

## AGENDA ITEM NO 5

**TITLE: Licensing Enforcement Policy**

Committee: Licensing Committee

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### **1.0 ISSUE**

1.1 To consider the adoption of an updated Licensing Enforcement Policy.

### **2.0 RECOMMENDATION(S)**

2.1 That Members consider the report and:

- adopt the proposed enforcement policy.

### **3.0 BACKGROUND**

3.1 The Council implements, administers and enforces a range of legislation intended to protect public safety, local economies and the environment from any adverse effects of the provision of licensable activities. Various pieces of legislation outline what is or isn't a licensable activity, and which body is responsible for overseeing such activities. The following list contains many (but not all) of the legislation relevant to the Council's Licensing Authority.

The Local Government (Miscellaneous Provisions) Act 1976

Town Police Clauses Act 1847

The Licensing Act 2003

The Gambling Act 2005

The Animal Welfare (Licensing of Activities involving Animals) (England)

Regulations 2018

Scrap Metal Dealers Act 2013

3.2 Many of the areas that the Licensing Authority oversees have specific policies, some as a result of a statutory requirement placed upon the Council, and others to provide a solid framework to assist all parties including Officers, Members, applicants and licence holders, and members of the general public.

3.3 An enforcement audit conducted in 2023 found that whilst the Council had an overarching enforcement protocol published in 2014, the specific licensing

enforcement policy published on the Council's website was last updated in 2006, and was therefore, in need of review. The 2006 policy can be found in **appendix 1** to this report.

#### **4.0 PROPOSALS**

4.1 Having reviewed the content of the 2006 licensing enforcement policy, Officers have drafted an updated and simplified licensing enforcement policy for Members consideration, which is contained in **appendix 2** to this report.

4.2 This new policy covers all of the same areas that the 2006 version covered, however, Members will note that Appendix A and B have been removed from the proposed version.

#### **5.0 CONCLUSION**

5.1 Many of the specific policies and guidance documents maintained by the Licensing Authority cover enforcement options that are applicable to the specific type of permission the document relates to. The proposed policy in **appendix 2** has been written to take this information into account, and it has been written in language that is hopefully easy to understand to all persons relying on it.

5.2 Appendix A and B from the 2006 version have been removed from the proposed policy because it is considered that Appendix A is outdated and surplus to requirements due to the content of the proposed policy, and Appendix B is outdated, and specific to the Licensing Act 2003. Officers consider that if it is to be updated it should be made to apply across more areas of licensing and sit as a standalone document. This will require a separate piece of work.

#### **6.0 FINANCIAL IMPLICATIONS**

6.1 There are no financial implications to the trade or public if the recommendation in this report is approved.

6.2 A small amount of Officer time will be required to update the website. These costs will come out of the Licensing Department's budget.

6.3 An Equality Impact Assessment (EIA) (**appendix 3**) has been completed showing there is no adverse impact on the community if Members follow the Officer recommendations.

#### **7.0 APPENDICES**

7.1	Appendix 1	2006 Licensing Enforcement Policy
	Appendix 2	Proposed Licensing Enforcement Policy
	Appendix 3	Equality Impact Assessment (EIA)

Background Documents: None.

# **EAST CAMBRIDGESHIRE DISTRICT COUNCIL**

## **LICENSING ENFORCEMENT POLICY STATEMENT**

**March 2006**

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# **EAST CAMBRIDGESHIRE DISTRICT COUNCIL**

## **LICENSING ENFORCEMENT POLICY STATEMENT**

### **1. INTRODUCTION**

- 1.1** The purpose of this policy statement is to express the commitment and intentions of East Cambridgeshire District Council (“the Council”) to the principles of consistent and effective enforcement of licensing legislation.
- 1.2** This policy is designed to set out the arrangements by which the principles of proportionality, consistency, transparency, helpfulness, openness, and targeting of resources will be incorporated into actions.
- 1.3** The officers who carry out the enforcement of licensing legislation are Council staff or contractors who are authorised in writing to enforce delegated tasks and duties in accordance with the Council’s scheme of delegation. In some instances, external staff may be similarly authorised to enforce such powers and duties on behalf of the Council on a temporary basis.

### **2. STATEMENT OF INTENT**

- 2.1** It is the Council’s policy to strive to ensure that residents and visitors to East Cambridgeshire District Council are protected through the implementation of the statutory systems of licensing.
- 2.2** In order to achieve this objective enforcement action will be proportionate to the risk(s) presented, or the seriousness of the contravention of legislation and in accordance with the guidelines of this policy.
- 2.3** In the first instance officers will adopt an educative approach to those responsible for securing compliance with relevant licensing legislation. In the second instance officers will enforce the law by using a range of enforcement options including: verbal and written warnings, use of statutory notices, formal cautions and prosecution. Prosecution will not normally constitute a punitive response to minor contraventions of licensing legislation.
- 2.4** This policy recognises and gives support to the specific guidelines and enforcement action contained in all relevant statutory Guidance to the

various Licensing Acts as well as the Local Authorities Coordinators of Regulatory Services (LACORS) guidance and Home Office Guidance and Circulars.

- 2.5 All authorised officers shall have regard to this policy when carrying out their assigned duties.
- 2.6 Where there is considered to be a significant risk to public health, departures from these policy guidelines will be the exception and only following consultation with the Divisional Environmental Health Officer (DEHO) or in her absence the Principal Environmental Health Officer, in consultation with the Executive Director of Environmental Services (EDES).

### **3. GENERAL PRINCIPLES**

- 3.1 The Council will endeavour to secure full compliance with all relevant licensing related legislation that it is responsible for enforcing. Most of the Council's dealings with those responsible for complying with such legislation are informal and authorised officers will seek to offer relevant information and advice in person as well as in writing. The Council's authorised officers will deal with anyone subject to the enforcement process in a courteous, fair and objective manner, and taking into account its policy on equal opportunities.
- 3.2 Authorised officers will also assist businesses and individuals to understand legal requirements and the obligations imposed by the relevant legislation. They will seek to encourage good practice by businesses in line with that which is contained in the relevant guides to industry, codes of practice and relevant legislation. Officers will be sensitive to the needs of business including requirements for prompt responses, of action and the imposition of minimum burdens consistent with regulatory confines. It should also be noted that from time to time advice or instructions may be given to the Council from central Government and other Organisations when it specifies a particular type of enforcement approach for specific legal requirements. In such instances, the Council will adhere to such instructions where it is appropriate to do so.
- 3.3 Authorised officers will also use formal enforcement measures set out in the relevant legal provisions including the issuing of statutory notices, formal cautions and by taking prosecutions. Where the premises or operation of the business fails to meet prescribed conditions or standards of a licence that has been granted, then an application may be refused in line with the appropriate enforcement guidance in existence at that time.
- 3.4 It is accepted that there should be a quick and effective response to serious breaches of legislation as distinct from an efficient and effective enforcement approach to other breaches. In considering whether good

practice has been adopted, the Council's authorised officers will take account of relevant guidance using professional judgement about the extent of the risks and the effort that may have been applied to counter them.

- 3.5** Some legislation is prescriptive. Prescriptive law requires that both the operator and enforcer meet its requirements precisely and this removes the opportunity for discretionary interpretation.
- 3.7** Where appropriate, the Council reserves its rights to carry out covert surveillance of individuals or organisations. In doing so, officers will comply with any human rights legislation and associated guidance in existence at the time along with any internal policies and procedures.
- 3.8** The Council will ensure that its officers are suitably qualified, experienced and competent with respect to the enforcement duties that they have been authorised to carry out. Such authorisations shall be in accordance with that which is laid down in the relevant Act. The Council shall also ensure that each officer receives suitable and sufficient structured training that is managed, assessed and recorded on an ongoing basis.
- 3.9** Where resources permit it, the Council will endeavour to provide suitable training and education to the licensed trade and associated businesses on a range of licensing matters designed to encourage compliance with the law. This will be particularly relevant where new legislation is introduced and where an initial educative approach is appropriate and encouraged. In providing training and education, every effort will be made to provide it in languages other than English where there is a demand and where resources facilitate this.

#### **4. PRINCIPLES OF ENFORCEMENT**

The enforcement of licensing legislation should be guided by the principles that are contained within the Enforcement Concordat that has been formally adopted by the Council. This constitutes a framework for local authorities to work to by committing them to good enforcement policies and procedures. The principles are as follows:

##### **4.1 Standards**

The Council remains accountable to central government and the local taxpayer for its actions and omissions. This means that it must have clear policies and standards against which it can be judged. The Council will consult with business and other relevant interested parties, including technical experts where appropriate and draw up these standards setting out the level of service and performance the public and business can expect to receive. These standards will then be made available to those who are regulated.

## **4.2 Openness**

The Council will provide information and advice in plain language on the law that it enforces and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities. Officers will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

## **4.3 Helpfulness**

The Council believes that prevention is better than cure and that its role therefore involves actively working with business, especially small and medium sized businesses, to advise and assist on compliance. It will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point and telephone number for further dealings with the Council and will encourage business to seek advice/information from them. Applications for licences, registrations, etc, will be dealt with efficiently and promptly. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays.

## **4.4 Complaints about Service**

The Council will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any rights of complaint or appeal will be explained by the officer, with details of the process and the time-scales involved.

## **4.5 Proportionality**

**4.5.1** Proportionality means relating enforcement action to the risks and costs. Both those whom the law protects and those in whom it places a duty expect that action taken by the Council to achieve compliance should be proportionate to the risks posed to members of the public and to the seriousness of any breach of the legislation or relevant licensing conditions.

**4.5.2** Some legal requirements are specific and others are mandatory i.e. there is no room for discretion or individual interpretation. However, others require action in line with the principles of “reasonableness” or “appropriateness” and the regulatory system often includes the concept of proportionality through such principles. Deciding what is reasonable or appropriate to control risks involves the exercise of judgement by businesses and, when the law permits, discretion by enforcers based on sound professional judgement. Where a proprietor and the Council cannot reach agreement, the final determination of what is reasonable in particular circumstances may ultimately be made by the Courts. In



other instances, it may be appropriate for enforcers to consult with LACORS, other authorities, or the legislators to seek clarification.

**4.5.3** Some risks may be so serious that they cannot be permitted irrespective of the economic consequences, whilst at the other extreme, some items may be so trivial that it may not be worth spending more to reduce them. In general, risk-reducing measures must be weighted against the associated costs of the proprietor taking appropriate remedial measures, unless the cost of a particular action is excessive compared with the benefit of the risk reduction in terms of its magnitude of probability.

**4.5.4** Although not precisely defined, cost effectiveness is an implicit element of practicality when determining 'due diligence defences.' Authorised officers must have regard to costs and benefits when determining whether a company has "taken all reasonable precautions and exercised all due diligence" to prevent an offence occurring.

## **4.6 Consistency**

**4.6.1** Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. Businesses managing similar risks expect a consistent approach from enforcing officers in the advice tendered, the use of powers, issuing of approvals for licences, decisions on whether to prosecute and response to licensing-related incidents.

**4.6.2** The Council recognises that, in practice consistency is not a simple matter. Authorised officers are faced with many variables such as the severity of the hazard, the attitude and competence of management and the associated history of compliance. Each may vary between businesses which otherwise appear similar. Decisions on enforcement are a matter of sound professional judgement when the Council, through its officers, will exercise discretion. It will continue to develop arrangements – including standard procedures in line with national audit requirements – to promote consistency in the exercise of discretions. These will include effective arrangements for liaison with other enforcing authorities through the County Licensing Liaison Group, consultations with LACORS, and other Statutory Consultees.

## **4.7 Transparency**

**4.7.1** Transparency means helping proprietors of businesses and the public to understand what is expected of them and what they should expect from the Council. It also means making it clear to proprietors not only what they have to do but, where this is relevant, what they don't. It also means making clear why an officer intends to or has taken a particular course of action. In turn these mean distinguishing between compulsory requirements on the one hand and advice and guidance about what is desirable, but not compulsory, on the other.

**4.7.2** This document sets out the general policy framework within which the Council will operate. Businesses need to know what to expect when an authorised officer visits and what rights of complaint are open to them. An explanatory text entitled “Licensing Law Inspections and Your Business” produced by East Cambridgeshire District Council will be made available to all businesses following a routine inspections and upon request. The text explains what businesses and their employees can expect when an authorised officer visits a licensed business. In particular, in the case of informal enforcement action the officer will tell the proprietor what to do to comply with the law, explain why, and, if asked, distinguish legal requirements from best practice advice. Officers will, if asked, confirm any advice in writing. Letters will identify the DEHO as being the initial point of contact if businesses wish to query an officer’s findings or are unhappy about the standard of service received;

## **4.8 Targeting**

**4.8.1** Targeting means making sure that resources are targeted primarily on those whose activities give rise to the most serious risks, or whether hazards are least well controlled: and that action is focused on the proprietors who are responsible for the risk and who are best placed to control it.

**4.8.2** The Council will prioritise inspections. The priorities for visits in response to complaints from the public about licensed activities and licensing incidents will take into account the nature and severity of the allegations. Certain licensed operations will receive more regular visits and inspections so that the Council can confirm that potentially high risk operations have effective management arrangements in place.

**4.8.3** Where formal enforcement action is necessary, it will be directed against those who are responsible for preventing the offence from occurring or for carrying out the remedial work. Where several individuals share responsibility, the Council will take action against those who can be shown to be in breach.

## **5. SPECIFIC ENFORCEMENT AREAS**

### **5.1 Routine inspections**

**5.1.1** Under normal circumstances, inspections and visits to licensed premises will be made without prior warning. In instances where it is appropriate to do so, appointments may be advisable e.g. where it is prudent that the proprietor or manager is on site in order to discuss particular issues or matters arising from a previous visit.

**5.1.2** Officers will identify themselves at the premises at time of entry unless for operational reasons the purpose of the visit is for surveillance

purposes. Officers will show their identification, if asked, and provide means of checking that identity, if necessary.

- 5.1.3** The main purpose of a licensing inspection is to establish if the licensable activity is being carried out in accordance with relevant statutory provisions and / or conditions.
- 5.1.4** The officer will state the purpose of the inspection at the start of the visit with the person in charge at that time. Inspections can involve discussions with all or some of the staff working at the premises at that time. At the conclusion of all programmed inspections, the officer will offer to discuss their findings and give to the person in charge a completed inspection form (see section 6.3.7 below).
- 5.1.5** Officers will offer to supply any relevant leaflets or guidance notes at the time of inspection if they have them or send them later, if requested. Letters can be translated into other languages if requested and interpreters can be used if necessary. Where issues of interpretation or inconsistency arise, the authority will liaise with other authorities in the County or LACORS.
- 5.1.6** Generally, enforcement will be undertaken in a graduated approach. In the first instance, a discussion of requirements will take place with the proprietor or his representative. When considering formal enforcement, account will be taken as to whether there is also evidence of significant breaches of other licensing requirements. In the absence of other significant breaches, the officer may consider a formal approach where:
- there are high risk involved; or
  - breaches of licensing requirements would likely lead to significant risks to public and or employee safety and if not remedied and in doing so gives rise to unacceptable risks; or
  - the proprietor has already failed to respond to an informal, educative approach.
- 5.1.7** Offences of a minor nature may be dealt with by way of advice, verbal warning, follow up letter, a re-visit or any combination of these. New legislation will also require a more educative approach in the first instance.
- 5.1.8** If contraventions of licensing regulations and conditions and/or poor practices are found, where resources permit, the authority will arrange for a further visit to be carried out. Officers will take a graduated approach to enforcement dependant upon the nature, size and risk posed by that business.
- 5.1.9** Where it is inappropriate for offences to be dealt with by an informal approach, then matters will be discussed between the officer and their line manager. A decision will then be taken as to what course of action to take. These situations might include:-

- where there is an imminent risk to health;
- failure to comply with licensing conditions;
- failure to comply with a previous informal letter to remedy breaches of legislation;
- a cumulative breaches of licensing legislation creating a risk to public safety;
- an act of obstruction.

## **5.2 Investigations**

**5.2.1** The Council will respond to, and where appropriate, investigate all complaints about licensing, licensed premises, licensing practices etc. within 3 working days. The response may vary according to the nature of the allegation, its severity and whether it is deemed to be frivolous or vexatious in nature. In most cases, it will be appropriate to inform the proprietor of the business that a complaint has been received and the nature of the allegation. In some instances, it will be appropriate to release the complainant's details. However, where it is necessary to protect the identity of the complainant e.g. where there may be intimidation, then their personal details may be withheld pending legal advice.

**5.2.2** In responding to complaints from whatever source, the investigating officer will liaise, where necessary, with the "home" or originating authorities for the premises in question. The complainant shall be kept informed of the progress of the investigation and notified of the eventual outcome.

**5.3.4** Where complaints have been received, the proprietor and/or management of the licensed premises likely to be responsible for any offence shall be notified as soon as is reasonably practicable unless it is not appropriate to do so e.g. it might hinder a more serious on-going problem subject to a separate investigation. The investigating officer will, and in any event when requested, keep the proprietor or their representative informed of the progress of the investigation. At the end of the investigation, the proprietor or their representative shall be informed of the outcome and any further action to be taken by the Council.

## **6. ENFORCEMENT OPTIONS**

**6.1** There are a number of enforcement options available to the authorised officers where they have identified contraventions of the law. The options include: -

- taking no action i.e. premises fully compliant and no further action required;
- taking informal action;
- using statutory notices;

- using formal cautions;
- suspending, revoking or refusing to renew a licence;
- prosecution (can be taken as well as issuing notices);
- a review of a licence, instigated by one or more of the statutory consultees.

**6.2** This part of this policy provides detailed guidance on when each of these options may be considered. In each situation, the officer will need to assess the degree of risk, the seriousness of the offence and the technical means of remedying the situation along with the history of compliance. The decision as to which type of enforcement is appropriate must always be governed by the particular circumstances of the case. Where appropriate, a staged approach to enforcement should be adopted and in the first instance businesses should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required.

### **6.3 Informal Action**

**6.3.1** Informal action may consist of any or all of the following:

- giving advice and offering general assistance and guidance;
- issuing verbal warnings of contraventions;
- writing a letter requiring action.

**6.3.2** Authorised Officers will use informal procedures as long as they believe such procedures will secure compliance with the law within a time scale that is reasonable in the circumstances. However, certain Acts and Regulations may dictate that certain formal procedures shall be taken given particular situations. These procedures are outlined in the appropriate sections below.

**6.3.3** If the officer decides not to use formal procedures (notices, cautions or prosecution), but prefers to use informal methods such as giving written advice, this should not produce a lower standard of compliance with the Act and ancillary legislation than would be achieved by the use of formal legal procedures.

**6.3.4** While the action taken by the officer will depend on the circumstances of the particular case, for guidance purposes only, the Council considers the following circumstances where it may be appropriate to take informal action:-

- the offence is not serious enough to warrant formal action e.g. a minor technical offence which creates little or no risk to health;
- from the past history, it can reasonably be expected that informal action will achieve compliance;
- confidence in the business management involved is reasonably high.

- 6.3.5** Where informal action has already been adopted in relation to the same Licensing Operator, but without success, officers will consider using a more formal approach. In the first instance, this may include the serving of a Notice or calling for a Licence Review subject to any guidance issued under the Act.
- 6.3.6** Where an officer offers advice following an inspection, then they will always confirm that advice in writing. Copies of letters and inspection reports will be sent to the registered or head office where this is not the premises visited.
- 6.3.7** Inspection reports must be issued following all programmed inspections. This applies even in those circumstances where conditions at the time of inspection are satisfactory. The minimum details which must be included in post inspection reports include: date and time of inspection, type of premises, proprietor/owner of the business, address of the premises, persons seen/interviewed, areas inspected, records examined, and a summary of action to be taken by the authority.
- 6.3.8** All letters sent to proprietors following licensing inspections will distinguish a legal requirement from a recommendation, give a time for compliance and state the regulation being contravened. It will also give the contact details for the officer and where to write in if there are any queries. Informal post inspection letters will be sent out within 10 working days of the inspection.

## **6.4 Review of Licences**

- 6.4.1** The Licensing Act 2003 permits Responsible Authorities to apply for a review of a premises licence or club premises certificate. Except in extreme cases, the Responsible Authority seeking a review will:
- 6.4.2** give an early indication to both the holders of the premises licence or club premises certificate and to the licensing authority that this is their intended course of action
- 6.4.3** liaise with other responsible authorities as necessary to ensure a co-ordinated and thorough review
- 6.4.4** seek an informal resolution to the matter with the holders of the premises licence or club premises certificate, if possible and appropriate
- 6.4.5** be able to demonstrate, to the Licensing Committee hearing the application for review, that alternative approaches to dealing with the situation have been tried, or were considered appropriate.

## **6.5 Formal Cautions**

**6.5.1** The Council may consider issuing a formal caution, in appropriate cases, as an alternative to a prosecution. In doing so, reference will be made to the appropriate Home Office circular. Under normal circumstances, the purpose of a formal caution is to:-

- deal quickly and simply with less serious offences;
- divert less serious offences away from the Courts;
- reduce the chances of repeat offences.

**6.5.2** When a formal caution is under consideration, the following conditions must be fulfilled before it is given:-

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction if a prosecution were to be taken as an alternative; and
- the suspected offender must admit the offence; and
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

**6.5.3** Where a person declines the offer of a formal caution, it will be necessary to consider taking alternative enforcement action. This could include prosecution in the first instance subject to the criteria laid down in the Council's prosecution policy attached as Appendix A.

## **6.6 Prosecution**

Prosecution is only one of a number of enforcement options available to the Council. Each case needs to be judged on its own merits and any policy cannot therefore be prescriptive but only broad in its nature. As the prosecution process is particularly important and far reaching in its possible consequences, it is attached in Appendix A as a separate policy document.

# Appendix A

## EAST CAMBRIDGESHIRE DISTRICT COUNCIL

### LICENSING PROSECUTION POLICY

#### 1. Introduction

1.1 Through its Standing Orders, East Cambridgeshire District Council (the Council) delegates the authority to prosecute for licensing matters to the Executive Director Environmental Services Division (EDES). There are, however, a number of individuals who will be consulted as part of the decision-making process. These are:-

- a. The Divisional Environmental Health Officer (DEHO);
- b. The Principal Environmental Health Officer and;
- c. The Head of Legal Services.

1.2 Dependant on the case in question, the following people may also need to be consulted as appropriate:-

- a. Fully authorised Licensing officers;
- b. External professional/experts in connection with Licensing issues
- c. Statutory Consultees

1.3 In consultation with the DEHO and where appropriate the Council's legal advisor, the authorised officer(s) will gather appropriate evidence and prepare the case on behalf of the Council. Where, having considered all the evidence, it is felt by these officers that a prosecution may be warranted, a recommendation will be formed that will be presented in writing to the EDES for his consideration and authorisation. Following the written agreement by the EDES to proceed, the Council's legal service will instigate the prosecution in consultation with the case officer.

#### 2. The Prosecution Policy

2.1 This part of this document outlines the prosecution policy of the Council and describes, in broad terms, the criteria and basis of taking matters before a court of law. The Council's Prosecution Policy in relation to Licensing forms part of the overall strategy for enforcement and for dealing with offences. This policy is consistent with the Enforcement Concordat agreed by central and local government to which the Council has formally signed up to. The overall enforcement strategy of the licensing enforcement function is detailed within the remainder of this document.

2.2 This Council takes seriously its obligations arising from the human rights legislation. It will endeavour, at all times, to act compatibly with this legislation and give due regard to the rights of the individual.



- 2.3 It is the policy of the Council when dealing with all offences to:
- i) ensure uniformity, consistency and evenhandedness;
  - ii) specify and to observe the criteria for alternative courses of action; and
  - iii) take action which assists the prevention of potential, continuing or recurring offences of a similar nature.
- 2.4 Enforcement action ranges from giving advice and issuing informal warnings, to cautioning and prosecution. Decisions on the type of action that will be taken in relation to a particular offence are based on the following criteria:
- i) the nature of the alleged offence;
  - ii) the seriousness of the alleged offence;
  - iii) the status, circumstances, previous history etc. of the alleged offender;
  - vi) the reliability and scope of the evidence, including the likelihood of the alleged offender being able to establish a statutory defence.
  - v) the desirability, in terms of benefit to the community, of a particular course of action;
  - vii) the prevalence of the class of alleged offence and whether a prosecution could act as a deterrent and encourage compliance generally;
  - viii) regard to authoritative advice, guidelines and recommendations;
  - ix) any explanation offered by the alleged offender and their willingness to prevent a recurrence;
  - x) any previous advice given to the alleged offender by this, or another authority;
  - xi) if a complainant or employee is involved, the effect (financial, physical, psychological etc.) which the offence creates and their willingness, or otherwise, to cooperate with an investigation.
- 2.5 The Council recognises that most businesses wish to comply with the law. However, there are occasions when action, including prosecution, will be taken against those who have flouted the law, or acted irresponsibly. Those matters that involve intentional, repeated or reckless acts and those concerned with public safety will be specifically reported and considered for prosecution.
- 2.6 When a decision whether or not prosecute is being made, the Council will have regard to the Attorney General's Code for Crown Prosecutors. This means that the principle criteria which will be considered are:
- i) whether the standard of evidence is sufficient for there to be a realistic prospect of conviction;
  - ii) whether a prosecution is in the public interest;
  - iii) the likely penalty, i.e. if the probable penalty would only be an absolute discharge then it would not normally be considered in the public interest to prosecute;
  - iv) currency, i.e. regard would be had to the time which has elapsed since the date of any alleged offence;
  - v) youth, with regard being taken of previous character, parental attitude, and the likelihood of the alleged offence being repeated;

- vi) old age; infirmity, or other medical condition, in particular, whether the accused is fit to stand trial.
- 2.7 Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay and to select offences that:
- i) reflect the seriousness of the case;
  - ii) enable a court to exercise adequate sentencing powers; and
  - iii) permit the case to be presented in a clear and precise manner.
- 2.8 Once the prosecution has been determined by a court of law, the Council will contact all its witnesses to inform them of the outcome.



## Licensing Act 2003

### **Memorandum of Understanding and Joint Enforcement Protocol signed between**

### **East Cambridgeshire District Council (the Licensing Authority) and**

- 1. Cambridgeshire Constabulary**
- 2. Cambridgeshire & Peterborough Fire & Rescue Authority**
- 3. Cambridgeshire County Council Trading Standards Service**
- 4. Cambridgeshire County Council Child Protection Service**
- 5. East Cambridgeshire District Council Environment and Planning Services**

1. The above statutory organisations are the Parties to this Memorandum of Understanding and Joint Enforcement Protocol.
2. East Cambridgeshire District Council and Cambridgeshire Constabulary, Cambridgeshire & Peterborough Fire & Rescue Authority and Cambridgeshire County Council aim to provide safe environments for the community of Cambridgeshire.
3. The Licensing Act 2003 introduces a new regime for the licensing of a variety of activities, including places where alcohol is sold and entertainment is provided. It sets out four equal licensing objectives which are to be promoted by licensing authorities, in conjunction with other “responsible authorities”, as defined by the Act, and the holders of licences. The Act also defines other bodies as responsible authorities, with rights of consultation and objection to applications, but it is not thought that formal agreements will be required with these bodies.

These are:

- a. The prevention of crime and disorder
  - b. The promotion of public safety
  - c. The prevention of public nuisance
  - d. The protection of children from harm
4. Each Party has enforcement responsibilities in relation to premises licensed under the Act and recognises the importance of effective co-operation and liaison to ensure that premises licence holders, designated premises supervisors, personal licence holders and club premises certificate holders understand and comply with the law.

5. The Government has strongly recommended that protocols be set up between authorities and this document has been prepared with that in mind.
6. The purpose of this document is to ensure efficient and effective co-operation between agencies when dealing with areas of mutual interest, to secure:
  - a. High levels of open communication between agencies
  - b. Clear lines of responsibility regarding enforcement of the law
  - c. Sharing intelligence, where appropriate to enable effective enforcement of the law

It sets out the steps that have been agreed to achieve that aim, in accordance with guidance issued by the Office of the Deputy Prime Minister (ODPM).

## 7. **Communication**

- 7.1 Good communication between agencies is vital to ensure that information of mutual interest is shared effectively and, in particular, where responses are required within a tight timescale to meet statutory periods for determination of applications, that deadlines can be met. It is important that each organisation has a reliable contact point, and will identify nominated officers and their deputies. There must be a clear understanding about when, where and how contact shall be made, including for emergencies.

## 8. **Sharing Intelligence**

- 8.1 The parties to this Memorandum of Understanding need to share information about premises and people currently licensed or proposed to be licensed, in such a way as to enable the effective operation of the licensing process. This agreement enables the sharing of information by all parties in compliance with the rules on Data Protection, Freedom of Information and Human Rights.

## 9. **Data Protection and exchange of information**

- 9.1 Section 185 of the Licensing Act 2003 states that the Licensing Authority and responsible Authorities may share information for the purpose of “facilitating the exercise of the Authority’s functions under this Act”. Information should not be further disclosed except to a licensing authority or responsible authority and only for the purpose mentioned above.
- 9.2 Section 29 of the Data Protection Act 1998 allows for the exchange of information for the purposes of the prevention of crime or the apprehension of offenders.
- 9.3 Parties to this Protocol may disclose information to other Parties for these purposes providing that the local Protocols applicable to each organisation for data protection are observed. Every request for information under the Act must be made in writing giving reasons why disclosure is necessary.
- 9.4 Information supplied must only be used for the purpose for which it is obtained, must be securely retained whilst in the possession of the responsible authority that has requested it, and must be securely disposed of when no longer required. It must not be further transmitted to a third party without the consent of the original authority that supplied the information.

9.5 This part of the Protocol may be supplemented by any Memorandum of Understanding on data exchange agreed either at a local or national level.

10. **Indemnity**

10.1 The signatories to this memorandum of Understanding are all committed to the sharing of information to prevent and detect crime. As all signatories to this agreement are also signatories of the Cambridgeshire Partnership Information Exchange Protocol for Crime and Disorder, misuse of information provided within this Agreement will invoke the cover provided within the indemnity within the above protocol.

11. **Enforcement Action**

11.1 Enforcement action taken in respect of breaches of legislation will remain the responsibility of the agency designated for each piece of legislation, but the outcome of such action should be fed into the process for determining applications and reviewing the status of licences currently in force.

11.2 The Licensing Act does not transfer from any enforcement body, including the Police or the Fire Authority, powers of enforcement for any pieces of legislation. From time to time, however, it may be expedient for joint operations to be carried out in respect of licensed premises by officers from the licensing authority and officers from one or more of the relevant responsible authorities.

11.3 Joint operations will normally be conducted on the basis of a risk assessment applied to all licensed premises, or in response to specific complaints. Responsibility for seeking a joint operation will rest with the responsible authority with the expertise in dealing with the complaint in question (eg the Environmental Health Service for prevention of nuisance; the Fire & Rescue Service for fire risk issues)

12. **Relevant legislation:**

- a. **Licensing Act 2003** – provides a clear focus on the promotion of the licensing objectives; introduces better and more proportionate regulation to give customers more choice, whilst providing the necessary protection for local residents and others.
- b. **Police Act 1964** – imposes a primary responsibility on the Police Authority to maintain an adequate and effective Police Force.
- c. **Fire & Rescue Services Act 2004** – places a duty on the Fire Authority to provide efficient arrangements for the giving, when requested, of advice in respect of buildings and other property as to fire prevention, restricting the spread of fires and means of escape in case of fire.
- d. **Crime & Disorder Act 1998** – places a statutory requirement on Police Services, Local Authorities and other agencies to tackle crime and disorder by working in partnership.

13. **Offences**

13.1 The Parties agree that the prime responsibility for enforcing the offences under the Act should lie as follows:

Note abbreviations, as follows:

LA = Licensing Authority

CPC = Club Premises Certificate

DPS = Designated Premises Supervisor

PLH = Premises Licence Holder

AO = Authorised Officer

Section	Offence	Authority
33 (6)	Failure to notify LA of change of name or address PLH or DPS	LA
40 (2)	Failure to notify existing DPS of variation to premises licence to exclude them	LA
41 (5)	Failure to provide premises licence to LA upon removal of DPS	LA
46 (4)	Failure to notify DPS of application for transfer of premises licence	LA
49 (5)	Failure to notify DPS of grant of interim authority notice	LA
56 (3)	Failure to provide premises licence at request of LA for amendment	LA
57 (4)	Failure to keep or display premises licence on premises	LA
57 (7)	Failure to produce premises licence to an AO for examination	LA
59 (5)	Obstruction of an AO entering premises to inspect before grant of a licence, review or a statement	LA
82 (6)	Failure to notify of change of name or alteration of rules of a club	LA
83 (6)	Failure to notify of a change of registered address of club	LA
93 (3)	Failure to produce CPC for amendment within 14 days of LA request	LA
94 (5, 6, 9)	Duty to keep, display and produce club premises certificate at premises	LA
96 (6)	Inspection of premises before grant etc of club premises certificate	LA
108 (3)	Obstruction of an AO in inspecting temporary event premises	LA or Police
109 (4)	Failure to keep or display temporary event notice on premises	LA
109 (8)	Failure to produce temporary event notice to an AO	LA
123 (2)	Failure to notify LA of conviction for relevant offence during application or renewal period	LA
127 (4)	Failure to notify LA of change of name or address of personal licence holder	LA
128 (6)	Fail to notify court of personal licence or "notifiable event" when being dealt with for a relevant offence	Police or LA
132 (4)	Failure to notify LA of conviction for relevant or foreign offence	LA
134 (5)	Failure to produce personal licence within 14 days to LA for updating	LA

135 (4)	Failure to produce personal licence to an AO whilst on premises to sell or authorise sale of alcohol	LA or Police
136 (1)	Allowing licensable activities otherwise than in accordance with an authorisation	LA or Police
137 (1)	Unauthorised exposure for retail sale of alcohol	LA or Police
138 (1)	Unauthorised possession of alcohol with intent to sell or supply	LA or Police
140 (1)	Allowing disorderly conduct on licensed premises	Police or LA
141 (1)	Sale or supply of alcohol to person who is drunk	Police or LA
142 (1)	Obtaining alcohol for a person who is drunk	Police or LA
143 (1)	Failure to leave licensed premises following a request from a PC or AO	Police
144 (1)	Keeping unlawfully imported goods on relevant premises	Police or Customs and Excise
145 (1)	Allowing unaccompanied children under 16 on relevant premises when alcohol is being supplied	LA or Police
146 (1, 2, 3)	Sale or supply of alcohol to children under 18	LA, Police or Trading Standards
147 (1, 3)	Allowing sale or supply of alcohol to children under 18	LA, Police or Trading Standards
148 (1, 2)	Sale or supply of liqueur confectionery to children under 16	LA or Police
149 (1, 3, 4)	Purchase or supply of alcohol by or on behalf of children under 18	LA or Police
150 (1, 2)	Consumption on relevant premises of alcohol by children under 18, or knowingly allowing it to occur	LA or Police
151 (1, 2, 4)	Delivering or permitting others to deliver alcohol to children under 18	LA or Police
152 (1)	Sending a child under 18 to obtain alcohol for consumption	LA or Police
153 (1)	Permitting children under 18 to sell or supply alcohol children	LA or Police
156 (1)	Sale of alcohol in or from a moving vehicle	Police
158 (1)	False statement in connection with a licensing application	LA
160 (4)	Keeping premises open in contravention of an area closure order	Police or LA
161 (6)	Permitting premises to be open in contravention of a premises closure order	Police or LA
165 (7)	Permitting premises to be open in contravention of a Magistrates' closure order	Police or LA
179 (4)	Obstructing entry by a PC or an AO to premises to check on the carrying out of licensable activity	Relevant responsible authority

14. **Investigation of offences**

14.1 When the licensing authority or a responsible authority has become aware of an offence and would like another more appropriate responsible authority (or the licensing authority) to take formal action, they will take the following steps:

- a. early discussion with the appropriate authority, including (unless in cases of extreme urgency) the licensing authority's enforcement officer
- b. supply the relevant authority in a timely manner all of the relevant evidence (whether subsequently used or unused)
- c. set out in writing details of the offence and request that the relevant authority take action

14.2 Once in receipt of a written request to take action the appropriate authority will:

- a. assess the facts and take appropriate action in accordance with its own enforcement policy. The appropriate authority will, unless immediate action is required, commence an investigation within a maximum of 15 working days of receipt of the complaint.
- b. inform the authority that initiated the complaint, and any other relevant authority, of the action taken, and reasons why.

15. **Responsibility for Prosecutions**

15.1 Section 186 of the Act provides that proceedings for offences under the Act may be instituted by:

- a. the Licensing Authority
- b. the Director of Public Prosecutions
- c. for offences under Ss. 146 and 147, the Local Weights and Measures Authority

15.2 It is expected that the Police and the Weights & Measures Authority will normally bring proceedings, including the issue of formal cautions, as a result of offences which they have investigated, unless, in the case of some minor offences, it is specifically agreed that the Licensing Authority will do so. (This may, for example, be part of a prosecution which relates to a series of matters of which the offences form part).

15.3 In all other cases, the Licensing Authority will be the prosecuting authority.

16. **Notification of prosecutions and cautions**

16.1 Notwithstanding the duty of the court in section 131 (duty to notify the Licensing Authority of convictions) the appropriate prosecuting authority will inform the Licensing Authority within five working days of any conviction or caution under the Act.

16.2 The Licensing Authority for these purposes is the Licensing Authority that issued the personal licence, premises licence, club premises certificate or which received the temporary event notice, even if not a party to this Protocol.

16.3 The notification shall be in writing and shall state:



- a. the name and address of the person convicted or cautioned
- b. the nature and date of the conviction or caution and
- c. the details of any conviction including any order under section 129 of the Act.

17. **Register of Cautions**

- 17.1 The Licensing Authority will maintain a register of formal cautions issued to holders of personal licences, premises licences, club premises certificates or persons issuing a temporary event notice.

18. **Liaison between Parties to this Agreement**

- 18.1 Liaison meetings will take normally place between the Licensing Authority and the Police on a monthly basis, depending on the nature and quantity of business and with other responsible authorities on a basis to be agreed, but not less than annually.

- 18.2 Responsible Authorities will determine the basis for liaising with each other, but this will be not less than annually.

19. **Consultation on applications**

- 19.1 Applicants for licences have a duty to send copies of applications to the appropriate responsible authorities at the same time as the application is submitted to the Licensing Authority. If this is not done, the application may be returned, as not duly made.

- 19.2 The Licensing Authority will communicate with all responsible authorities on a regular basis, to check that all relevant copies of applications have been received.

- 19.3 Responsible Authorities have a maximum of 28 days to raise representations to licences, where they consider that the operating schedule does not address sufficiently one or more of the licensing objectives.

- 19.4 Representations should include suggestions for conditions which would overcome the perceived shortcomings of the application.

- 19.5 Responsible Authorities are encouraged to contact applicants to discuss areas of concern, so that the opportunity to amend applications in advance of the date set by the Licensing Authority for a hearing. If this is successfully achieved, **and the Licensing Authority receives written confirmation of the amendments from the applicant**, a representation can be withdrawn, and this may obviate the need for a hearing.

20. **Applications for review of a licence**

- 20.1 This document recognises the right of any responsible authority to apply to the Licensing Authority for a licence or club premises certificate to be reviewed at any time.

- 20.2 Except in extreme cases (where there has been a serious incident of crime and disorder, a serious risk to public safety, a serious incident of public

nuisance or a serious incident related to the protection of children from harm) the responsible authority seeking a review will be expected to:

- a. give an early indication to the Licensing Authority of the events requiring an application.
- b. seek an informal resolution to the matter if possible or appropriate.
- c. be able to demonstrate to the Licensing Committee hearing the application for a licence review that, where appropriate, alternative approaches to dealing with the situation leading to the application have first been attempted, in accordance with the authority’s enforcement policy.

21. **Procedural Review**

21.1 All parties to this agreement shall periodically review this document to ensure that it maintains a suitable response and working arrangement for all licensing functions and achieves necessary feedback to assist in meeting the statutory objectives. It is suggested that the first review should take place not later than one year following the Second Appointed Day.

Signed .....

‡**John Hill**  
 Chief Executive  
 East Cambridgeshire District Council  
 (Licensing Authority and Environment & Planning Services)

Date .....

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Signed .....

‡  
 Cambridgeshire Constabulary

Date .....

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Signed .....

‡  
 Cambridgeshire & Peterborough Fire & Rescue Authority

Date .....

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Signed .....

‡  
 Cambridgeshire County Council (Trading Standards Service)

Date .....

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Signed .....

‡

Cambridgeshire County Council (Child Protection Service)

Date .....





# East Cambridgeshire District Council

# LICENSING ENFORCEMENT POLICY

**Published:** TBC  
**Version number:** 1  
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## **About this document**

- 1.1. East Cambridgeshire District Council has a responsibility to protect the community it serves, using the legislative powers delegated by central government. The Council implements, administers and enforces a range of legislation intended to protect public safety, local economies and the environment from any adverse effects of the provision of licensable activities.
- 1.2. The purpose of this Licensing Enforcement Policy is to set out the general principles and approach that East Cambridgeshire District Council will follow when taking enforcement or compliance actions under licensing legislation. The Policy aims to ensure that all enforcement action is conducted in accordance with the Better Regulation principles of:
  - Proportionality
  - Accountability
  - Consistency
  - Transparency
  - Targeting
- 1.3. Our primary objective is to achieve regulatory compliance. The Licensing Enforcement Policy therefore provides guidance to officers, businesses and the general public on the way in which we will exercise our enforcement powers to achieve compliance with the legislation enforced by the Licensing Authority. However, the emphasis is primarily on the methods and principles that we will follow, and this document does not attempt to create a comprehensive list of the powers open to us.
- 1.4. This policy was adopted by the Council's Licensing Committee on TBC, and will be periodically reviewed to ensure its continued accuracy in light of any significant changes in legislation, Codes of Practice or centrally issued guidance, or case law.
- 1.5. While we will have regard to this policy when exercising our powers, the Council will continue to consider each matter on its individual merits and circumstances. Nothing in this policy shall bind the Council to a particular action, or otherwise affect the Council's discretion to take legal or other enforcement action, in light of the circumstances of a particular case, where this is considered to be in the public interest.

## **General principles**

- 2.1. We will aim to ensure that any action taken to enforce or ensure compliance with legislative requirements is in accordance with the Better Regulation principles set out in paragraph 1.2 above.
- 2.2. East Cambridgeshire District Council acknowledges the principles of the "Better Business for All" partnership scheme<sup>1</sup>, which aims to develop relationships between businesses, support organisations and regulators.

<sup>1</sup> [BBFA – Better Business For All \(www.bbfa.biz\)](http://www.bbfa.biz)

- 2.3. In the first instance, licensing officers will look to advise businesses, especially small and medium enterprises; residents; and other organisations, on issues of compliance and regulation. When attending premises or carrying out inspections, officers will identify themselves by name and will produce identification, unless carrying out authorised covert investigations. Contact details for an appropriate officer will be provided in the event of any further action being required.
- 2.4. When taking enforcement action, in addition to this policy officers shall also have regard to the provisions within any overarching Council-wide Enforcement Statement and specific enforcement statements within specific licensing policies maintained by the Licensing Authority.

#### Proportionality

- 2.5. The Council accepts that any enforcement action should be proportionate to the risks and the perceived severity of the breach, ensuring that the most serious risks are effectively targeted. We will take into account the circumstances of each case and the response of the licence holder or person concerned. The attachment of conditions to licences will follow the same principles and the Licensing Section will work with licensees to assist them in meeting their legal obligations without incurring disproportionate or unnecessary expense.
- 2.6. We will carry out our duties in a fair and reasonable manner. Except in circumstances where immediate action is required, officers will provide an opportunity to discuss the case and, if possible, resolve any point of difference before any formal action is taken. In circumstances where immediate action is considered necessary, an explanation of why such action is necessary will be given at the time. This explanation will subsequently be confirmed in writing.
- 2.7. In considering enforcement action, account will be taken of relevant codes and guidance from legal authorities, public authorities and industry bodies.
- 2.8. Advice will be put clearly and simply and confirmed in writing on request. Explanations of what action is necessary, why it is necessary and over what timescale will be given.
- 2.9. In appropriate circumstances licensing officers may encourage training and education where this is needed to address problems attracting enforcement action.

#### Accountability

- 2.10. This policy, which guides the enforcement actions taken by officers on behalf of the Council, is determined by the Licensing Committee, which is comprised of democratically elected Councillors. The Licensing Committee delegates the enforcement responsibilities to the Council's Licensing (Statutory) and Licensing (Non-Statutory) Licensing Sub-Committees, and in many cases directly to Officers of the Council. The outcomes of enforcement actions



initiated by Officers, such as revocations and/or prosecutions shall be reported to the Licensing Committee at regular intervals.

### Consistency

2.11. Decisions on enforcement always involve a degree of judgement and the circumstances of each case will inevitably differ in detail. The guidance from official sources that is provided for Officers is reviewed on a regular basis and may directly affect enforcement decisions, as may case law. As a result there may be instances when enforcement appears from the outside to be inconsistent.

2.12. However, we will try to ensure that enforcement action is consistent by:

- Following current internal procedural and guidance notes
- Taking into account guidance from other authoritative bodies - e.g. the Home Office; Department for Culture Media and Sport; Department for Transport; Driver and Vehicle Licensing Agency; Driver and Vehicle Standards Agency; the Gambling Commission; the Local Government Association
- Taking account of new legislation or guidance impacting on licensing powers
- Taking account of new case law impacting on licensing matters
- Liaising with other enforcement agencies as appropriate – for example, Cambridgeshire Constabulary, Cambridgeshire Fire & Rescue Service, Cambridgeshire Trading Standards, the Security Industry Authority, the Gambling Commission, DVSA, the RSPCA (in respect of animal welfare matters), and other departments of East Cambridgeshire District Council, such as Environmental Services, and Planning
- Adopting an inter-agency approach where the Licensing Enforcement Officers' powers cannot be engaged – for example, ensuring that information gathered in respect of problems such as noise nuisance or anti-social behaviour at licensed premises, but where such evidence is insufficient to justify direct action, is shared with the relevant authorities, who may be able to take alternate action to remedy the issue.

2.13. To help achieve greater consistency on a regional basis, we will actively participate in local authority liaison schemes with neighbouring authorities where available.

2.14. These measures will be further supported by training for enforcement officers, and managerial checks on performance.

### Transparency

2.15. We will be open about how work is to be carried out, or why it may be necessary to take enforcement action.

2.16. We will provide information and advice, wherever possible in plain language and in a suitable medium. A clear distinction will be made between what is legally required, and what is advice or guidance and is desirable but not compulsory, in written and verbal communications.

- 2.17. If requested officers will confirm in writing any verbal advice given.
- 2.18. In circumstances where remedial work is required, this will be set out clearly and simply in writing. Where there is a contravention of legislation we will indicate which legislation is being contravened and what measures can be taken to achieve legal compliance and acknowledge that other means of achieving the same effect may be taken. Clear guidance will be given as to what action must be taken in order to comply with the legislation and what is recommended as good practice.
- 2.19. Where immediate action is necessary, an explanation of why such action is necessary will be given, and this will be confirmed in writing.

#### Targeting

- 2.20. Enforcement activities are primarily targeted towards activities carrying high risks or where there could be a considerable impact as the result of non-compliance either with licensing conditions or the legislation. Enforcement activities may be targeted towards individuals who are primarily responsible for an activity, who have the greatest responsibility to ensure compliance with the law or who have been subject to previous enforcement action. From time to time we will engage in enforcement activities which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement. These may represent national concerns as expressed by central government or its agencies, or local concerns as voiced by Members of the Council, residents or businesses.
- 2.21. We will undertake programmes of inspection and enforcement in respect of all the activities for which we issue licences. Each licensing function is assessed against risk, and this will be taken into account in establishing the nature and frequency of any inspections or enforcement activity. In determining the level of risk Officers will consider the following:
- The nature of the licensing function
  - The previous history relating to the licensing function
  - The nature and extent of complaints received by the Council
  - Information received from other agencies or departments
  - Safety and public protection issues.
- 2.22. Where complaints relating to a licensable activity or licence holder are received, they will be investigated, and evidence, experience, and this policy will be used to determine an appropriate enforcement action.

#### Equalities and human rights

- 2.23. This policy and all associated enforcement decisions take account of the following provisions of the Human Rights Act 1998. In particular, due regard is given to the following:
- Right to a fair trial;
  - Right to respect for privacy and family life, home and correspondence.

- 2.24. We will endeavour to ensure that all parties affected by our enforcement and compliance activities, including both formal and informal action undertaken, receive fair and equitable treatment irrespective of their race, ethnicity, gender, sexuality, disability status or any other identifying characteristic.

### **Visits and inspection of premises (powers of entry)**

- 3.1. Many pieces of licensing legislation which we enforce convey powers of entry, allowing authorised council officers to enter and inspect premises, vehicles or other structures which are being used for licensable activities, or where intelligence suggests such use otherwise than in accordance with a licence, permit or registration.
- 3.2. When we exercise a statutory power of entry, we will have regards to the Home Office's Code of Practice on Powers on Entry<sup>1</sup>, published pursuant to the Protection of Freedoms Act 2012.
- 3.3. We anticipate that most visits to, and routine inspections of, licensed premises will be pre-arranged and carried out with the licence-holder's knowledge and consent – particularly inspections required to assess the suitability of premises prior to the grant or renewal of a licence. In such cases, the purpose of and procedures for inspections will be outlined either within application guidance and related licensing policies, or when arranging the visit or inspection.
- 3.4. For other compliance and enforcement visits and inspections, we will follow any applicable statutory prerequisites to powers of entry. We will consider whether it is appropriate and practicable to give prior notice of the visit or inspection, and will do so where we are satisfied that pre-notification will not undermine or defeat the purpose of that inspection. However, we retain the right to carry out unannounced visits or inspections where we consider this appropriate and necessary. This is likely to be the case where we receive complaints or allegations of misconduct or breaches of licences which may, if true, be detrimental to public safety and require immediate remedial action to resolve. In such circumstances, the powers of entry and purpose of the inspection will be explained to a responsible person at the start of the visit or inspection.
- 3.5. We will attempt to notify and gain consent of the owner, occupier or appropriate representatives (e.g. premises manager or member of shop staff) of premises which are to be inspected under a power of entry at or before the start of a visit or inspection. However, where exercising a statutory power of entry, such visits or inspections may proceed without consent if this is deemed to be necessary and any other applicable legal prerequisites have been satisfied. Where consent to enter premises is refused or withdrawn, we will document our efforts to obtain that consent, and this evidence may be referred to in any subsequent proceedings. We will also explain to any person who appears to be responsible for the premises the effect of the statutory power of entry and any consequences of obstructing authorised officers in the course of their duties.

<sup>1</sup> <https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

- 3.6. Where appropriate for the exercise of our own statutory powers, licensing officers may accompany other authorised officers exercising relevant powers of entry at licensed premises, or be accompanied during inspections under licensing powers by authorised officers from agencies with statutory responsibilities for that premises. Examples of such joint working may include officers authorised by other East Cambridgeshire District Council departments, such as Planning, Environmental Services, Anti-Fraud or Anti-Social Behaviour; the Gambling Commission; Cambridgeshire Constabulary; Cambridgeshire Fire & Rescue Service; Cambridgeshire Public Health; Cambridgeshire Trading Standards; Home Office Immigration Enforcement; and the Security Industry Authority. From time-to-time, we may also be accompanied by professional advisers appointed by the Council, including vehicle mechanics or veterinary surgeons/practitioners. We will however aim to ensure that the number of persons inspecting premises remains reasonable and proportionate.
- 3.7. Where prior judicial approval to utilise powers of entry is required (warrants), we will follow the applicable legislation and maintain appropriate records of steps to obtain such approval.

### **Enforcement options**

- 4.1. In any situation which requires action to ensure compliance with legislation, officers will consider the following when deciding on the most appropriate enforcement action:
- The degree of risk from the situation
  - The particular circumstances of the case and likelihood of its continuation or recurrence
  - Whether any harm was caused
  - The aim to eliminate any financial gain or benefit from non-compliance
  - The general attitude of the offender to his or her responsibilities
  - The past history of the person(s), company or premises involved
  - The impact of the enforcement choice in encouraging others to comply with the law.
  - The likely effectiveness of the various enforcement options
  - Any legal guidance
  - Any Guidance document or Policy Statement issued by the Council, whether adopted under a statutory requirement or published in pursuit of the transparency principle.
- 4.2. Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law, including both formal and informal measures. Under normal circumstances, a process of escalation will be used until compliance is achieved. Exceptions would be where there is a serious risk to public safety or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment. Culpability and harm will always be considered.

4.3. As a general rule, the following options for enforcement action are open to the Council:

- To take no action
- To refer the matter to another service or agency
- Informal action – written or verbal warnings
- To administer a simple caution
- Hearings and reviews
- Refusal, suspension and revocation of licence
- Prosecution
- Exercising closure powers under the Anti-Social Behaviour Crime and Policing Act 2014
- Fixed penalty notices (FPN)

#### **No action**

4.4. In certain circumstances, contravention of the law may not warrant any action. This may be where the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has already ceased to trade in contravention of the law and will certainly not reoffend. In such cases we will advise the offender of the reasons for taking no action.

#### **Referrals to other agencies and partnership working**

4.5. From time to time matters under investigation are found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. Police, Fire Authority, Planning Department, Trading Standards, Gambling Commission, or another Licensing Authority. In all cases of referred enforcement, the person(s) under investigation will be notified of the reasons for referral in writing.

#### **Informal actions**

4.6. For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of non-compliance.

4.7. Sometimes advice will be given about 'good practice'. In such cases, we will clearly distinguish between what steps they must carry out to comply with the law, and additional advisory steps.

4.8. Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an individual or premises.

4.9. Failure to comply with recommendations arising from informal actions, or repeated misconduct, could result in an escalation of enforcement action.

### **Simple cautions**

- 4.10. In certain cases, a simple caution may be offered instead of prosecution. It should be noted that, although not a conviction, a caution still represents an admission of the commission of a criminal act, and as such may be formally recorded and appear on future criminal records checks, or be cited during future legal actions. In circumstances where a simple caution is offered and refused then the case will usually proceed to court.
- 4.11. A caution may be offered if:
- It is a first offence,
  - Evidence of offences warranting prosecution exists,
  - The offender admits the offence and agrees to be cautioned,
  - The offender is committed to preventing the likelihood of a re-occurrence, and
  - It is in the public interest as detailed in the Code for Crown Prosecutors.
- 4.12. When considering whether to offer a simple caution, we will take into account the wilfulness with which the offence was committed, the subsequent attitude of the offender and the views of the victim. An offer of a simple caution will always be accompanied by a full explanation of the effects and implications of acceptance, and a suitable period of time will be given to allow the full consideration of the offer.
- 4.13. There is no inherent right to be offered a simple caution as a means of disposal of an investigation. In all cases, decisions on whether to offer a caution will be made by the Council, following consultation between the Environmental Services Manager and the Council's Legal team.

### **Hearings and Reviews**

- 4.14. Certain behaviour, conduct or incidents may give cause for the referral of a licence to the Council's Licensing Committee to allow that licence to be reviewed or reconsidered. Although different legislative areas make specific provisions and processes for action of this type, typical circumstances that may warrant such action include:
- Where the licence-holder has been convicted of a relevant offence, or has otherwise committed a criminal act
  - Where the licence-holder or their staff have failed to comply with a condition of the licence
  - Where the licence-holder has behaved in a way which calls into question their suitability to hold a licence
  - Where the licence-holder has behaved in a way which is likely to have put the public at risk, or
  - Where the proprietors of licensed premises have failed to take suitable and sufficient action to promote the licensing objectives of the Licensing Act 2003 or Gambling Act 2005.

4.15. Where cases are referred to a Committee, we will:

- Give sufficient notice of the date on which the matter is to be considered
- Give proper notice to the licence-holder of the allegations against them
- Give notice to other affected parties with a right of appearance
- Allow the licence holder to obtain appropriate representation, if desired
- Provide the licence holder with the opportunity to address the Committee, present his/her case and provide supporting evidence
- Ensure the matter is determined in an impartial manner in accordance with the rules of natural justice
- Provide a written notice of the decision with reasons, and details of any right of appeal.

### **Prosecution**

4.16. A prosecution will only be brought where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to do so. In determining whether it is in the public interest, we will consider the Code for Crown Prosecutors guidance. The following list indicates some possible public interest factors in favour of a prosecution:

- There is, or has been a significant risk, or negative impact arising from a serious legal contravention or a number of lesser contraventions
- There has been some actual harm done to a third party, or that harm was reasonably foreseeable
- The attitude of the offender(s) is such that there is cause to believe that they knew that they were breaking the law or, if they did not, any reasonable person in their position should have known (this could take account of the past history of the case which may illustrate previous blatant or reckless disregard for the law)
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. complainant in a nuisance case, or a passenger in a vehicle)
- The defendant has previous convictions, cautions or FPN's which are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- The offence, although not serious in itself, is widespread in the area where it was committed
- An officer has been obstructed
- The cumulative effect of such breaches would be serious even if the breach itself was not
- A prosecution will have a significant deterrent effect.

### **Closure powers**

4.17. The Anti-Social Behaviour Crime and Policing Act 2014 created new powers for police and local authorities to close premises which are causing significant nuisance or disorder. These powers replaced previous powers allowing the police to close alcohol-licensed premises under the Licensing Act 2003,

consolidating them with various other statutory closure powers, and extending them to include other types of premises, both licensed and unlicensed. It is expected that this power will be reserved for the most serious incidents of nuisance and disorder, where it is not appropriate to use other powers.

- 4.18. As these powers are available to a range of Council officers, it is not considered appropriate for the Licensing Authority alone to create policy or guidance on the exercise of these powers which would bind the entire local authority. Licensing officers exercising such powers will have regard to any relevant guidance issued by the Government, or policy as may be compiled by the Council, and where applicable will liaise with the police and/or other relevant Council departments authorised to exercise closure powers prior to taking such action.
- 4.19. Where a closure order is made in respect of premises licensed for the supply of alcohol, provision of regulated entertainment or supply of late night refreshment, review proceedings under the Licensing Act 2003 will automatically be commenced. The Licensing Authority will deal with these proceedings in full accordance with the relevant statutory requirements, and will also have regard to earlier provisions of this policy regarding the carrying out of reviews under the 2003 Act.
- 4.20. Where a closure order is made in respect of premises licensed under another enactment, the licensing authority will typically consider whether it would be appropriate to take any action to revoke, restrict or refuse to renew the relevant licence, as may be the case, under the applicable licensing legislation, if this would ensure that the nuisance or disorder which led to the order being made would not continue nor reoccur in the longer term.

#### **Fixed Penalty Notices (FPN)**

- 4.21. Where an alleged offence has been committed and the evidential and public interest tests have been met, where legally available, fixed penalty notices may be considered as a suitable alternative to a Simple Caution or proceeding with a formal prosecution. It should be noted that, although not a conviction an FPN can be used by the Licensing Authority to consider future enforcement action. Where an FPN is not paid, the matter will usually proceed to court.
- 4.22. An FPN may be offered if:
- It is a first offence,
  - Evidence of offences warranting prosecution exists,
  - The offender is committed to preventing the likelihood of a re-occurrence.
- 4.23. There is no inherent right to be offered a FPN as a means of disposal of an investigation. In all cases, decisions on whether to offer a FPN will be made by the Council, following consultation between the Environmental Services Manager and the Council's Legal team.



## **Authorisation and delegation of functions**

- 5.1. Only officers authorised by the Council under delegated powers will be permitted to undertake investigations, inspections and visits, or other enforcement actions. Officers will only be authorised to deal with such investigations if they have the experience and specialist knowledge to undertake such action in accordance with established procedures. They will follow the relevant procedures and guidelines in carrying out their duties. Officers are issued with a personal identity card and evidence of their authorisation(s), which will be carried with them at all times and will be shown upon request.
- 5.2. Decisions about what enforcement action is appropriate are based upon professional judgement, legal guidance, statutory codes of practice and priorities set by the Council and/or Central Government, as well as the individual circumstances of a particular case.
- 5.3. Where appropriate, decisions about enforcement actions will involve consultation between or approval from:
  - Investigating officer(s)
  - Senior Licensing Officer
  - Environmental Services Manager
  - Director (Legal Services)

## **Notification and publication of enforcement actions**

- 6.1. If we receive information (e.g. from a complainant) that may lead to enforcement action against an individual or a business we will notify that individual or business as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2. During the progression of enforcement investigations/actions, parties involved will be kept informed of progress.
- 6.3. The Council will normally publicise details of any convictions, which would serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will be provided with factual information about charges that have been put before the Courts. In addition, details of convictions may be recorded on public registers where the Council is under an obligation to record such data, or included within statistical datasets returned to central government and other statutory agencies. Records of cautions administered by the authority may also be recorded on national databases, where they can be accessed by other enforcement agencies.

## **PACE interviews – Police and Criminal Evidence Act 1984**

- 7.1. Questioning of persons will be carried out by way of a formal interview where there is suspected involvement in criminal offences. All formal interviews will be conducted with regard to the 1984 Act and associated Codes of Practice, with a formal record made of the content of the interview. This may comprise a written transcript, or audio or video recording.

### **Regulation of Investigatory Powers Act 2000**

- 8.1. During an investigation into suspected non-compliance with legislation, the Council may need to undertake directed covert surveillance. This may include using sound or video monitoring. From time to time, we may also carry out enforcement operations utilising covert human intelligence sources.
- 8.2. In circumstances where it is necessary to use covert surveillance or sources, we will ensure that any statutory prerequisites under the Regulation of Investigatory Powers Act 2000 (RIPA) and The Covert Human Intelligence Sources Act 2021 (CHIS) are complied with. In all cases where the use of covert surveillance or intelligence sources is proposed, such operations will only be undertaken with the express authorisation of a senior officer appointed by the Council for that purpose.
- 8.3. Requests for RIPA authorisation will be made in writing by the investigating officer. All such requests will be accompanied by a statement which details why the proposed conduct is appropriate and proportionate, how it is to be undertaken, who is likely to be involved and any impact that might result from the surveillance.
- 8.4. In deciding whether or not to authorise the proposed activity, the authorised officer will have regard to any policies and issues relevant to the investigation and any alternative methods of conducting the investigation. Surveillance authorisations will only last for as long as necessary and will be reviewed on a regular basis.
- 8.5. An authorisation for covert directed surveillance or use of human intelligence sources will not be valid unless an order has been made by a justice of the peace approving the grant of the authorisation.
- 8.6. The Council maintains a register of authorised covert surveillance operations under the Regulation of Investigatory Powers Act. Authorisations will not be made public whilst there is an ongoing investigation.

## **Annex A – Contacting us**

### **Complaints about businesses or persons providing licensable activities**

If you wish to make a complaint or provide feedback about alleged unlicensed activity or the breach of conditions of a licence then you can contact the Licensing Section:

Via our website: [www.eastcambs.gov.uk](http://www.eastcambs.gov.uk)

By email to: [licensing@eastcambs.gov.uk](mailto:licensing@eastcambs.gov.uk)

By post to: Licensing  
East Cambridgeshire District Council  
Council Offices  
Nutholt Lane  
Ely  
CB7 4EE

If you make a complaint outside of normal office hours we will respond when the office re-opens.

Complaints made to the Licensing Section will be investigated by a Licensing Enforcement Officer who will also inform you of the progress and outcome of your complaint. For many complaints we may need you to make a formal written statement (which we will assist with if required), and if we take legal action we may ask you to attend court to give evidence.

### **Complaints about the Licensing Section**

We understand that, from time to time, persons may not be completely satisfied with the service that they receive from the Licensing Section, and we would encourage any person who feels this way to let us know, so that we can develop and improve our service. We will ensure that complaints about our service are investigated fairly and thoroughly using the Council's Complaints Procedure (details of which can be found on the Council's website at [www.eastcambs.gov.uk](http://www.eastcambs.gov.uk)).

Complaints or comments about the Licensing Section can be made:

Via our website: <https://www.eastcambs.gov.uk/customer-services/customer-feedback-and-complaints>

By phone to: 01353 665555

By post to: Customer Services  
East Cambridgeshire District Council  
Council Offices  
Nutholt Lane  
Ely  
CB7 4EE

In cases where disputes still cannot be resolved, we will ensure that any rights of complaint or appeal against the Council's actions are explained with an indication of the likely timescales involved.

To make an application or for further guidance, please visit our website: [www.eastcambs.gov.uk](http://www.eastcambs.gov.uk). For informal advice or queries, please email: [licensing@eastcambs.gov.uk](mailto:licensing@eastcambs.gov.uk).

**EQUALITY IMPACT ASSESSMENT – INITIAL SCREENING TEMPLATE (IST)**

Initial screening needs to take place for all new/revised Council policies. The word ‘policy’, in this context, includes the different things that the Council does. It includes any policy, procedure or practice - both in employment and service delivery. It also includes proposals for restructuring, redundancies and changes to service provision. This stage must be completed at the earliest opportunity to determine whether it is necessary to undertake an EIA for this activity.

<b>Name of Policy:</b>	Licensing Enforcement Policy
<b>Lead Officer (responsible for assessment):</b>	Stewart Broome
<b>Department:</b>	Licensing
<b>Others Involved in the Assessment (i.e. peer review, external challenge):</b>	
<b>Date Initial Screening Completed:</b>	19 March 2024

**(a) What is the policy trying to achieve?** i.e. What is the aim/purpose of the policy? Is it affected by external drivers for change? What outcomes do we want to achieve from the policy? How will the policy be put into practice?

A framework to assist members of the public, Officers and Committee Members with regards to controlling persons engaging in licensable activities
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**(b) Who are its main beneficiaries?** i.e. who will be affected by the policy?

Persons who engage in licensable activities with or without the relevant permission to do so
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**(c) Is this assessment informed by any information or background data?** i.e. consultations, complaints, applications received, allocations/take-up, satisfaction rates, performance indicators, access audits, census data, benchmarking, workforce profile etc.

Yes, it is a replacement of an existing policy.
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**(d) Does this policy have the potential to cause a positive or negative impact on different groups in the community, on the grounds of any of the protected characteristics? (please tick all that apply):**

<b>Ethnicity</b>	<input type="checkbox"/>	<b>Age</b>	<input type="checkbox"/>
<b>Gender</b>	<input type="checkbox"/>	<b>Religion or Belief</b>	<input type="checkbox"/>
<b>Disability</b>	<input type="checkbox"/>	<b>Sexual Orientation</b>	<input type="checkbox"/>
<b>Gender Reassignment</b>	<input type="checkbox"/>	<b>Marriage &amp; Civil Partnership</b>	<input type="checkbox"/>
<b>Pregnancy &amp; Maternity</b>	<input type="checkbox"/>	<b>Caring Responsibilities</b>	<input type="checkbox"/>

**Please explain any impact identified:** i.e. What do you already know about equality impact or need? Is there any evidence that there is a higher or lower take-up by particular groups? Have there been any demographic changes or trends locally? Are there any barriers to accessing the policy or service?

This policy affects all applicants and licence holders equally.
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**(e) Does the policy affect service users or the wider community?**

<b>NO</b>
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**(f) Does the policy have a significant effect on how services are delivered?**

<b>NO</b>
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**(g) Will it have a significant effect on how other organisations operate?**

<b>NO</b>
<b>NO</b>
<b>NO</b>

**(h) Does it involve a significant commitment of resources?**

**(i) Does it relate to an area where there are known inequalities, e.g. disabled people's access to public transport etc?**

If you have answered **YES** to any of the questions above, then it is necessary to proceed with a full equality impact assessment (EIA). If the answer is **NO**, then this judgement and your response to the above questions will need to be countersigned by your Head of Service and then referred to the Council's Equal Opportunities Working Group (EOWG) for scrutiny and verification. Please forward completed and signed forms to the Principal HR Officer.

**Signatures:**

**Completing Officer:** Stewart Broome **Date:** 19/3/2024

**Head of Service:** Liz Knox **Date:** 19/3/2024