

# **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 remediating 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.



# East Cambridgeshire District Council

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## 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

<b>Section</b>	<b>Offence</b>	<b>Authority</b>
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 .....

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Cambridgeshire Constabulary

Date .....

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Signed .....

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Cambridgeshire & Peterborough Fire & Rescue Authority

Date .....

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Signed .....

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Cambridgeshire County Council (Trading Standards Service)

Date .....

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Signed .....

‡

Cambridgeshire County Council (Child Protection Service)

Date .....