

## Licensing And Registration: Statement of Enforcement Policy

### Introduction

1. The appropriate use of enforcement powers is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to comply. The primary responsibility for ensuring compliance lies with those who have duties under the legislation, the 'Duty Holders' – generally those who hold licences of various kinds or those who act on behalf of the licence holders. The term 'enforcement' has a wide meaning and this statement applies to all dealings, both formal and informal between Inspectors and Duty Holders.
2. The purpose of enforcement is to:
  - ensure that Duty Holders take action to deal immediately with serious problems.
  - promote and achieve sustained compliance with the law.
  - ensure that Duty Holders who breach the law may be held to account
  - protect public health and safety
  - ensure a fair trading environment for local businesses.
3. Many of the Council's dealings with those on whom the law places duties will be informal, and its Inspectors will offer information, advice and support, both face to face and in writing. However, the Council may also use formal enforcement mechanisms including notices, simple cautions or, ultimately, prosecution.
4. In considering whether good practice has been adopted, Inspectors will take into account relevant Approved Codes of Practice (ACOPs) and other guidance from Government and industry bodies, using sensible, professional and considered judgement about the extent of the risks and the effort that has been applied to counter them.

### Scope

5. The main areas covered by this policy are
  - a. Licensing Act 2003
  - b. Gambling Act 2005
  - c. Private hire driver, vehicle and operator's licences
  - d. Hackney carriage driver and vehicle licensing
  - e. Street trading consents
  - f. Small lotteries
  - g. Street collections
  - h. House to house collections
  - i. Animal licences – animal boarding, dog breeding, pet shops, horse riding, zoos and dangerous wild animals.
  - j. Skin piercing – acupuncture, tattooing and ear piercing
  - k. Sex establishments
  - l. Scrap metal dealers

### Principles of Enforcement

6. In enforcing licensing law, the Council's Inspectors will be firm but fair and will use the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action, and transparency about how it operates in accordance with the Regulators' Code 2013 and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

## **Proportionality**

7. Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties can expect the Council to take action in a manner proportionate to any risks and to the seriousness of any breach.
8. Deciding what is reasonably practicable involves the exercise of judgement by Duty Holders and discretion by enforcers. When Duty Holders and the Council cannot reach agreement, final determination on what is reasonably practicable in particular circumstances will be made by the Courts.
9. Where the law requires that risks should be controlled so far as is reasonably practicable, the Council in considering protective measures to be taken by Duty Holders will take into account the cost as well as the degree of risk involved. However, the Council will expect that relevant good practice has been followed.
10. Some risks may be so serious that they cannot be permitted irrespective of the economic consequences, but in general, risk reducing measures will be weighed by the Council against the associated costs. If there is a significant risk, the Duty Holder must take measures to either eliminate it or where elimination is impossible, minimise it, unless the cost of taking particular actions is clearly excessive compared with the benefit derived.

## **Consistency**

11. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
12. Wherever possible, the Council will adopt a consistent approach in its use of enforcement powers. However consistency is not a simple matter and Inspectors are faced with many variables including the degree of risk, the attitude and competence of Duty Holders, any history of incidents or breaches involving the Duty Holder, previous enforcement action and the seriousness of any breach. The Council recognises that enforcement action is a matter of judgement and discretion in each case. The Council's Inspectors will endeavour to promote consistency in the exercise of both their judgement and discretion.

## **Transparency**

13. Transparency means helping Duty Holders to understand what is expected of them, and what they should expect from the Council. It also means making it clear to Duty Holders, not only what they have to do, but, where this is relevant, what they do not have to do. In pursuance of the aims of transparency, the Council's Inspectors will distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory. All advice will be confirmed in writing.
14. Complaints procedures are set out on the Council's website.

## **Targeting**

15. Targeting means making sure that an inspection is targeted primarily on those whose activities give rise to the most serious risk, or where the premises are least well controlled. Council Inspectors will focus on Duty Holders who are responsible for the risk and who are best placed to control it.
16. Any enforcement action will be directed against Duty Holders responsible for a breach. Where several Duty Holders have responsibilities the Council may take action against more than one when it is appropriate to do so in accordance with this policy.

## Investigation

17. Investigations are undertaken in order to determine

- causes
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law
- lessons to be learnt and to influence the law and guidance
- what response is appropriate to a breach of the law.

18. To maintain a proportionate response, most resources available for investigation will be devoted to the more serious circumstances. It is neither possible nor necessary to investigate all issues on non compliance which are uncovered in the course of preventative inspections or in the investigation of reported events.

19. In selecting which complaints or reports of incidents to investigate the council will take account of the following factors:

- a. the severity and scale of potential or actual harm
- b. the seriousness of any potential breach of the law
- c. knowledge of the Duty Holder's past performance
- d. the current enforcement priorities
- e. the practicality of achieving results
- f. the wider relevance of the event including serious public concern.

## Enforcement Options

### 20. Informal Action

Informal Action (i.e. verbal advice, written advice, informal written warning or action/compliance plan) will be considered where:

- any contravention or omission is not serious enough to warrant immediate formal action, or
- past history of the premises indicates that informal action can be reasonably expected to achieve compliance and there is sufficient confidence in the management, or
- voluntary organisations are running businesses that, although not satisfying the above criteria, are more likely to respond effectively to an informal and educative approach.

In the case of informal action, correspondence will be issued to persons running a business detailing requirements necessary to comply with the law and clearly indicating any recommendations of good practice.

### 21. Formal action

Will be considered where one or more of the following apply:

- there are significant contraventions of the legislation
- there is a lack of confidence in the management of the business to respond to an informal approach
- there is a history of non-compliance
- standards are generally poor
- the consequences of non-compliance could be potentially serious, and
- effective means are needed to remedy serious contravention

## 22. Review Of Premises Licences

### (a) Licensing Act 2003 & Gambling Act 2005

The provisions for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

Licensing Authorities are included in the list of responsible authorities under the legislation. However, it is for the Licensing Authority to determine when it considers it appropriate to act in its capacity as responsible authority. Licensing Authorities are not expected to act as responsible authorities on behalf of other parties (E.g. local residents or community groups) although there may be occasions where the Authority decide to do so. Such parties can make relevant representations in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so.

It is also reasonable for the licensing authority to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority (e.g. crime and disorder – Police, noise – Environmental Health)

However the licensing authority may make representations or call a review of a premises licence where it considers it appropriate in accordance with its duties under the legislation.

### (b) All other licences/registrations

Failure by holders of licences or registrations to comply with the legislation and/or licence conditions will be referred to the Council's Licensing Committee where the breaches are of a serious nature or where there is a failure to remedy more minor breaches despite written advice having been issued.

## 23. Simple Caution

The following conditions must be fulfilled before a caution is issued:

- there must be evidence of the suspected offenders guilt sufficient to give a realistic prospect of conviction
- 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

In particular, a formal caution will be issued in the following circumstances:

- to deal quickly and simply with less serious offences
- to divert less serious offences away from the courts, and
- to reduce the chances of repeat offences

If a Duty Holder refuses the offer of a simple caution then a prosecution will be instituted

### Prosecution

24. The Council will consider prosecution when one or more of the following apply:

- It is appropriate in the circumstances to maintain public confidence in the law and maintenance of standards, especially where there would be a normal expectation that a prosecution will be taken, or, where, through the conviction of offenders, others may be deterred from similar failures to comply with the law;
- There has been, or the potential for, considerable harm arising from a breach;

- The gravity of the breach, or the general record of the approach of the Duty Holder warrants prosecution, e.g. apparent reckless disregard for standards, blatant disregard for the law, repeated breaches, or persistent poor standards;
- False information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk.
- Officers have been intentionally obstructed or assaulted in the lawful course of their duties.

The decision to prosecute will also take account of the criteria set down in the Code for Crown Prosecutors and the Regulators Compliance Code. No prosecution may go ahead unless the prosecutor finds there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

All Duty Holders suspected of having committed an offence where legal proceedings are under consideration will be offered an interview. This is their opportunity to provide any information which will assist the Council in deciding whether further action is appropriate. It also provides the Duty Holder with an opportunity to admit the offence(s) alleged in cases where a simple caution may be a more appropriate remedy than a prosecution. All interviews will be carried out in accordance with the requirements of PACE.

## **Prosecution of Individuals**

25. The Council's Inspectors will identify and prosecute individuals, including company directors and managers, if they consider that a conviction is warranted, and can be secured. In particular, where the inspection or investigation reveals that the offence was committed with their consent, or connivance, or to have been attributable to neglect on their part. Where appropriate the council will seek to disqualify directors under the Company Directors Disqualification Act 1986.

## **Publicity and Sharing Of Information**

26. We will publicise any conviction which could serve to draw attention to the need to comply with the law or deter anyone tempted to act in a similar manner. Details of such cases will also be published on our website.
27. We will share intelligence and information secured in the ordinary course of our business with other statutory enforcement bodies and relevant partners in accordance with information sharing protocols signed by the Council and our duties under the Crime and Disorder Act 1988.
28. Information will be made available in public registers where the legislation requires it. These will be freely available for the public to view on our website [www.northwarks.gov.uk](http://www.northwarks.gov.uk) or during normal office hours.