

LANCASTER CITY COUNCIL

GOVERNANCE - LICENSING

LICENSING ENFORCEMENT POLICY

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LANCASTER CITY COUNCIL

LICENSING ENFORCEMENT POLICY

1 BACKGROUND

- 1.1 The purpose of this document is to set out the general principles that the Council's Licensing Service will apply when undertaking licensing enforcement work. Enforcement does not only mean deciding whether to prosecute an alleged offender. Rather, it includes a wide range of issues including communicating effectively, acting fairly and acting consistently when using statutory enforcement powers. It includes undertaking inspections of licensed premises, vehicles and activities and giving advice to enable licensees to meet minimum legal standards as well as higher standards and good practice.

2 POLICY STATEMENT

- 2.1 This Policy was written having regard to the Government's "concordat on Good Enforcement" which Lancaster City Council formally adopted. Officers will therefore have regard to and implement the 4 principles of enforcement set out in the Policy.
- 2.2 Where there is specific guidance on enforcement action, for example, statutory guidance, or Codes of Practice and guidance issued for example by the Better Regulation Delivery Office or the Local Government Association (formerly Local Authorities Co-ordinators of Regulatory Services (LACORS)), these will be followed.
- 2.3 The Council fully acknowledges and endorses the rights of individuals and will ensure that all enforcement action is taken in strict accordance with the Police and Criminal Evidence Act 1984, the Criminal Procedures and Investigation Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and other relevant legislation and guidance.
- 2.4 The Council recognises that the particular interests of different consumers within the District will need to be taken account of to ensure that legislation is enforced fairly. Interpreters will be used where there is difficulty in understanding the English language. Where possible, translated advisory leaflets will be made available. Any visits that are required out of hours will be undertaken as necessary.
- 2.5 All enforcement action will be based on risk to health and safety and in accordance with this policy. Any departure from this policy will be justified to the Legal Services Manager or the Licensing Manager. The reasons for any departure will be fully documented and retained on the relevant file.

3 PRINCIPLES OF ENFORCEMENT

- 3.1 The Council believes in firm but fair enforcement of licensing law and the relevant byelaws or licence conditions. Underlying this belief are the principles of **proportionality** in applying the law and securing compliance, **consistency** of approach, **transparency** about how the Licensing Service operates and what those regulated may expect from the Service and **targeting** of enforcement action.
- 3.2 **PROPORTIONALITY**

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcement authorities to achieve compliance should be proportionate to any risks to public health and safety and the seriousness of any breach.

3.3 **CONSISTENCY**

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. There is a right to expect consistency from an enforcing authority whether they are: responding to requests for service, issuing advice, using statutory notices, or deciding to prosecute.

3.4 **TRANSPARENCY**

Transparency means helping duty holders and individuals to understand what is expected of them and what they should expect from the enforcing authorities. It also means making it clear to duty holders and individuals, not only what they have to do, but also, where relevant, what they do not. This means distinguishing between statutory requirements and recommendations or advice that is desirable, but not compulsory.

3.5 **TARGETING**

Targeting means making sure that enforcement is targeted primarily on those situations where activities give rise to the most serious risks, or where the hazards are least well controlled. The Licensing Service will ensure that action is focused on the duty holders who are responsible for the risk and who are best placed to control it.

4 STATUTORY OBLIGATIONS

- 4.1 The Licensing service administers a wide range of licences and permits which may be mandatory, where the local authority must license particular activities, or adoptive where the Council has elected to control certain businesses, activities or individuals through the issue of licences and the imposition of licence conditions.
- 4.2 The main purpose of licensing enforcement is to:
- a) Secure the health, safety and welfare of members of the public who either make use of the licensed activity or who are affected by it in some way.
 - b) Deal immediately with serious risks.
 - c) Promote and achieve sustained compliance with the law.

5 ENFORCEMENT OPTIONS

- 5.1 External agencies including Lancashire Police, Lancashire Fire and Rescue Service, Lancashire County Council also have an interest in the enforcement of licensing legislation. Where there is a shared enforcement role, the Council's Licensing service will liaise with the appropriate body to ensure effective co-ordination. Protocols will be established between the enforcement agencies to ensure clarity in their respective roles.
- 5.2 Enforcement officers must seek to secure compliance with the law. Most of the time this will be conducted informally, by offering information, advice and support, both verbally and in writing. They may also use formal mechanisms, as set out in law,

including the service of notices, suspension of vehicle licences, or ultimately prosecution.

5.3 In arriving at a decision, the Licensing Service will consider:

- a) The seriousness of the offence;
- b) The individual or duty holder's past history;
- c) Confidence in management;
- d) The requirements of the legislation;
- e) The consequences of non-compliance; and
- f) The likely effectiveness of the various enforcement options.

5.4 Where enforcement is being considered, the Licensing service can choose one or more of the following options:

- a) Take no action;
- b) Take informal action;
- c) Take statutory action;
- d) Use formal cautions;
- e) Prosecution.

6 INFORMAL ACTION

6.1 Informal action will include the following:-

- a) offering advice
- b) verbal warnings and requests for action
- c) the use of warning letters setting out the potential consequences of any future non-compliance.

6.2 The circumstances in which informal action may be appropriate include:-

- a) Where it is considered that informal action will achieve compliance based on the offender's past history.
- b) Where confidence in the management of the licensed activity or the licensee is high.
- c) Where the consequences of non-compliance will not pose a significant risk to the physical, financial or emotional well-being of the public, or is of a minor technical nature.
- d) Where it is considered that informal action will be more effective than formal action.

7 STATUTORY ACTION AND DECISION MAKING PROCESSES

7.1 Such action may involve the suspension, revocation or the refusal to grant or vary a licence.

7.2 In certain circumstances, authority to suspend the licence of hackney carriage/private hire vehicles, hackney carriage/private hire drivers and private hire operators may be delegated to authorised officers (See Appendix 1). The criteria for the suspension of such licences is as follows:-

- a) Hackney Carriage/Private Hire Vehicles

A licensed hackney carriage or private hire vehicle may be suspended if an authorised officer is not satisfied as to the vehicle's fitness (Sections 60 & 68 Local Government (Miscellaneous Provisions) Act 1976).

b) Hackney Carriage/Private Hire Drivers

A licence may be suspended by an authorised officer, if since the grant of a licence the driver has been convicted of an offence involving dishonesty, indecency or violence, or for any other reasonable cause (Section 61, Local Government (Miscellaneous Provisions) Act 1976). In these circumstances, consideration will also be given whether the interests of public safety require the suspension to take immediate effect.

c) Private Hire Operators

A licence may be suspended by an authorised officer, in the event of there being any offence under, or non-compliance with the private hire legislation, or for any other reasonable cause. (Section 62 Local Government (Miscellaneous Provisions) Act 1976)

7.3 However, in the majority of cases involving drivers' and operators' licences any consideration to suspend, revoke or refuse to grant/renew a licence will normally be dealt with by the Council's Licensing Regulatory Committee under established procedures. Similarly, the Licensing Act Sub-Committees and Gambling Act Sub-Committees will normally deal with contentious matters associated with premises licences issued under the Licensing Act 2003 and the Gambling Act 2005 respectively.

7.4 Any person aggrieved by a decision taken to suspend, revoke or refuse to grant/vary a licence has a right of appeal to the Magistrates' Court.

8 FORMAL CAUTIONS

8.1 Enforcement Officers will consider issuing a formal caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not require a prosecution, a formal caution may be an appropriate course of action. The Ministry of Justice Guidance on Simple Cautions for Adult Offenders (November 2013) states that the purpose of a formal caution is to:

- a) Offer a proportionate response to low level offending where the offender has admitted the offence;
- b) Deliver swift, simple and effective justice that carries a deterrent effect;
- c) Record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- d) Reduce the likelihood of re-offending
- e) Increase the amount of time officers spend dealing with more serious crime and reduce the amount of time completing paperwork and attending court, whilst simultaneously reducing the burden on the courts

8.2 The use of formal cautions will be in accordance with the Ministry of Justice Guidance referred to above.. The following conditions must be fulfilled before a caution is administered:

- a) There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of a conviction;
- b) The suspected offender must admit the offence; and

- c) The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

8.3 Before proceeding with a formal caution, the enforcement officer must discuss the proposed action with their line manager. Where a formal caution is refused, the officer must re-consider all the evidence, which may result in a prosecution or other action being taken. Where formal cautions are accepted, they must be registered with Legal Services.

9 PROSECUTION

9.1 The following circumstances may warrant prosecution:

- a) The offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk; or
- b) The offence involves a failure by the offender to correct an identified serious potential risk, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer; or
- c) The offence involves a failure to comply in full or in part with the requirements of a statutory notice; or
- d) There is a history of similar offences on the part of the alleged offender; or
- e) The obstruction or assault of an authorised officer; or
- f) False or misleading information is provided to an authorised officer.

9.2 The officer must be satisfied, before a prosecution proceeds, that there is relevant, admissible, substantial and reliable evidence that the offence was committed by the accused. There must be a realistic prospect of conviction. A bare prima facie case is not enough. If there is insufficient evidence, other formal action such as a formal caution will not be an alternative.

9.3 The officer and their manager must decide whether it is in the public interest to undertake a prosecution, following the guidance in the current Code for Crown Prosecutors. The 2013 edition of the Code indicates that prosecutors should consider each of the following questions:

- a) How serious is the offence committed?
- b) What is the level of culpability of the suspect?
- c) What are the circumstances of and harm caused to the victim?
- d) Was the suspect under the age of 18 at the time of the offence?
- e) What is the impact on the community?
- f) Is prosecution a proportionate response?
- g) Do sources of information need protecting?

The Code provides that these questions are not exhaustive, and that not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

9.4 Once a decision to prosecute has been made, the procedure should be implemented without undue delay. The requirements of PACE and CPIA will be adhered to.

9.5 The criterion for deciding whether to prosecute or issue a formal caution is shown at Appendix 2.

10 LEGISLATION

10.1 The legislation under which authorised officers have the authority to act is shown at Appendix 3.

APPENDIX 1**AUTHORITY FOR OFFICERS TO ACT**

| DECISION MAKING AREA | OFFICERS AUTHORISED TO ACT | OFFICERS WHO MUST BE CONSULTED FOR AUTHORITY TO ACT |
|------------------------------------|--|--|
| Informal action and formal letters | Chief Officer (Governance) Legal Services Manager Licensing Manager Licensing Enforcement Officer | |
| Statutory Action | | |

| | | |
|--|--|--|
| <p>a) Suspension of hackney carriage/private hire vehicle licence</p> <p>b) Suspension of hackney carriage/private hire drivers licence</p> <p>c) Suspension of private hire operators licence</p> | <p>Chief Officer (Governance) Legal Services Manager Licensing Manager Licensing Enforcement Officer</p> <p>Chief Officer (Governance) Legal Services Manager Licensing Manager</p> <p>Chief Officer (Governance) Legal Services Manager Licensing Manager</p> | <p>Licensing Manager</p> <p>Chief Officer (Governance) or Legal Services Manager</p> <p>Chief Officer (Governance) or Legal Services Manager</p> |
| <p>Formal Caution</p> | <p>Chief Officer (Governance) Legal Services Manager Licensing Manager</p> | <p>Chief Officer (Governance) or Legal Services Manager</p> |
| <p>Prosecution</p> | <p>Chief Officer (Governance) Legal Services Manager</p> | <p>Chief Officer (Governance) or Legal Services Manager</p> |

APPENDIX 2

DECISION WHETHER TO PROSECUTE OR ISSUE A FORMAL CAUTION

| CRITERION | PROSECUTE | OFFER CAUTION |
|--|------------------|----------------------|
| Is the offence serious? | Yes | No |
| Is the offender old or infirm? | No | Yes |
| Has the offender a previous history of offending? | Yes | No/Unknown |
| Is the offending willing to prevent a recurrence of the problem? | No | Yes |
| Would a prosecution be in the public interest? | Yes | No |
| Is the case likely to establish a legal precedent? | Yes | No |
| Has the offender offered a reasonable explanation? | No | Yes |
| TOTAL | | |

Note:

Ring the appropriate response to each criterion and then total the number of rings in each column.

The decision will be based on the total number of rings.

Recommendation of Investigating Officer: Formal Caution

Prosecution*

Signed:

Date:

Decision of Licensing Manager : Agree

Disagree*

Signed:

Date:

Decision of Legal Services Manager Agree

Disagree*

Signed:

Date:

***Delete as appropriate**

APPENDIX 3

RELEVANT LEGISLATION

Animal Boarding Establishments Act 1963
Breeding of Dogs Acts 1973 and 1991
Breeding and Sale of Dogs (Welfare) Act 1999
Caravan Sites and Control of Development Act 1960
Dangerous Wild Animals Act 1976
Gambling Act 2005
Game Act 1831

Game Licences Act 1860
Health Act 2006
House to House Collections Act 1939
Hypnotism Act 1952
Licensing Act 2003
Local Government (Miscellaneous Provisions) Act 1976
Local Government (Miscellaneous Provisions) Act 1982

Pet Animals Act 1951
Pet Animals (Amendment) Act 1983
Police, Factories etc (Miscellaneous Provisions) Act 1916
Public Health Act 1936
Riding Establishments Acts 1964 and 1970
Scrap Metal Dealers Act 2013
Town Police Clauses Act 1847
Transport Act 1985
Vehicles (Crime) Act 2001
Zoo Licensing Act 1981

Please note that the above list is not exhaustive and may be amended from time to time.