

Tunbridge Wells Borough Council

Licensing Compliance and Enforcement Policy



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1. Introduction

- 1.1. Tunbridge Wells Borough Council (TWBC) is responsible for licensing and registering a range of functions within its district in the interests of public safety and protection. This policy sets out how we as the Licensing Authority achieve compliance and enforcement.
- 1.2. We define compliance as how licence holders meet the standards required of them and define enforcement as meaning taking action in relation to unlicensed activities.

These functions include:

- (a) hackney carriage and private hire drivers and vehicles and private hire operators;
- (b) alcohol, entertainment and late night refreshment;
- (c) charitable collections;;
- (d) sex establishments;
- (e) gambling premises, permits and lottery registrations;
- (f) scrap metal dealers and collectors;
- (g) street trading.

- 1.3. This Licensing Compliance and Enforcement Policy seeks to cover all relevant licensing functions and all related topics.
- 1.4. Tunbridge Wells Borough Council as the Licensing Authority puts into effect and ensures compliance with a range of legislation in the public interest. Furthermore,

the Council has a duty to uphold and achieve compliance relating to the policies adopted by the Licensing Authority and conditions and requirements that may be imposed on licence holders or those that engage in licensable activities for the benefit of public safety. The Licensing Authority supports the corporate vision that the borough should remain a prosperous, safe and healthy place where people want and are able to live and work, and whereby culture, tourism, employment and self sufficiency of local communities is encouraged.

- 1.5. Compliance and enforcement is important to maintain integrity and confidence in the various licensing regimes, and to prevent anyone obtaining an unfair advantage through unlicensed activities.
- 1.6. The Licensing Authority seeks to uphold the legislation and prevent offences occurring under the various Acts. The seriousness of these offences is reflected in the maximum penalty on conviction in the Magistrates' Court which for some offences may result in imprisonment and/or an unlimited fine.
- 1.7. In developing this policy, the Licensing Authority has had regard to the Human Rights Act 1998, the statutory Regulators' Code issued under the Legislative and Regulatory Reform Act 2006, the Regulatory Enforcement and Sanctions Act 2008, the Code for Crown Prosecutors and the Equalities Act 2010.

2. Aim of this policy

- 2.1. This policy is intended to reinforce the aims and uphold the objectives of the published guidance to all relevant legislation by promoting effective practice and the Regulators' Code ensuring proportionate, consistent and targeted regulator activity, whilst developing a transparent and effective dialogue and understanding between regulators and those we regulate.
- 2.2. This policy is intended to protect individuals, organisations, the community and the environment from harm and to assist as practically as possible in preventing further crime and disorder and to change the behaviour of perpetrators. This policy also aims to eradicate any financial gain or benefit which may be the consequence of non-compliance and to protect those affected by non-compliance. The Licensing Authority in adopting this Policy aims to be responsive and consider what is appropriate in the circumstances, be proportionate to the nature of the offence and the harm caused and to deter future non-compliance.

3. Implementation of policy

- 3.1. All enforcement powers are delegated to the Head of Environment and Street Scene Services who may instruct the Head of Legal Partnership to commence legal proceedings where appropriate. However, Officers have delegated authority to determine and undertake investigations as may be appropriate under the Council's Constitution and the various Acts. Officers may where appropriate present a case to the Licensing Sub-Committee to determine enforcement action.
- 3.2. Any appeal to an Officer's decision or Licensing Sub-Committee decision may be to the appropriate Courts.
- 3.3. This policy was adopted by Licensing Committee on 6 September 2016 and came into immediate effect. It will be reviewed in 2021, unless legislative or other changes make it appropriate to do so before this period. Policies and procedures may change from time to time as they may be reviewed on a regular basis in the light of changes in legislation, case-law or best practice.
- 3.4. New Councillors will receive training on the policy, and the Committee will be kept informed about any future updates.
- 3.5. The Licensing Authority has a duty under the Crime and Disorder Act 1998 to take all reasonable measures to prevent crime and disorder within the Borough. Consequently, the Licensing Authority will share information where relevant about applicants, licence-holders and unlicensed people or organisations with other agencies as appropriate. For example, the Council's Fraud team, the Police, HM Revenue and Customs, Home Office Immigration Enforcement, Trading Standards or the Department for Work and Pensions.
- 3.6. This list may be revised from time to time and we may share information with other agencies as required with due regard to data protection legislation.
- 3.7. All enforcement decisions will be fair, independent and objective. They will not be influenced by any of the protected characteristics under the Equalities Act 2010 for example, age, ethnicity, national origin, gender, religious or political belief, disabilities or sexual orientation.
- 3.8. Due regard will be taken when dealing with juveniles or other vulnerable people. Each case will be determined on its own merits taking into consideration the requirements of the governing legislation, relevant guidance, Council Policies and relevant sources of evidence. Policies the Council will consider within its decision making process may include the Statement of Licensing Policy Licensing Act 2003, Statement of Licensing Principles for the Gambling Act 2005, Hackney Carriage

and Private Hire Licensing Policy, Convictions Policy and Charitable Collections Policy, Street Trading Policy and Sex Establishments Policy. This list is not exhaustive and may change from time to time given legislative or procedural changes.

- 3.9. In some cases where we do not have powers to intervene ourselves as the Licensing Authority, we may refer the intelligence or complaint to the appropriate organisation. Where the Council do have powers to intervene, our first approach wherever possible will be to attempt an informal resolution. Officers will use the resources at their disposal, intelligence and evidence presented and gathered to determine objectively using their discretion whether an informal resolution is possible. Informal resolutions will unlikely be adopted for repeat offenders. This will involve clearly identifying the nature of any actual or potential legislative breach and giving the perpetrator the opportunity to remedy it.
- 3.10. Decisions will be consistent, proportionate and will aim to uphold public confidence. They will balance the rights of licence holders, applicants and perpetrators with maintaining public confidence and safety. We will also make clear the difference between statutory requirements or advice, or guidance about what is desirable or good practice which is not compulsory.
- 3.11. We may publicise the results of prosecutions when it is in the public interest to do so, or in the interests of the Authority.
- 3.12. We will maintain the confidentiality of complaints and sources of complaints as far as reasonably possible. Should a prosecution be pursued, the Court or other relevant parties may be required to be provided with these details. We will only release personal information in accordance with legal requirements or the Data Protection Act 1998.

4. Principles of operation

- 4.1. The Licensing Authority aims to continue to promote the spirit of co-operation that exists between the relevant agencies and to recognise the benefits to be derived from developing close working relationships.
- 4.2. The Licensing Authority will seek to enhance the understanding of the advantages and opportunities which joint activity can bring to effective enforcement and community safety and promote the legitimate exchange of information and operational cooperation.

5. Liaison arrangements

5.1. There will be regular contact and liaison with the responsible authorities and other government bodies or individuals or organisations where appropriate to:

- Provide access to appropriate sources of information;
- Provide a consistent approach to communication, operations and investigations;
- Encourage early contact and liaison in specific cases;
- Allow for advice or guidance to be given in relation to a specific case;
- Ensure that any national or regional campaigns or investigations are considered;
- Enable relevant officers to be kept informed of the progress of cases that are being investigated;
- Ensure that information and intelligence being passed between the agencies is in accordance with the Information Sharing Agreement between the Licensing Authority and other Council and Police departments.

Officers will seek to:

- Ensure the effective exchange of information between the agencies;
- Consider the need for joint visits;
- Implement co-ordinated actions as necessary;
- Co-ordinate the supply of evidence and information to any other agency taking formal action;
- Work together where practicable, to promote stated objectives;
- Discuss and liaise in the event of uncertainty over lead roles.

6. Effective practice

6.1. The Council will ensure that it will carry out the work undertaken in accordance with the legislation, government guidance and all reasonable aspects of effective practice. In doing so the Council will:

- Focus primarily on premises/activities that are determined by consultation between the partner agencies to be a high risk of contravening the legislation and the objectives of the legislation;
- Ensure all guidance and information is in a clear, accessible and concise format, using media appropriate to the business;
- Ensure that service delivery is provided in a non-discriminatory manner;
- Highlight those matters that are legal requirements to separate them from matters that are recommendations or good practice;
- Provide information in a timely manner and where required, advise recipients of their legal rights in such matters;
- Ensure, wherever possible, that responsible persons do not undertake work that is unnecessary in terms of duplication with other legislation and has regard to cost/benefit; available technology; consistency in application with enforcement action proportionate to risk in each case;
- Deal with the public, licensees and businesses in a fair and honest way;
- Provide a courteous, efficient responsive and helpful service, responding promptly and appropriately to service requests and complaints;
- Attend Court in support of partner agencies where it is agreed that evidence/information will be of mutual assistance having due regard to liability.

7. Risk rating of licensed premises

- 7.1. All licensed premises will be risk assessed. This assessment takes into consideration the type of premises, range of licensable activities, history of complaints, competency of the current management and other factors which may change from time to time. The Licensing Authority will base its regulatory activity on risk, prioritising high risk and problem premises and activities.
- 7.2. All premises will be scheduled for inspections based upon their level of risk. This schedule may change from time to time subject to management changes or complaints arising from premises.

8. Compliance

- 8.1. In respect of licensed premises such as those under the Licensing Act 2003, Scrap Metal Dealers Act 2013, Gambling Act 2005, Sex Establishment Licences under the amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Operator licences under the Local Government (Miscellaneous Provisions) Act 1976, routine visits/inspections may be made on the basis of risk assessments, as well as intelligence led operations.
- 8.2. In respect of licensed vehicles, six-monthly compliance tests are required to be passed and vehicles will be inspected as a result of complaints or intelligence received. The Authority has the right to inspect a licensed private hire or hackney carriage vehicle whenever they deem it appropriate to do so. A sample of vehicles will be tested monthly. Checks will also be carried out on drivers of licensed vehicles each month and as a result of complaints or intelligence from other authorities.
- 8.3. When inspecting premises, the Authority will draw the appropriate authority's attention to any contraventions of any relevant legislation which are found to exist and will record the information gathered from all visits and act upon it in order to achieve compliance.
- 8.4. Non-compliance with the relevant legislation may lead to the appropriate proportionate enforcement action, taking into consideration the frequency of the breach, a risk to public safety or whether it is in the public interest to do so amongst other factors.

9. Enforcement

- 9.1. Enforcement action must be proportionate to the offence and the circumstance of the offence and balanced against risks, costs and resources available to the Authority. Proportionate action concerns judging the extent to which perpetrators have gone to in order to comply with the law and the extent to which the breach was intended, for instance deliberate misuse of licensed activities or premises and vehicles and so forth. Also assessed is the extent to which the breach could have been avoided, for instance previous knowledge of the requirements through advice or warnings.

Circumstances may include (but not exclusively) the following:

- Previous licensing history/character;
- Previous interventions from the Authority and other agencies;
- Change of premises ownership/management;
- Seriousness of the offence and impact on risk to public safety.

9.2. An informal warning for example is unlikely to be a suitable disposal for a significant infringement that led to or could have potentially led to serious injury. Likewise, a prosecution is generally unsuitable for a minor administrative type of breach or technical oversight.

Enforcement action may include the following:

- No further action;
- Verbal warning;
- Written warning;
- Simple caution;
- Prosecution;
- Other legal action.

9.3. The Authority may undertake informal advisory visits and meetings, mediation where possible, education, awareness-raising and advice. The Authority may also use direct observations, test purchasing, joint investigations with other agencies and roadside vehicle checks for licensed vehicles and scrap metal dealers. The Authority will also conduct proactive and reactive visits.

9.4. The Authority, where possible, will give an early indication to all relevant parties of our progress and our intended course of action. We will liaise with those parties as necessary to ensure a co-ordinated and thorough approach. The Authority will consider other actions as required bearing in mind alternative approaches to dealing with the situation that have been previously attempted and/or deemed to be inappropriate.

9.5. The Authority will explain the need for enforcement action in writing and verbally as far as reasonably practicable and why the action is necessary and when it must be carried out by. The Authority recognises that it may not be always possible to liaise with the relevant parties immediately if action is needed urgently to protect public health, safety or the environment or preserve evidence.

9.6. If the Authority receives information that may lead to formal enforcement action it will notify the source of the complaint as soon as practicably possible of any

intended enforcement action, unless this will impede an investigation or pose a safety risk.

- 9.7. The Authority has the right to request to interview those whom they suspect of unlicensed activity, or breaches under the various licensing legislations. These interviews may be informal, formal recorded interviews or interviews conducted under the Police and Criminal Evidence Act (PACE). Whilst attendance may not be compulsory, it would be in the interests of the individual or organisation being investigated to attend. Actions may be considered should they abstain from attending.

10. Review of this policy

- 10.1. Tunbridge Wells Borough Council shall periodically review this Policy, at least once every five years, to ensure that it maintains a suitably responsive and practical arrangement for all licensing functions and that enforcement and compliance measures remain reasonable and proportionate to the matters to which it pertains, and in line with the resources at the Council's disposal.