

ENVIRONMENTAL HEALTH ENFORCEMENT POLICY – LICENSING

TITLE: ENVIRONMENTAL HEALTH LICENSING ENFORCEMENT POLICY

1.0 INTRODUCTION

1.1 Scope and explanation of the policy

The Environmental Health Department undertakes licensing work in the following eleven service areas:

- I. Drivers, Vehicles and Operators licences in respect of Hackney Carriages
- II. Drivers, Vehicles and Operators licences in respect of Private Hire Vehicles
- III. House to House Collections licence (persons collecting money for charity on doorsteps)
- IV. Street Collections Licence (person with a charity collection box on the street)
- V. Small Lotteries Licence (re associations such as Parent Teacher etc)
- VI. Street Trading Consents for mobile traders selling food or non food items
- VII. Market Trading Consents
- VIII. Nursing Agency Certificate of Licence for agencies supplying Bank Nurses
- IX. Gaming Machine Permits for premises not subject to a Justices Licence
- X. Justice Licence notifications
- XI. Club Registration Licence notifications

Service areas I. – IX include enforcement roles, areas X and XI is a service that receives notifications for information only.– these service areas are therefore not included in this enforcement policy. The enforcement policy covers all aspects of the other service areas.

1.2 Associated documents to be considered

Other associated documents that should be read in conjunction with this policy are:

- Council's Corporate Enforcement Policy

- Lone Working Procedure
- Regulation of Investigatory Powers Act 2000
- Written departmental Licensing procedures

1.3 **Statement of objectives**

1.3.1 Three Rivers District Council has a number of unique demographic, geographic and social attributes that impact upon the way that the licensing service is delivered locally. This policy is designed to ensure that the broad objectives of the enforcement concordat underpin the detailed workings of the licensing section in its day to day contact with all service users.

1.3.2 The council's licensing policy is to work towards an achievable goal, which would mean that people living, working or visiting in Three Rivers largely enjoy:

- Travel in Hackney Carriage and Private Hire vehicles that are licensed and carry a valid vehicle test certificate from an authorised garage relating to the sound condition of the vehicle.
- Vehicles driven by licensed drivers who have been subject to police and medical checks to validate, as far as possible, their suitability to drive a vehicle carrying members of the public.
- Confidence, upon production of a licence, that door to door and street collectors are collecting for a true charity.
- Street Traders who are sited safely on a highway and inspected on a regular basis by other sections of Environmental Health to ensure that food and health and safety legislation is complied with to protect the public.

1.3.3 People whose business related activities persistently have the effect of diminishing the achievement of this goal, and where a statutory provision is being breached, will be dealt with according to the guidance contained in this policy

1.4 **Good Enforcement Practice**

The Council has signed up to the voluntary code, known as the Enforcement Concordat which is a nationally produced standard in promoting best practice in enforcement. It is committed to the principles of the code and to work with all people to comply with the law and to take action against those that flout the law and put and others at risk. The principles of the concordat have formed the basis of the Corporate Enforcement Policy.

1.5 **Shared Enforcement**

1.5.1 Some aspects of the licensing work that the Environmental Health Service undertakes interacts with other Council services and outside Agencies that carry out enforcement work that can provide an alternative form of resolution, or can complement or support our enforcement action. These include:

- Three Rivers District Council's Commercial Team (food safety, health and safety)
- Three Rivers District Council's Development and Building Control service

- The Highways Agency
- Police Authority

1.5.2 In determining the most appropriate form of enforcement action officers must have regard to any on-going or potential action of other Council services and Agencies and the suitability and effect of our action, as opposed to, or combined with their action in addressing the issues.

1.5.3 Where issues are identified by Officers from the Environmental Health Service that are the enforcement responsibility of another council service or other agency the person reporting the matter(s) will be referred to the relevant agency or service. The Officer should then refer the matter to the relevant agency or service.

1.5.4 Where enforcement action is being taken by another Council service or outside Agency, Officers from Environmental Health will provide all assistance that is reasonably requested, including the production of witness statements, collection and sharing of evidence etc.

1.5.5 Where there is a shared enforcement role with another Council service or outside Agency, Officers from Environmental Health will carry out joint visits where it is appropriate and beneficial to those involved.

1.6 **Commitment to the Policy**

The Council is committed to ensuring that all authorised officers carrying out licensing enforcement work are trained and fully acquainted with the requirements of this policy. All authorised officers must abide by this policy when making decisions on enforcement. Any departure from this policy will be exceptional, documented, justified and approved by the line manager unless the delaying in decision making would result in a significant risk to the public.

2.0 **AUTHORISATION**

2.1 Authorisation of officers is of paramount importance in the effective delivery of the licensing functions of Three Rivers District Council. The 'proper officer' of this authority who has the delegated responsibility for authorising enforcement officers is the Chief Environmental Health Officer in consultation with the Director of Housing and Environment.

1.1 All authorisations of enforcement officers must be in writing, specifying the limits of authorisation and must form part of the identification cards shown on visits.

2.3 The designations of person(s) who may authorise a prosecution or a formal caution in line with the current Home Office Circular are the Chief Environmental Health Officer and the Licensing Officer. Decisions relating to the instigation of prosecution proceedings will be taken in consultation with the Solicitor to the Council.

2.4 **Competencies**

2.4.1 The Council's policy is that the competencies considered suitable for officers to carry out licensing work are: -

- Proven enforcement experience
- Proven knowledge and interpretation of all relevant legislation

3.0 **ENFORCEMENT APPROACH**

3.1 This Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions, which concern licensing enforcement action, including prosecution. To achieve and maintain consistency, it is important that the Enforcement Concordat is always considered and followed where appropriate.

3.2 This Authority, in line with the Enforcement Concordat, will seek to ensure that enforcement decisions are always consistent, balanced, fair and relate to common standards that ensure that the public is adequately protected.

3.3. Whenever an enforcement decision needs to be made fair regard shall be made to the normal hours of trading of any business under investigation. Whenever necessary inspections and investigations will be carried out in the early morning, in the evening and at weekends, in order to obtain fair and representative evidence pertaining to the alleged breach(s).

3.4 Enforcement investigations may involve obtaining a Warrant of Entry from the Court in accordance with provisions contained in relevant legislation.

3.5 Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection was being undertaken.

3.6 Whenever enforcement investigations require the attendance of a translator, interpreter, signer or other person to assist with written or verbal communications with the person(s) under investigation, such reasonable provision will be made.

3.7 The Environmental Health Service will base all licensing enforcement decisions on :

- The effect of the legislative breach upon the potential persons affected.
- The risk to the health and safety of persons that may be affected.
- The future consequences of failing to address the breach at the present time.
- Any concurrent or potential action by other services and agencies and the suitability and effect of our action as opposed to or combined with theirs in addressing the issues

3.8 In making an enforcement decision, we will consider a number of factors. These include seriousness of offence; the perpetrator's past history, confidence in management, the consequences of non-compliance; effect of the defect on the person(s) affected and the likely effectiveness and consequences of the various enforcement options.

3.9 Where there are failures to comply with the law, this Authority has a number of informal and formal approaches to secure compliance: -

- to take no action (possibly refer the matter to another service or agency)
- to take informal action
- to use formal cautions
- to prosecute

Any of the above options can also be undertaken alongside appropriate action – enforcement or otherwise by other Council Services or outside agencies. (see shared enforcement section 1.5)

4.0 **INFORMAL APPROACH**

4.1 Informal action to secure compliance with legislation can be by a variety of means including giving advice, verbal warnings, sending informal letters, issuing inspection reports, etc. This advice will be put clearly and simply.

4.2 These methods of informal action will continue to be used by authorised officers as long as they believe that these methods will result in compliance within reasonable timescales. These methods can be used alongside other Council services or outside Agencies action where appropriate.

4.3 Informal action may be used in the following circumstances: -

- The breach is not serious enough to warrant action.
- The owner's/manager's/responsible person's past history shows that it can be reasonably expected that informal action will achieve compliance.
- Confidence in the owner's/manager's/responsible person's management is high.
- The consequences of non-compliance will not pose a significant risk to those affected.

4.4 When an informal approach is adopted to secure compliance with licensing legislation, it is important that any letter issued explains: -

- The remedial action needed to achieve compliance, why it is necessary and within what timescale.
- Offers the opportunity for discussion or for the owner to make representations, including contact point(s) and name(s).
- Provides the details of any other Council services or outside Agencies that may be able to provide assistance or related services to the owner/occupier/manager/responsible person.

5.0 **FORMAL APPROACH**

- 5.1 Formal action is not suitable for minor technical contraventions.
- 5.2 A written formal warning must be issued and signed by the authorised officer who is satisfied that the situation constitutes a breach of Statutes.
- 5.3 Any formal warning that is issued must contain:-
- The legislation, including regulation, section, subsection or paragraph that has been contravened.
 - In the opinion of the officer, the reason there has been a contravention and what the person responsible needs to do.
- 5.4 Where appropriate, the officer will inform to all interested bodies or agencies, including of the action taken and its outcomes.

6.0 FOLLOW UP VISITS

This Authority will undertake follow up visits to premises to ensure that progress has been made to rectify contraventions of Statutes. The criteria to decide whether a follow up visit is necessary will be the seriousness of the offence and the likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection should carry out the revisit if there are significant breaches of legislation.

7.0 FORMAL CAUTIONS

- 7.1 In certain circumstances this authority will issue a formal caution.
- 7.2 The matters which will be taken into account when deciding whether a formal caution is appropriate, include:-
- The seriousness of the offence, as a caution is not suitable for serious offences.
 - There must be substantial evidence to obtain a realistic prospect of prosecution if the offender does not agree to the caution.
 - The offender must admit the offence.
 - The offender's attitude to the offence, in particular the wilfulness in which it was committed and their subsequent attitude, including willingness to rectify the matters constituting the offence.
 - The previous history of the party concerned.
- 7.3 The officer shall ensure that decisions to issue a Formal Caution are notified to all interested bodies.

8.0 PROSECUTION

- 8.1 The Authority recognises that most property owners/managers/persons responsible wish to comply with the law and prosecution will be restricted to

those who flout the law. The following circumstances are likely to warrant prosecution: -

- The alleged offence involves a flagrant breach of the law such that the health, safety or well being of persons or others is or has been put at risk.
- The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to the health or safety of persons or others, having been given a reasonable opportunity to comply with the requirements of an officer.
- There is a history of similar offences.

8.2 The officer must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person/company. Reference should be made to the Code of Crown Prosecutors issued by the Crown Prosecution Service who gives guidance.

8.3 The criteria contained in the relevant Code of Practice must be followed when decisions are being taken on whether to prosecute. The factors to be considered are:

- The seriousness of the alleged offence;
- The previous history of the party concerned;
- The likelihood of the defendant being able to establish a due diligence defence.
- The ability of any important witnesses and their willingness to co-operate.
- The willingness of the party to prevent a recurrence of the problem.
- The public benefit of a prosecution and the importance of the case.
- Whether other action (formal) cautioning, will be more appropriate or effective.
- Any explanation offered by the company or suspected offender.

9.0 **STATUTORY NOTIFICATIONS AND REFERRAL TO OTHER REGULATORS**

9.1 From time to time matters under investigation are found to fall more appropriately under the enforcement regime of another regulatory body or agency. Eg Police authority. In all cases of referred enforcement the person(s) under investigation will be notified of the reasons for referral by letter.

10.0 **REVIEW**

10.1 This policy will be reviewed on an annual basis and in light of any changes in legislation, Codes of Practice or centrally issued guidance.

Health and Safety Implications:

1. Reference should be made to the Departmental District Working and Lone Working Procedure, particularly when logging in and out. This is imperative when undertaking enforcement action to follow these procedures due to the higher risk nature of this aspect. Where officers anticipate problems, then additional measures should be undertaken, i.e. visit with another officer.

Human Rights implications:

1. Individuals have the right to their possessions or property (which includes a business) unless interference is justified except in accordance with the law, and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

PERSONS RIGHTS.**Data Protection implications:**

1. Only publicly available information is the notice register.
2. Information may be disclosed to Police, Customs and Excise, other Council Services etc. about an individual if they are investigating a specific offence in which that individual may be involved.