

LICENSING ENFORCEMENT POLICY

Introduction

The Licensing team operates in connection with the Council's role as the Licensing Authority for the Licensing and Gambling Acts and the Local Authority for the regulation of other licensable activities. The team works in partnership with the police, businesses, residents and other partner organisations. Through advice and enforcement it seeks to ensure compliance with regulations to create and maintain fair and safe standards of operation from the individuals, premises and services it licences and for those that use the licensable services.

Purpose and Scope

The leaflet titled, "Enforcement Policy Principles for Development and Street Scene Services" sets out the general principles that apply to all the enforcement policies of that department, including for Licensing. The purpose of the Licensing Enforcement Policy is to set out the ways in which this service will enforce the law in accordance with the principles adopted by the department as a whole. The policy sets out what businesses and others affected by its regulatory responsibilities can expect from the service and assists staff in applying enforcement powers.

The policy applies to all Licensing officers with enforcement responsibilities. The Head of Licensing or deputy have additional responsibilities that are specified in the individual paragraphs of this policy and it will be reviewed as necessary in response to changing circumstances, such as new legislation or guidance.

Service Standards

The basic standards of customer service are set out in the leaflet, "Licensing – Our Service Standards" available from our offices and via the Council's web site, (see '*contacts and further information*' below).

In regard to enforcement, the general standards and procedures applicable to the service are set out below.

Inspections and Other Enforcement Visits

Premises in the borough will be inspected on the basis of licence application, risk assessment, annual inspection, or complaint. Inspections vary according to the legislation applicable. Where comprehensive inspections are carried out the officer will hand over a Post Inspection Report (PIR) that will summarise the findings of the inspection.

Other visits may be made to premises in order to check on compliance with the terms of licence and or legislation. These visits may include covert test purchases, visits in response to complaints, observations of premises etc.

Enforcement Options

In the event of an infringement being detected then the following list of options are available to the officer:-

- a) Advice
- b) Informal warning
- c) Written warning
- d) Simple caution
- e) Prosecution

In taking actions it is important to minimise the cost to business or individuals and to ensure that actions are proportionate to the risk.

When the offence detected should, in the opinion of the officer, be dealt with by way of c) Written warning, d) Simple caution or e) Prosecution, then the officer should consult with the Head of Licensing or deputy for an initial assessment as to which of those options would be the appropriate course of action. The initial views may well be modified as further information becomes available.

Where infringements are detected during an inspection of licensed premises, the officer should issue a "post inspection report" (PIR) to the trader in question except when the infringement is of a very minor nature. The PIR is in the form of a self-duplicating document. The top copy will be given to the licence holder/responsible person, the duplicate copy will be kept by the licensing authority. The issue of a PIR does not preclude writing to the licence holder/responsible person giving more detailed advice or issuing a written warning.

Whilst recognising that officers need to exercise judgement in individual cases, it is also necessary that duties are carried out in a fair, equitable and consistent manner. In order to facilitate this, the following paragraphs apply.

For the guidance of officers when offences have been committed in any of the following circumstances then the minimum course of action should be a written warning. Where the investigating officer considers recommending more severe action is appropriate, including prosecution, the investigating officer should consult the Head of Licensing and or deputy about the recommendation:

- Offence was committed recklessly
- Offence was committed knowingly
- Offence was committed deliberately
- Offence was committed fraudulently
- The offence had a significant effect on a customer or group of people
- There have been repeated breaches
- The offence is likely to be repeated
- Violence has been used
- The offender was in a position of trust/authority
- The offender was a ringleader or organiser of others who committed the offences
- There are previous convictions or cautions for similar offences
- A significant penalty is the likely outcome if prosecuted

In considering whether to initiate a prosecution in addition to the above, the following matters will be relevant for consideration by the Head of Licensing and or deputy in their absence.

- The admissibility and reliability of the evidence and there being a realistic prospect of conviction
- Relevant matters in the Code of Conduct for Crown Prosecutors
- Any expressed views of victim or victims family about the offender
- Whether there has been any wilful obstruction of the officer investigating the offence
- Whether the offender did take any remedial action in response to advice given
- Whether the offender has corrected any harm done to the victim

Criminal proceedings should not normally be taken against an individual if he/she is not involved in the management or supervision of the licensable activity, nor has any additional responsibility for matters associated with the offence and is acting only in the course of their employment, unless the employee has contradicted the employer's instructions, is being deliberately obstructive or in committing the offence has acted unreasonably.

Occasionally the decision as to whether or not to prosecute is not clear-cut. The initial decision rests with the Head of Licensing or deputy, who will make the decision after considering the prosecution report, and after discussing the matter with the investigating officer and the officer in charge (if a different officer). The Head of Licensing or deputy may refer the decision to the Director of Environment or relevant deputy, the Cabinet Member for the Environment, the Regulatory Committee, the Licensing Committee, a Licensing Sub-Committee or Chairman and or vice chairman of the Licensing Committee.

When offences detected are of a nature where it is considered that a simple caution or prosecution is the appropriate course of action and it is considered that a Director has consented, connived or was attributable to any wilful neglect, then the same action against the director as is being taken against the licensee or company should be considered. This should be discussed with the Head of Licensing and or deputy.

If it is considered likely that the offending company may be wound up in order to avoid criminal proceedings then proceedings against the directors should be considered. This should be discussed with the Head of Licensing and or deputy.

Criminal proceedings against employees should not, except in unusual circumstances be considered, unless the employee has contradicted the employers instructions or is being deliberately obstructive or has not heeded warnings.

Offences of obstruction should be considered for prosecution especially if the nature of the obstruction has resulted in additional work and/or costs to the Department.

In the case of Temporary Event Notices, the 'notice giver', who may be an individual, may have criminal proceedings brought against them for breaches of legislation in connection with the event for which they as notice giver have legal responsibility.

Notifications

This service will fully comply with any requirements for statutory notifications. This includes the requirement to provide the HSE with details of Health and Safety notices and or prosecutions and the OFT with information about convictions in order to keep the Central Register of Convictions updated.

Shared Enforcement Role

For some legislation there is a shared enforcement responsibility, the Police, Environmental Health, etc. The following paragraphs give guidance on how that responsibility is to be shared in the circumstances referred to.

The Licensing Act 2003 creates specific responsibilities for enforcement for the Police, Trading Standards and the Licensing Authority. Protocols between the Licensing Authority and the Police, and the London wide protocol with the LFEPA outline the respective responsibilities. The Licensing Authority will be the primary enforcer of conditions of licence. Trading Standards will enforce the under age sales of alcohol for consumption off licensed premises and the Police on. Complaints about noise nuisance under the Environmental Protection Act 1990 will be primarily the responsibility of Commercial Environmental Health as will inspection and response to complaints about the Health and Safety of licensed premises. Officers of the Licensing Authority where appropriately authorised under other legislation may enforce it on behalf of the Local Authority.

Where joint enforcement undertaken by the Police and Licensing officers for unlicensed Street Trading results in prosecutions whether by the police or the local authority these will usually be processed by the local authority.

Where legislation creates other similar shared responsibilities this service will fully enforce those provisions of the legislation concerned.

Licensing officers will often receive information that will be of relevance to other regulators investigating criminal offences. The policy is that such information should be provided to those other regulators providing that no officer commits any offence in providing that information and that the relevant 'authority' for disclosure is provided. Information will be passed to the Police, Customs and Excise, the Inland Revenue, other local Authorities on the above basis.

Powers of Entry

Licensing officers have considerable powers to enforce the law conferred on them by legislation. Some legislation grants authority to enter and inspect premises. Refusal to permit entry may constitute the offence of obstruction. In particular some legislation enforced by the Licensing team allows, if necessary, entry by reasonable force. A warrant issued by the justices will be sought where this is a requirement of entry or in some cases if entry had previously been refused or it is anticipated that entry may be refused and that pre-warning the occupant of entry would defeat the point of entering.

Forfeiture of Goods

When criminal proceedings are instituted in relation to goods which have been seized as evidence of an infringement of legislation then the normal course of action would be to request the court that such goods should be forfeited. Goods seized as evidence must be counted, bagged and tagged where and when possible in front of the offender and a notice of seizure must be completed. The accused must be given an opportunity to sign the seizure notice and be given a copy.

The goods must be held securely until the case comes to trial or a decision not to prosecute is made. Where the case is prosecuted the goods must be made available for the Court who will decide whether or not to order the forfeiture of the goods. If the decision is made not to prosecute, the goods must be made available to the offender for collection and kept securely until such time that they are collected. Goods must be checked out and signed for. Forfeit goods must be kept securely for such period as the court may order or until appeal options have expired before disposing of them.

In a case where a simple caution is accepted the owner of seized goods may assign the goods to the Licensing Service for disposal. As an alternative to seeking a court order, or a simple caution the owner of the goods may be asked to voluntarily assign the ownership of the goods to the Licensing Service for disposal.

Arrangements will be made by the Licensing Service for goods subject of a forfeiture order or voluntarily handed over to the Licensing service to be destroyed or occasionally it may be appropriate to donate goods to a suitable charity, if the goods can be rendered legal through, for example, removal of infringing trade marks.

Particular Customer Needs

This service will endeavour to be flexible in responding to customer needs by adapting the method of operation to suit the customer. In particular the following paragraphs apply in this regard

Service leaflets, letters or other documents are willingly translated into other languages utilising a translation service. There is no additional expense to the customer for this service. We will also arrange for interpreters when necessary.

Contacts and Further Information

If you want further information about the service provided or the standards applicable please contact us or look at our website at www.richmond.gov.uk/consumer_protection

Call the service on:

T 020 8831 6455

e-mail licensing@richmond.gov.uk

Visitors who would have difficulty with the stairs to the Parkshot building can be seen in the Magistrates Court next door. Please call at the court reception.. Alternatively, please contact us and we will arrange to see you in your home, workplace or other place that is convenient to you.

If you need this leaflet in Braille, large print, audio tape or another language, please contact us on 020 8831 6455 or minicom 020 8831 6006

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اگر آپ کو اس اشاعت کو سمجھنے میں کوئی مشکل ہے تو، براہ کرم نیچے دیئے ہوئے ایڈریس کے استقبال پر جا کر ملیئے، جہاں ہم آپ کیلئے ٹیلیفون انٹرپرائزنگ سروس (ٹیلیفون پر ترجمانی کی سروس) کا انتظام کر سکتے ہیں۔

Nese keni veshtersi per te kuptuar kete botim, ju lutemi ejani ne receptionin ne adresen e shenuar me poshte ku ne mund te organizojme perkthime nepermjet telefonit.

إذا كانت لديك صعوبة في فهم هذا المنشور، فنرجو زيارة الإستقبال في العنوان المعطى أدناه حيث بإمكاننا أن نرتب لخدمة ترجمة شفوية هاتفية.

এই প্রকাশনার অর্থ বুঝতে পারায় যদি আপনার কোন সমস্যা হয়, নিচে দেওয়া ঠিকানায় রিসেপশন-এ চলে আসুন যেখানে আমরা আপনাকে টেলিফোনে দোভাষীর সেবা প্রদানের ব্যবস্থা করতে পারবো।

اگر در فهمیدن این نشریه مشکل دارید، لطفاً به میز پذیرش در آدرس قید شده در زیر رجوع فرمایید تا سرویس ترجمه تلفنی برایتان فراهم آورده شود.

જો તમને આ પુસ્તિકાની વિગતો સમજવામાં મુશ્કેલી પડતી હોય તો, કૃપયા નીચે જણાવેલ સ્થળના રિસેપ્શન પર આવો, જ્યાં અમે ટેલિફોન પર ગુજરાતીમાં ઇન્ટરપ્રિટિંગ સેવાની ગોઠવણ કરી આપીશું.

ਜੇਕਰ ਤੁਹਾਨੂੰ ਇਸ ਪਰਚੇ ਨੂੰ ਸਮਝਣ ਵਿਚ ਮੁਸ਼ਕਲ ਪੇਸ਼ ਆਉਂਦੀ ਹੈ ਤਾਂ ਹੇਠਾਂ ਦਿੱਤੇ ਗਏ ਪਤੇ ਉੱਪਰ ਰਿਸੈਪਸ਼ਨ 'ਤੇ ਆਓ ਜਿੱਥੇ ਅਸੀਂ ਟੈਲੀਫੋਨ ਤੇ ਗੱਲਬਾਤ ਕਰਨ ਲਈ ਇੰਟਰਪ੍ਰਿਟਰ ਦਾ ਪ੍ਰਬੰਧ ਕਰ ਸਕਦੇ ਹਾਂ।