

Changes and Updates to Licensing Officers Enforcement Policy

Meeting	13th April 2023
Report Author	Alison Stocker - Senior Licensing Officer
Portfolio Holder	Cllr Heather KEEN
Status	For Decision
Classification:	Unrestricted
Key Decision	N/A
Reasons for Key (if appropriate)	N/A
Previously Considered by	N/A
Ward:	N/A

Executive Summary:

The Licensing Officer's Enforcement Policy provides a framework to assist the Licensing Team in deciding what form of enforcement action is the most appropriate. The report asks Board to consider the update to the Licensing Officer's Enforcement Policy, in line with new legislation and guidance.

Recommendation(s):

The instructions of the Board are requested.

Corporate Implications

Financial and Value for Money

Costs associated with processing application are taken from licensing fee income. The applicant or any other person (objector) may appeal the Committee's decision to Magistrates' Court within 21 days. Should this decision be appealed the Council will incur costs defending the appeal. Should the appeal be successful it could result in costs being awarded against the Council. Therefore all decisions should ensure that they are in line with the Local Government (Miscellaneous Provisions) Act 1976

There are no direct financial implications arising from the update Licensing Officers Enforcement Policy.

Legal

The Licensing Board must pay proper attention to the applicant's rights under the provisions of the Human Rights Act 1998, which gives further effect in the United Kingdom to the fundamental rights and freedoms contained in the European Convention on Human Rights. The Licensing Board must have proper regard to the rights of the individual applicant when making decisions that affect them. However, it also has to have regard to the safety and protection of the public and therefore to ensure that the right balance is found and think hard about how it can cause the least possible harm to individuals, bearing in mind its duty to ensure the protection of the public. Section 17 of the Crime and Disorder Act 1998 states: "Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those function on, and the need to do all that is reasonably can to prevent crime and disorder in its area"

In considering this application the Licensing Board will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

There is a right of appeal to a Magistrates' Court within 21 days of the date of the decision of the Licensing Board with regard to the grant/refusal of a licence or any of the conditions attached to it. The risk of appeal/challenge is increased if any decision made is not evidence based and proportionate.

Whilst there is no statutory guidance with regards to the definition of a fit and proper person, in 2018 The Institute of Licensing produced guidance on determining the suitability of applicants and licensees in the Hackney Carriage and Private Hire Trades in order to bring clarity and conformity to the definition of a 'fit and proper person'.

The Licensing Officer's Enforcement Policy is in line with The Enforcement Concordat and Regulator's Code requirements.

The policy ensures that all enforcement decisions will take into account the provisions of:

The Human Rights Act 1998
The Crime and Disorder Act 1998
Police and Criminal Evidence Act 1984
Criminal Procedure and Investigations Act 1996
Regulation of Investigatory Powers Act 2000

- [The Human Rights Act 1998](#)
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- [Criminal Procedure and Investigations Act 1996](#)
- [Regulation of Investigatory Powers Act 2000](#)
- Equal rights and anti-discrimination legislation and any advice issued by the Government, the [Chartered Institute of Environmental Health](#) and other relevant bodies.
- Code of Practice for Crown Prosecutors

Risk Management

The options set out below allow discretion to Licensing Board members in reaching fair and proportionate decisions.

There is a risk in not bringing this report to the Licensing Board, as this report updates the legislation in the enforcement policy and ensures clarity and transparency in enforcement remit of Licensing Officers. There exists a risk in not updating the policy that enforcement actions do not mirror current legislation, guidance and best practice and officers will therefore be unable to employ the full range of options available.

Corporate

The Council's Core Business Objectives set out the direction of travel for the Council until 2023 laying the strong foundations that will benefit, shape and grow the district. By taking this approach, the Council's resources will be focused on what matters most, service delivery will be strengthened and both staff and partners will be working towards a common goal - ensuring prosperity and improved quality of life for our residents and the community. These Core Business Objectives are:

Growth

We will continue to ensure we work to consider new ways to generate income and invest our current resources. Delivering a Council that is financially strong to discharge its services and invest in the growth of the District.

Environment

Having a clean and well-maintained environment remains important to us. We will be clear with our residents on what we do and what our asks of residents are - cultivating a shared responsibility approach. Delivering a clean and accessible living environment, maintaining an emphasis on prevention but where necessary we will use an enforcement approach.

Communities

Through effective partnership working with both the public sector agencies and the community, we will provide leadership and direction across the district and the region to ensure everyone is working to the same goal. Delivering high-quality housing, safer communities and enhancing the health and wellbeing of our residents.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

There are no Equality Act 2010 or Public Sector Equality Duty implications from this policy. It reflects national legislation and guidance and applies equally to all businesses and individuals.

All Licensing Officers involved in licensing enforcement will be made aware of their responsibilities under the [Public Sector Equality Duty](#) and [TDC's Equality Policy](#). They will be expected to treat people equally at all times and have regard to the needs of vulnerable people and protected groups where appropriate.

Corporate Priorities

This report relates to the following corporate priorities: -

- Growth
- Communities
- Environment

1.0 Introduction and Background

- 1.1 The existing enforcement policy used by the Licensing Officers requires reviewing due to the length of time it has been in operation. Legislation has changed and the policy needs to be updated to reflect those changes.
- 1.2 The existing policy does not reflect some new ways of working, legislation and powers available to Licensing Officers.
- 1.3 The policy has now been updated to reflect current legislation, guidance and enforcement remit. In particular, this policy covers provisions and enforcement protocols under the Animal Welfare Act.

2.0 Current Situation

- 2.1 Thanet District Council has signed up to The Enforcement Concordat, confirming its commitment to the principles of good enforcement. This policy encompasses the principles of this concordat.
- 2.2 This enforcement policy not only lays out how enforcement action is decided upon, but also provides those complaining about Licensing Enforcement issues or causing them to understand what action is available to the local authority to resolve matters.
- 2.3 The policy lays out how we investigate complaints; and is a general policy which outlines the basic principles of enforcement. Guidance is provided on what is considered when making a decision on enforcement action. The policy then goes on to lay out the various types of enforcement action available to the local authority.
- 2.4 The policy includes details on complaints and appeals available to those who are affected by enforcement decisions made by the local authority.

3.0 Options

Members are requested to review the updated Policy, which now includes reference to the Animal Welfare Act 2006.

3.1 To agree to the introduction of the new Enforcement Policy

3.2 To refuse to the introduction of the new Enforcement Policy

Contact Officer: Alison Stocker - Senior Licensing Officer

Reporting to: Morgan Sproates- Regulatory Services Manager

Annex List

Annex 1: Licensing Officers Enforcement Policy

Background Papers

Old Enforcement Policy

Corporate Consultation

Legal: Jennifer Phillips (Principle Litigation Solicitor)