

LICENSING ENFORCEMENT POLICY

1.0 Objectives

- 1.1 It is the Council's objective to ensure that all Premises Licences and Personal Licences issued under Licensing Act 2003 are issued in accordance with the Council's approved Licensing Policy, of which this Enforcement Policy forms part, and the Statutory Guidance issued under Section 182 Licensing Act 2003.
- 1.2 It is also the Council's objective to ensure that Premises and Personal Licence Holders comply with the conditions laid down in each specific licence. The Council will work in conjunction with Sussex Police, West Sussex Fire Brigade and West Sussex Trading Standards in enforcing the requirements of the Licensing Act 2003.
- 1.3 In meeting these objectives, the Council's enforcement action (verbal warnings, written warnings and prosecutions) will be primarily based on a risk assessment of the compliance with the conditions laid down in the licence and the implications of this for public disturbance and crime and disorder. This Licensing Enforcement Policy has to be read in conjunction with the Council's General Enforcement Policy for Public Health and Licensing.

2.0 Guidance

- 2.1 This Council supports the guidance issued under Section 182 Licensing Act 2003.

3.0 Implementation of the Policy

- 3.1 All authorised officers will fully acquaint themselves with this document and should have regard to it when making enforcement decisions. Any departure from the policy must be exceptional, capable of justification and should have been considered by at least two of the following officers (unless it is considered that there is significant risk to the public in delaying the decision): -

Head of Public Health and Licensing (HPLH)
Deputy Chief Environmental Health Officer (DCEHO)
Principal Environmental Health Officer (Licensing) (PEHO) (Licensing)

4.0 Training

- 4.1 The PEHO (Licensing) is responsible for carrying out or arranging training for staff in the Public Health and Licensing Department in matters relevant to this policy. This includes the individual training of new staff and the ongoing training of existing staff, as the need arises.

5.0 Decision Making - Proceedings

- 5.1 The power to institute, prosecute or terminate proceedings is delegated to the Council Secretary and Solicitor, in consultation with the Head of Public Health and Licensing (Part 3F, Para. 4.2(a), Council Constitution).
- 5.2 Any officer intending to recommend a prosecution for a contravention of the Premises Licence holder or Personal Licence holder must consult with

the PEHO (Licensing) in the first instance. If the proposal is being initiated by the PEHO (Licensing), then the PEHO (Licensing) will consult with the DCEHO or the HPHL before taking the matter further.

- 5.3 If following this consultation, it is proposed to recommend prosecution; the officer initiating the action will contact the Council Secretary and Solicitor and arrange for a consultation with a solicitor.
- 5.4 If prosecution is still the chosen option, the officer initiating the action will complete the proforma requesting the Council Secretary and Solicitor to authorise the institution of proceedings. **THE PROFORMA MUST BE SIGNED BY THE HEAD OF PUBLIC HEALTH AND LICENSING.**

6.0 **Enforcement Options**

- 6.1 In considering enforcement options, officers will ensure, in the interests of balanced, consistent, proportionate and fair enforcement that the guidance contained in the Guidance issued under Section 182 Licensing Act 2003 is taken into account and followed where appropriate.
- 6.2 In deciding which enforcement option to adopt, officers will have regard to the following criteria before making a decision: -
- seriousness of the offence
 - the past history of the business
 - confidence in the management of the premises
 - the consequences of non-compliance
 - the likely effectiveness of various enforcement options
 - whether the offence will continue to be committed without enforcement action

The above list is not exhaustive and other factors may be taken into account in the circumstances of a particular case.

- 6.3 The options for action are: -

- no action
- informal action (verbally or through a letter)
- formal caution
- prosecution

The Council asserts its right to decide on the form of action to be taken in any particular case, notwithstanding the relevant guidance.

7.00 **Informal Action**

- 7.1 This includes offering advice, verbal warnings, request for action and the use of letters.
- 7.2 Examples of circumstances in which it is appropriate to use informal action are where: -
- the act or omission is not serious enough to warrant formal action, or
 - from the company's past history it can be reasonably expected that informal action will achieve compliance, or

- confidence in the individual / company's management involved is high, or
- Informal action will be more effective than a formal approach.

7.3 When adopting a formal approach to secure compliance with legislation, officers must ensure that any documentation issued: -

- contains all the information necessary for the recipient to understand what work is required and why it is necessary; and
- indicates the regulation or conditions contravened, measures which will enable compliance with the legal compliance and that other means of achieving the same effect may be chosen; and
- indicates the timescale (with the proprietor) within which the required work must be completed, and
- Clearly indicates recommendations of good practice for the process involved as separate from the legal requirements.

8.0 Prosecution

8.1 In general, prosecution will be restricted to those persons who blatantly disregard the law, refuse to achieve the requirements of the Licensing Act 2003, the associated regulations and guidance and who create an imminent or actual risk to disturbance of the environment or to crime and disorder.

8.2 The circumstances which are likely to warrant prosecution will be characterised by one or more of the following: -

- a) where the alleged offence involves a flagrant breach of the law such that the Licensing Objectives are compromised, public safety or well being is put at risk, or there are negative crime and disorder implications, or
- b) where there has been a repeated failure to comply with conditions of the licence, or
- c) where a premises or person has not applied for a licence, even though licensable activities are being carried out, or
- d) Where there is a history of similar offences for that specific premises or licence holder.

The above list is not exhaustive and other factors may arise in individual cases.

8.3 To enable a prosecution to proceed, the HPHL and Council Secretary and Solicitor must be satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction.

8.4 In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction, the officers must make a positive decision, based on relevant criteria that it is in the public's interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which should be considered, including relevant public interest criteria. A copy of this document has been placed in Public Health and Licensing Department General File EH/67

- 8.5 When deciding whether to prosecute, the HPHL and Council Secretary and Solicitor should have regard to the guidance contained in the statutory guidance and this may include: -
- (a) The seriousness of the offence: -
 - The risk or harm to public health,
 - The availability of identifiable victims.
 - Failure to comply with a statutory notice served for a significant breach of legislation,
 - Disregard of public health for financial reward.
 - (b) The previous history of the party concerned: -
 - Offences following a history of similar offences,
 - Failure to respond positively to past warnings,
 - Failure to comply with statutory notices.
 - (c) The ability of any important witnesses and their willingness to cooperate
 - (d) The willingness of the party to prevent a recurrence of the problem
 - (e) The probable public benefit of a prosecution and the importance of the case - e.g. whether it might establish a precedent: -
 - Advice on public interest is contained in the Code for Crown Prosecutors (see Paragraph 9.5 above).
 - (f) Whether any other action, such as issuing a formal caution in accordance with Home Office Circular 18/1994 (see Public Health and Licensing Department - General File EH/67), would be more appropriate or effective.
 - See Section 9 of this document with regard to Formal Cautions.
 - (g) Any explanation offered by the company or suspected offender: -
 - Suspected offenders should always be invited to an interview and given the opportunity to offer an explanation before prosecution decisions are finalised.
- 8.6 The guidance in Paragraph 9.6 is not to be interpreted as rigid constraints. For example, it may be appropriate to prosecute a first time offender for a serious breach of environmental protection legislation. The final decision on whether a prosecution proceeds will always rest with the Council.
- 8.7 Once a decision to prosecute has been taken, the officer initiating the action must refer the matter to the Council Secretary and Solicitor without undue delay.

9. **FORMAL CAUTIONS**

9.1 Before deciding whether a prosecution should be taken, the officers concerned will consider whether other action, such as issuing a formal caution in accordance with Home Office Circular 18/1994, would be more appropriate or effective.

9.2 Guidance on the use of the Formal Caution procedure is contained in general file EH/67.

9.3 The purpose of the formal caution is: -

- To deal quickly and simply with less serious offences,
- To divert less serious offences away from the Courts,
- To reduce the chances of repeat offences.

9.4 The significance of a formal caution, the fact that a record will be kept and may be cited in court if the offender is subsequently found guilty of an offence and that a previous formal caution may influence the decision to prosecute in a future case must all be explained to the suspected offender. The following conditions must be fulfilled before a formal caution is administered: -

- There must be sufficient evidence of the offence to give a realistic prospect of conviction, and
- The suspected offender must admit the offence, and
- The suspected offender must understand the significance of a formal caution and give an informed consent to the caution, and
- if aged under 14, the offender must understand that what he / she did was seriously wrong and in such circumstances the caution must be issued in the presence of the minor's parents or guardian

9.5 Formal cautions may be issued by the following officers only: -

Chief Executive
Council Secretary and Solicitor
Head of Public Health and Licensing

9.6 Where a person declines the offer of a formal caution, consideration must be given to taking alternative action. Whilst probable, it is not inevitable that a prosecution will follow. A decision to issue a written warning may still be taken.

10.0 **Policy Review**

10.1 The policy will be reviewed at least annually by the Head of Public Health and Licensing. Views on the policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

10.2 This Policy was adopted by the Council at the meeting of the Cabinet held on 31st March 2006.