



**Brighton & Hove
City Council**

Licensing Committee

(Non-Licensing Act 2003 Functions)

Title:	Licensing Committee (Non Licensing Act 2003 Functions)
Date:	5 February 2009
Time:	3.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: C Theobald (Chairman), Lepper (Deputy Chairman), Mrs Cobb, West, Hamilton, Harmer-Strange, Hyde, Kitcat, Marsh, Older, Pidgeon, Simson, Watkins, Fryer and Young
Contact:	Jane Clarke Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

20. PROCEDURAL BUSINESS

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.

21. MINUTES OF THE PREVIOUS MEETING **1 - 6**

22. CHAIRMAN'S COMMUNICATIONS

23. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on Thursday 29 January 2009).

No public questions received by date of publication.

24. POLICING AND CRIME BILL **7 - 14**

Contact Officer: Tim Nichols Tel: 29-2163
Ward Affected: All Wards

25. LICENSING ENFORCEMENT POLICY **15 - 38**

Contact Officer: Tim Nichols Tel: 29-2163
Ward Affected: All Wards

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

26. ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the 26 February 2009 Council meeting for information.

In accordance with Procedural Rule 24.3a the Committee may determine that any item is to be included in its report to Council. In addition each Minority Group may specify one further item to be included by notifying the Chief Executive by 10.00am on 16 February 2009.

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

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Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Jane Clarke, (01273 291064, email jane.clarke@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Wednesday, 28 January 2009

LICENSING COMMITTEE (Non Licensing Act 2003 Functions)

Agenda Item 21
Brighton & Hove City Council

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 27 NOVEMBER 2008

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors C Theobald (Chairman), Lepper (Deputy Chairman), Mrs Cobb, Fryer, Hamilton, Harmer-Strange, Hyde, Kitcat, Marsh, Older, Pidgeon, Simson, Watkins, West and Young

PART ONE

9. PROCEDURAL BUSINESS

9a Declarations of Substitutes

9.1 There were none.

9b Declarations of Interest

9.2 There were none.

9c Exclusion of the Press and Public

9.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100(1) of the Act).

RESOLVED – that the press and public be not excluded.

10. MINUTES OF THE PREVIOUS MEETING

10.1 **RESOLVED** – that the minutes of the meeting held on 19 June 2008 be approved and signed by the Chairman as a correct record.

11. CHAIRMAN'S COMMUNICATIONS

- 11.1 The Chairman updated the Committee that since the last Licensing Committee, officers in the Hackney Carriage Office have issued one caution, five warnings, suspended six drivers and revoked the licences of two drivers. In addition to this, two drivers were reminded of their licence conditions and one driver will have to undertake a DSA driving test within 6 months.
- 11.2 A Member asked for more details on some of the instances and the Head of Environmental Health and Licensing informed the Committee that one suspension was for an attempted rape charge, two suspensions were for medical reasons, one revocation was for excessive alcohol consumption and another revocation was for a conviction of rape.

12. CALLOVER

- 12.1 **RESOLVED** – that all items on the agenda be reserved for discussion.

13. PUBLIC QUESTIONS

- 13.1 There were none.

14. HACKNEY CARRIAGE/PRIVATE HIRE TRADE ETHNICITY MONITORING

- 14.1 The Hackney Carriage Officer presented a report on Hackney Carriage and Private Hire Trade Ethnicity Monitoring to the Committee.
- 14.2 A Member asked about the figures for the waiting list in the report, questioned why they were so high and asked if they were always so. The Hackney Carriage Officer replied that it was fairly steady year on year, but had reduced considerably from an over twenty year wait to around a nine year wait.
- 14.3 Further questions were asked about the ethnicity categories within the report and it was explained that the “other” category was self-determined by the respondent and could include any ethnicity or combination of ethnicities.
- 14.4 It was noted by Members that there was a low number of female drivers in the trade and Officers were asked whether this group was actively encouraged by the Council. The Hackney Carriage Officer noted that there was a small increase in women from ethnic minorities entering the trade this year, but stated that there were few measures the Council could implement to encourage higher uptake. It was noted that safety measures such as CCTV in Hackney Carriage taxis may make female drivers feel safer when driving at night and so could encourage uptake.
- 14.5 **RESOLVED** – to note the contents of the report.

15. AMENDMENT TO HACKNEY CARRIAGE FARE FORMULA

- 15.1 The Head of Environmental Health and Licensing presented a report on an Amendment to the Hackney Carriage Fare Formula to the Committee.
- 15.2 The Solicitor for the Committee, Ms R Sidell, explained that the taxi tariff setting was now an executive function under the new constitution and a report had just gone to the Governance Committee and to Cabinet concerning this. The function could be delegated to officers who must act in accordance with the advisory Committee recommendation, or else refer the matter to the Environment Cabinet Member Meeting or to Cabinet. The Licensing Committee would be sitting as the advisory Committee established by the Executive for this item.
- 15.3 The Hackney Carriage Officer explained that the changes to the formula were being proposed to pay for taxi marshalling, which had been identified by officers as a key safety measure within the city. The changes would put around £80-90 per vehicle on the licence fee.
- 15.4 It was explained that the trade would generally support the introduction of marshalling at taxi ranks but there was disagreement as to how this should be paid for. Many felt that the Council should pay the cost of this service. It was noted by officers that this was an imperfect remedy for the situation, but the best compromise.
- 15.5 The Hackney Carriage Officer explained that a pilot scheme had been conducted earlier in the year which had provided a much quicker turn around at taxi ranks and it was hoped that a similar scheme which would provide two marshals per rank over three ranks, two nights per week could be introduced with similar results.
- 15.6 It was felt by Members that this system was unfairly charging daytime passengers to pay for night time economy problems and the Committee asked whether a system could be devised to make only night time passengers pay for the marshalling system. The Head of Environmental Health and Licensing explained that the Authority devised the Hackney Carriage Fare Formula and set the tariff figure from this. Once this was set it was up to the taxi companies to implement the tariff. This would make it very difficult to charge night time customers a separate rate.
- 15.7 The Member asked what powers the taxi marshals would have and who would employ them, and the Head of Environmental Health and Licensing replied that they would have the same powers as any other civilian but would provide a calming influence on the taxi rank flashpoints. The Marshals would be SIA licensed and would most likely be sub-contracted from a local security company. It was noted that the Police were one of the strongest supporters of taxi marshalling as it was a good public safety measure.
- 15.8 The Members felt that this measure was worthwhile implementing but it should be funded by all interested stakeholders and partners in the city and that Cabinet should look more closely into options for funding the scheme.

15.9 **RESOLVED** – to recommend that the Director of Environment does not include the vehicle licence fee in the standing charges used in the formula to calculate the maximum normal daytime fare for hackney carriages.

16. UNMET DEMAND SURVEY

16.1 The Hackney Carriage Officer presented a report on the Unmet Demand Survey to the Committee and advised Members that officers were seeking confirmation of the Committee's continued support for the restricted numbers policy.

16.2 A Member noted that there were significant problems with taxi servicing in the city, especially with overcrowding at certain ranks and asked if there was still an identifiable unmet demand. The Head of Environmental Health and Licensing explained that the current policy was based on the results from the last survey and that a new survey would need to be conducted before any review of the policy could take place. He agreed that there was a significant problem with over ranking in some areas but that this was because of under supply in other areas, not due to a general oversupply of taxis.

16.3 It was noted by Members that Brighton Station taxi rank was a particular problem but the Head of Environmental Health and Licensing explained that this rank was on private ground and permits for that area were issued by a private company. There was little the Council could do about this situation except to restrict numbers in the city.

16.4 It was asked that the new survey include information on specific problems experienced in geographical areas so that the Council could understand which areas were causing the greatest problems, and the Head of Environmental Health and Licensing informed the Committee that any specific questions that the Councillors would like answered could be included in the tender document.

16.5 **RESOLVED** – that the Licensing Committee confirms support for the restricted numbers policy and notes that a new Unmet Demand Survey will be conducted shortly.

17. STREET TRADING

17.1 The Licensing Manager presented a report on Street Trading to the Committee and highlighted that the Members were being asked for permission to begin a consultation process on street trading within the city.

17.2 It was explained that the current policies are an amalgamation of Brighton Borough Council and Hove Borough Council policies, which has resulted in a lack of clarity and in some cases, unenforceable conditions.

17.3 Members felt there was a need for higher quality pitches city wide, and for more pitches to be made available, especially in the city centre and on the seafront. It was asked whether the Council could make preferences on the type of stalls that opened on street pitches and the Head of Environmental Health and Licensing replied that whilst this had been done in the past, it had resulted in undesirable consequences on the streets concerned.

17.4 It was noted that Upper Gardner Street currently had spare pitches available and if street traders required a pitch they could move there immediately. The Members felt that Upper Gardner Street needed more positive management to ensure the wellbeing of the area, but that it might not be suitable for some traders who wanted to be nearer to the sea. The Head of Environmental Health and Licensing highlighted that the seafront continued to be a consent street, but that this could be altered under the new policy if necessary.

17.5 **RESOLVED** – that permission to commence consultation on street trading within Brighton and Hove be granted.

18. LICENSING COMMITTEE FUNCTIONS RESERVED TO COMMITTEE

18.1 The Solicitor to the Committee, Ms R Sidell, presented the report on Licensing Functions Reserved to Committee and highlighted the new arrangements for executive and non executive functions, and how this related to the powers of the Licensing Committee.

18.2 **RESOLVED** – that the report is noted.

19. ITEMS TO GO FORWARD TO COUNCIL

19.1 There were none.

The meeting concluded at 4.20pm

Signed

Chair

Dated this

day of

LICENSING COMMITTEE (Non Licensing Act 2003 Functions)

Agenda Item 24

Brighton & Hove City Council

Subject: *Policing & Crime Bill*
Date of Meeting: **5 February 2009**
Report of: *Director of Environment*
Contact Officer: Name: *Tim Nichols* Tel: **29-2163**
E-mail: tim.nichols@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT

- 1.1 On 6 March 2008, Policy & Resources Committee resolved that the provisions of the Council's new licensing policy and other available regulatory powers be used to manage strip clubs;
- 1.2 The council would work with the Local Government Association (LGA) with a view to lobbying government for a change to national legislation; and
- 1.3 The government's response to the London Local Authorities Bill would be monitored.
- 1.4 In the event of any significant developments during the passage of the London Local Authorities Bill such as the moving and acceptance of any amendments relating to the licensing of strip clubs, a meeting of the cross-party working group on sex establishments would be reconvened;
- 1.5 The continued ring-fencing of the funding from the previous LABGI allocation that was set aside to fund a Private Bill should that option be taken forward was agreed;
- 1.6 Full representations should be made during the forthcoming government review of the 2003 Licensing Act in relation to the licensing of strip clubs and the need for local councils to be better able to regulate them.

2. RECOMMENDATIONS

- 2.1 That the cross party working group's work should be continued by Licensing Committee.
- 2.2 That Licensing Panels continue to be guided by paragraph 2.9.2 of the statement of licensing policy including the imposition of conditions applicable to lap dancing clubs in determining applications.
- 2.3 That the Council is recommended to adopt provisions relating to sex encounter venues, if the Policing and Crime Bill is enacted.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS

- 3.1 Under the statement of licensing policy, a Licensing Panel hearing an application for regulated entertainment involving naked or semi-naked dancing will have regard to:
 - (i) the location of the premises in relation to schools, places of worship, community centres and residential accommodation; and
 - (ii) the cumulative effect of the number of such premises on the character of the area

Further, Panel members may impose conditions, where appropriate, to regulate the conduct of dancers, customers (including the exclusion of persons under 18), and staff

- 3.2 Local MPs were briefed by officers in April 2008. Letters were sent by the Leader and Chief Executive to the appropriate DCMS Minister in May and June 2008. The June letter resulted from Chairman's communications on 19 June. The Chairman outlined a response that would be sent to the DCMS/Home Office. The response detailed the history of lap-dance clubs in the city and argued that local authorities should be permitted to control the localities, numbers and management of these premises as they do for sex shops and cinemas. An officer attended a meeting with the Home Office Minister (Parliamentary Under Secretary for Crime Reduction) and Home Office, DCMS and DCLG officials, government lawyers and council officers from Durham, Blackpool, Birmingham, Derwentside, Tower Hamlets and Southwark, which appeared to be councils with concerns about lap dancing controls.
- 3.3 It was intended to explore the extension of sex establishment controls under the 1982 Local Government (Miscellaneous Provisions) Act as this would allow controls on location and proliferation and standard conditions. The Home Office would lead this work.

- 3.4 In the 2008 Queen's speech there was a Policing and Crime Bill which, amongst other measures, promised tighter controls around lap dancing clubs.
- 3.5 The Home Office published the Policing & Crime Bill after it received its First Reading in the Commons; Second Reading was scheduled for 19 January.
- 3.6 Under clause 25 of the Bill, Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 will be amended so as to extend the meaning of 'sex establishments' to include 'sex encounter venues'. The Bill further defines a 'sex encounter venue' as premises where a live performance or a live display of nudity is provided for a live audience, for the purpose of sexually stimulating any member of the audience. This definition is intended to catch the majority, if not all, lap dancing clubs. The effect of clause 25 is to subject sex encounter venues to the same controls that currently apply under that legislation to sex cinemas and sex shops. By virtue of Schedule 3 to the Bill (transitional arrangements), the new provisions do not appear to apply retrospectively. They will only apply to new licensed premises when the council makes a resolution to that effect under section 2 of the 1982 Act. Once the Council resolves to bring the provisions of clause 25 into effect, any new applications for lap dancing clubs in Brighton & Hove will be subject to the wider controls.

The Home Office advises Council lawyers: "the purpose of paragraph 2(2) of Schedule 3 is to ensure that a local authority who has already adopted Schedule 3 to the 1982 Act does not automatically become bound by the amendments being made by clause 25 of the Bill.

Instead, they must resolve to adopt them. Where a local authority resolves to adopt Schedule 3, as amended by clause 25 of the Bill, the intention is that existing lap dancing clubs will be covered by the new regime provided they fall within the definition of "sex encounter venue". Regulations will be made to provide appropriate transitional arrangements to deal with existing clubs which presently have a regulated entertainment licence under the Licensing Act 2003.

- 3.7 It is not yet clear whether clause 25 applies retrospectively. However, it may be possible to apply conditions applicable to lap dancing clubs on variation or review.

4. CONSULTATION

- 4.1 Legal and Finance officer comments are incorporated in this report.

5. FINANCIAL AND OTHER IMPLICATIONS

Financial Implications:

- 5.1 Licence fees for sex establishments are set at a level that are anticipated will cover costs of administering and enforcing provisions. Premises licence fees are set by regulations. The bill ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. A reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act.

Finance Officer Consulted: Karen Brookshaw

Date: 21/01/09

Legal Implications:

- 5.2 "Sex encounter venue" means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. Appendix A reproduces the official explanatory note to the Policing & Crime Bill, prepared by the Home Office.

Equalities Implications:

- 5.3 Licensing authorities may impose conditions excluding minors and to protect performers' safety, where justified.

Statement of Licensing Policy excerpts:

2.9.2 Where appropriate, the Licensing Authority will also take into account the cumulative effect of a number of such premises on the character of the area. Where such applications are made the licensing authority will expect operating schedules to address the following matters and will include such conditions as are necessary to promote the licensing objectives.

- A. A code of conduct for dancers and appropriate disciplinary procedures, developed in consultation with the Police and the Council.
- B. Rules of conduct for customers, developed in consultation with the police and the council.
- C. Procedures to ensure that all staff employed in the premises have pre-employment checks including suitable proof of identity, age and (where required) permission to work.
- D. The exclusion of persons under 18 from the premises when such activities are taking place.

2.9.3 Conditions to regulate may prohibit physical contact between customers and performers and may include:

- Dressing room security
- Displays
- CCTV

Lawyer Consulted: Rebecca Sidell & Oliver Dixon *Date: 21/01/09*

Sustainability Implications:

5.4 None.

Crime and Disorder Implications:

5.5 Concerns were raised by local authorities that the Licensing Act 2003 controls led to a relaxation of controls, because the grounds on which a local authority can refuse a licence were constrained by the four licensing objectives, none of which may help in blocking an application if the licensee can make a sufficiently strong case that the proposed activity qualifies as an “entertainment similar to dance”.

Risk and Opportunity Management Implications:

5.6 None.

Corporate/Citywide Implications:

5.7 Under public entertainment licensing provisions the Council, so far as erotic entertainment (e.g. lap dancing or striptease) was concerned, would not grant a licence to establishments proposing to stage such events unless conditions imposed restrictions on the level of nudity and contact.

SUPPORTING DOCUMENTATION

Appendices

1. Appendix A reproduces the official explanatory note to the Policing & Crime Bill, prepared by the Home Office.

Documents in Members' Room

1. None.

Background Documents

1. Statement of Licensing Policy.
2. The official explanatory note to the Policing & Crime Bill.

Appendix A

Sex establishments

Clause 25: Regulation of lap dancing and other sex encounter venues and Schedule 3: Lap dancing and other sex encounter venues: transitional provisions

184. This clause inserts a new category of “sex establishment” called a “sex encounter venue” into Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.
185. The clause would insert a new paragraph 2A into Schedule 3 of the Local Government Act 1982.
186. Sub-paragraphs (1), (2) and (8) of the new paragraph define a “sex encounter venue” as a premises where certain entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. The entertainment may take the form of a live performance or live display of nudity and must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. An audience can consist of just one person.
187. Sub-paragraph (3) explains that sex shops, sex cinemas and any premises that provide relevant entertainment less than once a month are not sex encounter venues. The Secretary of State, or in Wales the Welsh Minister, may also make an order excluding other premises. In addition, under sub-paragraph (4) they may make an order excluding certain types of performances or displays of nudity.
188. Sub-paragraphs (5), (6) and (7) make provision relating to the exercise of the order making power described in sub-paragraphs (3) and (4). In particular, the power to make such an order is subject to the negative resolution procedure.
189. Sub-paragraph (9) stipulates that it is the organiser that must apply for a licence under the 1982 Act as the “user” of the premises.
190. Sub-paragraph (10) provides various definitions including the meaning of “nudity” in the cases of men and women. The definition of “premises” means that private dwellings to which the public are not admitted are expressly excluded from the definition of premises. Sub-paragraph (10) also states that it does not matter whether the financial gain arises directly or indirectly from the performance of display or whether it is the person providing the entertainment who receives the benefit or some other person. Therefore, for example, it should not matter whether those admitted to the premises pay for admission to or membership of the club.
191. *Subsection 4* amends paragraph 12(3)(c) of Schedule 3 to the 1982 Act, which deals with refusal of licences, to allow local authorities to set a limit on the number of sex establishments of a particular type in a

locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate.

192. *Subsection 5* amends paragraphs 13(2) and (3) of Schedule 3 to the 1982 Act which provides local authorities with the power to prescribe in regulations standard terms and conditions for sex establishment licences. The amendments allow local authorities to impose different standard conditions on a sex encounter venue compared with other kinds of sex establishment, such as a sex shop. Copies of any regulations made by a local authority under paragraph 13 of Schedule 3 must be supplied by the local authority upon request and payment of a reasonable fee.
193. *Subsection 6* ensures that the local authority will be able to charge a fee for applications to vary a licence granted under the 1982 Act. Indeed, a reasonable fee set by the local authority is also payable for the grant, renewal or transfer of a licence under the 1982 Act. *Subsection 7* inserts a new paragraph after paragraph 25 of the 1982 Act that stipulates the procedure by which the police and local authority officers can, under the authority of a warrant, seize property from premises that can be forfeited following a conviction for an offence under paragraphs 20 (enforcement) or 23 (offences relating to persons under 18) of the 1982 Act. The provisions largely replicate those inserted by the Greater London Council (General Powers) Act 1986 but are necessary as that Act is of limited application. *Subsection 8* similarly replicates an amendment made by the Greater London Council (General Powers) Act 1986.

Schedule 3: Lap dancing and other sex encounter venues: transitional provisions

194. *Paragraph 1* deals with those local authorities that have not already resolved to adopt Schedule 3 of the 1982 Act and provides that the amendments made to the 1982 Act by clause 24 will apply where such an authority resolves to adopt Schedule 3 on or after clause 24 comes into force.
195. *Paragraph 2* deals with those local authorities that have already adopted Schedule 3 and any subsequent amendments made by local acts. In these cases the amendments to Schedule 3 made by clause 24 will not apply to a local authority area unless the relevant local authority resolves to adopt them.
196. *Paragraph 3* allows the appropriate national authority to make, by statutory instrument, appropriate saving, transitional or transitory provisions relating to the coming into force of Schedule 3 of the 1982 Act as amended by this Bill.

These notes refer to the Policing and Crime Bill as introduced in the House of Commons on 18 December 2008 [Bill 7].

LICENSING COMMITTEE (Non Licensing Act 2003 Functions)

Agenda Item 25
Brighton & Hove City Council

Subject: *Licensing Enforcement Policy*
Date of Meeting: **5 February 2009**
Report of: *Director of Environment*
Contact Officer: Name: **Tim Nichols** Tel: **29-2163**
E-mail: tim.nichols@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 On 16 October 2008, Cabinet approved the Corporate Enforcement Policy and authorised its implementation by all enforcement sections in the Council
- 1.2 Fair and consistent enforcement is a key priority for the Council. On 6 April 2008 the statutory Regulators' Compliance Code for specified functions, including Trading Standards and Environmental Health, came into force.

2. RECOMMENDATIONS:

- 2.1 That the licensing committee recommends that the Director of Environment uses the draft licensing enforcement policy in appendix C for consultation.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The corporate enforcement policy is set out in appendix A. The current commercial enforcement policy is set out in appendix B, for reference, both regulate Trading Standards and Environmental Health. The principles of the Regulators' Code are applicable to all of our regulators because they promote openness, fairness, proportionality and consistency.
- 3.2 As sanctions for licensing offences are not identical to other regulatory services, officers need a framework, consistent with corporate policy, to ensure enforcement is carried out in accordance with principles of good regulation (ref Better Regulation Task Force 2000): proportionality, accountability, consistency, transparency, targeting.

4. CONSULTATION

- 4.1 In developing the corporate enforcement policy the following organisations were consulted: The following stakeholders have been consulted
 - All enforcement sections in the council

- Local business associations and individual businesses
- The public (via the website)
- Other enforcement agencies including Sussex Police and neighbouring authorities.

4.2 It is proposed to consult parties set out in section 5 of the Licensing Act 2003: Sussex Police, East Sussex Fire & Rescue Service, the licensed trade, business associations, residents and their associations. This can be achieved by engaging consultative groups: taxi forum, licensing strategy group and the Brighton and Hove Business Forum.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 There are no direct financial implications.

Finance Officer Consulted: Karen Brookshaw

Date: 21/01/09

Legal Implications:

5.2 Policy will assist the Council in meeting its duty under section 6 of the Human Rights Act 1988 not to act in a way which is incompatible with a Convention Right.

Lawyer Consulted: Rebecca Sidell

Date: 21/01/09

Equalities Implications:

5.3 An equality impact assessment concludes a policy should promote action that is transparent, consistent, proportionate and fair

Sustainability Implications:

5.4 None.

Crime & Disorder Implications:

5.5 The policy requires officers to consider targeted and proportionate action against those that persistently breach the legislation so should assist in the prevention of crime and disorder.

Risk and Opportunity Management Implications:

5.6 None.

Corporate / Citywide Implications:

5.7 Good regulation promotes economic success and prosperity.

SUPPORTING DOCUMENTATION

Appendices:

- A. Corporate enforcement policy
- B. Commercial enforcement policy (previously existing)
- C. Draft licensing enforcement policy

Documents in Members' Rooms:

- 1. None

Background Documents:

- 1. The Regulators Compliance Code
- 2. Cabinet Office Enforcement Concordat
- 3. Hampton Review
- 4. Macrory Report (Penalties & Sanctions)

APPENDIX A

Corporate Enforcement Policy

1. Introduction

- 1.1 Fair and effective enforcement is essential to protect the economic interests and health and safety of the public, businesses, the environment and the public purse.
- 1.2 This Policy sets out what businesses and individuals that are either the subject of, or benefit from enforcement action can expect from Enforcement teams and their officers.
- 1.3 This policy commits the Council to good enforcement practice and procedures and is supplemented by service specific policies.

2. Status

- 2.1 This Policy was approved by Cabinet on 16 October 2008.

3. Scope

- 3.1 This Policy applies to any enforcement activity taken against members of the public who make fraudulent claims to the Council as well as person who is required to comply with the legislation applicable to the running of a business.
- 3.2 Enforcement includes any action taken by officers aimed at ensuring that both the public and/or businesses comply with the law. This is not limited to formal enforcement action such as prosecution but also includes the inspection of premises, investigations and other intervention activity designed to reduce crime and disorder and improve the quality of life in our communities.

4. Aims

- 4.1 The aim of this policy is to ensure that:
 - All those who live and work in the City have a clear understanding of the Corporate Policy and the enforcement functions.
 - All statutory notices issued by the Council are checked by an experienced officer for legal validity, content and technical information.
 - Any information given, whether written or verbal, clearly identifies these requirements that are mandatory and those that are advisory.
 - Any enforcement activity is proportionate to the seriousness of the breach and risks involved, and officers follow a consistent approach.

5. Legal Provisions

5.1 The following legislation and guidance will be taken into account in the enforcement activities of the council.

- The Compliance Code introduced by the Legislative & Regulatory Reform Act 2006
- Cabinet Office Enforcement Concordat
- Regulation of Investigatory Powers Act 2000
- Police & Criminal Evidence Act 1984
- Criminal Proceedings and Investigations Act 1996
- Freedom of information Act 2000
- Human Rights Act 1998
- Data Protection Act 1998
- Local Government Acts
- Race Relations Acts
- Crime & Disorder Act 1998
- Other relevant legislation such as the Public Health Acts, Anti Social Behaviour Act 2003, Criminal Justice & Public Order Act 1994, Clean Neighbourhoods & Environment act 2005
- The Code for Crown Prosecutors
- Home Office Guidance on the use of Simple Cautions
- Local Service Plans
- Other relevant guidance or professional advice

6. General Principles

6.1 Enforcement actions and the determination of sanctions and penalties should be carried out in an open, transparent and timely manner.

6.2 Regulators should be accountable for the efficiency and effectiveness of their activities whilst remaining independent in their decision-making.

6.3 Any enforcement action must be proportionate to the seriousness of any breach and to the risk to the public and businesses and should

- Aim to change the behaviour of the offender.
- Aim to eliminate any financial gain or benefit from offending.
- Be responsive and take account of what is appropriate for the particular offender.
- Deter further offending.

6.4 All duties must be carried out in a fair, equitable and consistent manner.

6.5 All activities are implemented through the use of comprehensive risk assessment and an intelligence led approach to ensure that resources are targeted at cases where protection is needed.

7. Service Standards

7.1 For people subject to enforcement action, we will aim to provide

- Targeted information and education programmes, where this is appropriate to achieve compliance.
- Information about the actions that can be taken on finding a breach of relevant legislation and the timescales involved.
- Clear advice on how to remedy the breach, distinguishing between legal advice and good practice.
- Advice on the planned level and frequency of any inspection regime, where premises are subject to regulatory controls.
- Arrangements for inspecting businesses at suitable times and an explanation why appointments may not be possible for all activities.
- Coordination of the activities of different Council Services and outside agencies to minimise the burden on businesses from multiple visits.
- Clear standards of response to complaints about the way in which enforcement activities are carried out.
- Arrangements for communicating with people in a manner most appropriate to their needs.
- Arrangements for ensuring that any commercially sensitive information obtained in the course of the enforcement action is protected.
- Consistency of enforcement for businesses that undertake similar activities, where appropriate.

7.2 For people who benefit from enforcement action, we will aim to provide

- Clear information about how we will respond their enquiry and the timescale involved.
- Arrangements for visiting complainants to investigate their problem where it is happening.
- Standards for keeping people informed of the status and progress of any subsequent investigation.
- Arrangements for communicating with complainants in a manner most appropriate to their needs.
- Standards for responding to complaints from people who are dissatisfied with the action taken on their behalf.
- Clear explanation of the limitations, or non availability of powers to deal with particular matters.

8. Officers Powers

8.1 Enforcement officers have a wide variety of duties and have to act as investigators. In order to act effectively certain legislation provides strong powers of entry, seizure and inspection. If individuals or companies obstruct officers or refuse to provide information the law also imposes punishments.

Officers use these powers with discretion but to be effective the Council will uphold and support them.

- 8.2 Officers will use their powers of entry only when necessary to effect an inspection of premises or in the process of an investigation. The Council will always support officers who act in good faith, including prosecuting those individuals who obstruct or assault officers during investigations or inspections.
- 8.3 Where the legislation allows, officers may examine premises and articles, remove articles, label samples, require information, issue enforcement notices and may in some instances be accompanied by other persons. In some cases a Justice's warrant may be obtained to obtain entry to specified premises.
- 8.4 An officer must be able to explain the legal basis and justify any individual action taken in the performance of their duties.

9. Appointment of officers and identification

- 9.1 All enforcement will be authorised to act under relevant legislation enforced or administered by the service in which they are employed. Their authorisation will follow the scheme of delegations procedure adopted by the council and will be known as their Warrant. This must be produced if requested.
- 9.2 All officers are issued with an identification card bearing their photograph. This identification must also be produced on request.

10. Shared Enforcement Role

- 10.1 Enforcement officers investigating breaches of the law must consider whether there is a shared or wider enforcement role. In many instances effective action can only occur if officers actively work with other sections within the Council, the Police, Fire & Rescue Services and other similar enforcement agencies.
- 10.2 The Council also has a duty to inform certain government bodies of statutory notifications, e.g. reporting appropriate accidents, occupational diseases outbreaks to the Health & Safety Executive, Notices of Intended Proceedings to the Office of Fair Trading, or the issue of Suspension Notices to the Department of Business & Regulatory Reform.
- 10.3 If another agency or authority is the enforcing authority for a particular activity, officers will inform them of any contraventions they observe during the performance of their duties, e.g. officers must consult the Fire Authority before serving a statutory notice to provide or improve means of escape in a house of multiple occupation. When appropriate, enforcement issues may be referred to other agencies including:

East Sussex Fire & Rescue Service (Petroleum Licensing)
East Sussex County Council (Animal Health)
Health and Safety Executive
Environment Agency
Emergency Services
Adjoining local authorities
Government Departments

11. Formal Action

11.1 Compliance should normally be achieved through informal actions such as

- Educational Courses and training
- Advice provision
- Compliance check
- Warning letters
- Consideration Notices
- Undertakings

11.2 Where this does not result in compliance or in more serious cases, formal action may be considered, this includes

- Notice of intention
- Works notice
- Abatement Notices
- Demotion Orders
- Improvement Notices
- Works in default
- Prohibition Notices
- Suspension Notices
- Control Orders
- Closure Orders
- Seizure and detention, forfeiture
- Simple Cautions
- Enforcement notices and other notices under the Town & County Planning Acts
- Injunctions
- Enforcement Orders
- License Reviews
- Fixed Penalty Notices
- Anti Social Behaviour Orders
- Criminal Anti-Social Behaviour Orders
- Prosecution

11.3 The Proceeds of Crime Act 2002 was introduced to provide a mechanism to ensure that persons committing crime should not benefit from that activity. Financial Investigations should therefore be considered in appropriate cases.

12. Decision - making

- 12.1 The relevant enforcement officer can make the decision for less serious infringements. These decisions must be based on professional judgement, legal guidelines, statutory codes of practice and the priorities set by the Council and / or Central Government.
- 12.2 For more serious breaches, where the nature of the offence points towards prosecution, the offer of a simple caution, the issuing of an Enforcement Notice, or an application to the courts for injunctive action the decision will be made by the Team Manager, Head of Service or relevant Assistant Director. These decisions should be taken in conjunction Legal Services and reflect national guidance and best practice, in particular the criteria found within the Code for Crown Prosecutors.

13. Monitoring & Review

- 13.1 All officers must adhere to this policy. Senior managers are required to monitor its implementation and make any necessary suggestions or recommendations for improvement.
- 13.2 Any variance from the policy should be reported to the appropriate Head of Service who will ensure that the issue is addressed and necessary training given if applicable.
- 13.3 The policy will be reviewed when there is any significant change in legislation or other circumstances that affect its effectiveness and validity.

14. Equalities

- 14.1 The Council is committed to delivering all its operational activities in accordance with our Equalities and Diversity policies and will embed the principles in its approach to its enforcement and regulatory functions

15. Appeals, Complaints & Comments

- 15.1 The Council has published its Complaints Procedure which can be found on the Councils website www.brighton-hove.gov.uk. Copies of this Policy can also be found. In addition, most legislation has inbuilt appeals procedures whenever formal enforcement action is taken.

Complaints may also be made to the Local Government Ombudsman.

APPENDIX B

1. Commercial Enforcement Policy

- 1.1 This policy supports and supplements specific guidance on enforcement action contained in the Cabinet Office's Enforcement Concordat, Code for Crown Prosecutions, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government departments and co-ordinating bodies.
- 1.2 All authorised officers when making enforcement decisions shall abide by this policy. Any departure from the policy must be exceptional, capable of justification, and be fully considered by a team member before a decision is taken, unless there is significant risk to the public in delaying the decision. Any such departure from the policy should be recorded in writing.

2. Training

- 2.1 Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

3. Management systems

- 3.1 The council will maintain management systems to monitor the quality and nature of enforcement activities undertaken so as to ensure uniformity and consistency, so far as is reasonably practicable.

4. Enforcement Options

- 4.1 The department recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government departments and professional bodies will therefore be considered and followed where appropriate.
- 4.2 Enforcement decisions will be consistent, balanced, fair and relate to common standards that ensure the public or environment is adequately protected. Criteria to be considered will include:
- the seriousness of the offence
 - the past history of the business
 - confidence in management
 - consequences of non-compliance
 - likely effectiveness of the various enforcement options

4.3 Having considered all the relevant options the choices for action are:

- to take no action, or
- to take informal action, or
- to serve statutory notices, or
- to issue formal cautions, or
- to prosecute

4.4 If the department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

4.5 Prior to taking enforcement action, consideration shall be given to the compatibility of such action with those rights protected by the Human Rights Act 1998.

5. Informal Action

5.1 Informal action may be taken when:

- the act or omission is not serious enough to warrant formal action, or
- from the individual/enterprise's past history, it can be reasonably expected that informal action will achieve compliance, or
- confidence in the individual/enterprise's management is high, or
- the consequences of non-compliance will not pose a significant risk to public health public safety, or the environment

5.2 When an informal approach is used to secure compliance with regulations, written documentation issued to the proprietor will:

- contain all the information necessary to understand what work is required and why
- indicate the regulations contravened, the measures which will enable compliance with legal requirements, and that the individual/organisation may choose other means of achieving the same effect
- clearly differentiate between legal requirements and recommendations of good practice - such a differentiation will also be made when verbal advice is given

6. Statutory Notices

6.1 Statutory notices will, in general, relate to risk, maintenance of the environment, quality of life, or public or residential amenity, and may be issued where one or more of the following criteria apply:

- where this is a statutory duty
- there are significant contraventions of legislation or substantial evidence of nuisance that requires remedy
- a breach of planning legislation is suspected
- there is a lack of confidence in the proprietor or enterprise to respond to an informal approach
- there is a history of non-compliance with informal action
- standards are generally poor with little management awareness of statutory requirements
- the consequences of non-compliance could be potentially serious to public health or cause public nuisance or be irreversible
- although it is intended to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious, deteriorating, irreversible or needed to support prosecution

6.2 Failure to comply with statutory notices may, in general and where relevant, result in prosecution. Where works in default are being undertaken prosecution may still be considered.

7. Statutory Notices - Prohibition Notices/Stop Notices/Injunctions

7.1 It will be necessary to consider the service of a statutory notice that takes immediate effect (such as prohibition notices or injunctions) or remove control from businesses (such as stop notices, revocation notices, closing orders, demolition orders or control orders) in one or more of the following circumstances:

- an imminent risk of injury to health or safety can be demonstrated
- an imminent risk of serious pollution to the environment can be demonstrated
- the consequences of not taking immediate and decisive action to protect the public would be unacceptable
- where an unauthorised development is unacceptable and immediate remedial action is required because the breach is causing serious harm to public amenity in the neighbourhood of the site or where there has been breach of a condition notice
- where unauthorised development is unacceptable and continuing works are causing irreversible damage and remedial action is not a satisfactory option
- the guidance criteria concerning the conditions when prohibition may be appropriate, are fulfilled
- there is no confidence in the integrity of an unprompted offer made by a proprietor to voluntarily close premises or cease the

use of any equipment, process or treatment associated with the imminent risk

- a proprietor is unwilling to confirm his/her unprompted offer of a voluntary prohibition in writing

7.2 Any notice listed in 7.1 in the name of the Director of Housing & City Support will be served after proper consultation in accordance with the Scheme of Delegation for the council's functions.

8. Prosecution

8.1 The department recognises that the decision to prosecute is significant and could have far reaching consequences for the offender.

8.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The criteria for the issue of proceedings include:

- the alleged offence involves a flagrant breach of the law such that public health, safety or well being is or has been put at risk or irreversible damage has resulted
- there has been a reckless disregard for the environment
- the alleged offence involves deception or the integrity of the licensing framework is threatened
- the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer
- the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice, licence, authorisation or other granted permission
- there is a history of similar offences
- the alleged offence causes public alarm and it is desirable to produce an effect which reassures the public and deters other offenders
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings

8.3 All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made.

9. Summary v Either Way Offences

9.1 Where an act or omission is capable of constituting both a summary and either way offence, the following will be considered when deciding which offence to charge:

- the gravity of the offence
- the adequacy or otherwise of the powers of the summary court to punish the offence
- the record of the offender
- the offender's previous response to advice or other enforcement action
- the magnitude of the hazard
- any circumstances causing particularly great public alarm
- comments from the council's Legal Team

10. Prosecution Without Warning

10.1 As a general rule a person or a company will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning, eg:

- the contravention is a particularly serious one
- there has been a particularly blatant disregard of the law
- a statutory notice has previously been issued for a similar offence
- the integrity of the licensing framework is threatened

11. Formal Cautions

11.1 A formal caution may be issued as an alternative to a prosecution. Formal cautions may be issued to:

- deal quickly and simply with less serious offences
- divert less serious offences away from the courts
- reduce the chances of repeat offences

11.2 To safeguard the suspected offender's interests, the following conditions will be fulfilled before a caution is administered:

- there must be sufficient evidence of the suspected offender's guilt 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 be cautioned

- 11.3 No pressure will be applied to a person to accept a formal caution.
- 11.4 The 'Cautioning Officer' will be the most appropriate officer from Appendix 1. The Cautioning Officer must not have taken an active part in investigating the case.
- 11.5 Should a person decline the offer of a formal caution, a prosecution will be recommended.

12. Appeals

- 12.1 If any person is unhappy with the action taken, or information/advice given, they will be given the opportunity of discussing the matter with the relevant team manager, Strategic Director, Assistant Director or Neighbourhood Services Manager.

Appendix 1

The appropriately delegated authorised officers to make relevant decisions under 7.1 or act as Cautioning Officers are:

Strategic Director,
Assistant Directors,
Head of Private Sector Services,
Neighbourhood Managers,
Building Control Manager,
Development Control Manager,
Environmental Health Manager,
Housing Advice Manager,
Private Sector Housing Manager,
Trading Standards Manager,
Divisional Environmental Health Officers.

Brighton & Hove City Council
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APPENDIX C

LICENSING ENFORCEMENT POLICY

1.0 STATEMENT OF OBJECTIVES

- 1.1 The Environmental Health & Licensing service is committed to the Council's core priorities. This policy gives detail on how the Council's priorities:

Protect the environment while growing the economy;
better use of public money;
reduce inequality by increasing opportunity;
fair enforcement of the law;
open and effective leadership;

and will inform the enforcement actions taken. Amendments to prioritise will be embedded automatically.

- 1.2 This service policy promotes efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulator's Compliance Code.
- 1.3 In certain instances the service may conclude that a provision in the Code is either not relevant or is outweighed by another provision. It will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- 1.4 The service pursues a positive and proactive approach towards ensuring compliance by:
- Supporting the better regulation agenda;
 - Helping make prosperity and protection a reality for the City's community;
 - Helping and encouraging regulated entities to understand and meet regulatory requirements more easily;
 - Responding proportionately to regulatory breaches; and
 - Protecting and improving public health and the environment.

1.5 This policy is based on the seven 'Hampton Principles' of:

- **Economic Progress:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection;
- **Risk Assessment:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most;
- **Advice and Guidance:** Regulators should provide authoritative, accessible advice easily and cheaply;
- **Inspections and other visits:** No inspection should take place without a reason;
- **Information requirements:** Businesses should not have to give unnecessary information or give the same information twice;
- **Compliance and enforcement actions:** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions; and
- **Accountability:** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

1.6 The rights and freedoms given to an individual under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

2.0 SCOPE OF THE POLICY

2.1 This policy supports and supplements specific guidance on enforcement action contained in the Statutory Code of Practice for Regulators, Brighton & Hove City Council's Corporate Enforcement Policy, Statutory Codes of Practice and relevant guidance documents and guidelines issued by Government Departments and co-ordinating bodies.

2.2 This policy relates to actions taken to educate and enforce legislation where non-compliances have been identified or have a realistic potential to occur.

2.3 The policy is limited to those enforcement activities lead by the Head of Environmental Health & Licensing.

3.0 TRAINING

3.1 Officers undertaking enforcement duties will be suitably trained and qualified so as to ensure they are fully competent to undertake their enforcement activities.

4.0 MANAGEMENT SYSTEMS

4.1 The service will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, so far as is reasonably practicable, uniformity and consistency.

5.0 ENFORCEMENT OPTIONS

5.1 The service recognises the importance of achieving and maintaining consistency in its approach to enforcement. Statutory Codes of Practice and guidance issued by Government Departments, other relevant enforcement agencies or professional bodies will therefore be considered and followed where appropriate.

5.2 Sanctions and penalties will be consistent, balanced, fairly implemented and relate to common standards that ensure individual's, public safety or the environment is adequately protected. The aim of sanctions and penalties are to:

- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- Proportionate to the nature of the offence and the harm caused; and
- Aim to deter future non-compliance.

5.3 Criteria to be taken into account when considering the most appropriate enforcement option include:

- the potential of the offence to cause harm;
- confidence in the offender;

- consequences of non compliance;
- likely effectiveness of the various enforcement options.

5.4 Having considered all the relevant options the choices for action are:

- **Informal Warning:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Enforcement Notices or Voluntary Surrender.
- **Licence review:** Licence review power will be used where an application for review relates to one or more of the licensing objectives.
- **Taxi licence:** Taxi licence suspension or revocation will be used to protect public safety. Other sanctions such as DSA testing will be used to protect public safety and in accordance with the taxi licensing policy (Blue book).
- **Simple Caution:** The issue of a Simple Caution by an authorised officer may be undertaken as an alternative to prosecution where it is considered unnecessary to involve the courts, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.
- **Prosecution:** A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment or environmental amenity is adversely affected.

The Crown Prosecutor's Code of Evidential and Public Interests tests must be met in all cases. However, certain circumstances will normally justify prosecution to prevent the undermining of the service's enforcement responsibilities.

- Failure to comply with an Enforcement Notice
- Declining a Simple Caution
- Continued, reckless, negligent or pre-meditated non-compliance.
- Failure to pay a fixed penalty.

- Non-cooperation, acts of obstruction or threats of physical harm or abuse.
- **Injunctions:** Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.

5.5 If the Department is considering taking enforcement action which it believes may be inconsistent with that adopted by other authorities, the matter will be referred to the appropriate local co-ordinating body.

6.0 **INFORMAL WARNING**

6.1 Informal action may be taken when:-

- the act or omission is not serious enough to warrant formal action or
- from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance or
- confidence in the individual/enterprise's management or ability to resolve the matter is high or
- the consequences of non-compliance will not pose a significant risk to public health, public safety, animal welfare or the environment.

6.2 When an informal approach is used to secure compliance with regulations, written documentation issued will:-

- contain all the information necessary to understand what is required and why;
- indicate the regulations contravened, measures which will enable compliance with legal requirements and that other means of achieving the same effect may be chosen;
- clearly differentiate between legal requirements and recommendations of good practice. Such a differentiation will also be made when verbal advice is given.

7.0 SIMPLE CAUTIONS

7.1 A Simple Caution may be issued as an alternative to a prosecution. Cautions may be issued to:-

- deal quickly and simply with less serious offences;
- divert less serious offences away from the courts;
- reduce the chances of repeat offences.

7.2 The following factors will be considered when deciding whether a Caution is appropriate:-

- evidence of the suspect's guilt
- has a clear and reliable admission of the offence been made either verbally or in writing
- is it in the public interest to use a Caution as the appropriate means of disposal when taking into account the public interest principles set out in the Code for Crown Prosecutors.
- the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

7.3 No pressure will be applied to a person to accept a Simple Caution.

7.4 The 'cautioning officer' will be the most appropriate officer from Service Director, Service Assistant Director, Head of Service Environmental Health Manager or Licensing Manager. The Cautioning Officer must not have taken an active part in investigating the case.

7.5 Should a person decline the offer of a formal caution a prosecution will be recommended.

8.0 PROSECUTION

8.1 The Department recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

8.2 The decision to undertake a prosecution will be taken after proper consultation in accordance with the Scheme of Delegation for the Council's functions. The decision to proceed with a prosecution will normally be taken following legal advice. The matters to be taken into account when deciding if the issue of proceedings is proportionate include:-

- the seriousness and nature of the alleged offence;
- the role of the suspect in the commission of the offence;
- any explanation by the suspect or any agent or third party acting on their behalf;
- was the suspect in a position of trust, responsibility or authority in relation to the commission of the offence;
- is there evidence of premeditation or disregard of a legal requirement for financial reward;
- risk of harm to the public, an individual or the environment;
- relevant previous history of compliance;
- reliability of evidence and witnesses
- any mitigating or aggravating circumstances or the likelihood that the suspect will be able to establish a defence;
- suspect's willingness to prevent a recurrence of the offence;
- the need to influence future behaviour of the suspect;
- the likely penalty to be imposed; and
- a prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings.

8.3 All relevant evidence and information will be considered before deciding whether to instigate proceedings in order to enable a consistent, fair and objective decision to be made.

8.4 Where an act or omission is capable of constituting both a summary and either way offence, when deciding which offence to charge the following will be considered:-

- the gravity of the offence;
- the adequacy or otherwise of the powers of the summary court to punish the offence;
- the record of the suspect;
- the suspect's previous response to advice or other enforcement action;
- the magnitude of the hazard;
- any circumstances causing particularly great public alarm;
- comments from the Council's Solicitor's Office.

8.5 As a general rule an individual or business will be given a reasonable opportunity to comply with the law although in some circumstances prosecution may be undertaken without giving prior warning e.g.

- the contravention is a particularly serious one;

- the integrity of the licensing framework is threatened.

9.0 APPEALS

- 9.1 If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant team manager, Head of Service or Assistant Director.
- 9.2 Any such appeal does not preclude any aggrieved person from making a formal complaint about the service or any officers. Any such complaint will be dealt with in accordance with Corporate procedures and guidance.
- 9.3 Complaints that are not dealt with by the council's complaints procedure are listed in corporate policy and include:
- Complaints where the complainant or another person has commenced or intends to commence legal proceedings against the council, in which case advice should be sought from Legal Services.
 - Complaints where the council has commenced or intends to commence legal proceedings against the complainant or another person relating to the matter of complaint.

