

PART A

Report to: Licensing Committee
Date of meeting: 14 July 2014
Report of: Head of Community and Customer Services
Title: Environmental Health and Licensing Enforcement Policy

1.0 SUMMARY

1.1 Environmental Health and Licensing is responsible for enforcing legislation relating to areas such as anti-social behaviour, environmental protection, housing, food safety, licensing and health and safety at work. The Council approves, and from time to time reviews, policies on how the legislation is to be enforced. This report sets out a revised enforcement policy for Members' consideration.

2.0 RECOMMENDATIONS

2.1 That the draft revised Environmental Health and Licensing enforcement policy set out at appendix 1 be adopted from 14 August 2014.

Contact Officer:

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Report approved by: Alan Gough, Head of Community and Customer Services

3.0 DETAILED PROPOSAL

3.1 The Council is the primary enforcement body for a range of legislation which applies to:

- anti-social behaviour
- environmental protection and pollution
- statutory nuisances such as noise, odour, vibration and light
- infectious diseases
- filthy and verminous premises

- littering, fly-tipping and other environmental crimes
- health and safety at work
- gambling
- alcohol, entertainment and late-night refreshment
- taxis and private hire vehicles
- street trading
- houses in multiple occupation
- charity collections
- food hygiene
- housing standards
- dog fouling
- drainage
- animal welfare
- pest control
- abandoned vehicles
- smoke-free legislation.

- 3.2 When exercising those functions it may exercise many different powers including inspections and closures of commercial and private premises; issuing legally binding notices; interviewing people under caution; issuing fixed penalty notices; withdrawing, amending or refusing permissions; issuing formal cautions; taking civil legal action or instituting criminal proceedings (prosecutions).
- 3.3 This council, and nearly all other councils, delegate these powers to officers with the exception of review powers under the Licensing and Gambling Acts. The policy sets out the limits and expectations of how the various powers are to be exercised by officers on the council's behalf.
- 3.4 In all enforcement work, the council has responsibilities under the Regulators' Code which has been approved by Parliament under section 23 of the Legislative and Regulatory Reform Act 2006. This means having regard to the Code when determining any general policy or principles about the exercise of specified regulatory functions. Paragraph 6.2(d) of the Code says regulators should publish an enforcement policy.
- 3.5 Publication of the policy makes clear to officers, those subject to enforcement action and the wider public the operational parameters within which their legal powers ought to be exercised. It also acts as a safeguard against abuse or over-zealous use of those powers.
- 3.6 Existing and other policies
The draft policy at appendix 1 is an over-arching policy for Environmental Health and Licensing. No significant changes are being proposed to this edition from the one adopted in 2011 other than those changes set out in paragraph 3.8 of this report. Further policies and plans are produced that also set out how we will approach regulation of food safety and for health and safety at work, to meet the requirements of the Food Standards Agency and of the Health and Safety Executive. The draft policy also reinforces the council's approach to enforcement under the Licensing and Gambling Acts, which is spelt out in those respective statutory policies.
- 3.7 Section 8 of the draft policy sets out in more detail the relationship with other policies.

3.8 Amendments to policy

Other than inconsequential amendments (for example the change of title to the Head of Community and Customer Services), the other proposed changes to the policy are:

- (1) updating references to the council's current corporate priorities in paragraph 1.3;
- (2) updating the reference in paragraph 1.4 to the Regulators' Code which replaced the Regulators' Compliance Code from 6 April 2014;
- (3) deleting the reference to the voluntary Enforcement Concordat which has been replaced by the Regulators' Code;
- (4) confirming in paragraph 4.4.1 that evidence obtained in the course of an investigation will not be kept for longer than allowed under codes of practise;
- (5) including an assessment of the proportionality and likely costs of bringing a prosecution at paragraph 6.5.2, in accordance with the Code for Crown Prosecutors;
- (6) setting out at paragraphs 6.5.7 and 6.5.8 the circumstances where a decision not to prosecute may be over-turned if new evidence comes to light, following changes to the Code for Crown Prosecutors;
- (7) introducing a new policy at paragraphs 6.10.2 – 6.10.8 for dealing with offences and contraventions by hackney carriage and private hire drivers licensed by the council.

3.9 Policy for hackney carriage and private hire drivers

The new policy for hackney carriage and private hire drivers has the following key elements:

- (1) abolition of the current penalty point scheme, which was first introduced in 2007. The scheme is no longer seen to be effective. Only two drivers have had their licences revoked on the basis of accumulating sufficient points to pass the relevant threshold for revocation. The perception amongst a large proportion of the trade and amongst some members of the public is that the penalty points are not a sufficient deterrent against contravening some licensing requirements such as over-charging or refusing to convey passengers within the Borough boundary. Consultation indicated that sanctions such as suspensions and formal review of drivers' licences at an earlier stage may both assist licensees in compliance but will also prevent ongoing or recurrent offences.
- (2) to allow licences to be suspended for a maximum of two days where there are proven serious offences by drivers concerning dishonesty, breach of trust, violence, aggression, putting a member of the public in danger, or putting a member of the public in an unsafe position. This follows a High Court decision that licences could be suspended as a punishment in its own right rather than being – as previously thought – as an interim step allowing investigations into

licence contraventions to take place. Officers are recommending a sensible maximum of two days suspension be imposed as a proportionate response to most licence contraventions. There is a right of appeal to the magistrates' court within 21 days against the decision to suspend a licence.

- (3) drivers who receive a number of written warnings or who have a history of similar offences will be invited to a Case Review with the Section Head for Environmental Health and Licensing.
- (4) Drivers who have a case review, re-offend after a period of suspension, have been successfully prosecuted, or commit a very serious first offence, may have their licences revoked by the Head of Community and Customer Services after consultation with the Chair of the Licensing Committee.

3.10 The proposed new approach and policy has been drawn up after consultation with licensed drivers between December 2013 and April 2014, to which over 130 drivers responded.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 The Shared Director of Finance comments that there are no identifiable financial implications associated with the policy, at this stage. Predictions of the number of appeals against suspended licences, and the cost of defending them in court, cannot be made. The Head of Service will monitor the volumes and report any significant budget changes to the Budget Panel.

4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Democracy and Governance comments that the enforcement policy is one required by legislation as identified in the report. The draft policy and the report indicate that all relevant legal standards are being met. It is important to have an up-to-date and robust enforcement policy, as defence counsel are more likely to question in court a council's authority and rationale in bringing a prosecution. In the case of *R v Glen Adaway* (2004), the court held that consideration had to be given to the council's policy guidelines on prosecuting offences before criminal proceedings could be instituted. In *London Borough of Wandsworth v Rashid* (2009) the court found that it was for the local authority to decide when to prosecute even when other options were open to it, and the court should only stop a prosecution where there an abuse of that process. It is therefore important to have a policy to ensure those issues are addressed.

4.2.2 The power to suspend licences is a new use of an existing power and officers have recommended controls to ensure it is used proportionally – that is, in defined circumstances and for a limited period of time. Drivers additionally have a right of appeal against a decision to suspend their licences to the magistrates' court.

4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Legal challenge to policy during a prosecution	2	3	6
Reputation	2	3	6

Appendices

Appendix 1 – draft Environmental Health and Licensing Enforcement Policy 2014 – 2019

Background Papers

Licensed driver consultation survey forms (April 2014)

File Reference

- Environmental Health and Licensing enforcement policies