



**Gravesham Borough Council
Licensing Enforcement and Prosecution Policy
Licensing Act 2003**

1. Aim

This policy is intended to fairly and firmly enforce the law in a consistent and transparent way, and in accordance with the four licensing objectives:

- prevention of crime and disorder
- public safety
- prevention of public nuisance
- protection of children from harm.

The council will assist and advise wherever appropriate, but proportionate action will be taken against those who breach the provisions of the legislation.

2. Purpose of policy

This policy is designed to:

- ensure consistency of approach and enforcement in respect of licensing issues
- provide officers with guidelines to enable them to make reasoned decisions regarding enforcement
- inform the public and proprietors of businesses of the principles by which enforcement action is determined and subsequently taken.

3. Underlying principles of the policy

The council has adopted or is in agreement with the provisions of the Government's Enforcement Concordat. This represents a graduated approach to enforcement based on the principles of:

- agreed standards and procedures
- helpfulness
- openness
- transparency
- proportionality
- consistency
- complaints procedure.

Standards and procedures

The council produces standards and procedures in respect of the level of service and performance to be expected. The council publishes its performance against the standards. The standards and procedures are readily available to businesses, others who are regulated and the public.

Helpfulness

The Council will deal courteously and efficiently with all individuals, organisations and businesses that it comes into contact with. Staff will identify themselves by name and contact numbers will be made available. Electronic means of communication will be facilitated wherever possible.

Openness

Information and advice will be provided in plain language and details of charges etc. will be made readily available. Translation services will be made available where practicable to assist customers who do not have English as their first language.

Transparency

Transparency is important in maintaining public confidence in the council's regulatory capacity. The council will help those being regulated, and others to understand what they need to do and how it may be achieved. The council will also make its own role in the matter clear.

The council will explain carefully (and if necessary in writing) why the action is necessary, who must carry it out and by what date it must be carried out. A clear distinction will be made between a legal requirement, a request and best practice.

The council will give every reasonable opportunity for discussion before formal enforcement action is taken unless urgent action is necessary in the public interest or to prevent the destruction of evidence that would compromise the council's case. In such circumstances the council will give a written explanation of its reasons for taking immediate action and this will be done as soon as possible after the event.

The council will give written notice of any rights of appeal against enforcement action at the time that action is taken.

Proportionality

The council, police and other enforcement agencies will, as far as the law allows and where co-operation is given, work with business/licensees to enable them to meet their legal obligations without undue cost. The council will take into account the cost of compliance by ensuring that any enforcement or remedial action required is proportionate to the risks. However clear breaches of the legislation may attract prosecution and /or recommendation for review of the licence where it is deemed to be in the public interest.

Consistency

The council and its officers will act in a fair and consistent manner. Council Officers whilst exercising their professional judgement in individual cases, will do so within a framework based on consistency and fairness in action. However the council recognises that consistency does not mean uniformity and officers of the council are required to take professional decisions that take account of a wide variety of situations and circumstances. Officers will take account of national and local standards and guidance and also be aware of this policy.

There will be specific circumstances when the council will share an enforcement role with the police or other agencies. When this happens, the same degree of consistency and fairness will be applied.

Complaints procedure

The council has a formal complaints procedure, although many complaints may appropriately be dealt with by a senior manager within Environmental and Public Health Services. Information regarding the formal complaints procedure may be obtained by calling Customer Services on 01474 33 70 00 or through the council's website www.gravesham.gov.uk

In addition to the council's own complaints procedures, the Local Government Ombudsman hears complaints regarding local government maladministration, and details of this are also available from Customer Services.

4. Liaison with other regulatory agencies

The council will work actively with the police and other bodies (Fire and Rescue Service, Customs and Excise, Trading Standards, Child Protection, Health and Safety Executive, Maritime and Coastguard Agency, Security Industry Authority, Crown Prosecution Service, etc.), in enforcing the licensing legislation. This will necessitate the sharing of information in relation those persons involved in licensing and relevant premises based on the requirements of the Licensing Act 2003, Criminal Justice and Police Act 2001, Anti-Social Behaviour Act 2003, Criminal Justice and Public Order Act 1994, Crime and Disorder Act 1998 and other relevant legislation.

There are various statutory provisions that enable the council to exchange relevant information with other bodies. These provisions will be used as appropriate.

This enforcement policy in no way restricts other regulatory bodies from carrying out enforcement under their own regulatory powers. When the council and another enforcement agency both have powers to take enforcement action, – the council will liaise with the other body to ensure that:

- action is effectively coordinated
- proceedings are for the appropriate offence
- inconsistencies are avoided.

5. Licensing Visits

Council officers will make licensing visits to premises, and may on occasion be accompanied primarily by police and or other regulatory agencies. Both the council and the other relevant agencies firmly believe that working together and with business is the primary method to achieve the licensing objectives, but will take appropriate enforcement action if necessary.

The visiting regime for premises is primarily but not solely decided on a risk assessment basis. The council will, as part of its proactive stance, make regular visits to and in the vicinity of licensed premises in order to assess the impact of their operation on residents and other businesses in the area.

There will be a presumption that visits will take place when various crime and disorder and other indicators show that there are potential problems developing in relation to specific premises or areas.

The Council will monitor patron movement to, from and between premises and the provision and accessibility of transport to assist dispersal of persons away from licensed premises. The information gained from these monitoring exercises will inform the development of the councils' licensing policy statement.

6. Enforcement Action/Options

The initial contact between council and Business/ Licensees will normally be informal, with the provision of advice, guidance and support.

Enforcement action can include the following progressive approach to achieve compliance:

- verbal advice- which may be documented
- written advice
- verbal warning-which will be documented
- written warning
- statutory Notice
- formal Caution (in accordance with Home Office circular 18/1994)
- prosecution

The individual circumstances of the breach of the legislation will determine the level of enforcement. In the case of a premises licence the council or the police may ask for a review which may lead to a suspension or revocation of the licence.

All actions will be considered in accordance with the requirements of the Human Rights Act 1998 and considered on its individual merits.

On conviction for a relevant offence, magistrates may endorse, suspend or revoke a personal licence. Council officers, police or crown prosecutors may relating to such a conviction remind the magistrates of their powers to endorse, suspend or revoke a personal licence

When prosecution is being considered, the relevant enforcement bodies will on a case-by-case basis decide which the lead authority to prosecute the offence will be. Regard will be taken of the Code of Practice made under Section 10 Prosecution of Offences Act 1985 and issued by the Crown Prosecution Service. Due consideration will be give to any guidance and/or advice issued by Government, Local Authority Association and other professional and technical bodies. Statements will be provided as regard to evidence from one agency to another as necessary. Before deciding whether to prosecute the following factors will be considered:

- the nature, seriousness and effect of the alleged offence
- there is sufficient, reliable and admissible evidence that the offence has been committed
- the history of the business/person concerned
- any explanation offered by the alleged offender
- the willingness of the business/individual to prevent a reoccurrence of the problem and the level of cooperation with Council officers, Police and/or other agencies
- whether it is in the public interest to prosecute
- the realistic prospect of conviction
- whether any other action (including a formal caution) would be more appropriate or effective.
- the views of any complainant, witness and other parties with an interest in a prosecution and their willingness to cooperate.
- the deterrent effect on the offender and others.

Prosecution will only be instigated following review of the matter by the Head of Regulatory Services and in consultation with the Head of Legal Services.

The council takes a proactive stance towards the proper regulation of, and enforcement of the provisions of this legislation. The council will normally take the lead on issues including:

- noise
- production and display of relevant licences and documents
- unauthorised licensable activities in relation to the provision of regulated entertainment
- breaches of conditions of premises licences
- breaches of requirements under temporary events notices
- exposing and keeping of alcohol on premises for unauthorised sale

Other breaches of the act will be dealt with either directly or jointly as indicated above. The council will give full cooperation to any other agency in carrying out their investigations.

7. Departures from the enforcement and prosecution policy

Agreed departures from the policy will be rare and the reason will be documented in each case, following review by Head of Regulatory Services.

8. Review of policy

The council will review this enforcement policy at least every 3 years in line with the review of the licensing policy statement, or when changes in legislation or centrally issued guidance make this necessary.