

HARLOW COUNCIL GENERAL ENFORCEMENT POLICY LICENSING SERVICES

Introduction

This Enforcement Policy constitutes a statement of the principles to be applied when making enforcement decisions, and outlines the process that will be used when deciding what action to take in the discharge of the Council's statutory duties. The Council recognises the important role that balanced consistent and effective enforcement has in protecting the interests of residents, licence holders and businesses based within Harlow. Decisions on enforcement action may have significant implications for those involved.

Approval

The Executive Committee of Harlow District Council approved this policy on 22nd July 2010.

Scope

This policy applies to the enforcement action carried out under legislation enforced by the Licensing team in accord with the Council's Scheme of Delegation in force for the time being.

Enforcement, in the context of this policy, includes action carried out in the exercise of, or against the background of, statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, and includes, for example, the inspection of premises and vehicles for the purpose of checking compliance with acts and regulations, and the provision of advice to aid compliance. Where it is deemed necessary the Council may also publish specific enforcement policy appendices relating to specialist functions such as hackney carriage and private hire licensing, gaming permits and licensing duties in respect of the Licensing Act 2003 etc. Although specific policies are more detailed they will still reflect the overarching principles of this General Policy.

General Principles

The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions that concern enforcement action, including prosecution. Each case is unique and must be considered on its own merits. There are, however, general principles, which apply to the way each case is approached, and these are set out in this policy.

The Council and its officers will take reasonable steps to make it clear to businesses, charitable organisations and individuals what their responsibilities and duties are, and what can be expected of Officers undertaking enforcement duties. Written reports following inspections will distinguish mandatory requirements from recommendations on good practice. Staff will be fair, independent and objective and treat customers equally regardless of race, colour, ethnic origin, religion, sex, disability, age, sexual orientation or marital status. They must not be affected by improper or undue pressure from any source. The Council is a public authority for the purposes of the Human Rights Act 1998. Staff must apply the principles of the European Convention on Human Rights in accordance with the Act. None of the above however detracts from the responsibility of persons with duties under the law to understand their obligations, to behave responsibly, and to comply with legal requirements. Consideration will be given to any evidence of wilful, reckless, or negligent

misconduct when making decisions under this policy, and in consideration of whether any exemption should be made.

Service Requests

It will be normal practice to advise a business, licence holder or individual who may be subject to enforcement action of the nature of any complaint, and to provide a reasonable opportunity to address any issues.

During the progress of enforcement action that business, charitable organisation or individual will normally be further notified of progress and any new information.

However in circumstances where such notification could impede appropriate enforcement action, notification will not take place until those circumstances no longer exist.

Determining Whether Enforcement Action in Court is Appropriate

Where such formal action is appropriate, the Council will not hesitate to commence proceedings. As stated above, the Council will have regard to any evidence of wilful, reckless, or negligent misconduct when making decisions on such action. In all cases, regard will be given to the Crown Prosecution Service (CPS), Code for Prosecutors.

In particular the Council will reassure its self that the criteria in the Code Tests, namely, the Evidential Test and the Public Interest Test have been met. The Code is located on the CPS website (www.cps.gov.uk) or can be requested by telephoning 020 7796 8442. Regard will also be give to other nationally recognised guidance and codes of practice.

Liaison

Where an enforcement matter significantly affects a geographical area beyond the boundaries of Harlow, or requires the involvement of one or more other local authorities or organisations, liaison and consultation will be undertaken as soon as practicable with the aim of co-ordinating enforcement activity with them.

Training

Officers undertaking enforcement duties will be suitably trained and qualified to ensure that they are competent to undertake enforcement activities.

Authorisations

Officers appointed and authorised by the Council to carry out enforcement action are issued with a written Authority specifying the provisions that they are entitled to exercise. Any decision to prosecute will be taken by the Environment and Licensing Manager in consultation with the Head of Governance.

Management Systems

The Council will maintain management systems to monitor the quality and nature of enforcement activity undertaken to ensure, so far as is practicable, uniformity and consistency in approach and quality of service.

Adherence with Policy

Authorised Officers when making relevant enforcement decisions will do so in compliance with this policy, and will refer to supporting documented operating procedures and specialist enforcement policies where appropriate. Any departure from this policy must be capable of justification, and will only be accepted in exceptional circumstances following authorisation by the Environment and Licensing Manager in consultation with the Chairman or Vice Chairman of the Licensing Committee.

Appeals

If any person is unhappy with the action taken, or the information or advice given by the Council's Safety and Licensing Department staff, they will be given the opportunity of discussing the matter with the Officer's line manager. This is without prejudice to any formal appeals mechanism.

Harlow Council also operates a Corporate Customer Care and Complaints Procedure, details of which are available on request, or on Harlowweb: (www.harlow.gov.uk).

Access to the Policy

This policy is available on the Council's web site (www.harlow.gov.uk) and in hard copy from the Licensing service: (01279) 446005; email licensing@harlow.gov.uk or write to the Licensing team Harlow Council, Civic Centre, The Water Gardens, Harlow, CM20 1WG.