



# Licensing Enforcement Policy

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Working in partnership, to create a Borough which enables the communities of Dacorum to thrive and prosper

Affordable Housing ♦ Regeneration ♦ Building Community Capacity ♦ Safe and Clean Environment ♦ Dacorum Delivers

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## **1. About this document**

- 1.1. Dacorum Borough Council has a responsibility to protect the community it serves, using the legislative powers delegated by central government. The Council implements, administers and enforces a range of legislation intended to protect public safety, local economies and the environment from adverse effects of the provision of licensable activities.
- 1.2. The purpose of this Licensing Enforcement Policy is to set out the general principles and approach that Dacorum Borough Council will follow when taking enforcement or compliance actions under licensing legislation. The Policy aims to ensure that all enforcement action is conducted in accordance with the Better Regulation principles of proportionality, accountability, consistency, transparency and targeting.
- 1.3. Our primary objective is to achieve regulatory compliance. The Licensing Enforcement Policy therefore provides guidance to officers, businesses and the general public on the way in which we will exercise our enforcement powers to achieve compliance with the legislation enforced by the Licensing Section. However, the emphasis is primarily on the methods and principles that we will follow, and this document does not attempt to create a comprehensive list of the powers open to us.
- 1.4. This policy was adopted by the Council’s Licensing, Health & Safety and Enforcement Committee on the xx xxxx 2021, and will be periodically reviewed to ensure its continued accuracy in light of any significant changes in legislation, Codes of Practice or centrally issued guidance, or case law.
- 1.5. While we will have regard to this policy when exercising our powers, the Council will continue to consider each matter on its individual merits and circumstances. Nothing in this policy shall bind the Council to a particular action, or otherwise affect the Council’s discretion to take legal or other enforcement action, in light of the circumstances of a particular case, where this is considered to be in the public interest.
- 1.6. A draft version of this policy was consulted upon prior to adoption, with representatives of licence-holders, statutory agencies, and local residents and businesses invited to comment. All responses were considered prior to the adoption of the final policy.

## 2. General principles

- 2.1. In accordance with the Better Regulation principles, we will aim to ensure that any action taken to enforce or ensure compliance with legislative requirements is:
  - Proportionate
  - Accountable
  - Consistent
  - Transparent
  - Targeted
- 2.2. Dacorum Borough Council is a signatory of the Hertfordshire Local Enterprise Partnership's "*Better Business for All*" charter, which furthers the above principles and aims to lessen the impact of regulation on businesses. For more information, please visit <http://www.hertfordshirelep.com/Better-Regulation.aspx>
- 2.3. In the first instance, licensing officers will look to advise businesses, especially small and medium enterprises; residents; and other organisations, on issues of compliance and regulation. When attending premises or carrying out inspections, officers will identify themselves by name and will produce identification, unless carrying out authorised covert investigations. Contact details for an appropriate officer will be provided in the event of any further action being required.
- 2.4. When taking enforcement action, in addition to this policy we shall also have regard to the provisions within any overarching Council-wide Enforcement Statement.

### Proportionality

- 2.5. The Council accepts that any enforcement action should be proportionate to the risks and the perceived severity of the breach, ensuring that the most serious risks are effectively targeted. We will take into account the circumstances of each case and the response of the licence holder or person concerned. The attachment of conditions to licences will follow the same principles and the Licensing Section will work with licensees to assist them in meeting their legal obligations without incurring disproportionate or unnecessary expense.
- 2.6. We will carry out our duties in a fair and reasonable manner. Except in circumstances where immediate action is required, officers will provide an opportunity to discuss the case and, if possible, resolve any point of difference before any formal action is taken. In circumstances where immediate action is considered necessary, an explanation of why such action is necessary will be given at the time. This explanation will subsequently be confirmed in writing.
- 2.7. In considering enforcement action, account will be taken of relevant codes and guidance from legal authorities, public authorities and industry bodies.
- 2.8. Advice will be put clearly and simply and confirmed in writing on request. Explanations of what action is necessary, why it is necessary and over what timescale will be given.
- 2.9. In appropriate circumstances licensing officers may encourage training and education where this is needed to address problems attracting enforcement action.

### Accountability

- 2.10. This policy, which guides the enforcement actions taken by officers on behalf of the Council, is determined by the Licensing and Health & Safety Enforcement Committee, which is comprised of democratically elected Councillors. The Committee shall also be responsible for the exercise of many

of the stronger powers available to the Council, including most cases warranting the revocation of a licence. The outcomes of other enforcement actions initiated by officers, such as prosecutions, shall be reported to the Committee at regular intervals.

## **Consistency**

2.11. Decisions on enforcement always involve a degree of judgement and the circumstances of each case will inevitably differ in detail. The guidance from official sources that is provided for officers is reviewed on a regular basis and may directly affect enforcement decisions, as may case law. As a result there may be instances when enforcement appears from the outside to be inconsistent.

2.12. However, we will try to ensure that enforcement action is consistent by:

- Following current internal procedural and guidance notes
- Taking into account guidance from other authoritative bodies - e.g. the Home Office; Department for Culture Media and Sport; Department for Transport; Driver and Vehicle Licensing Agency; Driver and Vehicle Standards Agency; the Gambling Commission; the Local Government Association
- Taking account of new legislation or guidance impacting on licensing powers
- Taking account of new case law impacting on licensing matters
- Liaising with other enforcement agencies as appropriate – for example, Hertfordshire Constabulary, Hertfordshire Fire & Rescue Service, Hertfordshire Trading Standards, the Security Industry Authority, the Gambling Commission, DVSA, the RSPCA (in respect of animal welfare matters), and other departments of Dacorum Borough Council, such as Regulatory Services (environmental health issues), Residents Services (anti-social behaviour issues), and Planning
- Adopting an inter-agency approach where the Licensing Enforcement Officers' powers cannot be engaged – for example, ensuring that information gathered in respect of problems such as noise nuisance or anti-social behaviour at licensed premises, but where such evidence is insufficient to justify direct action, is shared with the relevant authorities, who may be able to take alternate action to remedy the issue.

2.13. To help achieve greater consistency on a regional basis, we will actively participate in local authority liaison schemes with neighbouring authorities where available.

2.14. These measures will be further supported by training for enforcement officers, and managerial checks on performance.

## **Transparency**

2.15. We will be open about how work is to be carried out, or why it may be necessary to take enforcement action.

2.16. We will provide information and advice, wherever possible in plain language and in a suitable medium. A clear distinction will be made between what is legally required, and what is advice or guidance and is desirable but not compulsory, in written and verbal communications.

2.17. If requested officers will confirm in writing any verbal advice given.

2.18. In circumstances where remedial work is required, this will be set out clearly and simply in writing. Where there is a contravention of legislation we will indicate which legislation is being contravened and what measures can be taken to achieve legal compliance and acknowledge that other means of achieving the same effect may be taken. Clear guidance will be given as to what action must be taken in order to comply with the legislation and what is recommended as good practice.

2.19. Where immediate action is necessary, an explanation of why such action is necessary will be given, and this will be confirmed in writing.

## **Targeting**

2.20. Enforcement activities are primarily targeted towards activities carrying high risks or where there could be a considerable impact as the result of non-compliance either with licensing conditions or the legislation. Enforcement activities may be targeted towards individuals who are primarily responsible for an activity, who have the greatest responsibility to ensure compliance with the law or who have been subject to previous enforcement action. From time to time we will engage in enforcement activities which are directed towards issues where there is a need to draw attention to the existence of legislation and its enforcement. These may represent national concerns as expressed by central government or its agencies, or local concerns as voiced by Members of the Council, residents or businesses.

2.21. We will undertake programmes of inspection and enforcement in respect of all of the activities for which we issue licences. Each licensing function is assessed against risk and this will be taken into account in establishing the nature and frequency of any inspections or enforcement activity. In the determining the level of risk Officers will consider the following:

- The nature of the licensing function
- The previous history relating to the licensing function
- The nature and extent of complaints received by the Council
- Information received from other agencies or departments
- Safety and public protection issues.

2.22. Where complaints relating to a licensable activity or licence holder are received they will be investigated, and evidence, experience, and this policy will be used to determine an appropriate enforcement action.

## **Equalities and human rights**

2.23. This policy and all associated enforcement decisions take account of the following provisions of the Human Rights Act 1998. In particular, due regard is given to the following:

- Right to a fair trial;
- Right to respect for privacy and family life, home and correspondence.

2.24. We will endeavour to ensure that all parties affected by our enforcement and compliance activities, including both formal and informal action undertaken, receive fair and equitable treatment irrespective of their race, ethnicity, gender, sexuality, disability status or any other identifying characteristic.

### 3. Visits and inspection of premises (powers of entry)

- 3.1. Many pieces of licensing legislation which we enforce convey powers of entry, allowing authorised council officers to enter and inspect premises, vehicles or other structures which are being used for licensable activities, or where intelligence suggests such use otherwise than in accordance with a licence, permit or registration.
- 3.2. When we exercise a statutory power of entry, we will have regards to the Home Office's Code of Practice on Powers on Entry<sup>1</sup>, published pursuant to the Protection of Freedoms Act 2012.
- 3.3. We anticipate that most visits to, and routine inspections of, licensed premises will be pre-arranged and carried out with the licence-holder's knowledge and consent – particularly inspections required to assess the suitability of premises prior to the grant or renewal of a licence. In such cases, the purpose of and procedures for inspections will be outlined either within application guidance and related licensing policies, or when arranging the visit or inspection.
- 3.4. For other compliance and enforcement visits and inspections, we will follow any applicable statutory prerequisites to powers of entry. We will consider whether it is appropriate and practicable to give prior notice of the visit or inspection, and will do so where we are satisfied that pre-notification will not undermine or defeat the purpose of that inspection. However, we retain the right to carry out unannounced visits or inspections where we consider this appropriate and necessary. This is likely to be the case where we receive complaints or allegations of misconduct or breaches of licences which may, if true, be detrimental to public safety and require immediate remedial action to resolve. In such circumstances, the powers of entry and purpose of the inspection will be explained to a responsible person at the start of the visit or inspection.
- 3.5. We will attempt to notify and gain consent of the owner, occupier or appropriate representatives (e.g. premises manager or member of shop staff) of premises which are to be inspected under a power of entry at or before the start of a visit or inspection. However, where exercising a statutory power of entry, such visits or inspections may proceed without consent if this is deemed to be necessary and any other applicable legal prerequisites have been satisfied. Where consent to enter premises is refused or withdrawn, we will document our efforts to obtain that consent, and this evidence may be referred to in any subsequent proceedings. We will also explain to any person who appears to be responsible for the premises the effect of the statutory power of entry and any consequences of obstructing authorised officers in the course of their duties.
- 3.6. Where appropriate for the exercise of our own statutory powers, licensing officers may accompany other authorised officers exercising relevant powers of entry at licensed premises, or be accompanied during inspections under licensing powers by authorised officers from agencies with statutory responsibilities for that premises. Examples of such joint working may include officers authorised by: other Dacorum Borough Council departments, such as Planning, Regulatory Services (environmental health), Anti-Fraud or Anti-Social Behaviour; the Gambling Commission; Hertfordshire Constabulary; Hertfordshire Fire & Rescue Service; Hertfordshire Public Health; Hertfordshire Trading Standards; Home Office Immigration Enforcement; and the Security Industry Authority. From time-to-time, we may also be accompanied by professional advisers appointed by the Council, including vehicle mechanics or veterinary surgeons/practitioners. We will however aim to ensure that the number of persons inspecting premises remains reasonable and proportionate.
- 3.7. Where prior judicial approval to utilise powers of entry is required, we will follow the applicable legislation and maintain appropriate records of steps to obtain such approval.

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<sup>1</sup> <https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

## 4. Enforcement options

4.1. In any situation which requires action to ensure compliance with legislation, officers will consider the following when deciding on the most appropriate enforcement action:

- The degree of risk from the situation
- The particular circumstances of the case and likelihood of its continuation or recurrence
- Whether any harm was caused
- The aim to eliminate any financial gain or benefit from non-compliance
- The general attitude of the offender to his or her responsibilities
- The past history of the person(s), company or premises involved
- The impact of the enforcement choice in encouraging others to comply with the law.
- The likely effectiveness of the various enforcement options
- Any legal guidance
- Any Guidance document or Policy Statement issued by the Council, whether adopted under a statutory requirement or published in pursuit of the transparency principle.

4.2. Where the law has been contravened, there is a range of enforcement options available to seek compliance with the law, including both formal and informal measures. Under normal circumstances, a process of escalation will be used until compliance is achieved. Exceptions would be where there is a serious risk to public safety or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

4.3. As a general rule, the following options for enforcement action are open to the Council:

- To take no action
- To refer the matter to another service or agency
- Informal action – written or verbal warnings
- To administer a simple caution
- Hearings and reviews
- Refusal, suspension and revocation of licence
- Prosecution
- Exercising closure powers under the Anti-Social Behaviour Crime and Policing Act 2014

### No action

4.4. In certain circumstances, contravention of the law may not warrant any action. This may be where the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has already ceased to trade in contravention of the law and will certainly not reoffend, or where the offender is infirm and formal action could seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

### Referrals to other agencies and partnership working

4.5. From time to time matters under investigation are found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. Police, Fire Authority, Planning Department, Trading Standards or the Gambling Commission. In all cases of referred enforcement the person(s) under investigation will be notified of the reasons for referral in writing.

### Informal actions

4.6. For minor breaches of the law we may give verbal or written advice. We will clearly identify any

contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of non-compliance.

- 4.7. Sometimes advice will be given about 'good practice'. In such cases, we will clearly distinguish between what steps they must carry out to comply with the law, and additional advisory steps.
- 4.8. Informal action will be recorded on departmental files and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an individual or premises.
- 4.9. Failure to comply with recommendations arising from informal actions, or repeated misconduct, could result in an escalation of enforcement action.

## Simple cautions

- 4.10. In certain cases, a simple caution may be offered instead of prosecution. It should be noted that, although not a conviction, a caution still represents an admission of the commission of a criminal act, and as such may be formally recorded and appear on future criminal records checks, or be cited during future legal actions. In circumstances where a simple caution is offered and refused then the case will usually proceed to court.
- 4.11. A caution may be offered if:
  - It is a first offence,
  - Evidence of offences warranting prosecution exists,
  - The offender admits the offence and agrees to be cautioned,
  - The offender is committed to preventing the likelihood of a re-occurrence, and
  - It is in the public interest as detailed in the Code for Crown Prosecutors.
- 4.12. When considering whether to offer a simple caution, we will take into account the wilfulness with which the offence was committed, the subsequent attitude of the offender and the views of the victim. An offer of a simple caution will always be accompanied by a full explanation of the effects and implications of acceptance, and a suitable period of time will be given to allow the full consideration of the offer.
- 4.13. There is no inherent right to be offered a simple caution as a means of disposal of an investigation. In all cases, decisions on whether to offer a caution will be made by the Council, following consultation between the officer investigating the applicable misconduct and the Council's Legal team.

## Hearings and Reviews

- 4.14. Certain behaviour, conduct or incidents may give cause for the referral of a licence to the Council's Licensing Committee to allow that licence to be reviewed or reconsidered. Although different legislative areas make specific provisions and processes for action of this type, typical circumstances that may warrant such action include:
  - Where the licence-holder has been convicted of a relevant offence, or has otherwise committed a criminal act
  - Where the licence-holder or their staff have failed to comply with a condition of the licence
  - Where the licence-holder has behaved in a way which calls into question their suitability to hold a licence
  - Where the licence-holder has behaved in a way which is likely to have put the public at risk, or
  - Where the proprietors of licensed premises have failed to take suitable and sufficient action to promote the licensing objectives of the Licensing Act 2003 or Gambling Act 2005.

4.15. Where cases are referred to a Committee, we will:

- Give sufficient notice of the date on which the matter is to be considered
- Give proper notice to the licence-holder of the allegations against them
- Give notice to other affected parties with a right of appearance
- Allow the licence holder to obtain appropriate representation, if desired
- Provide the licence holder with the opportunity to address the Committee, present his/her case and provide supporting evidence
- Ensure the matter is determined in an impartial manner in accordance with the rules of natural justice
- Provide a written notice of the decision with reasons, and details of any right of appeal.

### **Licensing Act 2003**

4.16. Under the Licensing Act 2003, where a review of a premises licence is carried out under sections 52, 53C or 167 of the Act, the options available to the Licensing Committee are:

- To take no action
- To modify the conditions of the licence
- To exclude a licensable activity from the scope of the licence
- To remove the Designated Premises Supervisor
- To suspend the licence for a period not exceeding three months
- To revoke the licence

4.17. Where a review of a club premises certificate is carried out under section 88 of the Act, the options available to the Licensing Committee are:

- To take no action
- To modify the conditions of the certificate
- To exclude a qualifying club activity from the scope of the certificate
- To suspend the certificate for a period not exceeding three months
- To revoke the certificate

4.18. The following powers have been delegated to the Council's licensing officers:

- To make representations on behalf of the licensing authority in respect of applications under sections 17, 29, 34, 41A, 51, 53A, 71, 84, 86A, 87 or 167
- To apply for the review of a premises licence under section 51, and make appropriate supporting representations at the resulting committee hearing
- To apply for the review of a club premises certificate under section 87, and make appropriate supporting representations at the resulting committee hearing

4.19. The above powers shall be utilised only in cases where there is sufficient demonstrable evidence to support the grounds for representation or application, and where the content of the representation or application cannot be made by another responsible authority, either because the matter concerned falls outside of their statutory remit, or because the evidence that supports the representations is held by licensing officers (for example, evidence of a previous breach of the conditions of a licence).

4.20. In all cases, an officer exercising a power under this section shall not have any involvement in the provision of chargeable pre-application advice, the administration of the application, nor the presentation of the application to the Committee determining the application (although that officer

may appear at the hearing as the review applicant or representor, as applicable).

## **Gambling Act 2005**

4.21. Under the Gambling Act 2005, where review of a premises licence is carried out under section 202 of the Act, the options available to the Licensing Committee are: -

- To take no action
- To exclude a default condition attached to the licence under section 168, or remove or amend an exclusion; or to add, remove or amend a condition under section 169.
- To suspend the licence for a period not exceeding three months
- To revoke the licence

4.22. The following powers have been delegated to the Council's Licensing Enforcement Officers:

- To make representations on behalf of the licensing authority in respect of applications under sections 159, 187, 188, 195, 197, 200 or 204
- To apply for the review of a premises licence under section 197, and make appropriate supporting representations at the resulting committee hearing
- To initiate reviews of premises licences of a particular class under section 201, and make appropriate supporting representations at the resulting committee hearing(s)

4.23. The above powers shall be utilised only in cases where there is sufficient demonstrable evidence to support the grounds for representation or application, and where the content of the representation or application cannot be made by another responsible authority, either because the matter concerned falls outside of their statutory remit, or because the evidence that supports the representations is held by licensing officers (for example, evidence of a previous breach of the conditions of a licence).

4.24. In all cases, an officer exercising a power under this section shall not have any involvement in the provision of chargeable pre-application advice, the administration of the application, nor the presentation of the application to the Committee determining the application (although that officer may of course appear at the hearing as the review applicant or representor, as applicable).

## **Hackney Carriage / Private Hire Vehicles and Drivers**

4.25. When considering an application for the grant of a licence, the Council must be satisfied that the applicant is a "fit and proper" person to hold a licence, and may refuse the application if it is not so satisfied. The term 'fit and proper' covers a wide array of matters, and is discussed in further detail in the council's published guidelines on this topic.

4.26. A number of powers are provided within the Local Government (Miscellaneous Provisions) Act 1976 for the revocation, suspension or refusal of renewal of licences issued in respect of hackney carriage and private hire drivers, vehicles and operators.

4.27. In respect of hackney carriage and private hire drivers, section 61 permits the Council to suspend, revoke or refuse to renew an driver's licence on any of the following grounds

- a) that he has since the grant of the licence—
  - i) been convicted of an offence involving dishonesty, indecency or violence; or
  - ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or of Part II of the 1976 Act; or
- b) any other reasonable cause.

- 4.28. A decision to suspend or revoke a licence under section 61 will take effect 21 days after notification of the decision. The Council may, however, direct that a suspension or revocation shall have immediate effect, if this appears necessary in the interests of public safety.
- 4.29. Two distinct enforcement powers exist in respect of hackney carriage and private hire vehicles. Section 60 allows for the suspension, revocation or refusal to renew a vehicle's licence on any of the following grounds:
- a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
  - b) any offence under, or non-compliance with, the provisions of the 1847 Act or of Part II of the 1976 Act by the operator or driver; or
  - c) any other reasonable cause.
- 4.30. In addition, section 68 provides a power for the inspection and testing of vehicles and their taximeters, and the suspension of licences if they are found to be unsatisfactory. Under this power, suspensions remain in place until the vehicle has been re-inspected and found to be satisfactory, but the licence shall be deemed to have been revoked if such re-inspection has not been completed within a period of two months from the initial inspection.
- 4.31. In respect of private hire operators, section 62 permits the Council to suspend, revoke or refuse to renew an operator's licence on any of the following grounds
- a) any offence under, or non-compliance with, the provisions of this Part II of the 1976 Act;
  - b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;
  - c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
  - d) any other reasonable cause.
- 4.32. In accordance with the judgement of the Administrative Court in *R (on the application of Singh) v Cardiff City Council*<sup>2</sup>, the Council may take action to suspend a licence under the above powers in order to ensure the remedy of a defect (for example, a fault on a vehicle affecting its roadworthiness or appearance), or as a sanction against a licence-holder following an incident of non-compliance. However, suspension must be regarded as a final outcome – it may not be used as an interim measure, for example to provide time for further investigations to take place. This represents a significant change from the way in which the power of suspension was previously used by a large number of councils.
- 4.33. On occasion, a licence-holder may be subject to an allegation against him, or may be charged with an offence, which if substantiated would cast doubts over their fitness and propriety to continue to hold such a licence. Such allegations may come to light via a number of channels – for example, via declaration by the applicable licence-holder, notification under the common law police disclosure scheme, by way of a complaint from a member of the public, or through observations made by an officer carrying out his duties.
- 4.34. Where allegations are of a particularly serious nature and give rise to a genuine and urgent concern for the protection of the public, the Council may give consideration to the immediate revocation of a licence. It is expected that such action will usually relate to drivers and as such be taken under section 61 of the 1976 Act – however, where allegations concern the suitability of a vehicle or operator, similar action may be taken under the respective powers. Such action will be reserved for

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<sup>2</sup> [2012] EWHC 185 (Admin)

the most serious allegations only – for example, if a licence-holder is linked to a sexual or violent offence, an incident of hate crime, disqualification from driving, or is subject to a medical condition affecting their ability to drive safely, which calls in question whether the Council would be fulfilling its public protection duty by continuing to licence that individual pending the investigation into the allegations.

- 4.35. It is noted that receipt of an allegation or the fact that charges have been brought are not confirmation of an individual's misconduct in respect of that matter, and this policy does not seek to prejudice judicial or other processes which will be followed, nor should a revocation of a licence in line with this policy be taken as any kind of evidence or statement on the conduct of the individual concerned. Where feasible, all reasonable steps will be taken to allow the licence-holder to answer the allegations and put his case, prior to a decision being made. This will not necessarily mean at a formal hearing, but may include a telephone call, interview, email or letter. Where possible, the Council shall take further steps to try and establish the facts behind the allegation prior to determining whether to take action – however, it is noted that this may not always be possible, for instance, if a criminal investigation is ongoing. That said, the Council's primary responsibility in this legislative area is ensuring the safety of the public, and in the absence of a power of interim suspension, immediate revocation will be considered where deemed appropriate for the protection of the public.
- 4.36. The power to take such action shall be delegated to the Licensing Team Leader, Legal Governance Team Leaders, the Group Manager for Legal Governance and the Assistant Director – Corporate and Contracted Services, and may only be exercised following consultation with the chairman or vice-chairman of the Licensing Committee. A formal record of this process shall be kept, to be referred to in the event of an appeal to a magistrates' court against the revocation of the licence. Written notice of a decision to revoke a licence shall be given in accordance with legal requirements.
- 4.37. In the event of revocation of a licence in such circumstances, should the allegation subsequently be found to be baseless or any charges dismissed, the former licence-holder shall be permitted to make a new application to effectively reinstate his previous licence, without payment of an application fee or, at officer's discretion, being required to submit to the full range of checks that would ordinarily be required on a new application. The processing of any such application shall, insofar as is possible, be expedited, but will be considered fully against the statutory grounds for granting the licence. Any licence granted as a result of such application shall be valid for a duration not exceeding the period left on the previous licence at the time of revocation.
- 4.38. Generally, the powers discussed in the preceding paragraphs will be exercised in response to the most serious allegations or infractions. From time-to-time, complaints and allegations may be made to the licensing authority regarding misconduct by a licence-holder of a less serious type which would not by itself warrant severe action such as the revocation of a licence, but which may if regarded cumulatively give rise to concerns regarding the fitness or propriety of a person.
- 4.39. To offer an alternative mechanism to deal with such matters, the authority has developed a 'three strikes' policy for taxi and private hire licence-holders. Further details of how this scheme shall operate are given at Annex A.

## **Prosecution**

- 4.40. A prosecution will only be brought where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to do so. In determining whether it is in the public interest, we will consider the Code for Crown Prosecutors guidance. The following list indicates some possible public interest factors in favour of a prosecution:

- There is, or has been a significant risk, or negative impact arising from a serious legal contravention or a number of lesser contraventions
- There has been some actual harm done to a third party, or that harm was reasonably foreseeable
- The attitude of the offender(s) is such that there is cause to believe that they knew that they were breaking the law or, if they did not, any reasonable person in their position should have known (this could take account of the past history of the case which may illustrate previous blatant or reckless disregard for the law)
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance (e.g. complainant in a noise nuisance case)
- The defendant has previous convictions or cautions which are relevant to the present offence
- There are grounds for believing that the offence is likely to be continued or repeated, for example by a history of recurring conduct
- The offence, although not serious in itself, is widespread in the area where it was committed
- An officer has been obstructed
- The cumulative effect of such breaches would be serious even if the breach itself was not
- A prosecution will have a significant deterrent effect.

## Closure powers

- 4.41. The Anti-Social Behaviour Crime and Policing Act 2014 created new powers for police and local authorities to close premises which are causing significant nuisance or disorder. These powers replaced previous powers allowing the police to close alcohol-licensed premises under the Licensing Act 2003, consolidating them with various other statutory closure powers, and extending them to include other types of premises, both licensed and unlicensed. It is expected that this power will be reserved for the most serious incidents of nuisance and disorder, where it is not appropriate to use other powers.
- 4.42. As these powers are available to a range of Council officers, it is not considered appropriate for the Licensing Authority alone to create policy or guidance on the exercise of these powers which would bind the entire local authority. Licensing officers exercising such powers will have regard to any relevant guidance issued by the Government, or policy as may be compiled by the Council, and where applicable will liaise with the police and/or other relevant Council departments authorised to exercise closure powers prior to taking such action.
- 4.43. Where a closure order is made in respect of premises licensed for the supply of alcohol, provision of regulated entertainment or supply of late night refreshment, review proceedings under the Licensing Act 2003 will automatically be commenced. The Licensing Authority will deal with these proceedings in full accordance with the relevant statutory requirements, and will also have regard to earlier provisions of this policy regarding the carrying out of reviews under the 2003 Act.
- 4.44. Where a closure order is made in respect of premises licensed under another enactment, the licensing authority will typically consider whether it would be appropriate to take any action to revoke, restrict or refuse to renew the relevant licence, as may be the case, under the applicable licensing legislation, if this would ensure that the nuisance or disorder which led to the order being made would not continue nor reoccur in the longer term.

## **5. Authorisation and delegation of functions**

- 5.1. Only officers authorised by the Council under delegated powers will be permitted to undertake investigations, inspections and visits, or other enforcement actions. Officers will only be authorised to deal with such investigations if they have the experience and specialist knowledge to undertake such action in accordance with established procedures. They will follow the relevant procedures and guidelines in carrying out their duties. Officers are issued with a personal identity card and evidence of their authorisation(s), which will be carried with them at all times and will be shown upon request.
- 5.2. Decisions about what enforcement action is appropriate are based upon professional judgement, legal guidance, statutory codes of practice and priorities set by the Council and/or Central Government, as well as the individual circumstances of a particular case.
- 5.3. Where appropriate, decisions about enforcement actions will involve consultation between or approval from:
  - Investigating officer(s)
  - Licensing Team Leader
  - Assistant Director – Corporate and Contracted Services Legal Services department

## **6. Notification and publication of enforcement actions**

- 6.1. If we receive information (e.g. from a complainant) that may lead to enforcement action against an individual or a business we will notify that individual or business as soon as practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2. During the progression of enforcement investigations/actions, parties involved will be kept informed of progress.
- 6.3. The Council will normally publicise details of any convictions, which would serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will be provided with factual information about charges that have been put before the Courts. In addition, details of convictions may be recorded on public registers where the Council is under an obligation to record such data, or included within statistical datasets returned to central government and other statutory agencies. Records of cautions administered by the authority may also be recorded on national databases, where they can be accessed by other enforcement agencies.

## **7. PACE interviews – Police and Criminal Evidence Act 1984**

- 7.1. Questioning of persons will be carried out by way of a formal interview where there is suspected involvement in criminal offences. All formal interviews will be conducted with regard to the Act and associated Codes of Practice, with a formal record made of the content of the interview. This may comprise a written transcript, or audio or video recording.

## **8. Regulation of Investigatory Powers Act 2000**

- 8.1. During an investigation into suspected non-compliance with legislation, the Council may need to undertake directed covert surveillance. This may include using sound or video monitoring. From time to time, we may also carry out enforcement operations utilising covert human intelligence sources.
- 8.2. In circumstances where it is necessary to use covert surveillance or sources, we will ensure that any statutory prerequisites under the Regulation of Investigatory Powers Act 2000 (RIPA) are complied with. In all cases where the use of covert surveillance or intelligence sources is proposed, such operations will only be undertaken with the express authorisation of a senior officer appointed by the Council for that purpose.
- 8.3. Requests for RIPA authorisation will be made in writing by the investigating officer. All such requests will be accompanied by a statement which details why the proposed conduct is appropriate and proportionate, how it is to be undertaken, who is likely to be involved and any impact that might result from the surveillance.
- 8.4. In deciding whether or not to authorise the proposed activity, the authorised officer will have regard to any policies and issues relevant to the investigation and any alternative methods of conducting the investigation. Surveillance authorisations will only last for as long as necessary and will be reviewed on a regular basis.
- 8.5. An authorisation for covert directed surveillance or use of human intelligence sources will not be valid unless an order has been made by a justice of the peace approving the grant of the authorisation.
- 8.6. The Council maintains a register of authorised covert surveillance operations under the Regulation of Investigatory Powers Act. Authorisations will not be made public whilst there is an ongoing investigation.

## **Annex A – Three strikes policy for taxi & private hire licences**

1. The Council operates a policy for dealing with complaints, allegations and witnessed incidents of misconduct or infractions of a type which is not considered sufficiently serious in itself to justify a review of a person's suitability to hold a taxi or private hire driver, vehicle or operator licence, but which may give rise to such concerns if repeated or if regarded cumulatively with other such incidents.
2. Where complaints are substantiated for an applicable infraction, we may consider issuing a formal written warning, particularly if it would be disproportionate or inappropriate to take formal legal action for the infraction. Such warnings shall be issued only in situations where the investigating officer (or a reviewing officer) is satisfied that the infraction was committed, such as if they personally observed the infraction being committed, or if the results of the investigation into a complaint lead them to conclude on the balance of probabilities that the infraction was committed.
3. If a driver, operator or vehicle proprietor should receive three warnings for any combination of applicable infractions within a rolling period of two years, they shall be referred to the Council's Licensing Sub-Committee, for a review hearing into that individual's suitability to continue to hold the relevant licence.
4. In conducting such reviews, the Sub-Committee will take account of all of the pertinent facts, and of any representation made by the driver, operator or proprietor before considering what action, if any, would be appropriate to take. The Sub-Committee may also have regard to any previous warnings or Committee determinations in reaching a decision. The options available to the Sub-Committee, depending upon the severity of the infractions and any previous record of misconduct, will typically be: to take no further action; to warn the licensee as to their future conduct; to suspend the licence for a specified period, or until such time as certain conditions have been satisfied; or to revoke the licence.
5. The existence of this guidance does not bind the Council, its officers or members to reach a particular decision in every case, and if the circumstances of a particular case support doing so it shall be open to the Council to select a different course of action in respect of that case, such as prosecution for a single infraction of a type listed below, or issuing an informal warning which does not count towards the cumulative total.
6. The following lists of applicable infractions are non-exhaustive, and similar infractions may be regarded in the same way, even if not specifically referred to below.

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### **Applicable infractions – operators**

- Failing to declare convictions / cautions in a timely manner
- Failing to produce operator licence on request
- Failing to maintain operators records complying with licence conditions, or to produce on request
- Touting of hire car services
- Abusive/improper behaviour by operator or staff
- Use of unapproved door signs on vehicles
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

## **Applicable infractions – drivers / vehicle proprietors**

- Failing to declare convictions / cautions / motoring endorsements in a timely manner
- Failing to report accident
- Failing to produce vehicle/driver licence on request
- Failing to wear driver badge
- Failing to produce vehicle insurance certificate on request
- Failing to return licence plate / badge (following expiry, suspension or revocation)
- Using vehicle which is mechanically unsound / unsafe / excessively soiled
- Using vehicle at a time when it would not satisfy compliance standards
- Charging more than metered fare / use of incorrect tariff / previously agreed fare
- Non-display of fare card
- Prolonging journeys
- Tampering with taximeter seal, altering taximeter with intent to mislead
- Meter, radio or other equipment installed in dangerous position
- Non-display / incorrect display of licence plates
- Non-display of roof sign / door signs
- Display of roof/taxi sign on vehicle other than a hackney carriage
- Failure to carry first aid kit / fire extinguisher in vehicle
- Abusive/improper behaviour
- Injuring or endangering any person or property through wanton and furious driving or other wilful misconduct
- Driver improperly attired
- Touting
- Misuse of taxi ranks (obstructing or hindering other driver, preventing hiring)
- Hackney carriage driver refusing fare from taxi rank
- Private hire vehicle stopping on taxi rank
- Leaving hackney carriage unattended in public place
- Carrying excessive number of passengers
- Failing to deliver lost property to police station
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

## **Police infractions**

In addition to work undertaken by Dacorum council officers, Hertfordshire Constabulary officers may issue warnings which will have the same effect under this policy, for any of the above infractions, or for the following general violations:

- Minor offences under Road Traffic Acts in respect of a hackney carriage or private hire vehicle
- Minor offences under the Road Vehicles (Construction and Use) Regulations in respect of a hackney carriage or private hire vehicle
- Minor public order offences in the course of use of a hackney carriage or private hire vehicle

In all cases, issue of a warning under this scheme by a police officer shall represent an alternative disposal option, and police shall retain the right to instead utilise any other disposal method (e.g. fixed penalty notice or legal proceedings) for any applicable offence where deemed appropriate.

## Excluded offences

The following offences are deemed sufficiently serious that they will be excluded from this scheme, with prosecution and/or Committee referral likely to result from a single incident:

- Plying for hire without HCV licence (or driving or standing for hire)
- Using an unlicensed vehicle for private hire
- Driving a licensed vehicle without a valid HC/PH driver's licence
- Employing an unlicensed driver to drive a licensed vehicle
- Operating unlicensed vehicles, or operating vehicles without an operator's licence
- Refusing to accept booking to carry disabled passenger, or passenger with assistance dog

*N.B. Licences issued by any other council do not permit any person to drive, use or operate any vehicle as a hackney carriage or private hire vehicle within Dacorum, and persons doing so are 'unlicensed' in the above.*

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## Annex B – Contacting us

### Complaints about businesses or persons providing licensable activities

If you wish to make a complaint or provide feedback about alleged unlicensed activity or breach of conditions of a licence then you can contact the Licensing Section:

- Via our website: [www.dacorum.gov.uk/licensing](http://www.dacorum.gov.uk/licensing)
- By email, to: [licensing@dacorum.gov.uk](mailto:licensing@dacorum.gov.uk)
- By post, to:  
**Licensing  
Dacorum Borough Council  
The Forum  
Marlowes  
Hemel Hempstead  
Herts  
HP1 1DN**

If you make a complaint outside of normal office hours we will respond when the office re-opens.

Complaints made to the Licensing Section will be investigated by a Licensing Enforcement Officer who will also inform you of the progress and outcome of your complaint. For many complaints we may need you to make a formal written statement (which we will assist with if required), and if we take legal action we may ask you to attend court to give evidence.

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### Complaints about the Licensing Section

We understand that, from time to time, persons may not be completely satisfied with the service that they receive from the Licensing Section, and we would encourage any person who feels this way to let us know, so that we can develop and improve our service. We will ensure that complaints about our service are investigated fairly and thoroughly using the Council's Complaints Procedure (details of which can be found on the Council's website at [www.dacorum.gov.uk](http://www.dacorum.gov.uk)).

Complaints or comments about the Licensing Section can be made:

- Via our website: [www.dacorum.gov.uk/CustomerComplaints/](http://www.dacorum.gov.uk/CustomerComplaints/)
- By phone, to: **01442 228000 and at the prompt ask for Complaints**
- By post, to:  
**Complaints  
Dacorum Borough Council  
The Forum  
Marlowes  
Hemel Hempstead  
Herts  
HP1 1DN**

In cases where disputes still cannot be resolved, we will ensure that any rights of complaint or appeal against the Council's actions are explained with an indication of the likely time-scales involved.

To make an application or for further guidance, please visit our website:  
[www.dacorum.gov.uk/licensing](http://www.dacorum.gov.uk/licensing)

For informal advice or queries, please email:  
[licensing@dacorum.gov.uk](mailto:licensing@dacorum.gov.uk)

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