



LICENSING COMMITTEE

MEETING TO BE HELD IN CIVIC HALL, LEEDS ON
TUESDAY, 10TH JUNE, 2014 AT 10.00 AM

MEMBERSHIP

Councillors

K Bruce	Rothwell;
N Buckley	Alwoodley;
R Charlwood (Chair)	Moortown;
R Downes	Otley and Yeadon;
J Dunn	Ardsley and Robin Hood;
B Gettings	Morley North;
T Hanley	Bramley and Stanningley;
M Harland	Kippax and Methley;
G Hussain	Roundhay;
G Hyde	Killingbeck and Seacroft;
A Khan	Burmantofts and Richmond Hill;
P Latty	Guiseley and Rawdon;
B Selby	Killingbeck and Seacroft;
C Townsley	Horsforth;
G Wilkinson	Wetherby;

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A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 15.2 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 15.2, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p>DECLARATION OF DISCLOSABLE PECUNIARY INTERESTS</p> <p>To disclose or draw attention to any disclosable pecuniary interests for the purposes of Section 31 of the Localism Act 2011 and paragraphs 13 -16 of the Members' Code of Conduct.</p>	
5			<p>APOLOGIES FOR ABSENCE</p>	
6			<p>MINUTES OF THE PREVIOUS MEETING</p> <p>To approve the minutes of the last meeting held on 8th April 2014</p> <p>(Copy attached)</p>	1 - 8
7			<p>LICENSING COMMITTEE - ANNUAL GOVERNANCE ARRANGEMENTS</p> <p>To consider the report of the City Solicitor seeking to establish the governance arrangements for the Licensing Committee for the 2014/15 Municipal Year; specifically dealing with the Terms of Reference for the Committee and its Sub-Committees, the Membership of the Sub Committees and the officer delegation scheme</p> <p>(Report attached)</p>	9 - 26

Item No	Ward/Equal Opportunities	Item Not Open		Page No
8			<p>LICENSING PROCEDURE RULES, THE CODE OF PRACTICE FOR DETERMINING LICENSING MATTERS AND PRESCRIBED LICENSING TRAINING</p> <p>To consider the report of the City Solicitor seeking Members approval of the draft Licensing Procedure Rules intended to govern hearings and other meetings of the Licensing Committee and its' sub committees, along with the Code of Practice for the Determination of Licensing Matters as approved by the Standards Committee. The report also includes proposals for a prescribed training programme</p> <p>(Report attached)</p>	27 - 48
9			<p>REVIEW OF PRIVATE HIRE OPERATOR (PHO) CONDITIONS - DRAFT POLICY AND CONDITIONS PROPOSALS FOLLOWING CONSULTATION</p> <p>To consider a report by the Head of Licensing and Registration which provides a review of the PHO conditions and submit proportionate proposals to contribute and to uplift the service standards and compliance across the operator licensing base and meet arising public safety challenges.</p> <p>(Report attached)</p>	49 - 74

Item No	Ward/Equal Opportunities	Item Not Open		Page No
10			<p>CONVICTIONS CRITERIA - HACKNEY CARRIAGE (HCD) AND PRIVATE HIRE DRIVERS (PHD), PRIVATE HIRE OPERATORS (PHO) AND HACKNEY CARRIAGE PROPRIETORS (HC) - DRAFT POLICY AND CONDITIONS PROPOSALS FOLLOWING CONSULTATION.</p> <p>To consider a report by the Head of Licensing and Registration which identifies the current relevant legislation and the public safety benefits in having a clear and defensible policy that meets the statutory obligation for protecting the public and which sets out clear public information and a decision making criteria and process for Members, Officers and the Courts.</p> <p>(Report attached)</p>	75 - 128
11			<p>HACKNEY CARRIAGE PROPRIETORS (HCP) - APPROPRIATE SUITABILITY ASSESSMENT.</p> <p>To consider a report by the Head of Licensing and Registration which informs Members of the legislation applicable to Hackney Carriage Proprietors, the existing policy of the Licensing Committee, legal advice and the recommendation of the Licensing Committee Working Group?</p> <p>(Report attached)</p>	129 - 144

Item No	Ward/Equal Opportunities	Item Not Open		Page No
12			<p>3 YEAR DRIVER LICENCES FOR PRIVATE HIRE AND HACKNEY CARRIAGE DRIVERS.</p> <p>To consider a report by the Head of Licensing and Registration which informs Members of the consultation undertaken with the Private Hire and Hackney Carriage Trade in order they may further consider their previous 'in principle' approval in light of consultation feedback.</p> <p>(Report attached)</p>	145 - 152
13			<p>DE-REGULATION BILL 2013</p> <p>To consider a report by the Head of Licensing and Registration which informs Members of the issues to enable them to consider what actions they may consider appropriate in order to voice their concerns about the De-Regulation Bill 2013.</p> <p>(Report attached)</p>	153 - 164
14			<p>LICENSING COMMITTEE WORK PROGRAMME 2014</p> <p>To note the contents of the Licensing Work Programme for 2014</p> <p>(Report attached)</p>	165 - 170
15			<p>DATE AND TIME OF NEXT MEETING</p> <p>To note that the next Meeting will take place on Tuesday 8th July 2014 at 10.00am in the Civic Hall, Leeds.</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
			<p>Third Party Recording</p> <p>Recording of this meeting is allowed to enable those not present to see or hear the proceedings either as they take place (or later) and to enable the reporting of those proceedings. A copy of the recording protocol is available from the contacts named on the front of this agenda.</p> <p>Use of Recordings by Third Parties– code of practice</p> <p>a) Any published recording should be accompanied by a statement of when and where the recording was made, the context of the discussion that took place, and a clear identification of the main speakers and their role or title.</p> <p>b) Those making recordings must not edit the recording in a way that could lead to misinterpretation or misrepresentation of the proceedings or comments made by attendees. In particular there should be no internal editing of published extracts; recordings may start at any point and end at any point but the material between those points must be complete.</p>	
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a)				
b)				

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Licensing Committee

Tuesday, 8th April, 2014

PRESENT: Councillor G Hyde in the Chair

Councillors N Buckley, R Downes, J Dunn,
M Harland, G Hussain, A Khan, B Selby
and C Townsley

123 Appeals Against Refusal of Inspection of Documents

There were no appeals against the refusal of the inspection of documents

124 Exempt Information - Possible Exclusion of the Press and Public

There were no items identified where it was considered necessary to exclude the press or public from the meeting due to the confidential nature of the business to be considered

125 Late Items

The Chair accepted the inclusion of a late item of business onto the agenda "Vehicle Age Policy" (Minute No. 136 refers). Officers reported the receipt of an urgent item of correspondence. The correspondence in question was not available at the time of agenda publication and it was considered to be in the best interests of all parties concerned that the matter be considered without delay.

126 Declaration of Disclosable Pecuniary Interests

There were no declarations of disclosable pecuniary interests

127 Apologies for Absence

128

Apologies for absence were received from: Councillor K Bruce, Councillor R Charlwood, Councillor B Gettings, Councillor T Hanley, Councillor P Latty and Councillor G Wilkinson.

129 Minutes of the Previous Meeting

The minutes of the previous meeting held on 11th March 2014 were accepted as a true and correct record

130 Shisha Smoking and Smoke Free Legislation Update Report

The Director of Environment and Neighbourhoods submitted a report which provided an update on "Shisha Smoking and Smoke Free Legislation" and the on-going enforcement work of the Health and Safety Team and its partners

Rachel McCormack, Team Leader, Health & Safety, presented the report and responded to Members questions and queries.

Detailed discussion ensued on the contents of the report which included:

- The number of premises within the City that continued to allow smoking indoors
- Health implications associated with Shisha smoking and the measures undertaken to educate the public about the harmful effects of tobacco
- The work undertaken by the multi-agency teams to address the matter

On a point of clarification Councillor Dunn ask if any action could be taken against individual's shisha smoking in the outside area of licenced premises.

In responding officers said that in such a situation the Council had no power to act

Councillor Khan asked how Members of the public were been made aware of the harmful effects of shisha smoking

Officers reported that the "Niche Tobacco education project" had raised awareness of the health risks of niche tobacco use, the project being delivered by Trading Standards.

In summing up the Chair welcomed the report suggesting that progress was been made.

RESOLVED –

- (i) To support the following staged approach to dealing with shisha smoking indoors:
 - The Council and its partners would continue efforts to educate the community about the dangers of shisha smoking.
 - The Council would carry out advisory visits to such premises and work with the business to secure compliance with smoke free legislation. These visits will serve as warnings to the business.
 - The Council would work with partners, and use best practice to take enforcement action against those who do not respond positively to warnings.

- (ii) That a further update report be brought back to this Committee in 6 months' time (October). An invitation to attend be extended to other multi agency partners

131 Notification of First Draft Event Management Plan for Leeds Festival 2014

The Head of Licensing and Registration submitted a report which advised Members of the arrangements for the 2014 Leeds Festival to be held at Bramham Park between the 22nd and 24th August 2014

Appended to the report was a copy of the Summary of Changes (Appendix A refers)

Stephen Holder, Principal Licensing Officer, Entertainment Licensing together with Mr Melvin Benn of Festival Republic, event organiser, presented the report and responded to Members questions and queries.

Detailed discussion ensued on the contents of the report which included:

- The history of the premises
- A summary of changes for the 2014 event
- Drainage problems due to adverse weather conditions in 2013
- Highway cleansing operations

Commenting on last year's event and the severe wet conditions which resulted in drainage problems on the festival site. Mr Benn said that since that time improvements had been made with a significant amount of drainage works having been undertaken. It was the view of the event organisers that such works would make a substantial difference to this and future events.

Referring to highway cleansing operations Mr Benn reported that he had been in discussions with the Street Cleaning Section and had agreed an increase in the number of remote cleaners to four, last year only one was used. A memorandum of understanding was currently been drafted which would be an appendix to the Event Management Plan.

The report made reference to E cigarettes, Mr Benn confirmed they should be judged within the same context as tobacco cigarettes, only permissible in open spaces and not confined areas.

Referring to paragraph 2.7 of the submitted report, and the capacity figure of 84,999 people for the 2013 event. Councillor Townsley asked how many people did actually attend?

In responding Mr Benn said approximately 70,000 people attended the 2013 event.

Members expressed a wish to undertake a site visit to view the preparations prior to the event taking place.

Mr Benn welcomed the suggestion and offered to liaise with officers to make the necessary arrangements.

RESOLVED –

- (i) To note the summary of changes to the 2014 event
- (ii) That a further report be brought back to the August 2014 meeting of this Committee which provides the final arrangements and Agency comments
- (iii) That arrangements be made for Members of the Licensing Committee to undertake a site visit to view the preparations prior to the event taking place

132 Review of Sex Establishment Fees

The Head of Licensing and Registration submitted a report which sought approval to set a fee scheme that reflected the cost of processing and determining applications for sex establishment licences for 2014

Susan Holden, Principal Project Officer, Entertainment Licensing, presented the report and responded to Members questions and queries.

Detailed discussion ensued on the contents of the report which included:

- The Local Government (Miscellaneous Provisions) Act 1982 states that the licensing authority may set a reasonable fee
- European Services Directive ensures that the fee was limited to cost recovery
- Fee Review 2011 & 2013
- Proposed Fee for 2014

Councillor Selby asked if the proposed fees included costs for Judicial Reviews

In responding Susan Holden said that the proposed fees reflected the actual costs of processing an application and the legal costs associated with the Judicial Review proceedings were not included in the calculations.

Councillor Dunn asked if there were any dispensations for sex establishments in the "Outer Areas" (Special circumstances)

In providing clarification Susan Holden said all venues would be charged the same fee.

RESOLVED –

- (i) That the contents of the report be noted

- (ii) That approval be given to introduce a new fee scheme for sex establishment applications taking immediate effect and to remain in place until such time the scheme is reviewed again

133 Age Restriction on Advertising on Wheelchair Accessible Hackney Carriage Vehicles - Proposal to Extend

The Head of Licensing and Registration submitted a report which informed Members of that part of the "Corporate Advertising" policy applicable to Wheelchair Accessible Hackney Carriages which restrict the applicable age of the policy to those vehicles which were 5 years old from the date of first registration and the potential opportunities to benefit the trade by extending that age limit.

Des Broster, Section Head, Taxi and Private Hire Licensing presented the report and responded to Members questions and queries

Detailed discussion ensued on the contents of the report which included:

- Corporate Advertising favoured new vehicles
- London cabs where decreasing in numbers across the fleet

RESOLVED –

- (i) That approval be given to release the report to the trade and other interested parties for a consultation period of one month
- (ii) That following the consultation period a further report be brought back to this Committee (July 2014) providing feedback on the consultation

134 Update Report on the Uptake of 'Wi-Fi in Cabs'.

The Head of Licensing and Registration submitted a report which informed Members of the take up of free "Wi-Fi" in Taxis. The report also set out the current position on potentially extending the free "Wi-Fi" facility throughout the whole of the licensed fleet.

Des Broster, Section Head, Taxi and Private Hire Licensing presented the report and responded to Members questions and queries

Detailed discussion ensued on the contents of the report which included:

- There had been no take up of Wi-Fi in the licensed Taxi Fleet
- Corporate organisations favoured advertising on "iconic vehicles" London Cab and had no desire to be associated with other vehicle types

Councillor Khan asked if the trade were aware that no vehicle had taken up free Wi-Fi

In responding Mr Broster confirmed that the trade were aware

The Chair asked if there were any proposals for free Wi-Fi in Private Hire vehicles

In responding Mr Broster said the issue of free Wi-Fi in Private Hire vehicles had not yet been explored but there was an intention to do so

The Chair asked if the necessary work could be undertaken and a report be brought back to Committee

RESOLVED

- (i) That the contents of the report be noted
- (ii) That any requests/proposals for the extension of the Policy to the remainder of the licensed fleet be brought back to this Committee upon the receipt of any such requests/proposal
- (iii) That a report exploring proposals for free Wi-Fi in Private Hire vehicles be prepared and added to the Committee's Work Programme for 2014

135 Licensing Work Programme 2014

Members considered the contents of the Licensing Work Programme for 2014

RESOLVED – That, subject to the inclusion of any additional items of business identified at this meeting, the contents of the Licensing Work Programme be noted

136 Date and Time of Next Meeting

RESOLVED – To note that the next meeting will take place on Tuesday 13th May 2014 at 10.00am in the Civic Hall, Leeds.

137 Vehicle Age Policy - Request for Suspension

The Chief Officer Elections, Licensing and Registration referred to the recent receipt of correspondence from the Joint Trade Council (City Cabs Association, Eurocabs Association and Streamline/ Telecabs) requesting that the existing Vehicle Age Policy be suspended until the conclusion of discussions with trade members and the Member Working Group.

A copy of the correspondence had been circulated to Members prior to the meeting.

Mr Kearsley briefly outlined the request and referred to the arrangements for the Member Working Group set up to consider the Vehicle Age Policy and two other issues. The current criteria included provisions for vehicles to continue operating dependent on condition, maintenance and safety inspection. He advised that it would be unusual to suspend a long standing approved policy of the Council in these circumstances and expressed concern about the potential precedent

It was the general opinion of Members that this particular issue should be referred to the next meeting of the Licensing Working Group for urgent consideration.

Councillor Khan asked if it would be possible for Committee Members to be circulated with Trade Forum Minutes.

Officers confirmed that Trade Forum Minutes would be circulated to all Members of the Licensing Committee

RESOLVED – That the matter be considered as part of the Member Working Group review of the existing Vehicle Age Policy.

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Report author: Mary O'Shea 247 8991
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Report of the City Solicitor

Report to Licensing Committee

Date: 10 June 2014

Subject: Licensing Committee – Annual Governance Arrangements

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. Under the Licensing Act 2003 and the Gambling Act 2005 the Licensing Committee is authorised to discharge the licensing functions of the Licensing Authority. This report deals with the annual governance arrangements for Licensing Committee.

2. The Licensing Act 2003 specifically dis-applies Section 101 of the Local Government Act 1972 in respect of the Licensing Committee. The 2003 Act specifically provides that the Licensing Committee may establish one or more sub-committees, and that the Licensing Committee may arrange for the discharge of any functions exercised by it by a sub-committee established by it, or by an officer of the Licensing Authority. This report therefore deals with the appointment and terms of reference of Licensing sub-committees, and the delegation of functions to officers.

Recommendations

3. Members of the Licensing Committee are requested to note the terms of reference of the Licensing Committee as approved by full Council on 9 June 2014 as shown at Appendix 1.

4. Members of the Licensing Committee are asked to establish five licensing sub-committees.

5. Members of the Licensing Committee are asked to approve the membership of each sub-committee as set out in Appendix 2 of this report.
6. Members of the Licensing Committee are asked to approve the terms of reference for the licensing sub-committees as set out in Appendix 3 of this report.
7. Members of the Licensing Committee are asked to approve the delegation of licensing functions to the Assistant Chief Executive (Citizens and Communities) as shown in Appendix 4 to this report.

1. Purpose of this report

- 1.1 This report is presented to Members to establish the governance arrangements for the Licensing Committee for the 2014/2015 municipal year, namely:
 - Noting the terms of reference of the Licensing Committee as agreed at the annual Council meeting on need to insert date.
 - To appoint licensing sub-committees for the 2014/2015 municipal year.
 - To approve terms of reference for the licensing sub-committees.
 - To approve the delegation of functions to Officers as appropriate.

2. Background information

- 2.1 The Council is the Licensing Authority under the Licensing Act 2003 (“the 2003 Act”) and the Gambling Act 2005 (“the 2005 Act”).
- 2.2 In accordance with both the 2003 Act and 2005 Act, with the exception of specified functions (which largely relate to the Authority’s statement of licensing policy), all matters relating to the discharge by the Authority of its licensing functions are automatically referred to the Licensing Committee. This discretion does not extend to any licensing function referred to full Council or a licensing function where full Council has referred the matter to another committee.
- 2.3 The Licensing Committee is also authorised to create sub committees and to delegate functions of the Licensing Authority to sub-committees and to officers.

Legislation

- 2.4 Section 101 of the Local Government Act 1972 sets out the arrangements for the discharge of functions by Local Authorities. Section 101 is, however, amended by the 2003 Act to dis-apply these provisions in respect of any licensing functions of the Licensing Authority.
- 2.5 Instead the 2003 Act specifically provides that a Licensing Committee may establish one or more sub-committees consisting of three members of the committee (Section 9). It also provides that regulations may make provisions about the proceedings of Licensing Committees, and their sub-committees (including the validity of proceedings and the quorum of the meeting).

- 2.6 Subject to any such regulations the Licensing Committee may regulate its own procedure and that of its sub-committees (Section 9(3) of the 2003 Act).
- 2.7 The 2003 Act also provides that the Licensing Committee may arrange for the discharge of any functions exercisable by it:
- (a) by a sub-committee established by it, or
 - (b) by an officer of the Licensing Authority.
- 2.8 Where arrangements are made for a sub-committee to discharge functions, that sub-committee may in turn arrange for the discharge of the function by an officer of the Licensing Authority.
- 2.9 The powers of the sub-committee to delegate to officers are subject to any direction given by the Licensing Committee to the sub-committee (Section 10(5) of the 2003 Act).
- 2.10 The arrangements may provide for more than one sub-committee or officer to discharge the same function concurrently (Section 10(3)).
- 2.11 There are limitations to the power to delegate in relation to a number of different functions. Generally where representations or objections have been made in respect of particular applications decisions cannot be delegated to an officer. These limitations are set out in Section 10(4) of the 2003 Act.

3 Main issues

Licensing Committee Terms of Reference

- 3.1 The terms of reference for the Licensing Committee were agreed at the annual Council meeting held on need to insert date. The terms of reference are attached at **Appendix 1** of this report for members' information.
- 3.2 Members should note that under Section 7(3) of the 2003 Act, full Council may arrange for the Licensing Committee to discharge any function of the Authority which "relates to" a matter referred to the committee but which is not a licensing function.
- 3.3 Members should note that the power to make a Designated Public Places Order in respect of alcohol consumption under the Criminal Justice and Police Act 2001 was delegated by full Council to the Licensing Committee on 11 January 2006.
- 3.4 Members should also note that the following functions were also delegated by full Council to the Licensing Committee on 14 July 2010

hackney carriages and private hire vehicles
sexual entertainment venues, sex shops and sex cinemas
performances of hypnotism
charitable collections

Appointment of Sub-Committees

- 3.5 As referred to above, the Licensing Committee may establish one or more sub-committees consisting of three members of the committee. Previously five sub-committees were established each with three members. It is again proposed that five sub-committees are established in order to deal with hearings under the 2003 Act, the 2005 Act and other routine matters. Due to changes in the membership of the Licensing Committee it is now necessary to re-appoint the sub-committees.

3.6

Membership

The membership of each sub-committee will be determined at the Annual Meeting of Council on 9th June 2014 and will be circulated at the Licensing Committee on 10th June 2014. The rules on political balance do not apply to sub-committees however officers have suggested sub committee membership which takes into account levels of experience as well as ensuring a mix of political parties and wards.

Substitutes

- 3.7 The licensing procedure rules approved previously provide that the fifteen members of the licensing committee form a pool for the purposes of substitutions to the sub-committees. Therefore any member of the Licensing Committee can substitute for any other member at any meeting of a sub-committee.

Appointment of Chairs

- 3.8 Chairs are not appointed to each sub-committee, but instead, the members present at each meeting of a sub-committee appoint the chair from their numbers.

Quorum

- 3.9 The quorum of meetings of the Licensing Committee is five, and for the sub-committee, three. However, on 5 June 2007 the Licensing Committee did approve that in exceptional circumstances on the day of the sub-committee hearing and after all other avenues to seek a third member have been exhausted, a quorum of two will be permissible. It is proposed that the same principles be applied. These rules are set out in the proposed procedure rules set out in a separate report.

Sub-Committee Terms of Reference

- 3.10 The proposed terms of reference for the licensing sub-committees are set out at **Appendix 3** to this report. These are unchanged from previous years. Members will recall that sub-committees do not deal with large scale or outdoor events like the Leeds Festival. Such events raise serious issues of public safety, crowd control and public nuisance. As such it was felt they should be the subject of consideration by the full Licensing Committee. Sub-committees will still deal with smaller outdoor events. These applications do not raise the same issues as large scale outdoor events.

- 3.11 Members will note a paragraph in the terms of reference which states that the sub-committee can also deal with any other hearing required under the 2003 or 2005 Acts, but which may not be specified in the terms of reference. This is to ensure that as legislation comes into force the sub-committee is able to continue to deal with all hearings relating to the council's licensing functions without having to necessarily amend the licensing sub-committees terms of reference each time. It is intended that the licensing sub-committees terms of reference will be regularly updated with any new legislation, this proposal is a measure designed to prevent potential difficulties with the timely disposal of licensing hearings.
- 3.12 The terms of reference also include some matters that were previously delegated to the Licensing and Regulatory Panel which was disbanded during the 2010/11 municipal year. Licensing Committee has previously delegated contract driver permit appeals, hypnotism and street collection licensing and appeals against an officer refusal to allow a trade representation to join the hackney carriage forum. It is proposed that those matters be re-delegated in the municipal year 2014/2015.
- 3.13 Members should also note that under the proposed terms of reference all applications for the grant, renewal, variation or transfer of sexual entertainment venues licences irrespective of whether objections have been received, the grant or variation of sex shop or sex cinema licences irrespective of whether objections have been received, the renewal or transfer of sex shop or sex cinema licences where objections have been received will be brought before a licensing subcommittee will be heard by a sub-committee. Officers will have delegated authority to deal with the renewal or transfer of sex shop or sex cinema licences where no objections have been received. Any case where an officer has decided not to exercise their delegated authority will refer the matter to the subcommittee for determination.
- 3.14 The committee is asked to approve the licensing sub-committee terms of reference as shown at **Appendix 3**.

Officer Delegation Scheme

- 3.15 Members will recall as set out in paragraph 2.7 above that the Licensing Committee may arrange for the discharge of any functions exercisable by it to be carried out by an officer of the Licensing Authority. The Licensing Committee has previously delegated functions to the Director of Resources as set out in the Officer Delegation Scheme shown at **Appendix 4**. To reflect the changes to the Officer Delegation Scheme approved at the Annual General Meeting of Council Licensing Committee is now requested to delegate the same functions to the Assistant Chief Executive (Citizens and Communities)
- 3.16 Members will be aware that the Police Reform and Social Responsibility Act 2011 allows the licensing authority to act as a responsible authority in relation to the 2003 Act and so to make representations on applications and seek reviews where appropriate. The Guidance issued by the Secretary of State recommends that there be separation between the roles of those involved in making representations or seeking reviews and those involved in making decisions on such matters. That separation should extend to keeping the role separate to that of the officers supporting the sub-committee decision making process. Both these roles are covered in the delegation by the Licensing Committee to the Assistant Chief

Executive (Citizens and Communities), however it is proposed to again sub-delegate this new responsibility to the appropriate officers of the Liaison and Enforcement Team in Entertainment Licensing. This will separate the roles within the Licensing Section. Only at the level of Section Head, Head of Service or above will the functions be delegated to the same officers thus ensuring proper separation between those officers with day to day responsibility for the functions.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 There are no implications for consultation and engagement arising from this report

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There are no implications for equality and diversity or cohesion and integration arising from this report.

4.3 Council policies and City Priorities

4.3.1 There are no policies which cover the matters set out in this report.

4.4 Resources and value for money

4.4.1 Adopting the recommendations of this report will ensure efficient decision making and reduce legal challenges.

4.5 Legal Implications, Access to Information and Call In

4.5.1. A clear delegation framework will minimise the risk of legal challenge.

4.5.2. There are no matters contained in this report which are potentially exempt from the press and public.

4.5.3. The matters in this report are not eligible for call in as they relate to council functions.

4.6 Risk Management

4.6.1 The appointment of sub-committees to carry out the licensing functions and delegations to officers as appropriate is consistent with good corporate governance arrangements.

5 Conclusions

5.1 That the Licensing Committee should adopt the arrangements set out in this report.

6 Recommendations

- 6.1 Members of the Licensing Committee are requested to note the terms of reference of the Licensing Committee as approved by full Council on need to insert date as shown at Appendix 1.
- 6.2 Members of the Licensing Committee are asked to establish five licensing sub-committees hearings required under the 2003 and 2005 Acts
- 6.3 Members of the Licensing Committee are asked to approve the membership of each sub-committee as set out in Appendix 2 of this report.
- 6.4 Members of the Licensing Committee are asked to approve the terms of reference for the licensing sub-committees as set out in Appendix 3 of this report.
- 6.4.1 Members of the Licensing Committee are asked to approve the delegation of licensing functions to the Assistant Chief Executive (Citizens and Communities) as shown in Appendix 4 to this report.

7 Background documents¹

- 7.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

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The Licensing Committee

With the exception¹ of

- any licensing function under the Licensing Act 2003 (the 2003 Act) or the Gambling Act 2005 (the 2005 Act) reserved to full Council;² or
- any licensing function where full Council has referred a matter to another committee,³

the Licensing Committee is authorised to discharge⁴ the following functions⁵:

1. to discharge the licensing functions of the licensing authority;⁶
- 2.1 to discharge any other function of the authority referred to it by full Council;⁷
- 2.2 pursuant to the provision in section 2.1 above full Council has delegated to the Licensing Committee the following functions:
 - 2.2.1 the power to make a designated public places order in respect of alcohol consumption under the Criminal Justice and Police Act 2001⁸
 - 2.2.2 the power to designate an area as an Alcohol Disorder Zone⁹
 - 2.2.3 hackney carriages and private hire vehicles¹⁰
 - 2.2.4 sexual entertainment venues, sex shops and sex cinemas¹¹
 - 2.2.5 performances of hypnotism¹²
 - 2.2.6 charitable collections¹³

¹ In accordance with Section 7(2) of the 2003 Act or s154 (2) (a) and (c) of the 2005 Act.

² Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act and under the 2005 Act.

³ Under the provisions of Section 7(5)(a) of the 2003 Act.

⁴ The Committee may arrange for any of its functions to be discharged by one or more sub-committees, or by an officer, subject to the exceptions set out in Section 10(4) of the 2003 Act see also Section 154 of the 2005 Act.

⁵ 'Functions' for these purposes shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.

⁶ This includes the power to set fees under Section 212 of the 2005 Act

⁷ Full Council may arrange for the Licensing Committee to discharge any function of the authority which relates to a matter referred to the Committee but is not a licensing function (Section 7(3)). It may also refer a matter to the Committee where a matter relates to both a licensing function and to a function of the authority which is not a licensing function, and arrange for the Committee to discharge the other function (Section 7(5)(b) of the 2003 Act). Before exercising this power, the Council must consult with the Committee.

⁸ Item 49 of Para I of Schedule 1 to the 2000 Regulations

⁹ Item 50 Para I of Schedule 1 to the 2000 Regulations

¹⁰ Item 3 – 5 of Para. B of Schedule 1 to the 2000 Regulations

¹¹ Item 15 of Para. B of Schedule 1 to the 2000 Regulations and Section 27 Policing and Crime Act 2009 and Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

¹² Item 16 of Para. B of Schedule 1 to the 2000 Regulations

Council Committees' Terms of Reference

- 3 in respect of any approval, consent, licence, permission, or registration which they may grant,
 - (a) To impose conditions limitations or restrictions;
 - (b) To determine any terms;
 - (c) To determine whether and how to enforce any failure to comply;
 - (d) To amend, modify, vary or revoke;
 - (e) To determine whether a charge should be made or the amount of such a charge.
4. to make recommendations to full Council in connection with the discharge of its functions as licensing authority;¹⁴ and
5. to receive reports from, and to make recommendations and representations to other committees or bodies as appropriate.¹⁵

¹³ Item 39 of Para. B of Schedule 1 to the 2000 Regulations

¹⁴ Including recommendations arising from the monitoring of the operation and impact of the licensing or Gambling policy by the Licensing Committee.

¹⁵ Where the licensing authority exercises its power under Section 7(5)(a) of the 2003 Act the other Committee must consider a report of the Licensing Committee. Where the Council does not make arrangements under Section 7(3), it must (unless the matter is urgent) consider a report of the Licensing Committee with respect to the matter before discharging the function (Section 7(4)).

Licensing Sub-Committees

The Licensing Sub-Committees are authorised to discharge¹ the following functions² concurrently³:

1. functions⁴ under:

- (a) section 18(3) of the 2003 Act (determination of application for premises licences where representations have been made);
- (b) section 31(3) of the 2003 Act (determination of application for provisional statements where representations have been made);
- (c) section 35(3) of the 2003 Act (determination of application for variation of premises licence where representations have been made);
- (d) section 39(3) of the 2003 Act (determination of application to vary designated premises supervisors following police objection);
- (e) section 44(5) of the 2003 Act (determination of application for transfer of premises licences following police objection);
- (f) section 48(3) of the 2003 Act (consideration of police objection made to an interim authority notice);
- (g) section 52(3) of the 2003 Act (determination of an application for review of a premises licence);
- (h) section 53A-C of the 2003 Act (summary expedited review hearings);
- (i) section 72(3) of the 2003 Act (determination of application for club premises certificates where relevant representations have been made);
- (j) section 85(3) of the 2003 Act (determination of application to vary club premises certificates where representations have been made);
- (k) section 88(3) of the 2003 Act (determination of application for review of a club premises certificate);
- (l) section 105(2)(decision to give counter notice following an objection to a temporary event notice);
- (m) section 120(7) of the 2003 Act (determination of application for grant of personal licence following police objection);
- (n) section 121(6) of the 2003 Act (determination of application for renewal of personal licences following police objection);
- (o) section 124(4) of the 2003 Act (revocation of licence where convictions come to light after grant or renewal of personal licences);
- (p) section 20(3) of the 2003 Act (making recommendations for restricting the admission of children to the exhibition of any film)
- (q) section 159 of the 2005 Act (determination of application for premises licences where representations have been made)⁵

¹ With the exception of those functions set out in paragraphs 1 and 2 above, and subject to any direction given by the Licensing Committee, the Licensing Sub-Committees may arrange for any of these functions to be discharged by an officer (Section 10(2) and (5) of the Licensing Act 2003 (the 2003 Act)).

² "Functions" for these purposes shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.

³ Section 10(3) of the 2003 Act.

⁴ Including agreeing whether a hearing is necessary.

- (r) section 187 of the 2005 Act (determination of application for variation of premises licence where representations have been made);⁵
 - (s) section 188 of the 2005 Act (determination of application for transfer of premises licences following objection);⁶
 - (t) section 195 of the 2005 Act (consideration of objection made to an application for reinstatement);⁶
 - (u) section 203 of the 2005 Act (determination of review of a premises licence);
 - (v) section 204 of the 2005 Act (determination of application for provisional statements where representations have been made);⁶
 - (w) section 224 of the 2005 Act (decision to give counter notice following an objection to a temporary use notice);
 - (x) schedule 10 of the 2005 Act (consideration of representations in relation to the proposed rejection of a family entertainment centre permit);
 - (y) schedule 14 of the 2005 Act (consideration of representations in relation to the proposed rejection of a prize gaming permit);
 - (z) schedule 13 of the 2005 Act (consideration of representations in relation to the proposed rejection of an alcohol licensed premises gaming machine permit);
 - (aa) schedule 12 of the 2005 Act (consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit);
2. Functions relating to any other hearings required under the 2003 Act or the 2005 Act that have not been reserved to the Licensing Committee.
 3. The function of hearing appeals against the refusal to grant a contract driver permit.
 4. The function of licensing performances of hypnotism⁷ where an officer has considered they should not exercise their delegated authority and has referred the matter to the sub-committee for determination.
 5. The function of licensing sex establishments⁸ (sex shops, sex cinemas or sexual entertainment venues) where either the application is for the grant, renewal, variation or transfer of a sexual entertainment venue licence irrespective of whether objections have been received, or the grant or variation of a sex shop or sex cinema licence irrespective of whether objections have been received, or renewal or transfer of a sex shop or cinema licence where objections have been received, or in any other case where an officer has decided not to exercise their delegated authority and has referred the matter to the sub-committee for determination.

⁵ Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

⁶ Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

⁷ The Hypnotism Act 1952

⁸ s2 and sch 3 of the Local Government (Miscellaneous Provisions) Act 1982

Council Committees' Terms of Reference

6. The function of licensing persons to collect for charitable and other causes⁹ where either objections have been received, or an officer has decided not to exercise their delegated authority and has referred the matter to the sub-committee for determination.
7. Hearing any appeal against an officer decision to refuse to recognise an applicant for the purposes of the constitution for the Hackney Carriage Trade Forum or the removal of recognition under the terms of that document.
8. To discharge any other function referred by the Licensing Committee, including making representations to the Licensing Committee in connection with the discharge of its functions.

Exceptions

A Sub Committee is not authorised to discharge functions under paragraph 1 (a) to (e) above where the application relates to an event in the open air, in a temporary structure and where the proposed capacity of the event exceeds 30,000 people.

⁹ Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

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Assistant Chief Executive (Citizens and Communities)

Subject to the exceptions listed below, the Assistant Chief Executive (Citizens and Communities)¹ is authorised to discharge the following Council (non-executive) functions:

1. Regulatory Functions

(a)	To approve premises for the solemnisation of marriages	Section 46A of the Marriage Act 1949 and the Marriages (Approved Premises) Regulations 1995(SI 1995/510)
-----	--	--

Exceptions²

The Assistant Chief Executive is not authorised to discharge the function above where objections have been received.

2. Functions of the Licensing Authority delegated by Full Council

Subject to the exception set out below, the Assistant Chief Executive (Citizens and Communities) is authorised to discharge the functions of the licensing authority as set out below:-

(a)	Any function of a Licensing Authority ³	Licensing Act 2003 and any regulations or orders made under that Act ⁴ .
(b)	Powers and functions relating to late night levy requirements	Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 and any regulations made under that Chapter.

Exceptions:

- any function of the Licensing Authority reserved to full Council⁵;

¹ The fact that a function has been delegated to the Assistant Chief Executive does not require the Assistant Chief Executive to give the matter his/her personal attention and the Assistant Chief Executive may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However, the Director remains responsible for any decision taken pursuant to such arrangements.

² Under this delegation scheme (Council functions). The General Purposes Committee may however arrange for the discharge of any of its functions by the Assistant Chief Executive - (Section 101(2) Local Government Act 1972.

³ These functions will be carried out to support those matters which cannot be delegated by the Licensing Authority.

⁴ Including functions which, by virtue of the 2005 Act are delegated to the Licensing Committee.

⁵ Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2011 Act.

3. Functions of the Licensing Authority delegated by Licensing Committee

Subject to the exceptions listed below, the Assistant Chief Executive (Citizens and Communities) is authorised to discharge the licensing functions⁶ of the licensing authority as set out below:-

(a)	Any function of a Licensing Authority	Licensing Act 2003 and any regulations or orders made under that Act ⁷ .
(b)	Powers and functions relating to late night levy requirements	Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 and any regulations made under that chapter
(c)	Duty to comply with requirement to provide information to Gambling Commission.	Section 29 of the Gambling Act 2005
(d)	Functions relating to the exchange of information	Section 30 of the Gambling Act 2005
(e)	Functions relating to occasional use notices	Section 39 of the Gambling Act 2005
(f)	Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises	Section 304 of the Gambling Act 2005
(g)	Power to institute criminal proceedings	Section 346 of the Gambling Act 2005
(h)	Power to exchange information	Section 350 of the Gambling Act 2005
(i)	Functions relating to the registration and regulation of small society lotteries	Part 5 of Schedule 11 to the Gambling Act 2005

Exceptions:

- any function of the Licensing Authority⁸ reserved to full Council⁹;
- any function of the Licensing Authority where full Council has referred a matter to a committee other than the Licensing Committee¹⁰;
- any function of the Licensing Authority reserved to the Licensing Committee;
- any function of the Licensing Authority within the terms of reference of the Licensing Sub-committees¹¹;and

⁶ "Licensing functions" means functions under the 2003 Act, the 2005 Act and the Police Reform and Social Responsibility Act 2011.

⁷ Including functions which, by virtue of the 2005 Act are delegated to the Licensing Committee.

⁸"Licensing functions" - see footnote 6 above

⁹ Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

¹⁰ Under the provisions of Section 7(5)(a) of the 2003 Act.

¹¹ Except where a Licensing sub-committee has arranged for the discharge of any of their functions by an Officer.

- to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act

4. Functions related to the Licensing Functions delegated by Licensing Committee¹²

Subject to the exceptions listed below, the Assistant Chief Executive (Citizens and Communities) is authorised to discharge the functions set out in the following table that are delegated to the Assistant Chief Executive (Citizens and Communities) by Licensing Committee

(a)	To license hackney carriages and private hire vehicles	(a) As to hackney carriages, the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985 and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (b) As to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(b)	To license drivers of hackney carriages and private hire vehicles	Section 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(c)	To license operators of hackney carriages and private hire vehicles	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(d)	** To license sex shops and sex cinemas and sexual entertainment venues.	The Local Government (Miscellaneous Provisions) Act 1982, Section 2, Schedule 3, the Policing and Crime Act 2009, Section 27.
(e)	To license performances of hypnotism.	The Hypnotism Act 1952
(f)	*** To license persons to collect for charitable and other causes	Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

¹² These functions were delegated to the Licensing Committee by full Council on 14 July 2010.

Exceptions

The Assistant Chief Executive (Citizens and Communities) is not authorised to discharge those functions marked ** above where the application is for the grant, renewal or transfer of a sexual entertainment venue licence irrespective of whether objections have been received, or the grant of a sex shop or sex cinema licence irrespective of whether objections have been made, or renewal or transfer of a sex shop or cinema licence where objections have been received

The Assistant Chief Executive (Citizens and Communities) is not authorised to discharge those functions marked *** above where objections have been received.

Report of the City Solicitor

Report to Licensing Committee

Date: 10 June 2014

Subject: Licensing Procedure Rules, the Code of Practice for Determining Licensing Matters and Prescribed Licensing Training.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. This report sets out the proposed Rules of Procedure to be followed by the Licensing Committee and the licensing sub-committees in respect of all meetings including those held under the provisions of both the Licensing Act 2003 and the Gambling Act 2005.

2. It is necessary for the Licensing Committee to re-affirm the Rules of Procedure each time the Committee is appointed.

3. It also highlights the Code of Practice for the Determination of Licensing Matters for Members' information. This code was previously approved by Standards Committee but, following changes to the Member Code of Conduct in 2012, the Standards Committee resolved to transfer responsibility for reviewing, amending and approving the Code of Practice to Licensing Committee.

4. Finally the report sets out the arrangements for the prescribed Member Training on licensing under the provisions of Article 8A of the constitution and the Code of Practice.

Recommendations

5. That Members approve the Licensing Procedure Rules as set out as **Appendix 1** to this report.
6. That Members approve and follow the contents of the Code of Practice for the Determination of Licensing Matters as attached at **Appendix 2**.
7. That Members note the arrangements for the prescribed training programme.

1. Purpose of this report

- 1.1 To put forward for Members' consideration, draft procedure rules relating to hearings and other meetings of the Licensing Committee and sub-committees and to seek the approval of Members to the adoption of these to govern committee procedure.
- 1.2 To put forward for members' consideration the Code of Practice for the Determination of Licensing Matters previously approved by Standards Committee and to ask members to approve and resolve to follow the Code.

2. Background information

- 2.1 Under the Licensing Act 2003 Leeds City Council is appointed as the licensing authority for the Leeds district. With the exception of certain functions (most notably the development of a licensing policy), the Act automatically refers all matters relating to the discharge of licensing functions to a licensing committee, which had to be created and which must discharge those functions on behalf of the authority.
- 2.2 Section 9 (2) of the 2003 Act provides that the Secretary of State may issue regulations governing
 - The proceedings of licensing committees and their subcommittees (including provision about the validity of proceedings and the quorum for meetings)
 - Public access to the meetings of those committees and subcommittees
 - The publicity to be given to those meetings
 - The agendas and records to be produced in respect of those meetings
 - Public access to such agendas and records and other information about those meetings
- 2.3 Subject to the regulations, a licensing committee may regulate its' own procedure and that of its sub-committees.
- 2.4 On 12 January 2005 the Secretary of State issued regulations under Section 9(2) of the 2003 Act¹ in respect of licensing matters, although these only apply to the procedure to be followed in respect of hearings as defined in column 1 of schedule 1 to the Regulations. Effectively this relates to the normal business of licensing-sub committee such as determining applications for premises licences and certificates, variations and transfers of licences and certificates and reviews.

¹ Licensing Act 2003 (Hearings) Regulations 2005 SI 2005/44

- 2.5 On 2 March 2005 the Licensing Committee approved two sets of procedure rules under the 2003 Act and the associated regulations. The first sets of rules were referred to as the Licensing Committee General Procedure Rules and the second as the Licensing Committee Hearings Procedure Rules. The second set mirrored the Regulations issued by the Secretary of State referred to in paragraph 2.4 above.
- 2.6 Under the Gambling Act 2005 the functions of the council as licensing authority for gambling are also automatically referred to the Licensing Committee created under the 2003 Act. Section 154(5) of the 2005 Act ensures that the provisions of section 9 of the 2003 Act apply to the proceedings of Licensing Committee and Sub Committees when exercising functions under part 8 of the 2003 Act (premises licensing). The Secretary of State can therefore use this provision to make regulations that may apply to both licensing and gambling functions, or may make separate regulations for each Act.
- 2.7 On 27 January 2007 the Secretary of State issued regulations in respect of premises licensing under the 2005 Act². These regulations apply only to the exercise of functions in respect of premises licensing and provisional statements under the 2005 Act. Therefore there are two separate sets of regulations which apply to the conduct of hearings before the Licensing Committee and sub-committees dependant upon which functions are being exercised.
- 2.8 On 3 April 2007 the Committee considered whether the provisions of the Gambling Regulations could be incorporated into the then existing Procedure Rules and concluded that they could not. The Committee then considered whether two full sets of rules should be drafted in relation to the gambling and licensing functions but agreed instead that a revised set of Rules be approved which cross refer to the two sets of regulations without setting out the full provisions of either.

3. Main issues

Licensing Committee Procedure Rules

- 3.1 The Committee has previously approved one set of Licensing Committee Procedure Rules, which apply to proceedings under both the 2003 Act and the 2005 Act and which cross refer to the relevant regulations. The Rules proposed for adoption by the Licensing Committee and sub-committees at **Appendix 1** to this report are identical to those approved previously.
- 3.2 In relation to hearings held under the 2003 or 2005 Acts before a licensing sub-committee, these must follow the relevant regulations. A legal advisor is present at all hearings of the sub committee and will provide advice on the regulations as required.

Licensing Code of Practice

² The Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licence and Provisional Statements) (England and Wales) Regulations 2007 SI 2007/173

- 3.4 The Code of Practice for the Determination of Licensing Matters was previously approved by the Standards Committee of the council following consultation with the Licensing Committee. It substantially followed the guidance previously produced by LACORs (Local Authority Coordinators of Regulatory Services).
- 3.5 The code applies to all licensing decisions made including decisions of the Licensing Committee, decisions of the licensing sub-committee and any delegated decisions within the terms of reference of the preceding bodies. The code also applies at all times when Members are involved in the licensing process, such as meetings with the public. The aim of the code of practice is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or not well founded in any way.
- 3.6 The revised Code of Practice for the Determination of Licensing Matters is attached at **Appendix 2** for Members to consider.
- 3.7 A new Members Code of Conduct was adopted by full Council on 12th September 2012 and this reflected new guidance issued by DCLG. In addition, the Standards and Conduct Committee met on Friday 11th January 2013 and considered a report on the review of the Codes of Practice. Members concluded that the Licensing Committee was better placed to formulate the contents of the Code of Practice than the Standards and Conduct Committee. They also agreed that the Code of Practice should not contain repetition of the requirements of the Members' Code of Conduct and instead should deal with issues affecting the legality of the decision, such as bias and predetermination. This means that complaints about potential breaches of the Codes of Practice can no longer be dealt with by the Standards and Conduct Committee under the code of conduct complaints process.
- 3.8 The Code of Practice has been amended to remove any repetition of the Members' Code of Conduct and to make clear that the Standards and Conduct Committee is no longer responsible for overseeing it. Responsibility for amending and approving the Codes of Practice has now been transferred to the Licensing Committee.
- 3.9 The Code of Practice has also been revised to ensure that there is clarity for Members about the need to give the members Code of Conduct primary consideration followed by the need to avoid a finding of bias and pre-determination in decision making. The section on committee membership has been removed and the section on membership of parish councils and other bodies now includes Area Committee membership and makes it clear that providing the Code of Conduct is observed and questions of bias and pre-determination have been considered, there is no bar on dual hatted members taking part in decision making.
- 3.10 Members are requested to consider the Code in the light of their requirements as a Licensing Committee and determine whether or not to approve the Code and if so, to resolve to follow it.

Licensing Training

- 3.11 Members will note from paragraph 10 of the Code of Practice at Appendix 2 that Members on Licensing Committee are required to attend two sessions of licensing training in each municipal year. These are
- a Licensing Update session, to receive guidance in relation to regulations and procedures; and
 - a Governance and Conduct session, for training on disclosable pecuniary interests and the Members' Code of Conduct.
- 3.12 In addition Article 8A of the constitution provides that Members of the Licensing Committee must complete all compulsory training and shall not sit as a member of the committee or its sub-committees unless such training has been undertaken in accordance with the Council's prescribed training programme.
- 3.13 Members are asked to note that the prescribed training programme consists of two sessions for newly appointed committee Members: namely an introduction to licensing and a session on committee procedures and for returning Members the two sessions referred to in (will need to check this numbering) above.
- 3.14 In addition to the prescribed training programme officers will continue to offer briefings and training on relevant developments as appropriate and that these will be added to the work programme when they are scheduled.

4. Corporate Considerations

4.1 Consultation and Engagement

4.1.1 No implications

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 No implications

4.3 Council policies and City Priorities

4.3.1 There are no policies which cover the matters set out in this report.

4.4 Resources and value for money

4.4.1 There are no resource implications in adopting the rules.

4.5 Legal Implications, Access to Information and Call In

4.5.1 Failure to adopt and adhere to relevant procedure rules might render decisions susceptible to challenge.

4.5.2 There are no potentially exempt matters referred to in this report.

4.5.3 This decision is not eligible for call in as it relates to a council function.

4.6 Risk Management

- 4.6.1 Following the Procedure Rules and the Code Of Practice for the Determination of Licensing Matters will assist in preventing claims that decisions have been biased, partial or not well founded.

5. Conclusions

- 5.1 That Members should adopt the proposed procedure rules, approve the requirements of the Code of Practice for the Determination of Licensing Matters and note the arrangements for the prescribed training programme.

6. Recommendations

- 6.1 That Members approve the Licensing Procedure Rules as set out as **Appendix 1** to this report
- 6.2 That Members approve and resolve to follow the contents of the Code of Practice for the Determination of Licensing Matters as attached at **Appendix 2**.
- 6.3 That Members note the arrangements for the prescribed training programme

7. Background documents³

- 7.1 None

³ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

LICENSING COMMITTEE AND SUB COMMITTEE PROCEDURE RULES

1. INTERPRETATION

'The Chair' means the Chair of the Licensing Committee.

'The Committee' means the Licensing Committee or Licensing Sub Committee.

'The Relevant Regulations' means the Licensing Act 2003 (Hearings) Regulations 2005 SI 2005/44 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 SI 2007/173

'The 2003 Act' means the Licensing Act 2003

'The 2005 Act' means the Gambling Act 2005

2. SCOPE

These Procedure Rules will apply in respect all matters which are dealt with by the Committee under either the 2003 Act or the 2005 Act

3. APPLICATION OF COUNCIL PROCEDURE RULES/ACCESS TO INFORMATION PROCEDURE RULES

Except where the Relevant Regulations provide differently, the Council Procedure Rules and Access to Information Procedure Rules (in so far as they apply to committees and sub-committees) will be followed for all meetings of the Committee.

4. APPLICATION OF THE RELEVANT REGULATIONS

The provisions of the Licensing Act (Hearings) Regulations 2005 shall apply to any hearings conducted under the provisions of the Licensing Act 2003¹ and in the event of any conflict between the relevant regulations and the Council Procedure Rules/Access to Information Procedure Rules in relation to such hearings the provisions of the relevant regulations shall prevail.

The provisions of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 shall apply to the exercise of functions under Section 162 (1) and (2) and Section 201 (4) of the Gambling Act 2005 and in the event of any conflict between the relevant regulations and the Council Procedure Rules/Access to Information Procedure Rules in relation to the exercise of such functions the provisions of the relevant regulations shall prevail.

5. APPOINTMENT OF CHAIR

The Authority shall appoint the Chair of the Licensing Committee at its AGM.

¹ Hearings are defined as those matters referred to in column 1 of schedule 1 to the regulations.

The Chair of each Licensing Sub-Committee shall be elected by the Sub-Committee at the start of each meeting.

6. QUORUM

Five Members (including the Chair) shall form a quorum for meetings of the Licensing Committee.

Three Members shall normally form a quorum for meetings of a Licensing Sub-Committee.

In exceptional circumstances such as illness or unanticipated none availability of a Sub-Committee Member it shall be possible for an ordinary business sub committee to conduct a hearing with only two Members present provide that

- Attempts have been made to identify a Member who can substitute for the Member who is not available without success and
- The parties present agree to a quorum of two and
- The resultant decision is unanimous

Except where authorised by statute, business shall not be transacted at a meeting unless a quorum is present.

7. SUBSTITUTE MEMBERS

Allocation

No substitute Members are appointed for the Licensing Committee.

In relation to each Licensing Sub-Committee, the Licensing Committee has appointed substitute Members, comprising all other Members of the Licensing Committee.

Substitution

A substitute Member shall be entitled to attend in place of a regular Member provided that the Committee Clerk has been notified of this before the meeting begins. Once the meeting has begun, the regular Member in respect of whom notification has been received, shall no longer be entitled to attend that agenda item as a Member of the Licensing Sub-Committee concerned.

Powers and duties

A substitute Member will have all the powers and duties of any regular Member of the Licensing Sub-Committee but will not be able to exercise any special powers or duties exercisable by the person for whom s/he is substituting.

A substitute Member shall be for all purposes a duly appointed Member of the Licensing Sub-Committee to which s/he is appointed as a substitute Member for the meeting in question and shall have the like duties, powers and responsibilities as the member whom s/he is replacing.

8. MEETINGS OF THE COMMITTEE

The Chair of the Licensing Committee or the Chief Executive may call a meeting at any time.

A special meeting of the Committee may be called on the requisition of any 3 Members of the Committee delivered in writing to the Chief Executive. The summons to such a special meeting shall set out the business to be considered and no business other than that set out in the summons shall be considered at that meeting.

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CODE OF PRACTICE FOR THE DETERMINATION OF LICENSING MATTERS

1.0 INTRODUCTION

1.1 **This code applies** to all licensing decisions including:

- Decisions of the Licensing Committee.
- Decisions of any Licensing Sub Committee.
- Delegated decisions within the terms of reference of the above bodies.

All decisions made by the above bodies will be referred to within this code as decisions of the licensing authority.

1.2 This code also applies at all times when Members are involved in the licensing process. This includes taking part in decision making meetings of the Council in exercising the functions of the licensing authority and on less formal occasions such as meetings with officers or the public and consultative meetings. It applies as equally to licensing enforcement matters, reviews, or site specific issues as it does to licensing applications.

1.3 This code of practice applies as follows:

- Sections 1-2 apply to all Members.
- Sections 3-8 apply particularly to Members of the Licensing Committee.
- Sections 9-10 apply to officers.
- Sections 11-13 deal with monitoring and review

1.4 **The aim of this code** of good practice is to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

1.5 **If you have any doubts** about the application of this Code, you should seek early advice, preferably well before any meeting takes place from the Monitoring Officer.

1.6 If you do not abide by this Code you may put the Council at risk of proceedings on the legality or maladministration of the related decision.

1.7 If you make or are involved in a licensing application, you should:

- Notify the Monitoring Officer in writing of your own application (or that of a relative or employer where known) or where you are employed as an agent.
- Consider whether it is advisable to employ an agent to act on your behalf in dealing with officers and any public speaking at a licensing hearing.
- Ensure that you have arranged for a substitute to attend the hearing in your place.

2.0 BIAS AND PREDETERMINATION IN THE LICENSING PROCESS

- 2.1 Section 25(2) of the Localism Act 2011 sets out that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –
- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
 - (b) the matter was relevant to the decision.
- 2.2 The above section was enacted to clarify that predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The section makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.
- 2.3 Having said this, the words ‘just because’ in Section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination so care still needs to be taken.
- 2.4 Given the requirement that Members of the Licensing Committee or Sub Committee should exercise an independent mind and decide proposals in accordance with the relevant licensing considerations, Members must not favour any person, company, group or locality or commit themselves to a particular point of view on a licensing decision prior to its full consideration at the Licensing Committee or Sub Committee.
- 2.5 **Do not** make up your mind or give the impression of making up your mind (particularly in relation to an external interest or lobby group) prior to the decision making meeting and of your hearing the officer’s presentation and the evidence and arguments on both sides.
- 2.6 **Do** be aware that you are likely to be biased or pre-determined where the Council is the landowner or applicant **if** you have been or are perceived as being, a chief advocate for the proposal. This will not necessarily arise from being a member of the proposing board or the Executive but through a significant personal involvement in preparing or advocating the proposal by which you may be perceived as being unable to act impartially or determine the proposal purely on its licensing merits and in the public interest.
- 2.7 **Do remember** that you are, of course, free to listen to a point of view about a licensing proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate licensing officer.
- 2.8 **Do not** use any political group meetings prior to the Licensing Committee or Sub Committee meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of

predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available, but decisions can only be taken after full consideration of the Licensing Officer's report and documents and information considered at the Hearing.

3.0 MEMBERSHIP OF PARISH COUNCILS, AREA COMMITTEES AND OUTSIDE BODIES

3.1 This section concerns the position of Members of Leeds City Council who are also Parish Councillors or members of an outside body.

3.2 **Do** consider yourself able to take part in a licensing debate and vote on a proposal at a meeting of the Parish Council or outside body where it is a consultee provided:

- You make it clear that that you are keeping an open mind and may vote differently at the licensing hearing when full details are available.
- You do not commit yourself so far to a particular point of view that you cannot be considered as open to persuasion at a licensing hearing when the proposal is decided.

4.0 SPOUSE/PARTNER COUNCILLORS

4.1 There may be occasions when the spouse or partner of a Member, usually a member for the same Ward, is also a Member of the Licensing Committee or Sub Committee. That Member might quite properly refer constituents who wish to make representations to his or her spouse or partner rather than be directly lobbied. Generally the fact that the spouse or partner Councillor has been approached will not affect your ability to speak and vote at a licensing hearing.

4.2 **Consider** if your spouse or partner is so closely involved with the support for, or opposition to, an application that a member of the public might reasonably think that the involvement is such that you must be biased or have predetermined the application.

5.0 CONTACT WITH APPLICANTS AND OBJECTORS

5.1 In order to maintain impartiality, it is preferable that Members are not involved in pre-application discussions but there will be occasions when this can be unavoidable. The following guidance is given.

- **Do not** agree to any formal meeting with applicants, or groups of objectors where you can avoid it. Where you feel that a formal meeting would be helpful in clarifying the issues, you should not arrange it yourself, but request the Licensing Officer to do so. The officer will then ensure that those present are aware that any discussion will not bind the Council and maintain a written file record of the meeting.
- **Do** refer those who approach you for advice to officers.

- **Do** follow the rules on lobbying.
- **Do** report any significant contact with the applicant or other parties to the Monitoring Officer explaining the nature and purpose of the contacts and your involvement and ensure that this is recorded on the licensing file.
- **Do not** attend a presentation by an applicant unless an officer is present and/or it has been arranged by an officer.
- **Do** ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other members might vote.
- **Do** make it clear that the presentation is not part of the formal decision making process and any view is both personal and provisional since not all relevant information will be to hand and the views of interested parties will not have been obtained.

6.0 MEMBERSHIP OF A LOBBY GROUP

- 6.1 Lobbying by Councillors is a legitimate activity but in the case of Members of the Licensing Committee or Sub Committee significant care needs to be taken to avoid any challenge of bias or predetermination or an allegation of bringing the Council into disrepute.
- 6.2 **You may** take part in a matter than involves issues upon which your lobby group has simply campaigned as long as your involvement has not resulted in you being biased and/or predetermining the matter.
- 6.3 **Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you are biased or have pre-determined a matter. The factors are:
- the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- 6.4 **Do not** lead, be part of the management of, or represent an organisation whose primary purpose is to promote or oppose licensing proposals. If you do, you may have fettered your discretion (be biased/pre-determined) and have to withdraw.
- 6.5 **Do not** become a member of an organisation whose primary purpose is to promote or oppose specific licensing proposals or those within a limited geographical area as you may be perceived as having fettered your discretion (be biased/pre-determined).

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- 6.6 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing proposals such as a local Civic Society but where that organisation has made representations on a particular proposal, you should make it clear to both the organisation and the Committee that you have not made up your mind on each separate proposal
- 6.7 **Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as being the Chairperson or a member of the Board or Committee, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may consider that you are biased and/or pre-determined and should withdraw from the meeting.
- 6.8 **Do not** excessively lobby fellow members regarding your concerns or views or attempt to persuade them that they should decide how to vote in advance of the hearing at which the decision is to be made. It is difficult to define 'excessively' but you need to consider whether a member of the public, knowing the facts would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.
- 6.9 **Do not** publicly support a particular outcome on a proposal or actively campaign for it if you wish to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the application in accordance with the law.

7.0 SITE VISITS

- 7.1 Site Visits can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to a hearing. Due to the tight timescales involved in licensing decisions, site visits must be viewed as an exception rather than the rule.
- 7.2 When undertaking a site visit Members should also have regard to the following paragraphs of the Code of Practice for Determining Licensing Matters:
- ✓ Paragraph 2 - Bias and Predetermination in the Licensing Process.
 - ✓ Paragraph 5 - Contact with Applicants and Objectors.

7.3 THIS SECTION APPLIES TO MEMBERS REQUESTS FOR A SITE VISIT

- 7.3.1 If a Member feels, on receipt of the report on an application, that a site visit would be beneficial, s/he should first discuss their concerns with a Principal Licensing

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Officer. Officers have powers to request additional information from parties, which can then be discussed at the hearing. This information may resolve the issues without the need for a site visit. If a Member still feels that a site visit is necessary then, in the interest of fairness, it is preferable that concerns should be expressed at the scheduled hearing since Members may find that the applicant, interested parties or responsible authorities can provide verbal information to the satisfaction of the Members present.

- 7.3.2 Views of the parties present must be canvassed and considered before a site visit is agreed since that is likely to result in a delay to the decision making.
- 7.3.3 In the case of a Sub Committee hearing, three Members or a 2:1 majority must be in favour of a site visit for arrangements to be made. The same three Members will be expected to undertake the requested site visit and attend the hearing for the application, which will be re-convened at a later date.
- 7.3.4 In the case of a meeting of the Licensing Committee, a majority of the Members present must be in favour of a site visit.
- 7.3.5 The same Members will be expected to undertake the requested site visit and be able to attend the re-convened meeting which will consider the application subsequent to the site visit.
- 7.3.6 **DO** raise the need for a site visit at a hearing and be prepared to give reasons why it is of real benefit. The reason will be recorded in the Minutes.
- 7.3.7 **DO NOT** request a site visit unless there is a real benefit from viewing the site. This might arise where:-
- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection.
 - There are significant policy or precedent implications and specific site factors need to be carefully addressed.
 - Relevant factors cannot be fully ascertained from any supporting information or the plans submitted to the Licensing Officer and available at the hearing, to Members satisfaction.

7.4 THIS SECTION APPLIES TO SITE VISITS AS PROPOSED BY OFFICERS

- 7.4.1 The Principal Licensing Officer may suggest the Committee or a Sub Committee undertake a Site Visit without prior discussion at a hearing, where in the professional opinion of the Officer there is a real benefit from viewing the site.
- 7.4.2 In such cases, officers will approach Members seeking a date for the site visit and hearing – usually in the form of an e-mail in the first instance.

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- 7.4.3 The e-mail should set out the proposal for a site visit, the reasons behind the request; the projected benefit for Members; the address of the premise; the type of application and set out the arrangements for the visit.
- 7.4.4 Some site visits can only be conducted at night in order to gauge an accurate impression of the proposal being discussed. On occasion the site visits will also include a viewing of the site 'in performance'.
- 7.4.5 In other cases it is usual for the site visit on an application to commence at 9.30 am (departing from the Civic Hall) and for the formal meeting to commence at 11.00 am in the Civic Hall to determine the application. As such it is anticipated that hearings will not conclude until the afternoon.
- 7.4.6 Having made proposals for a site visit, officers will seek confirmation from the Members able to attend that they are happy to undertake the proposed site visit.

7.5 ON THE SITE VISIT

- 7.5.1 **DO** ensure that any information gained from the site visit is reported back at the subsequent hearing.
- 7.5.2 **DO** ensure that you treat the site visit as an opportunity to seek information and to observe the site. It is not to be used to determine a matter prior to the hearing.
- 7.5.3 **DO** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 7.5.4 **DO** be prepared to listen to and ask questions of fact from the Applicant or other parties.
- 7.5.5 **DO** be aware that Officers will make all parties aware of the site visit. All parties may attend subject to being granted access by the owner (see below). If only one party is present be particularly careful only to obtain information and ensure that that information is repeated at the public meeting where the other parties have a right to comment on it.
- 7.5.6 **DO** be aware that access to the site is at the discretion of the owner. The owner can legitimately refuse access to objectors and even Members. If access is to be refused consider whether it is still appropriate to undertake the visit.
- 7.5.7 **DO NOT** be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind.
- Note that** the decision can only be made at the Licensing Hearing and you should make this clear to any applicant or other party.
- 7.5.8 **DO** note comments of the applicant or other parties which are made solely for the purpose of making members aware of any specific local circumstances and issues relevant to the application site.

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- 7.5.9 **DO NOT** express opinions or views to anyone which can suggest bias or predetermination. As indicated above, you should make it clear that formal consideration of the proposal will take place in public at the subsequent hearing/meeting.
- 7.5.10 **DO NOT** enter a site which is subject to an application otherwise than on a formal site visit although this does not prevent you from viewing the site from the highway or other publicly accessible area.

8.0 TRAINING

- 8.1 Members making licensing decisions must attend two training sessions each and every year:
- a Licensing Update session, to receive guidance in relation to regulations and procedures; and
 - a Governance and Conduct session, for training on disclosable pecuniary interests and the Members' Code of Conduct.
- 8.2 Failure to undertake either or both sessions will result in the Elected Member being unable to sit on the Licensing Committee or Sub Committee. Therefore, **do not** participate in decision making on licensing matters if you have not undertaken mandatory training.
- 8.3 **Do** try to attend any other specialised training session provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures and Policies beyond the minimum required and assist you in carrying out your role properly and effectively.
- 8.4 **Do** revisit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public, confidence in the licensing system, and can help with reviews of planning policies.

9.0 OFFICERS

- 9.1 Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Officers are employed by the Council and not by individual Councillors and instructions can only be given through a decision of the Council, the Executive or a Panel or Committee. A successful relationship can only be based on mutual respect, trust, courtesy and understanding of each others positions.
- 9.2 The role of the Legal officer is to assist the committee in gathering evidence and understanding all relevant issues in order for Members to make a decision, and to advise on the sub committees' legal duties under the relevant legislation and on the admissibility of evidence.
- 9.3 As and when appropriate legal advice should be given or repeated in open session for all parties to be made aware of.

- 9.4 The role of the Governance Officer is to facilitate the smooth running of the hearing; advise on the Rules of Procedure and Regulations relating to hearings; make notes of the proceedings and reasons for granting or refusing applications; and ensure that decision letters are sent to all parties as soon as possible after the hearing.
- 9.5 The role of the Licensing Officer attending the hearing is neutral. They will make no recommendations to the Committee and attend hearings only to provide a summary report of the application, giving details of the representations received and any relevant legislative or policy considerations. However there is a separate but distinct officer role which is exercised by Liaison and Enforcement Officers from Entertainment Licensing who may make representations on applications or seek reviews. The roles of these officers and the Licensing Officer processing applications and hearing reports are (and must remain) separate.
- 9.6 **Do not** put pressure on Licensing officers to put forward a particular recommendation.
- 9.7 **Do** recognise that officers are part of a management structure and only discuss an application, outside of any arranged meeting with those officers who are authorised to deal with the application at Member level.
- 9.8 **Do** recognise and respect that officers involved in the processing and determination of licensing application must act in accordance with the Council's Employee Code of Conduct. As a result, officers reports will be presented on the basis of their overriding obligation of professional independence.

10.0 RELATIONSHIP WITH THE EMPLOYEE CODE OF CONDUCT

- 10.1 The Council has an approved Employee Code of Conduct. That Code applies at all times when officers are involved in the licensing process. This includes decision making by officers under delegated powers and attendance at meetings whether those are formal decision making meetings or informal meetings with members or the public.
- 10.2 Officers must apply the rules in the Employee Code of Conduct at all times. If they do not they may put the Council at risk of proceedings on the legality of any related decision, and may put themselves at risk of disciplinary action.
- 10.3 Generally licensing officers have little discretion in making licensing decisions. However there may be situations where they are called upon to exercise discretion such as deciding whether an objection is relevant. Other officers such as those employed by Environmental Health or Development have discretion on whether to object. Legal officers and committee clerks remain in the room with Members when decisions are made.
- 10.4 In all cases officers must avoid any improper conduct or occasion for suspicion of the appearance of improper conduct and should:-

Code of Practice for Determining Licensing Matters

- Ensure that they have given notice of any financial interest in any contract which has been or is proposed to be entered into by the Council.
- Not accept gifts, entertainment, hospitality or any benefits in kind as set out in the Employee Code of Conduct.
- Declare to their Director by completing the Register of Interests Form any personal interests which may conflict with licensing applications such as:
 - § any involvement with an outside organisation which has an interest in any licensing application;
 - § any financial interest in any licensing application; and
 - § any other interest where others may think that a conflict of interest may arise. Examples of such situations include where the officer lives adjacent to any licensed premises or visits the premises in a personal capacity on a regular basis.

10.5 Officers should also consider whether their spouse, partner or close relative has a financial or other interest in a licensing application which may give rise to the suspicion of the appearance of improper conduct and where the officer may therefore need to declare an interest.

10.6 Where an officer has declared an interest he or she should not participate in the processing of a licensing application but should instead refer the matter to his or her Manager who will arrange for another officer to discharge the duties.

11.0 PROCEDURES AT LICENSING HEARINGS

11.1 The Licensing Committee and Sub Committee Procedure Rules (Part 4(n) of the Constitution), set out the procedure for hearings before the Licensing Committee and Sub Committees.

12.0 MONITORING AND REVIEW

12.1 The Monitoring Officer shall monitor the following, and will report annually to the Corporate Governance and Audit Committee in relation to these matters:-

- the number of appeals upheld;
- any external inspection reports in respect of relevant issues; and
- any ombudsman complaints or reports in respect of relevant issues.

13.0 BREACHES OF THE CODE OF PRACTICE

13.1 Failure to comply with this code of practice may lead to a finding of maladministration by the Ombudsman or could lead to a decision being challenged in the courts.

13.2 Allegations of a breach of this code of practice by Officers will be referred to the relevant Director for consideration under the Council's Disciplinary Procedure.

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Report author: Des Broster
Tel: 0113 3781561

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 June 2014

Subject: Review of Private Hire Operator (PHO) Conditions – draft policy and conditions proposals following consultation.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. In licensing Private Hire Operators (PHO) the Council has a statutory obligation to ensure that the applicant and directors are ‘fit and proper’ persons. That requirement continues throughout the lifetime of a licence and at the point of renewal.
2. Conditions can be imposed upon a PHO licence to ensure its operating practices meet the specific requirements of the Council. The conditions have to be proportionate and relevant to that area of licensing and regulation. Conditions cannot supersede controlling primary legislation (for example planning law).
3. The current PHO conditions have not been reviewed for a considerable time and the growth of the industry, the advances in technology, the increased public safety and expectations of service requirements all indicate the need for a comprehensive review. In one particular area there is an urgent need for review (‘Out of town’ taxis).
4. Full public and trade consultation has taken place and individually with some PHO’s. Those results, Officer views and reviewing other local Authority conditions leads to the wide range of proposals in this report.

5. Members are informed that the private hire industry in Leeds is the most significant supplier of licensed passenger transport in the district and amongst the top few industry leaders in the country. Some of the organisational aspects of their businesses are exemplary, some need significant development. Some proposals in the report are designed to extend that best service and management across the industry but without losing sight of the vital role small PHO's have in local communities. The balance between additional business costs and necessary industry improvements are recognised and can be proportionately addressed. Undoubtedly some PHO's will have to make relatively modest financial investment in technology which will be in the interest of public safety and assisting combatting illegal plying for hire.

Recommendations

6. Members approve in principle the policy and conditions and direct officers to prepare a report for the consideration of the Executive to approve the policy.
7. That Members approve the lead in time scales for implementation of the policy and conditions.

1 Purpose of this report

- 1.1 To present a comprehensive review of the PHO conditions and submit proportionate proposals to contribute and to uplift the service standards and compliance across the operator licensing base and meet arising public safety challenges.
- 1.2 These are significant change proposals and the report sets out the safety, service quality, compliance and complementary issues that need to be addressed. In doing so, the proposals are sensitive to imposing unnecessary financial burdens, but does balance that when highlighting the necessity for change. Timescales for service improvement that have a cost effect or potentially significant training input can be built in, but the need for increased professional standards in some areas needs to be addressed much more quickly. Members are pointed to those considerations in the body of the report.
- 1.3 The report has already had two distinct periods of consultation, the first being direct interaction with PHO's and secondly wide public and trade consultation.

2 Background information

- 2.1 The private hire industry in Leeds consists of:

90	Operators
4906	PHD's
3770	PHV's
143	Licensed escorts

- 2.2 In addition to the everyday service provision, the private hire sector is the most significant supplier to the Council's Education and Social Services Contracts and this brings with it potentially high levels of access to children and vulnerable adults. In awarding a contract to a private hire operator through an approved procurement tendering process it has to be taken as read that the drivers and escorts supplied by the operator have been assessed against the convictions criteria.
- 2.3 Whilst standards of safety and accountability in other areas of Taxi & Private Hire Licensing have moved forward significantly over recent years, the private hire operator conditions which should spell out their responsibilities and accountability have not and in many areas are not in 'sync' with today's professional business and safety standards in the public transport environment.
- 2.4 Some PHO's have made significant business strides in the last decade and embraced technology, the principles of good business and employment law and worked co-operatively with the Authority. However, that is not the case across the board.

2.5 In setting out the proposals later in this report Members may wish to consider the remarks of Mr Justice Hickinbottom, in the High Court of Justice, Queens Bench Division, Administrative Court, Leeds on 27 September 2012.

In respect of licensing the operators of private hire vehicles, section 55(3) of the 1976 Act provides:

“A District Council [i.e. the licensing authority] may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.

The wording of section 55(3) gives Licensing authorities considerable scope for setting operator conditions.

However, the discretion must be exercised against the background of the conferring legislation and to further the objectives of the 1976 Act. The patent intention of the Act is to impose a regulatory scheme which (i) is focused on operators and (ii) is inherently local in character, including enforcement by the relevant local licensing authority. “

2.6 In addition to setting out in straightforward terms the purpose of this part of the Local Government (Miscellaneous Provisions) Act, 1976, the emphasis is on reasonableness and localism. What might not be done in other Authorities, for whatever reason, should not deter Members from considering what is proportionate and most beneficial for Leeds citizens and those who visit the city and users of the private hire industry.

2.7 The report sets out not only proposals for a safer and more accountable transport management system but pushes forward the view that if a licence is granted by this Authority the business should be run in accordance with all of those other Acts of Parliament that reduce the risk of money laundering, tax and benefit avoidance issues that Members might want to consider. It also tackles the ‘out of town’ licensing issues where significant challenges are presented to the Authority.

3 Main issues

3.1 There has been wide public and trade consultation and an invitation to all PHO’s to work more closely with the Taxi & Private Hire Licensing staff and to work through some of the issues raised in this report or areas of potential development to the existing PHO conditions which are attached at **Appendix 1**.

Policy

3.2 The existing policy deals with the administrative processes which must be met by a PHO applicant prior to the grant of a licence. Members will recall that a range of issues were raised as desirable by the trades but not all of these were within the remit of the licensing Authority and were the subject of primary legislation elsewhere or just good business practices and not regulatory. Some issues although having some merit were too bureaucratic and beyond reasonable management.

3.3 That said there are still important issues to the Council, customers and employees of the PHO. Reference will be made to them in the new policy guidance. Conditions on the operating licence might not be the most appropriate way to deal with such issues, but breach of the primary legislation could still have significant consequences on the operating licence. Officers will continue to update advice and best practice guidance within the policy document as it develops.

3.4 The proposed further regulatory PHO conditions are set out below and there are significant changes proposed which are directed at the following areas:

- Professionalising further parts of the industry to increase public safety
- Regulatory measures to reduce unlawfully plying for hire and ensuring PHO's are more accountable for recording booking and despatch details.

3.5 To accommodate the introduction of training and technical and development measures, lead-in periods are proposed to allow the existing trade to consider what adjustments they might need and take stock of the technical or financial issues resulting from these proposals. It is recognised there are many business talents in the existing Private Hire industry with wide experience of the trade. However, it is important that they should all be aware of the new policy and conditions and should personally attend a briefing session which would have a standard training cost.

Regulatory

3.6 Operator training

Generally this was considered to be important to the trade during consultation but a thread of concern ran through the consultation briefings in respect of how it would affect those currently licensed. Building upon the thoughts of the existing PHO's there are undoubtedly significant business improvement and public safety benefits to be gained with the training indicated by the PHO consultees.

There is stability and a lot of experience within the current licensed PHO's and Officers feel that appropriate training, when necessary, could be more beneficial than demanding a CPC qualification. If at the point of entry the PHO applicant holds an appropriate industry related qualification the briefing exercise module would be sufficient and there would not be the need to undertake the training and testing module unless there was considered to be a clear lack of relevant knowledge.

Change proposal

- At the point of entry to the trade there should be a PHO, PHD, PHV knowledge test and equality training as is the case with PHD's, with a licence not being granted until the appropriate training and tests have been passed.

- Existing licensed operators would remain unaffected by this Condition unless there is a substantiated concern about breaches of conditions or associated poor practice. Such a training requirement exists in respect of PHD's and that was introduced on the basis that all new applicants should undertake it and as outlined in bullet point one above. The condition on PHD's could be mirrored in respect of PHO's.
- That those who manage distinct areas of the operating business under the control of the operator undertake training in PHO, PHD, PHV conditions and equality issues.

Change proposal.

- At the point of entry to the trade there should be a PHO knowledge test which incorporates all of PHD and PHV legislation and conditions and the newly approved PHO conditions.

Implementation:- With immediate effect.

- Where an existing PHO breaches their PHO conditions that they should be required to undertake such a test within a 3 month timescale. This mirrors the requirement of Private Hire drivers.

TRAINING TO EXPECTED STANDARDS OF SERVICE AND SAFETY

- (a) During the lifetime of a PHO licence, an Authorised Officer of the Council may require a licence holder to undertake reasonable and appropriate training to meet these expectations and requirements. Such a requirement would be in writing. A reasonable time scale of up to 3 months will be set for the training to be successfully undertaken at a place designated by the Council. If there is a refusal or failure to attend, or the licensed PHO does not meaningfully participate in the training or attain the training accreditation the licence may be suspended and consideration given to its revocation. The cost of such training will be borne by the licence holder.

Implementation:- With immediate effect.

- That all existing PHOs attend at their own expense a formal briefing sessions at a standard training fee.

Implementation:- With immediate effect in a rolling program.

3.7 Absence from business and communications with PHOs

This is a concern of Officers who frequently cannot contact the Operator or on some occasions determine who is managing the company in his absence. It is not intended to restrict the PHO practice but to ensure that the business is conducted properly, with appropriate accountability and reasonable access to a responsible manager(s) in that period of absence. This is an issue which has been recognised by way of Condition in some other local Authority areas.

Change proposal.

- PHOs should notify the Council and nominate a responsible person to take responsibility on an interim basis if they are absent and supply contact detail of the manager to the local Authority.

Implementation:- With immediate effect.

- At all times the PHO will ensure that the local Authority has his most up to date contact detail including a mobile telephone number and email addresses. There should be a generic email address for the company and a confidential email address so that sensitive information can be properly handled and held confidentially by the Operator.

Implementation:- With immediate effect.

3.8 Public complaints about a PHO service

PHOs confirm it seems to fall into three distinct categories:

- Unjustified complaints about service
- Poor service to the customer
- Potentially serious or criminal matters

There was a lukewarm attitude generally to reporting matters to the Authority but there have been some very good examples of clear integrity by some operators. There were mixed feelings about having to keep more records although there was an understanding of the importance of reporting some matters.

Complaints of poor service or allegations against drivers is an area frequently dealt with by Enforcement Officers who try to distinguish between a poor business service (low level complaints), which are referred to the operator to finalise directly with the customer and the other more serious matters which should be referred directly to the Authority (allegations of theft, indecency, equality breaches etc).

What appears to be clear is that even taking in to account the low level of some complaints they can build up a business profile that can be indicative of a professional development need, or in the worst case the concealing of some potential significant offending or allegations.

These concerns could be dealt with by a requirement to maintain a 'register of complaints' and outcomes for inspection by the Authority for a set period, along with a reporting requirement for some more serious matters, for example complaints or allegations of sexual misconduct, racist behaviour, violence, dishonesty, breaches of equality; in straight forward terms, allegations of criminal behaviour.

Change proposal.

- PHO's maintain a register of public complaints in a format approved by the Council (computerised or hard copy).

Implementation:- With immediate effect.

- A duty to report immediately when the licensing office is open and in any other event within 72 hours.

Implementation:- With immediate effect.

3.9 Wheelchair Accessible Vehicles - driver training

This is an issue already accommodated in PHV conditions. Currently the responsibility for ensuring a PHD has appropriate specific training for dealing with wheel chair users as passengers rests with the PHD by condition upon a PHV licence. This can be difficult to manage and enforce by Officers and it is felt appropriate that this safety requirement is now also placed firmly with PHO's when allocating bookings. This requirement will beneficially impact not only on the general travelling public but also those who use the Council's transport services contract.

Change proposal.

- To place a condition upon the PHO licence to the effect that a wheelchair accessible vehicle may only be used for the transport of wheelchair users by a PHD who has attended the appropriate Council training course or an accredited trainings scheme approved in writing by the Council.

Implementation:- With immediate effect.

3.10 'Out of Town' Hackney Carriages acting as PHV's in this licensing District

Generally PHO's could not understand why somebody would want to use drivers or vehicles not licensed by this Authority and thought that to do so could cause risks to customers or the good name of their company. The proposals in this report received some strong support.

This issue is raised as a serious public safety concern by Officers, some of the PH trade and some of the HC trade. In essence it has become a means for people who may not wish to undertake the knowledge and safety tests set by this Council or other Council's and who are beyond the control of LCC Enforcement Officers.

A recent High Court case examined the legal standing of HCV's licensed by one Authority acting as a PHV in another licensing District where no PHD or PHV licence had been granted to the driver or vehicle. HCV's have always been able to undertake Private Hire bookings from outside of their licensing District; for example collecting a regular customer from an airport or event outside of their licensing District.

The case(s) in question raised both concerns and possible solutions but in essence gave a green light to HCV's licensed by other Authorities to work as PHV's in areas where they have not been granted a licence.

This raises significant difficulties for a local Authority such as Leeds for example:

- HCV's not carrying the livery of this local Authority causes confusion with customers.
- The drivers and vehicles are not subject to reasonable enforcement capability by Leeds City Council.
- The drivers may not have undertaken any of the training that Leeds PHD's or HCDs do.
- In the event of a complaint against the driver or vehicle, Officers have difficulty in identifying the driver and have no powers to demand information or an interview with the driver.
- This Authority is reliant on a sanction or training requirement on the driver being carried out by another Authority and if that Authority does not have such a condition there may be difficulties in enforcing the issue or even accepting the need for such a condition or sanction.
- The fees for those drivers and vehicles licensed in this Authority may have to increase if the trend increases in volume.
- Leeds City Council are powerless to determine 'on the spot' if such a driver or vehicle is properly licensed at any time while conducting enforcement activity on the streets.
- The risk to the public is significantly increased by drivers who would not meet the standards of this Authority or who have had their licence revoked or refused by this Authority.

Significant changes are proposed in light of relatively recent case law to ensure that appropriate measures are in place in respect of public safety and enabling this Authority to be able to conduct its enforcement activity efficiently and effectively.

The proposals for increasing public safety in respect of the issues identified above are addressed in the following paragraphs at 3.11 to 3.16 inclusive which are in addition to existing PHO conditions.

Change proposal

Schedule of Drivers

The PHO shall notify the Licensing Authority shall forthwith, and in any event within 72 hours of each and every Hackney carriage driver employed or used for Private Hire bookings by the PHO on his Operator Driver Schedule (Form OPDS) will include Hackney carriage drivers licensed by this or other Authorities.

Implementation:- With immediate effect.

Where a PHO ceases to employ or use any such licensed Hackney carriage driver, the operator PHO shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing and present the form OPDS to the Licensing Authority for amendment by an Authorised Officer.

Implementation:- With immediate effect.

The PHO shall retain a copy of the Hackney carriage driver licence granted by this or other authority along with a copy of the driver's DVLA licence and of any driver of that vehicle and forward a copy of those documents to the Leeds City Council Licensing Office shall forthwith, and in any event within 72 hours of registering that driver on the form (OPDS).

Change proposal.

Schedule of vehicles

The PHO shall notify the Licensing Authority shall forthwith, and in any event within 72 hours of each and every Hackney carriage vehicle employed or used by the PHO on his Operator Vehicle Schedule (Form OPVS) this includes those Hackney carriage vehicles licensed by other Authorities.

Implementation:- With immediate effect.

Where a PHO ceases to employ or use any such licensed Hackney carriage vehicle, the PHO shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing and present the form OPVS to the Licensing Authority for amendment by an Authorised Officer.

Implementation:- With immediate effect.

The PHO shall retain a copy of the HCV licence granted by another Authority along with MOT certificate, certificate and policy of insurance; vehicle registration document and forward a copy of those documents to the Leeds City Council Licensing Office within 72 hours.

Implementation:- With immediate effect.

Advertising on vehicles

In addition to retaining the existing PHO and PHV condition it is proposed:-

Change proposal.

Where a vehicle is licensed by another Authority, such a HCD or HCV is expressly prohibited from using any literature, any documentation, any advertising or displaying any signage associated to that PHO or Leeds City Council which suggests or might lead to a misunderstanding that the vehicle is licensed by this Authority.

3.11 Telephone bookings

It is not unreasonable that when a Leeds area resident books a journey through a Leeds licensed PHO that they have an expectation their journey will be conducted with a driver who has attained all of the training and safety checks carried out by this Authority. The proposals do not restrict trading opportunities for PHOs but seek to ensure that there is clear information available for the public to consider and make their own decision and for enforcement officers to be able to carry out regulatory checks with ready access to the same information that they have for drivers licensed by this Authority.

Change proposals

Advance bookings for HCV's licensed by another Authority must be maintained in a completely separate register of bookings. If a computerised booking system is in place those booking records must be kept in a completely separate and distinct area of the systems hard drive to enable easy inspection by the Council.

Implementation:- With immediate effect.

A separate telephone line and telephone number must be installed and used for 'out of town' booking requests. This message must be contained as a pre-recorded intercept message on the unique booking telephone line.

The caller should then be reminded of the PHO main operator number and given the option to be redirected to "a Leeds City Council licensed driver and vehicle".

In any advertising literature or web information, a form of words must be used which clearly states to prospective customers the following:

"The driver and vehicle you are about to book are not licensed by Leeds City Council and the Council is not empowered to take licensing action against them in the event of a complaint."

Implementation: - within 3 months of adoption of policy and conditions.

3.12 Record of bookings

To many PHO's this was not an issue but some complained that not everybody wanted to give their mobile telephone number and that it is difficult to get all of that information when you are busy. The first thing to realise is that this is a very basic requirement to differentiate between taxis and private hire vehicles to demonstrate a pre-booking. The obtaining of a telephone number serves two main purposes:

- 1) to validate the caller in later enquiries and discourage false entries
- 2) it can enable call or text back from the PHO to confirm the vehicle which has been despatched or that the vehicle has arrived at the booking place.

To bring the relevant condition up to date to assist in detecting plying for hire it is proposed that:-

Change proposal.

- The records required to be kept by the operator, under section 56(2) of the Local Government (Miscellaneous Provisions) act 1976, shall be kept in a suitable bound book, the pages of which shall be consecutively numbered. Entries must only be made at the time the booking is received and there should be no blank pages or lines whatsoever in the booking record.

Implementation:- With immediate effect.

- The operator shall enter or cause to be entered in the record book or computer data base, before the commencement of each journey, the following details for every booking of a Private Hire Vehicle invited or accepted by the operator or their agent.
 - The time and date of the booking and the time required – the 24 hour clock shall be used.
 - The full name of the hirer and contact number used in making the booking.
 - A detailed point of pick-up (not simply Boar Lane or Headingley etc).
 - The specific destination address.
 - The driver's identifying number/name.
 - PHO's shall ensure that the booking record can clearly identify the plate number of the PHV and badge number of the PHD for every journey.

Implementation:- With immediate effect.

- In the event of a failure of the computer data base the paper records shall be maintained in compliance with the preceding conditions for those PHO's who are not operating a computerised booking system. A computer data base should have the facility to print a paper record.

Implementation:- With immediate effect.

- Records should be kept in English and securely retained for at least 12 months following the date of the last entry or for such period as required by an Authorised Officer.

Implementation:- With immediate effect.

- All records shall be maintained and kept up-to-date at all times, and shall be available for inspection at all reasonable times without notice by an Authorised Officer, Police or VOSA. For the purpose of further investigation, records may be removed from the premises if so required or copied to disk, in the case of computer records. The PHO or responsible manager will certify them as a true and accurate record. GPS information must be securely stored when so required by the Council.

Implementation:- With immediate effect.

- A copy of any document shall be made available for collection by any duly Authorised Officer of the Council.

Implementation:- With immediate effect.

3.13 Telephone voice recording of bookings

Some strong support was expressed by both trades as this could help in preventing plying for hire; keeps staff disciplined on customer care; good for resolving disputes; might cost more but it cuts out hassle between customer and operator; some old systems might not be compatible.

Officers feel that in recording incoming calls it will assist considerably in detecting false booking entries which arise in plying for hire cases. Technology has provided massive improvements in booking licensed private hire transport but has also made the detection of 'plying for hire' more difficult. Members are aware that even with the threat of the immediate suspension of their PHD licence, possible conviction and subsequent revocation of their licence that some PHD's are not deterred from unlawfully plying for hire. This is the strongest point of concern for Officers and the trade and potentially a significant risk to public safety. 'Committed' offenders simply telephone the base and record the detail of the journey at the time of plying for hire or later.

There are some dishonest ploys between some drivers and some who complete booking records to assist drivers plying for hire. Quite often the root cause of this is the PHO does not have a sufficient customer base to justify the number of drivers on his OPDS but is willing to accept the 'base rent' and then turn a blind eye to the illegal actions of drivers.

Change proposal.

- That a condition be placed on PHO's (not sole operators) that they utilise an approved voice recording system for incoming advance bookings which corresponds with the required detail in the booking records. The recordings must be kept securely as directed by Authorised Officers and in a manner that enables a speedy recovery of transactions. The technology must be approved in writing by the Council.

Implementation:- within 3 months of adoption of policy and conditions

- PHOs are not permitted to accept telephone bookings forwarded by their PHDs.

Implementation:- within 3 months of adoption of policy and conditions

3.14 Paper records or computerised booking records?

Trade members were quite emphatic about the need to move forward with IT development in PHO offices to counteract false entries and improve customer service. Having said that, the existing PHO's recognised there needed to be a balance of the start-up point as set out below.

This question of customer service improvement has been answered by the trade on the basis of "if you want to grow your business you need to be able to properly handle the volumes of bookings".

In consultation PHO views were in agreement but the start-up point varied. The consensus was clearly that it is not possible to satisfactorily manage a PHO business to today's standards without computerisation. Members may be aware that there are a wide range of systems available and for clarity, the purpose of this report is to set a standard of integrity at a level that is proportionate to the business size.

Computer records are not infallible, but paper records show there is much more scope for easy falsification of records. An example is where a PHO leaves a series of blank lines in the knowledge that a driver who has dropped off in the city centre can then delay his departure, ply for hire and have a retrospective entry created.

PHO's thought that a balanced proposal might accommodate those operators with small businesses and as they grow provide a satisfactory way of professionally dealing with the customer base and enabling appropriate enforcement supervision.

Change proposal.

- Paper records – Sole Operator
PHO - 2 to 9 cars
- Approved computerised system – 10 – 19 cars
- Booking and dispatch system – 20 cars plus

Implementation:- within 3 months of adoption of policy and conditions

Change proposal.

Members may also consider that it could be appropriate to set a policy that where there has been a breach of correct record keeping that it is appropriate (in addition to any other sanction) that there is a requirement to move from paper records to an 'approved computerised system'.

Implementation:- with immediate effect but with a 3 month grace period for the Operator to effect the required change

3.15 Requirement to report convictions

This condition already exists in respect of PHD's and Officers feel it should be mirrored in respect of PHO's.

Change proposal.

REQUIREMENTS TO REPORT CONVICTIONS & ASSOCIATED INCIDENTS

- (a) Any of the following events must be reported in writing to the Taxi & Private Licensing office within 72 hours during the currency of a licence giving full details:-
 - (a) any conviction or finding of guilt (criminal or driving matter);
 - (b) any caution (issued by the Police or any other agency);
 - (c) issue of any Magistrate's Court summons against them;
 - (d) issue of any fixed penalty notice for any matter;
 - (e) any harassment or other form of warning or order within the criminal law including Anti-Social Behaviour Orders or similar;
 - (f) their arrest for any offence (whether or not charged)
- (b) When required a licensed private Hire operator will undertake a Disclosure and Barring Service (DBS) vetting at his/her own expense and within a timescale set by the Council. Such a requirement may be on the basis of the Council's responsibility to ensure continued public safety and monitor licensed private hire operators.

Implementation:- With immediate effect.

3.16 Lost property

The existing condition requires Pho's to deliver property to the licensing office. It had been considered that this should be changed to taking it to the nearest police station but there may be changes within police procedures that

could affect this in the future. As there is a condition requirement on the licensed PHD to do this, it is felt that this condition is not of significance.

Change proposal

Existing PHO condition number 13 be removed.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 As highlighted earlier in the report there has already been a 3 month period of consultation (**Appendix 3**) and then a series of group sessions with private hire operators. Some of the issues raised are not part of this consultation exercise and will be dealt with separately. There are no significant contributions to deter approving the recommendations. The consultation has contributed to the formation of some of the policy and conditions proposals in this report and the recommendations at 6.1 and 6.2 set out the next steps.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An equality impact screening assessment has been carried out on this policy and conditions and there is no impact on equality issues. The screening is available as a background document to this report.

4.3 Council policies and City Priorities

4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan 2013 -17

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us.

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – Improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

4.4.1 Costs to the Section have been absorbed within the Sections budget and undertaken as a normal area of development. Staff training will be similarly accounted for but briefings, training and testing requirements of PHO's will be the subject of an administrative charge.

4.5 Legal Implications, Access to Information and Call In

4.5.1 In setting policy, Members have to consider whether the policy is proportionate to the aims of the relevant act and what is considered reasonable by the Council. The route of appeal against a policy such as this is by way of judicial review. When adopted the policy still allows for discretion to be applied in decision making in appropriate cases.

4.5.2 Where an applicant has been refused an operator's licence under the private hire regime, or is aggrieved by any conditions attached to such a licence, he may appeal to the Magistrates Court (section 55(4)).

4.5.3 Although breach is not a criminal offence, where an operator fails to comply with the conditions of its licence, the Council may revoke the licence (section 62(1)). Where an

operator is aggrieved by the decision to revoke, there is a right of appeal to the Magistrates' Court (section 62(3)).

4.6 Risk Management

4.6.1 Some of the proposals raised in this report are new, not only to this Authority but to most licensing Authorities throughout the country. Reference is made earlier in the report to a recent court case involving Newcastle City Council and it is felt that the proposals in respect of 'out of town' issues fit into the essential decisions in those court findings proportionately. Members will be aware that some areas of the trade can be litigious but the proposals here are not thought to be in the medium to high risk range.

5 Conclusions

5.1 The consultation and legal advice will help Members form views which can be further explored at presentation to the Committee. Officers do feel that the proposed conditions will inject more professionalism into some areas of the trade and contribute to improve service delivery and public safety.

5.2 The investment in technical improvements to call handling or booking or despatch systems, are set more in terms of parameters (number of vehicles licensed) and implementation timescales. This will assist PHOs to make business decisions in a reasonable timescale. The level of change will demand more conformity from some PHOs.

5.3 The training and testing proposals follow a tried and tested route of improvement being preferable to sanction in appropriate cases.

5.4 Legislation does allow out of town HCVs to operate as PHVs in this licensing district and although there may be a view that the interpretation of the relevant part of the act that allows that has been interpreted to liberally it is felt that the proposals presented in this report are proportionate and achievable and not restrictive to trade. Members may feel the measures are appropriate to prevent the total circumvention of this licensing Authorities safety controls.

6 Recommendations

6.1 Members approve in principle the policy and conditions and direct officers to prepare a report for the consideration of the Executive to approve the policy.

6.2 That Members approve the lead in time scales for implementation of the policy and conditions.

7 Background documents¹

Equality Impact Assessment

Leeds City Council PHO conditions

Leeds City Council PHD conditions

Leeds City Council PHV conditions

Button on Taxis

Blue Line Taxis v Newcastle City Council

Licensing Committee report and minutes of 14/1/2014 – review of Private Hire Operator (PHO) conditions

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

CONDITIONS ATTACHED TO THE GRANT OF A LICENCE TO OPERATE A PRIVATE HIRE VEHICLE

1. Any person wishing to acquire a licence to operate a Private Hire Vehicle shall be a fit and proper person and make the application to the Council solely in their name on the prescribed form and pay such fee as prescribed by the Council. Such fee shall not be returnable under any circumstance, save at the sole discretion of the Council.

Every applicant for an Operators licence shall be required to disclose on the application form details of any conviction for any offence, bearing in mind the provisions of the Rehabilitation of Offenders Act 1974. A summary of these provisions is included in the conditions for your guidance.

Every applicant shall in addition to the information specified in the above two paragraphs, provide the name, date of birth and address of any person if the applicant proposes to operate the business in partnership with any other person(s).

Each operator licence issued by the Licensing Authority shall be issued only in the name of the applicant and that person shall be deemed solely responsible as the operator upon the licence being granted and the licence is not transferable from the first mentioned person to another person.

2. **OPERATOR LICENCE**

Each operator licence issued by the Licensing Authority shall be valid for such a period as the Licensing Authority may decide.

The current operator licence must be displayed at the business premises to which the licence relates in a prominent position at all times in view of the general public with the exception of such times as the licence is presented to the Licensing Authority for amendment, or it is required to be produced for inspection by an Authorised Officer of the Licensing Authority or a Police Constable.

3. **PLACE OF BUSINESS**

A licensed operator will only conduct the business from the booking office address specified on the licence, each booking office address requires a separate licence. (NB: Any licensed operator wishing to conduct a business from any address other than that specified on the operator licence shall make application to the Licensing Authority on the prescribed forms which will be regarded by the Licensing Authority as a new application for an operator licence, and the applicant shall satisfy the requirements of the Licensing Authority accordingly). An application on or within the grounds of liquor licensed premises will not be accepted.

The licensed operator shall provide, at the address from which the business is conducted as specified on the operator licence, an enclosed area to which the public have right of access for the purposes of making a booking for the services of a licensed vehicle or awaiting the arrival of a licensed vehicle subsequent to any booking. No operator shall cause or permit any such area to be used by them or other persons for any other purpose than that outlined above.

The premises shall be kept clean, adequately illuminated, heated and ventilated and shall conform to any other relevant legal requirements.

All licensed operators shall have in force a Public Liability Insurance policy providing a minimum of £2,000,000 indemnity in respect of any one incident.

All licensed operators shall have in force an Employers Liability Insurance policy complying with the Employers Liability (Compulsory Insurance) Act 1969 covering death or personal injury arising out of any incident during the course of a person's employment.

4. OFF STREET PARKING

During the currency of the licence, the operator shall ensure designated off-street parking provision at all times for the number of vehicles being operated.

No licensed operator shall use any land or premises for the said purpose where that operator does not have lawful right of use of that land or premises. The operator, if required to do so by an Authorised Officer of the Licensing Authority or Police Constable, shall produce such documentary evidence as may be reasonably required to establish the operator's lawful right to use such land or premises for the purposes of providing off-street parking provision for private hire vehicles.

5. ACCEPTANCE OF BOOKINGS

Every contract for the hire of a private hire vehicle shall be deemed to be made with the licensed operator who accepted the booking, whether or not that licensed operator subsequently provides the vehicle(s).

6. RECORD OF BOOKINGS

Each licensed operator shall keep a full and accurate record of every booking of a private hire vehicle in a register, details to include time and date of booking, time required, customer's name, particulars of the journey (from and to), and the vehicle used. These records must be maintained in a bound book with consecutively numbered pages. Operators must be able to identify from their records which private hire vehicle has undertaken any particular job, e.g. call sign = plate number.

The register must be maintained up to date at all times, and shall be retained at the address from which the business is conducted as specified in the operator licence for a period of not less than 12 months from the date of the last entry in the register.

The register(s) shall be available at any time without notice by an Authorised Officer of the Licensing Authority or a Police Constable who shall be empowered to take away the register(s) from the premises if required.

Licensed operators who wish to operate a computer booking record system **must** have the approval in writing of the Licensing Authority, and must adhere to all other relevant conditions.

7. SPECIFIED VEHICLES

No licensed operator shall operate any private hire vehicle other than those which have been listed by an Authorised Officer of the Licensing Authority on the Operator Vehicle Schedule (Form OPVS). Any alteration to the form OPVS shall only be made by an Authorised Officer of the Licensing Authority.

When a licensed operator ceases to operate any vehicle specified on the OPVS, the operator shall forthwith, and in any event not later than 72 hours, notify the Licensing Authority for amendment by an Authorised Officer.

8. SPECIFIED DRIVERS

The operator shall notify the Licensing Authority of each and every private hire driver employed or used by the operator in his Operator Driver Schedule (Form OPDS). Where an operator ceases to employ or use any licensed private hire driver, the operator shall forthwith, and in any event within 72 hours, notify the Licensing Authority in writing and present the form OPDS to the Licensing Authority for amendment by an Authorised Officer. The private hire driver licence must be returned to the driver.

Each operator will retain at the address from which the business is conducted, the private hire driver licence of every licensed private hire driver employed or used by that operator.

The private hire driver licences shall be available at all times for inspection by any Authorised Officer of the Licensing Authority or Police Constable who may take the licence(s) away from the premises if so required.

Every private hire driver licence retained by the operator must display the trade name and operator licence number relating to his licence.

9. RADIO EQUIPMENT

No licensed operator shall use any radio equipment for the purpose of conducting the business specified in the operator licence, other than equipment approved by the Department of Trade and Industry (DTI) under the provisions of the Wireless Telegraphy Act 1949. The operator shall produce such licence for inspection if required to do so by any Authorised Officer of the Licensing Authority or Police Constable.

10. ADVERTISING

No operator may use the word **TAXI** or **CAB** or **HACKNEY CARRIAGE** or any combination or derivation thereof in any advertising manner in any media, and any such advertising shall include the words Licensed Private Hire.

Where any operator in the course of business uses the trading name of business address specified on the operator licence to offer the services of a Hackney Carriage to the general public, the operator shall not use the words **TAXI** or **CAB** or **HACKNEY CARRIAGE** or any combination or derivation thereof in any advertising manner unless the number of Hackney Carriages that the operator can offer (without engaging the services of any other company or trading concern) is not less than 49% of the number of licensed private hire vehicles specified on the form OPVS.

11. STANDARD OF SERVICE

The operator shall provide a prompt, efficient and reliable service to members of the public at all times and shall ensure that when a private hire vehicle has been hired to be in attendance at an appropriate time and place, that vehicle shall, unless delayed or prevented by sufficient cause, punctually attend at that time and place.

12. GUIDE DOGS

Every proprietor, driver and operator of a licensed private hire vehicle shall ensure that guide dogs are carried within the passenger compartment of the vehicle on request.

13. LOST PROPERTY

All property carried or articles of any description left by any person booking or waiting for a private hire vehicle at the address from which business is conducted shall forthwith, and in any event not later than 72 hours, be delivered to:

The Taxi and Private Hire Licensing Section
225 York Road Leeds LS9 7RY.

14. NOTIFIABLE ALTERATIONS

Place of Residence - During the currency of the licence, the operator shall notify the Licensing Authority in writing of any temporary change of residence which is for a period in excess of 21 days. In either case, the Licensing Authority shall be notified in writing within 7 days of such change taking place.

Radio Equipment - Where any licensed operator is granted a licence by the DTI to use radio equipment, and where that equipment is to be used for the purposes of conducting the business specified on the operator licence, the operator shall within 7 days of the grant of a licence issued by the DTI notify the Licensing Authority in writing stating the serial number and letters of the licence and any transmission frequencies authorised for use. The operator shall also notify the Licensing Authority in writing of any authorised change in transmission frequencies or of any additional frequencies within 7 days of such changes taking place.

Convictions - During the currency of an operators licence, the person named on the licence shall forthwith, and in any event within 7 days of any conviction, notify the Licensing Authority in writing of such conviction(s).

Disposal of Business - Each operator, when disposing of any business interest, shall within 14 days give notice in writing to the Licensing Authority that the business registered in his/her name has terminated.

15. COMPLAINTS

Operators on receiving any complaint of a serious nature regarding any person licensed by the Authority must immediately inform the Taxi and Private Hire Licensing Section as to the identity of the person involved and the nature of the complaint.

16. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, PART 2

All licences in connection with the driving and operation of private hire vehicles and all conditions attached to the grant of such licences are issued by the Licensing Authority in accordance with the provisions of the 1976 Act.

Each operator shall make themselves aware of the provisions of the 1976 Act and any other relevant legislation including the Licensing Authority conditions attached to the grant of a private hire operator, driver or vehicle licence.

PLEASE NOTE THAT SHOULD YOU FEEL AGGRIEVED BY ANY OF THE CONDITIONS IMPOSED ON THE LICENCE, YOU HAVE THE RIGHT OF APPEAL TO A MAGISTRATES' COURT WITHIN 21 DAYS FROM THE DATE WHEN THIS LICENCE WAS ISSUED TO YOU.

Policy in respect of Conditions attached to the grant of a Private Hire Operator licence.

Customer focus, business improvements and best practice

Corporate clothing (shirt or outer garment)

There are distinct benefits for this in terms of enhanced safety for customers and also improving the image of the trade in the city. There appears to be a positive link in supplying a uniform style shirt with the company logo on it and customer satisfaction along with the professional outlook of the operator. However, it is thought to be beyond licensing control and should be considered as a good business practice by PHO's.

Staff training and public access to PHO premises

It would be good practice for each private hire operator (except single vehicle companies) to ensure that all of their call handling staff have received:

- Accredited customer service training
- Data protection training
- Be subject to a DBS

DBS disclosure is thought to be important considering the amount of personal and secure information that can be collected. It is felt that the practice of using totally unqualified staff is inappropriate. Concerns in the trade are that people are 'employed' outside of all of the employment law, Inland Revenue arrangements, minimum wage legislation and outside of other financial scrutiny arrangements that should be in place.

The Data Commissioner retains responsibility for monitoring the 'data controller' (PHO). However, if there were to be breaches of data security the Council reserves the right to take compliance or formal action against the PHO to reduce the risk of crime or danger to public safety. HM Revenue and Customs or the Health and Safety Executive are the appropriate authority for some of the proposals. Whilst there may be some issues which might be poor business practice or worse it is thought to be beyond licensing control.

Officers may inform the appropriate regulatory body if they have a concern.

Record of driver hours

In contrast to the regulation of hours worked by a PSV or HGV driver, a self-employed private hire driver has no such legal restrictions on them. If they were the subject of a contract of employment with the PHO then there would be a restriction of 48 hours per week averaged over a 17 week period, but that is the only legal constraint. The consequences of driver fatigue all too often appear following some serious road traffic collision and whilst the driver may be held accountable for any subsequent fatality it is an issue that PHO should be aware of when they use a PHD

in those circumstances. There are many full time drivers but also others who use their PHD licence as a secondary form of income.

This issue needs an awareness by PHO's and it would be best practice for PHO's to be alert to the signs of tiredness and exhaustion and may wish to consider their own liability in not taking full account of such issues.

Fare awareness

This is often the subject of complaint by the travelling public and is frequently the root of arguments. That situation can be improved upon by clearer information at the time of booking and a visible notice showing how fares are calculated on the PHO web-site or public waiting area, to be easily read by a person seeking to hire a PHV or HCV at those premises. It would be helpful if at every point of producing such information it was pointed out "fares should be agreed before the journey". "Where the vehicle uses a meter this should be clearly explained and on what occasions it is not used (pre-arranged contract fares, out of licensing District fares etc).

The more information that can be visible to passengers the better it is for your driver, your business reputation, and, of course, the public. Being upfront with this can help reduce the risk of assaults.

Vehicles operated under the licence

Planning legislation has primacy but licensing Officers will support communities where complaints are made in assisting enforcement by planning and regulatory Officers and also seeking an early resolution to a problem through the relevant PHO.

Trading name

It is not the intention to restrict the appropriate or innovative naming of a PH business but it has been a source of frustration in the past to the trade and Officers. There are examples of a PHO selling the business and 'good will' only for a new operator to open a short while later with a very similar business name. Sometimes this is not dealt with in contractual arrangements and can lead to confusion with the public (as well as ill will within the trade). Similarly, where a PHO licence is revoked or suspended it seems inappropriate that the identical operating name or one closely associated to that is taken into use. Again this can be confusing for customers and drivers, and perhaps undermining of the council's regulatory sanctions.

It is a pre-requisite to the grant of a PHO licence by ensuring that any potential confusion is removed when a preferred operating name is put forward. This would also apply to those names which might conflict with the operating name within a neighbouring local Authority.

Safety standards of licensed vehicles under the operating licence

Officers have already presented a report to Members that they will consider the prosecution of PHO's for defective vehicles used in the course of their business and it is intended to continue with that and offences where there is no vehicle insurance in place. On rare occasions that may be out of the control of the PHO but control measures can be put in place which would help the PHO reduce their personal risk of prosecution and increase public safety.

To increase public safety and reduce the risk of prosecution to themselves PHOs are strongly advised to maintain a monthly record of vehicle inspections carried out by them on their operating licence to ensure checks on tyres, Council livery, accident damage, condition of interior etc, as prescribed by the Council and a check list of expiry dates of the PHD, PHV licences and MOT expiry dates.

The personal responsibility of the licensed PHO is for the safety of their customer is inescapable and each PHO should be able to demonstrate their commitment to road safety.



Report author: Des Broster
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Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 June 2014

Subject: Convictions criteria – Hackney Carriage (HCD) and Private Hire Drivers (PHD), Private Hire Operators (PHO) and Hackney Carriage Proprietors (HC) - draft policy and conditions proposals following consultation.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. Before granting a PHD, PHO, HCD and HCP licence the Council has a statutory obligation to ensure the applicant is a 'fit and proper' person. That requirement remains with the Council throughout the lifetime of a licence and at the point of renewal.
2. The Council has an existing policy dealing with various aspects of the 'fit and proper' issues, a key part being the 'convictions criteria'; which describes and tries to assess the potential risk to the public and the Council by categorising types of crime and driving convictions.
3. The 'convictions criteria' and driving convictions part of the policy is of long standing and is due for a comprehensive review, not only as a policy review requirement but to bring the policy into line with the new Acts of Parliament and to be more relevant to the dangers and risks facing the public and the Council in today's society.
4. The principles of the existing policy have stood the test of time and have been recognised and appreciated in the Magistrates and Crown Courts as good practice and a clear decision making framework. It also enables an audit trail of the decision making process. It is not intended to change the format but to refresh the information and format, enabling decision makers to deal more effectively with public safety issues in respect of criminal activity and driver behaviour that have become more prevalent.

5. The report offers options for formal driver 'life skills training' in place of sanction in some cases but also seeks to recognise that consistent bad driver behaviour and disqualification from driving reaches a point of unacceptability. Similarly the report asks Members to recognise that offending committed during the course of licensed work should attract greater sanction to those who later reapply than do standard convictions.
6. The report was previously released by Licensing Committee Member on 14 January 2014 for full public and trade consultation. There has been a large response which, for ease of reference is presented in chart form with selected examples which give a strong indication of the overall view of the policy proposals.

Recommendations

7. That Members consider and approve in principle the amendments to the policy and new policy proposals in respect of the 'convictions criteria' and direct Officers to prepare a report for the consideration of the Executive.
8. That Members consider and approve in principle the amendments to policy and new policy proposals in respect of 'motoring convictions generally and disqualification from driving' and direct Officers to prepare a report for the consideration of the Executive.

Purpose of this report

- 1.1 To identify to Members the current relevant legislation and the public safety benefits in having a clear and defensible policy that meets the statutory obligation for protecting the public and which sets out clear public information and a decision making criteria and process for Members, Officers and the Courts.
- 1.2 It is not the intention to move away from the existing decision making framework within the 'convictions criteria' but instead to make it more relevant to today's public safety risks and changes in legislation. The recommended changes to some types of offences are not only related to legal or public expectations but in some cases Officer experience.
- 1.3 Criminal convictions are dealt with quite distinctly from 'driving convictions' and it is hoped that a simplified way of dealing with driving convictions will result in improved understanding to all, consistency in decision making and improved driving skills.

2 Background information

- 2.1 Prior to granting a PHD, PHO, HCD and HCP licence the Council is obliged by law to ensure the applicant is a 'fit and proper' person. That requirement remains with the Council throughout the lifetime of a licence and at the point of renewal.
- 2.2 Decision making needs to be justified and consistent and the existing policy has met both of those requirements having been tested in the Courts on many occasions. Time has however brought changes to the law and also the requirement for local Authorities to be far more alert to criminal trends and public protection. Crime and safety are issues of national and local importance and despite falling levels of recorded crime in recent years, it remains a primary concern for the people of Leeds
- 2.3 Crime affects the lives of everybody - residents, businesses, visitors, students, commuters and investors alike. Reducing crime and disorder is a key element in improving the quality of life for the citizens of Leeds.

Leeds City council has adopted the essence of partnership working and expresses its values as follows:

The Safer Leeds Partnership is our vision is for people to be able to live without fear for their own safety, or the safety of others. Our overall aim is to secure sustainable reductions in crime and disorder, and to address fear of crime in the Leeds district.

Community Safety Partnership's (CSPs) were set up under Sections 5-7 of the Crime & Disorder Act 1998

CSPs are made up of representatives from the 'responsible authorities', which are the:

- *police*

- *local authorities*
- *fire and rescue authorities*
- *probation service*
- *health*

The responsible authorities work together to protect their local communities from crime and to help people feel safer. They work out how to deal with local issues like antisocial behaviour, drug or alcohol misuse and reoffending. They annually assess local crime priorities and consult partners and the local community about how to deal with them.

This partnership working is the essence of this report and is essential to contributing to the wider community safety.

- 2.4 Some examples of change would be grooming and trafficking of women; the extent of paedophilia; race hate crime; ‘staged road traffic accidents’; sophisticated criminal gangs involved in drugs supply; money laundering with organised criminal gangs needing more and more credible ‘fronts’ to facilitate or mask their crimes.
- 2.5 A local Authority must have a robust policy in place to ensure the statutory requirement of ‘fit and proper’ assessment is met, and whilst this is the same across all of the proposed categories set out later in the report Members may feel there is absolutely no room for compromise in the area of sexual offending and relevant information disclosed to the Authority by the Police. Members will be aware that the Council’s Safeguarding Policies for children and vulnerable adults are explicit in respect of responsibilities. Similarly race hate crime needs to be recognised as significantly relevant to the licensed services. Licence holders should not be considered as somewhat remote risks to those issues when considering this policy.
- 2.6 A public risk policy also needs to assess driver behaviours and this is an area in need of decision making clarification, possibly utilising training development. Anecdotally, Members will have heard of examples of poor driving standards and at other times complaints about individual examples of thoughtless or deliberately poor driving by some licence holders. Whilst there might be many expressed frustrations at some licensed drivers the context has to be that in reality it is probably a minority of drivers.
- 2.7 As a point of clarification, there are other areas which contribute to the ‘fit and proper’ test but are not part of this report. Those other areas have been relatively recently been approved by the Licensing Committee e.g. DSA test, English literacy and numeracy screening, medicals. This report and its recommendations are complementary to those safeguards.

3 Main issues

3.1 Criminal convictions – general information.

3.2 In essence convictions and cautions are the same in respect of culpability, evidence and admission of guilt and this is recognised in the previous policy. The change proposals in this document make it clear that in whatever way a finding of criminal responsibility is recorded against an individual, the policy will allow discretion to be exercised in appropriate cases, as has been the case on numerous occasions with the existing policy. It brings clarity around the issue that the Council can consider not just convictions but all of the Police, other agency and Courts disposal outcomes within the convictions criteria. It also recognises that such criteria cannot accommodate every type of adverse behaviour. In such cases the decision path might be “or any other reasonable cause”, in accordance with primary legislation. Discretion then follows on from that principle with appropriate weighting applied to individual cases.

3.3 Recognition of terms

3.4 ‘Conviction’

3.5 The term conviction includes the whole range of disposal outcomes of the commission of a criminal offence; those related matters which have been successfully pursued through the civil courts and those related licensing decisions which have been determined in the Courts in the favour of the local Authority.

3.6 Since the adoption of the original ‘convictions criteria’ there has been significant reshaping of the criminal law to combat the structures of organised crime and also deal more effectively with a range of issues. Slightly down the scale local crime groups can be sophisticated and confident. Easy access to obtaining a Private Hire driver, Private Hire Operator, Hackney carriage driver or Hackney Carriage proprietor licence provides an unbelievable opportunity for masking criminal activity and is a significant concern for the Police.

3.7 It can be a difficult message for Members and Officers to give to applicants, or licence holders affected by the convictions criteria when licences are refused or revoked, but the statutory guidance is quite clear; when making public safety decisions the financial impact on an individual is not the determining fact to take into account, and the public safety risk for all the citizens of Leeds is the key assessment.

The proposed convictions criteria tables are at **Appendix 1**. The proposals to adjust the conviction criteria is based upon:

- The public expectation of safety and control of risk with the most serious types of crime and sexual offending (particularly category 1).
- Reducing the risk potentially caused by serious criminal offending (particularly category 2).
- The Council can demonstrate its commitment to dealing with race/religious hate crime, gender/sexual orientation and disability offending (category 3).
- Recognition of the opportunities for criminals by being licensed. (particularly category 4).

- The Council needs to contribute to crime partnerships and safety groups to reduce the risk of crime (category 5).
- The Councils obligations to Safeguard Children and vulnerable adults.
- Significant new types of criminal networks are now more recognisable to society.
- Sentencing powers of Courts have increased in some areas recognising the relevance and seriousness of that type of offending.
- The need to refresh and update the policy to today's environment.
- Recognising that some types of crime have undertaken such criminal pre-planning that having trust and being able to professionally interact with them is barely viable.

Reproduced below is an extract from HM Government Serious and Organised Crime - reducing and preventing crime policy. This extract is included in the report to enable Members to more easily visualise the potential links to the licensed trades and add weight to the proposed policy changes later in the report.

“Serious and organised crime is a threat to our national security. It costs the UK at least £24 billion each year. It includes drugs trafficking, human trafficking, organised illegal immigration, high value fraud, counterfeiting, organised acquisitive crimes and cyber crime.

Police and law enforcement agencies estimate that there are around 5,500 organised crime groups operating against the UK, involving around 37,000 individuals.

The new serious and organised crime strategy is based around 4 areas of work:

- *pursue: prosecuting and disrupting people engaged in serious and organised crime*
- *prevent: preventing people from engaging in this activity*
- *protect: increasing protection against serious and organised crime*
- *prepare: reducing the impact of serious and organised crime*

The immediate priority is to prosecute and relentlessly disrupt organised criminals to reduce the threat they pose.”

It is proposed to members that licensing policy should positively contribute to the national and local measures.

3.8 Notable additions to the convictions criteria

Common Assault with the statutory aggravating features of being motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation or disability (or presumed sexual orientation or disability). – to Category 3

Offences under Protection from Harassment Act 1997, sections 1 and 2 to Category 5;

Offences of stalking – (sections 2a, 4, 4a) – to Category 3

Money Laundering – to category 4

The re-categorised table of sexual offences appears at **Appendix 2**.

The re-categorised table of violence offences appears at **Appendix 3**.

The re-categorised table of dishonesty offences appears at **Appendix 4**.

The re-categorised table of drugs offences appears at **Appendix 5**.

The categorised table of race related offences appears at **Appendix 6**.

3.9 For easier policy reference the crime categories have been structured as follows, accompanied by a policy statement.

Change proposal

Category 1 – The most serious types of crime often with sentences of life imprisonment.

For example: Murder manslaughter, grievous bodily harm/wounding, section 18 OAP Act kidnapping, false imprisonment, arson and convictions around sexual offending.

It would be only the most exceptional of circumstances that the grant of a licence would be considered for any of these types of convictions. The minimum period of time to have elapsed would generally be **10 years** from the date of conviction, final release or the end date of a suspended prison sentence. This would normally be the minimum period and there may be circumstances where the Council would continue to resist an application. It would be only in the most exceptional of circumstances that the grant of a licence would be considered for those types of convictions outside of the convictions criteria rehabilitation period.

Sexual Offences – additional information

The current 'convictions criteria' identifies the very real concerns that existed in the period around 2000 when a series of rapes and sexual assaults took place within the city by bogus 'licensed drivers'. Events over recent years give support to the proposals in this part of the policy in respect of the dangers of sexual offences being committed within the licensed trade, that view being drawn from

the national picture of notable criminal cases and also local experience of recorded and proven complaints.

Members will be all too aware of the current issues around trafficking of women, grooming children, paedophilia and sexual exploitation. Much of the terminology has changed and certain types of offences can equally be committed against a man as they can against a woman. The critical issue is that this is a very real threat which rises above all of those other difficult messages and conflicts when dealing with constituents.

Members are reminded of the Council's obligation to safeguarding children and vulnerable adults and how potential access to the vulnerable can be gained as a licence holder through the Council and transport contracts.

That responsibility is reproduced as follows:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

The links between different types of offending in this category may not always appear immediately evident but in recognising the potential risk for involvement in increasingly serious sexually motivated offending enables a strong policy to be introduced.

The decision making framework can to some extent be de-stabilised by those licensed drivers who do not report convictions in line with the condition upon their licence or make a false declaration at the time of renewal. It can be the case that the criminal offence in question is out of the convictions criteria by the time it is uncovered. By being dishonest the licence holder has evaded the best intentions of the policy.

Change proposal

Members may feel that in such circumstances that the conviction should still be seen as being in breach of the policy and that the 'start date' would become effective from the date the Council first became aware.

Regulated and Controlled Activities

Private hire or Hackney Carriage work might not be included in The Safeguarding Vulnerable Groups Act 2006 but Members will be aware of the types of contact that licensed drivers can have with children or vulnerable adults. The type of information held but not disclosed by relevant bodies including DBS can present difficulties in the decision making process. However, what is known is that an event has occurred and it has resulted in an individual being barred from working with such groups.

The activity concerned might cause concerns for the Council but it has little information to work on. However, the responsibility for demonstrating they are a

'fit and proper' person rests with the applicant and the change proposal below might seem the most appropriate way of overcoming the issues.

Change proposal

Where a person is barred from working with children or vulnerable adults the onus to provide all background information and the responsibility to provide additional information to satisfy the Council rests firmly with the applicant.

It would be only in the most exceptional of circumstances that a licence would be granted when such a barring from 'controlled or regulated activity is in place.

3.10 Change proposal

Category 2 – High level serious criminal offences usually associated with violence or high value crime.

For example, drugs supply/production, aggravated burglary, robbery, aggravated vehicle taking (causing death), blackmail and any other offence of dishonesty capable of attracting a term of imprisonment exceeding 10 years.

These are the next most serious types of crime for which significant custodial sentences are available, and, importantly to the Council, those which present significant risk to people or their property. The minimum period of time to have elapsed would be **8 years** from the date of conviction, final release or end date of a suspended prison sentence. This would normally be the minimum period and there may be circumstances where the Council would continue to resist an application. It would be only in the most exceptional of circumstances that the grant of a licence would be considered for those types of convictions outside of the convictions criteria rehabilitation period.

Drugs crime – additional information

When the Local Government (Miscellaneous Provisions) Act 1976 was created it did not define drugs as one of the three recognised types of conviction, most probably on the basis that criminal activity of organisations were not on the radar to the extent they are today and the issues around drug misuse were not as prevalent or as relevant to the licensed trades.

Drugs crime is a major feature of organised crime gangs and there is evidence to show that such organised criminal activity exists in areas of West Yorkshire and that licensed drivers have been involved in the ferrying of drugs, suppliers and drug users to 'supply points'. The existing convictions criteria recognises the dangers to an extent relevant at that time but again, time has moved on and Members may feel that the safeguarding issues and public safety sanction level should be set at a higher point. The basis is that trafficking of drugs now has an established association with the licensed trades and its consequential effects on the City's communities, the image of the city and the trades should be addressed within the licensing safety policy.

A licensed taxi or Private Hire driver is an ideal carrier for such activity, either in isolation or with affiliations to organised crime. The personal use of drugs is an

event that can overlap into driving time and Members may feel that risk should be minimised by these control measures on drug misuse.

3.11 Change proposal

Category 3 – Racially or religiously aggravated crime.

Some offences across a range of criminal convictions attract stronger sentences when the offence is racially motivated or the act is intended to stir up racial hatred or where there is possession of racially flammable material. Without minimising any crime of that nature, this category deals with the most serious crime in that offending profile. The minimum period of time to have elapsed would be **6 years** from the date of conviction, final release or end of a suspended prison sentence. It would be only in the most exceptional of circumstances that the grant of a licence would be considered for those types of convictions outside of the convictions criteria rehabilitation period.

Hate crime statistics

In September 2012, the Home Office published statistics on hate crimes recorded by the police in England and Wales for the first time. In 2011 to 2012, 43,748 hate crimes were recorded by the police, of which:

- 35,816 (82%) were race hate crimes
- 1,621 (4%) were religion hate crimes
- 4,252 (10%) were sexual orientation hate crimes
- 1,744 (4%) were disability hate crimes
- 315 (1%) were transgender hate crimes- ??? to follow.

3.12 Change proposal

Category 4 – High risk dishonesty crime to the public and the Council in granting/holding a licence.

For example: burglary dwelling, handling stolen goods, theft as employee, Perverting the course of justice, Perjury, Aggravated vehicle taking, those offences created by the Fraud Act of 2006 on the basis of the deliberate and planned elements of dishonesty, fraudulent use of motor vehicle documents or false declaration to obtain such.

The types of crime here are those which employment as a licensed driver would present very real opportunities for offending and are considered to be of substantial risk to the public or the Council or being able to have effective working relationships or trust with an individual. The minimum period of time to have elapsed would be **5 years** from the date of conviction, final release or end of suspended prison sentence. This would normally be the minimum period and there may be circumstances where the Council would continue to resist an application. It would be only in the most exceptional of circumstances that the

grant of a licence would be considered for those types of convictions outside of the convictions criteria rehabilitation period.

3.13 Change proposal

Drugs Misuse

In respect of 'possession of a controlled drug' there are two proposals; where there is an existing conviction for unlawful possession of a controlled drug that the period of rehabilitation be extended by one year to fall in line with the Category 3 offences on the basis that those who have a history of drug abuse are more sympathetic to others unlawful use and allows a more appropriate period of time to demonstrate 'distance' from drugs; it sends out a clear message that drugs and licensed drivers are not an acceptable mix and that the Council recognises the dangers of association between those who might be associated with drugs and illegal drugs activity.

- 3.14 Officers regularly see applications with two or more convictions for unlawful possession of drugs on Disclosure and Barring Service disclosures and the existing policy is felt to be inadequate in being able to deal effectively with that issue. An option available to Members is to build additional safeguards into the policy set out below.

3.15 Change proposal

- 3.16 Where there are two convictions for such an offence on a disclosure that the policy could be further strengthened reducing the risk to public safety by including a medical drugs test requirement prior to the approval of an application and at random times during the life time of a licence at the licence holders expense and in a manner prescribed by the Council. This would amount to not much more than three occasions in a rolling 12 months period and would cease after 5 years from the date of last conviction.

3.17 Change proposal

Where there is a third conviction for drugs possession that the last conviction be regarded as a category 2 matter from the date of last conviction and those timescales are adopted.

3.18 Change proposal

Category 5 – General Offences of dishonesty and violence

For example:- General cases of theft, 'shoplifting', stealing from motor vehicle, obtain money by deception, going equipped for crime, taking vehicle without consent/being carried on or in. Similarly the inclusion of the racially aggravated public order offence receives a significant upgrade from a 'points only' matter to a category 5 offence may be justified when one considers the benefits to community cohesion.

Those general crimes contained within the Theft Act 1968, and Theft Act 1978 along with those crimes associated with benefit fraud. The minimum period of

time to have elapsed would be **3 years** from the date of conviction, final release or end date of a suspended prison sentence.

Where there are other offences that have a 'Hate Crime' aggravating feature they will attract a longer period of rehabilitation in terms of this convictions criteria and move to a category 3 type of offence. 'Hate Crimes' are defined as any crimes that are targeted at a person because of hostility or prejudice towards that person's: disability, race or ethnicity, religion or belief, sexual orientation, transgender identity.

3.19 Acting as a licensed driver – increased tariff

Where an offence identified in the previous categories was committed whilst in a licensed vehicle or in the course of carrying out a service illegally or legally, this would be considered an aggravating factor and the conviction criteria rehabilitation period would attract an additional rehabilitation period of 50%. Where the Council is successful in defending a licensing decision to refuse an application, revoke or refuse to renew a licence where the information on which the decision was based can be appropriately linked to one of the categories of crime explained in this report it would then attract the same rehabilitation period as that category. In all other instances or in cases of doubt that part of the Local Government (Miscellaneous Provisions) Act 1976 'any other reasonable cause' should be used.

The above categories include attempts, incitement, aid and abet, counsel or procure or conspiracy to commit such an individual offence which can attract the same penalty.

3.20 Youth Justice Court sentences

Where a sentence imposed upon a child or young person is restricted by virtue of their age the policy will take account of the sentence that could have been imposed upon them as an adult. However, it is not intended to defeat the intentions of the Courts powers of sentencing of children and young persons in respect of lower level crime (category 5) and those matters will be weighted accordingly by discretion being appropriately applied.

3.21 Category 6 - Motoring convictions generally and disqualification from driving

The current policy guidelines are set out at **Appendix 7** which summarise the position in respect of motoring convictions.

As in the case of criminal convictions and the changing legislation the same applies with motoring convictions. This has proved to be one of the more difficult areas of decision making for a number of reasons including the areas of:-

- 'totting up' for varying periods of disqualification
- application of exceptional hardship pleas to the Court to avoid disqualification

- applications to the Court when a licence holder is nearing 9 points to voluntarily impose a short term discretionary disqualification
- failures to report convictions to the licensing section
- possession of more than one DVLA licence

3.22 EXPLAINING THE LAW

3.23 Totting up

A licence holder can be disqualified from driving for the accumulation of penalty points if they build up to, or exceed 12 points. On receiving 12 or more penalty points disqualification can be for:-

- 6 months if you get 12 penalty points or more within 3 years
- 12 months if you get a second disqualification within 3 years
- 2 years if you get a third disqualification

The legislation in respect of ‘new drivers’ is different in that if they receive 6 penalty points within two years of passing their test the licence is revoked by statute, it is not discretionary in the Magistrates Court.

There are of course more serious offences which carry long term disqualification periods or even imprisonment and that issue is addressed later in the report.

3.24 Exceptional hardship

Where a defendant accrues 12 or more penalty points in accordance with Section 35 of the Road Traffic Offenders Act 1988, the Court is bound to disqualify them from driving unless it can be proven that to do so would cause them “exceptional hardship”.

“Exceptional hardship” is a difficult term to qualify, because there is no strict definition of what the term means or which situations it will necessarily include. It should be noted, that exceptional hardship does truly mean exceptional and even arguing that you will lose your job as a result may not be a sufficient defence.

Typical arguments used to try and persuade the magistrates that exceptional hardship exists could be, for example that if they were disqualified they would lose their job, or if they are disabled or a disabled person is dependent on them for transport, or it would be difficult to visit vulnerable relatives, or there could be problems taking their children to some destination. It is also possible for the exceptional hardship to apply to someone else such as a partner, business partner, family, dependant relative etc.

Nationally this accounts for a significant number of exceptions to disqualification and does occur in respect of some Leeds licensed drivers. This brings into focus the conflict the Council has in ensuring it conforms to its statutory requirements in

respect of safety versus a Courts decision not to disqualify on the grounds of exceptional hardship.

The legal focus for the Council is solely in respect of safety and the Court considering an 'exceptional hardship' plea does **not** take account of safety concerns in such pleas, in law it can **only** assess the plea of exceptional hardship.

For clarity, to meet its legal obligations the Council must consider proportionate options for public safety which in law cannot take into account the exceptional hardship issue. Proposals are set out later in this report for Members to consider which try to bridge that difficult issue.

There are some newspaper extracts attached to illustrate the issues at a national level at **Appendix 8**.

Locally the issue of driver convictions and penalty point accumulation with existing licensed drivers is set out at **Appendix 9**.

3.25 Failure to report convictions

It is a regular occurrence that drivers do not report a conviction to the licensing office and in some cases do not report second or third convictions. It is not unusual for periods of disqualification not to be reported and then only come to light at the point of personal renewal. In effect some drivers have managed to circumvent the Council's safety policy.

3.26 More than one DVLA licence

There are a number of licensed drivers who have repeatedly lost their DVLA licence, and on occasions those licences have been produced at the point of renewal. The Police also encounter similar incidents of licences being produced which do not carry the correct number of motoring convictions penalty points but they are able to relatively quickly identify the discrepancy in licence issue numbers.

The main issues in developing a new policy revolve around these issues and updating the explanations of offences covered under the minor motoring convictions following changes in the law.

The fact that someone has been disqualified or achieved 12 or more penalty points on the DVLA licence can demonstrate a continued pattern of poor driving standards or significant high risk driver offending.

Members might consider that one way of overcoming the conflicts which often arise in 'short term disqualifications' and 'exceptional hardship' cases might be to provide an alternative to sanction and to achieve safety requirements and improved driving standards by utilising driver training life skills development opportunities.

3.27 Length of time full DVLA licence held before granting

3.28 Change proposal

Members, having viewed the information at **Appendix 7** may wish to consider whether at the point of application, the PHD applicant must have held a full UK DVLA licence (or its recognised EU equivalent) for a period of not less than 3 years. (This is a statutory requirement, in effect, on HCD's who cannot hold a HCD licence until they are 21 years of age but one which still does not reflect their driving experience and 12 months in respect of private hire driver's).

3.29 Disqualified from driving

The Council currently uses the Driver Standards Agency (DSA) to provide a level of security to itself in assessing safety after disqualification but there is no long term driver development engagement in that test.

There are numerous opportunities for drivers to take improved driver skills training and preference would ideally be left as a driver choice. The key issue is the accredited testing of drivers which the Council can rely on as being conducted in a consistent and auditable way. There are several organisations carrying out this type of assessment and who are approved by the DSA; for example the Institute of Advanced Motorists and ROSPA (Royal Society for the Prevention of Accidents).

An explanation of an advance driver test is described below:-

"The advanced driving test is a special exam for motorists who can drive to a skill level substantially above average, and candidates who passed are called advanced drivers. It is available from several societies, including the Institute of Advanced Motorists, the Royal Society for the Prevention of Accidents and the Driving Instructors' Association DIAMOND Advanced Test.

Most candidates need advanced lessons before the advanced test. They may be provided by the examining body (as with IAM) or the candidate can pay their own instructor privately, as is UK standard practice for the initial driving test.

The test covers 30 to 40 miles (48 to 64 km) on different types of road, from town to country, city and country. Students will have trained in all areas and have to demonstrate the techniques and methods they've learned.

Advanced driving is described as "The ability to control the position and speed of the vehicle safely, systematically and smoothly using road and traffic conditions to make reasonable progress unobtrusively, with skill and responsibility. This requires a positive but courteous attitude and a high standard of driving competence based on concentration, effective all round observation, anticipation and planning co-ordinated with good handling skills. The vehicle should always be at the right place on the road at the right time, travelling at the right speed with the correct gear engaged and can always be stopped safely in the distance that can be seen to be clear."

Some insurers will offer reduced vehicle insurance premiums to holders of an advanced certificate."

It is to be emphasised, that such driver training or assessments could not be undertaken by Officers or the recommending of how training and assessing is undertaken nor would individual organisations. However, the standard to be attained would be in accordance with recognised outcomes of the accredited organisation and it is for individual drivers to choose their own preferred training provider and similarly with the test process.

Change proposal options

- When disqualified from driving under the 'totting up' procedures, a compulsory or discretionary period of disqualification, the current policy remains in place and when disqualified the local Authority licence will remain suspended until the driver has achieved a pass in 'life skills driving development' with a nationally recognised driving assessment programme.
- 12 or more points but not disqualified because of 'exceptional hardship' – requirement to undertake 'driving life skills' development and be successful in achieving that within 3 months of the Court decision or the Private Hire driver licence be suspended and not renewed until successful in a 'driving life skills' programme.

3.30 Failure to report a disqualification

Change proposal

Council PHD or HCD licence is suspended and remains so for 6 months and not re-issued until completion of driver life skills training, which is a process that does not reward circumventing the Council's licensing safety policy. Where false declarations are involved that might also be considered under the 'fit and proper' test.

3.31 Second period of disqualification

Change proposal

Private Hire driver licence is revoked and not considered for renewal for a minimum period of 12 months from the end of the disqualification period and a requirement to undertake driver life skills training.

3.32 Third period of disqualification

Change proposal

Private Hire driver licence is revoked and not considered for renewal for a minimum period of three years from the end of the disqualification period etc.

3.33 ROAD TRAFFIC OFFENCES SCHEDULE

The proposed schedule of offences covered under motoring convictions is at **Appendix 10**.

The proposed new profile of 'major motoring convictions' has been updated to include new legislation. The reference to the Rehabilitation of Offenders Act 1974 remains as useful guidance for time periods. The body of the original policy statement at **Appendix 7** would remain the same.

3.34 Change proposal

Where there is a second conviction of using a motor vehicle with defective brakes (CV10), defective tyres (CU30), defective steering (CU40), using a mobile phone whilst driving (CU80), no insurance (IN10) active on the DVLA licence (or a combination of these categories), the licence should be refused, suspended or revoked and not restored until the number of active occasions for those types of offence has reduced to one or less.

3.35 Change proposal

Where there is a conviction for Driving after making a false declaration about fitness (LC30), driving a vehicle having failed to notify a disability (LC40), Driving after a licence has been revoked or refused on medical grounds (LC50), driving with uncorrected defective eyesight (MS70), driving while disqualified by order of court (BA10) which occurred whilst a licensed driver it may be regarded as high risk to public safety and immediate suspension should be considered until all safety issues have been resolved and in any other case consideration should be given to revocation.

3.36 Change proposal

Where there is a second conviction for the types of offences immediately above or any failure to comply with any reasonable request from an Authorised Officer of the Council consideration should be given to the immediate suspension of the licence, its revocation, or a refusal to renew.

3.37 Legal implications

3.38 Members are aware that the basis of the existing policy had previously been approved and withstood legal challenge. The proposals follow the same principles in respect of criminal convictions and as such are not considered a medium to high risk for legal challenge. The process of appeal against the policy would be by way of Judicial Review but drivers can appeal decisions made on the policy on each occasion in the courts.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Full consultation has taken place on the proposed policy and all of the trade and public have had the opportunity to contribute. The consultation responses are at Appendix 11.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 A full equality impact assessment has been completed and is available as a background document.

4.3 Council policies and City Priorities

- 4.3.2 The Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan 2013 -17

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us.

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs,
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

- 4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

4.4.1 There are no anticipated additional on-costs other than those involved in obtaining legal advice.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The statutory obligation of the Council is clear and set out at Section 51(1)(a) and (b) of the Local Government (Miscellaneous Provisions) Act 1976

Provided that a district council shall not grant a licence—

(a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence; or

(b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver's licence so authorised

4.5.2 The issues of suspension, revocation and refusal to renew follow on from that same requirement.

4.5.3 The existing policy has been seen as good practice and repeated in other Licensing areas. It has also stood repeat legal scrutiny in the Courts. The new proposals in this report need to be considered in the light of proportionality. Members might consider that the proposals for change are not a significant departure from the existing policy in so far as the changes are appropriate and necessary for maintaining public safety and not excessive in its overall effects.

4.5.4 The opportunities for challenge exist by way of judicial review of the policy or on the occasion of individual appeals against decisions made under the policy..

4.6 Risk Management

4.6.1 It is felt that change proposals do not present significant challenge risk to the Council.

5 Conclusions

5.1 Members may feel that the existing convictions criteria has served the Council and the public well and the change proposals are necessary updates which reflect changes in law, society, unacceptable patterns of driver behaviour and public safety risks and the changes are proportionate. It may also be felt that the public response raises concerns and expectations of the Council to protect the public. The report tries to balance all of these concerns.

6 Recommendations

- 6.1 That Members consider and approve in principle the amendments to the policy and new policy proposals in respect of the 'convictions criteria' and direct Officers to prepare a report for the consideration of the Executive
- 6.2 That Members consider and approve in principle the amendments to policy and new policy proposals in respect of 'motoring convictions generally and disqualification from driving' and direct Officers to prepare a report for the consideration of the Executive.

7 Background documents¹

Forgery & Counterfeiting Act 1981

Public Order Act 1986

Consumer Credit Act 1974

Sexual Offences Act 2003

Policing and Crime Act 2009

Road Traffic Offenders Act 1988

Criminal Justice & Immigration Act 2008

Indecent Displays (Control) Act 1981

Obscene Publication Act 1959

Protection of Children Act 1978

Crime and Disorder Act 1998

Child Abduction Act 1984

Offences Against the Person Act 1861

Police Act 1996

Theft Act 1968

Theft Act 1978

Public Order Act 1986

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Protection from Harassment Act 1997

Racial & Religious Hate Act 2006

Crime & Disorder Act 1998

Criminal Justice Act 1988

Local Government (Miscellaneous Provisions) Act 1976

Protection of Freedoms Act 2012

Licensing Committee report and minutes – 14 January 2014

Equality, Diversity, Cohesion and Integration Screening Document

Current convictions criteria - Points Criteria Tables

Table 1 - Dishonesty

Date Since Conviction Received	12mth ago	24mth ago	36mth ago	48mth ago	60mth ago	72mth ago	84mth ago	96mth ago	108mth ago	120mth ago
	(1 Year)	(2 Years)	(3 Years)	(4 Years)	(5 Years)	(6 Years)	(7 Years)	(8 Years)	(9 Years)	(10 Years)
Type of Offence	Points	Points	Points	Points	Points	Points	Points	Points	Points	Points
Dishonesty	Points are doubled if term of imprisonment served									
Theft	Refused	Refused	Refused	5	4	3	2	1	0	0
Theft – Shoplifting	Refused	Refused	Refused	5	4	3	2	1	0	0
Theft – Employee	Refused	Refused	Refused	5	5	4	3	2	1	0
Theft – From Vehicle	Refused	Refused	Refused	5	4	3	2	1	0	0
Burglary & Theft – Dwelling	Refused	Refused	Refused	Refused	8	6	4	2	0	0
Burglary & Theft – Non Dwelling	Refused	Refused	Refused	5	4	3	2	1	0	0
Burglary & Theft – Aggravated	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	0
Fraudulent Use	Refused	Refused	Refused	5	4	3	2	1	0	0
Handling	Refused	Refused	Refused	5	4	3	2	1	0	0
Receiving	Refused	Refused	Refused	5	4	3	2	1	0	0
Forgery	Refused	Refused	Refused	5	4	3	2	1	0	0
Conspiracy to Defraud	Refused	Refused	Refused	5	4	3	2	1	0	0
Obtain Money by Deception	Refused	Refused	Refused	5	4	3	2	1	0	0
Obtain Money by Forged Instrument	Refused	Refused	Refused	5	4	3	2	1	0	0
Deception	Refused	Refused	Refused	5	4	3	2	1	0	0
False Accounting	Refused	Refused	Refused	5	4	3	2	1	0	0
False Statement to Obtain Benefit	Refused	Refused	Refused	5	4	3	2	1	0	0
Going Equipped	Refused	Refused	Refused	5	4	3	2	1	0	0
Taking/Driving or Attempt to Steal Vehicle	Refused	Refused	Refused	5	4	3	2	1	0	0
Allow to be Carried in a Stolen Vehicle	Refused	Refused	Refused	5	4	3	2	1	0	0
Perverting Course of Justice	Refused	Refused	Refused	Refused	8	6	4	2	0	0

Table 2 - Drugs

Date Since Conviction Received	12mth ago	24mth ago	36mth ago	48mth ago	60mth ago	72mth ago	84mth ago	96mth ago	108mth ago	120mth ago
	(1 Year)	(2 Years)	(3 Years)	(4 Years)	(5 Years)	(6 Years)	(7 Years)	(8 Years)	(9 Years)	(10 Years)
Type of Offence	Points	Points	Points	Points	Points	Points	Points	Points	Points	Points
Drugs	Points are doubled if term of imprisonment served									
Possessing Controlled Drug	Refused	Refused	Refused	Refused	8	6	4	2	0	0
Possessing Controlled Drug with Intent to Supply	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Producing Controlled Drug	Refused	Refused	Refused	Refused	8	6	4	2	0	0
Import Drugs	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2

Table 3 – Violence

Date Since Conviction Received	12mth ago (1 Year)	24mth ago (2 Years)	36mth ago (3 Years)	48mth ago (4 Years)	60mth ago (5 Years)	72mth ago (6 Years)	84mth ago (7 Years)	96mth ago (8 Years)	108mth ago (9 Years)	120mth ago (10 Years)
Type of Offence	Points	Points	Points	Points	Points	Points	Points	Points	Points	Points
VIOLENCE										
Points are Doubled if Term of Imprisonment Served										
Common Assault	Refused	Refused	Refused	5	4	3	2	1	0	0
Assault - Section 47	Refused	Refused	Refused	5	4	3	2	1	0	0
Grievous Bodily Harm - Section 20	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Grievous Bodily Harm - Section 18	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Assault Police	Refused	Refused	Refused	6	5	4	3	2	1	0
Affray	Refused	Refused	Refused	5	4	3	2	1	0	0
Riot	Refused	Refused	Refused	Refused	8	6	4	2	0	0
Murder	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Manslaughter	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Manslaughter or Culpable Homicide while Driving	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Using Threatening, Abusive Words or Behaviour	5	4	3	2	1	0	0	0	0	0
Breach of the Peace	3	2	1	0	0	0	0	0	0	0
Drunk and Disorderly	3	2	1	0	0	0	0	0	0	0
Common Assault - Aggravated	Refused	Refused	Refused	6	5	4	3	2	1	0
Obstruction	Refused	Refused	Refused	3	2	1	0	0	0	0
Robbery	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Possess Offensive Weapon	Refused	Refused	Refused	5	4	3	2	1	0	0
Possess Firearm	Refused	Refused	Refused	5	4	3	2	1	0	0
Possess Firearm with intent	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Criminal Damage	Refused	Refused	Refused	5	4	3	2	1	0	0
Violent Disorder	Refused	Refused	Refused	8	6	4	2	1	0	0
Resist Arrest	Refused	Refused	Refused	8	6	4	2	1	0	0
Arson	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused

Table 4 - Indecency

Date Since Conviction Received	12mth ago (1 Year)	24mth ago (2 Years)	36mth ago (3 Years)	48mth ago (4 Years)	60mth ago (5 Years)	72mth ago (6 Years)	84mth ago (7 Years)	96mth ago (8 Years)	108mth ago (9 Years)	120mth ago (10 Years)
Type of Offence	Points	Points	Points	Points	Points	Points	Points	Points	Points	Points
INDECENCY										
Points are Doubled if Term of Imprisonment Served										
Indecent Exposure	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4
Indecent Exposure to the Annoyance of Residents	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4
Indecent Exposure with intent to insult a Female	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Unlawful Sexual Intercourse	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Importuning	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4
Gross Indecency with a Female	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Gross Indecency with a Male	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Indecent Assault on a Female	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Indecent Assault on a Child Under 16 yrs	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Living Off Immoral Earnings	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4
Prostitution	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4
Possessing or Distributing Obscene Material	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Buggery	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Rape	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Indecent or Nuisance Telephone Calls	Refused	Refused	Refused	Refused	Refused	5	4	3	2	1

Proposed Indecency table

	1 year ago	2 years ago	3 years ago	4 years ago	5 years ago	6 years ago	7 years ago	8 years ago	9 years ago	10 years ago
Category 1 offences										
Rape	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Sexual Assault (Section 2 & 3)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Causing sexual activity without consent	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Rape- sexual offences – children under 13 (Section 5 – 8 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Child sex offences (Section 9 – 15 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Abuse of Trust (Section 16 -19 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Familial Child sex offences (Section 25 – 27 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Sexual activity – persons with mental disorder (Section 30 -37 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Careworkers – sexual activity with persons with mental disorder (Section 38 -41 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Indecent photographs with children (Section 45)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Indecent photographs of children – take, permit to be taken or make, distribute or show	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Abuse of children through prostitution and pornography (Section 47 – 50 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Trafficking for sexual exploitation (Section 57 – 59 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Preparatory offences for sexual offending	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Sex with adult relative (Section 64 – 56 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Voyeurism (Section 67)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Sexual penetration – animal or corpse (Section 69 – 70 inclusive)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Prostitution – causing, inciting, controlling, exploitative conduct (Section 52 – 52A)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused

Appendix 2

Category 2 offences										
Indecent exposure (Section 66)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Possession of extreme pornographic images	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Displaying Pornographic images	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Category 4										
Sexual activity in a public lavatory (Section 71)	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Soliciting for prostitution (Section 51A)	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Paying for sexual services – subjected to force (Section 53A)	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Sending indecent or obscene articles by post	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0

Proposed Violence table

	1 year ago	2 years ago	3 years ago	4 years ago	5 years ago	6 years ago	7 years ago	8 years ago	9 years ago	10 years ago
Category 1 offences	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Murder	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Manslaughter	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Manslaughter or Culpable Homicide while driving	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Child abduction (by stranger) or those with aggravating features	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Arson	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Grievous Bodily Harm/Wounding Section 18	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Arson	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Possess a firearm with intent	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused
Category 2 offences										
Child abduction (none stranger)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Aggravated burglary	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Robbery	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Grievous Bodily Harm Section 20	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Possess a firearm	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Category 3										
Protection form Harassment – Section 4	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Category 4										
Riot	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Child abduction	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Assault – Actual Bodily Harm Section 47	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Stalking Section 2A	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Stalking Section 4 & 4A	Refused	Refused	Refused	Refused	Refused	8	6	4	2	0
Category 5										
Violent disorder	Refused	Refused	Refused	8	6	4	2	0	0	0

Appendix 3

Affray	Refused	Refused	Refused	8	6	4	2	0	0	0
Fear of provocation of violence -	Refused	Refused	Refused	8	6	4	2	0	0	0
Intentional harassment, alarm or distress	Refused	Refused	Refused	8	6	4	2	0	0	0
Protection from Harassment Section 1	Refused	Refused	Refused	8	6	4	2	0	0	0
Common Assault	Refused	Refused	Refused	6	4	2	0	0	0	0
Assault Police	Refused	Refused	Refused	8	6	4	2	0	0	0
Obstruct Police	Refused	Refused	Refused	6	4	2	0	0	0	0
Possess offensive weapon	Refused	Refused	Refused	8	6	4	2	0	0	0
Criminal damage	Refused	Refused	Refused	8	6	4	2	0	0	0
Violent Disorder	Refused	Refused	Refused	8	6	4	2	0	0	0
Resist arrest	Refused	Refused	Refused	8	6	4	2	0	0	0
Harassment, alarm or distress Section 5 Public Order Act 1986	6	4	2	0	0	0	0	0	0	0
Breach of the Peace	4	3	2	1	0	0	0	0	0	0
Drunk and disorderly	6	4	2	0	0	0	0	0	0	0

Proposed Dishonesty table

	1 year ago	2 years ago	3 years ago	4 years ago	5 years ago	6 years ago	7 years ago	8 years ago	9 years ago	10 years ago
Category 2 offences										
Robbery	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Aggravated Burglary	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Aggravated vehicle taking (causing death)	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8	6
Blackmail	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	6	4
Footnote: And any other offences of dishonesty capable of attracting a term of imprisonment exceeding 10 years										
Category 3 offences										
Category 4 Offences										
Burglary & Theft - Dwelling	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Perverting the Course of Justice	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Money laundering Section 45	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Theft - Employee	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Theft - Employee	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Burglary & Theft – Non Dwelling	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Fraudulent Use of Road Traffic documents	Refused	Refused	Refused	Refused	Refused	Refused	8	6	4	2
Category 5 Offences										
Theft	Refused	Refused	Refused	6	5	3	2	1	0	0
Theft – From vehicle	Refused	Refused	Refused	6	4	2	1	0	0	0
Obtain by deception	Refused	Refused	Refused	6	5	3	2	1	0	0
Evasion of Liability by deception	Refused	Refused	Refused	6	5	3	2	1	0	0
Obtain Services by deception	Refused	Refused	Refused	6	5	3	2	1	0	0
Making off without payment	Refused	Refused	Refused	6	5	3	2	1	0	0
False Statement to obtain Benefit	Refused	Refused	Refused	8	6	4	2	0	0	0
Going Equipped	Refused	Refused	Refused	6	4	3	2	1	0	0
Taking/Driving or Attempt to steal Vehicle	Refused	Refused	Refused	5	3	2	1	0	0	0
Allow to be Carried in a Stolen Vehicle	Refused	Refused	Refused	5	3	2	1	0	0	0
Use unrebated fuel	Refused	8	6	4	2	0	0	0	0	0

Proposed Drugs table

	1 year ago	2 years ago	3 years ago	4 years ago	5 years ago	6 years ago	7 years ago	8 years ago	9 years ago
Category 2 offences									
Possessing a Controlled Drug with Intent to Supply	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Import Drugs	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Producing Controlled Drug	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Category 4									
Possessing Controlled Drug	Refused	Refused	Refused	Refused	Refused	8	6	4	2

New Table – Racially motivated Offences

	1 year ago	2 years ago	3 years ago	4 years ago	5 years ago	6 years ago	7 years ago	8 years ago	9 years ago
Category 2 offences									
Assault occasioning Actual bodily harm	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Common assault	Refused	Refused	Refused	Refused	Refused	Refused	Refused	Refused	8
Category 3									
Acts intended or likely to stir up racial hatred (Section 18 – 22 inclusive) Public Order Act 1986	Refused	Refused	Refused	Refused	Refused	Refused	6	4	2
Possession of Racially Inflammatory material (Section 23) Public Order Act 1986	Refused	Refused	Refused	Refused	Refused	Refused	6	4	2
Stirring up religious/racial hatred 2006 Act (all offences)	Refused	Refused	Refused	Refused	Refused	Refused	6	4	2

Current Policy guidelines on motoring convictions and disqualification.

Motoring convictions adopt different criteria dependant on the conviction(s) disclosed on the licence and are broken into two groups:

- (a) Minor road traffic offences
- (b) Major road traffic offences

Minor Road Traffic Offences:

Convictions for minor traffic offences should not prevent you from proceeding with an application or holding a licence. However, if the number of current points on your DVLA licence exceeds 12 points then your application will be refused or the current licence suspended or revoked.

A further application will not be approved until the DVLA licence demonstrates that the number of current points on the licence is below 13 points.

If a period of disqualification has been received on a licence, a period of 6 months must have elapsed from the restoration of the DVLA licence and be free from any other motoring conviction before an application is approved or a licence restored. Should the DVLA licence demonstrate a further conviction since the disqualification period, then a 6 months period must elapse from the date of the last conviction on the DVLA licence before an application is approved or a licence restored.

Major Road Traffic Offences:

An isolated conviction for major traffic offences should not prevent a person from proceeding with an application or holding a licence. However, if more than one conviction for an offence under this heading is shown to be current on the DVLA licence, then an application will be refused or the current licence suspended or revoked.

Where the DVLA licence demonstrates more than one conviction of this type a period of 6 months must have elapsed from the date of the last conviction on the DVLA licence before an application is approved or a licence restored.

If a period of disqualification has been received on a licence, a period of 6 months must have elapsed from the restoration of the DVLA licence and be free from any other motoring conviction before an application will be approved or a licence restored.

Should the DVLA licence demonstrate a further conviction since the disqualification period then a 6 months period must elapse from the date of the last conviction on the DVLA licence before an application is approved or a licence restored.

An application received which details one of the following offences on the DVLA licence; DD30, DD60, DD70, will automatically be refused or a current licence suspended or revoked. No further application will be approved until such time as that conviction is removed under the Rehabilitation of Offenders period. Other offences covered in this section will be treated under the dishonesty/violence category as detailed in the Criminal Convictions section.

Driving a Motor Vehicle under the Influence of Drink or Drugs:

A serious view is taken of convictions of driving or being in charge of a vehicle while under the influence of drink or drugs. An application with one conviction on the DVLA licence under this category will be accepted providing a 12 months period has elapsed since the restoration of his DVLA licence. More than one conviction of this type and the application will be refused until such time as one of the convictions has been removed under the Rehabilitation of Offenders period.

Road.cc

NEWS

More than 8000 drivers have 12 or more points on their licence - and are still allowed on the roads

Some have as many as 25 points - and the worst offenders are men

by Sarah Barth April 27, 2013



driving using mobile phone

More than 8000 drivers in the UK have 12 or more points on their licence - despite an official upper limit of 12 before a driver faces disqualification.

A total of 14 UK drivers have more than 25 points - all of them men.

In fact the gender imbalance is very pronounced: of the top 99 licence point holders, just fourteen are women; 2256 men are still driving with more than 12 points on their licence, and 351 women are still driving with more than 12 points their licence.

The DVLA states that the official top limit for licence points is 12 (or six for those who have held a licence for three years or less) - but a Freedom of Information request carried out by the Institute of Advanced Motorists revealed that there were a surprisingly large number of drivers still on the roads with far more penalty points.

A male driver from Warrington has the highest number of points, 36.

IAM chief executive Simon Best said: "Law abiding drivers will be shocked that so many drivers are on the road who have more than 12 points. The 'totting up' principle is supposed to give a simple four strikes and you are out message. Anything more than this should be a disqualification, unless there are the most exceptional circumstances.

"There must be tighter practice in courts and at the DVLA to take these motorists off the road or ensure they take a driver retraining course to help them break their points habit."



Totting up driver gets ban: exceptional hardship defence failed

Posted on [August 9, 2013](#)

A father of four who 'totted' up points on his licence has been banned from driving despite claiming exceptional hardship.

Waheed Rafiq, 42, of Worcester, tried to use the defence of exceptional hardship against a driving ban because he needed to take his son to the hospital.

Rafiq admitted to driving without insurance, driving otherwise than in accordance with a licence and using a car without a MOT certificate in December last year, when he appeared in court.

His licence was revoked by the DVLA in October last year and the police had written to him in January this year offering to settle the matter by way of a fixed penalty.

Rafiq, who is unemployed, requested some kind of payment plan which was rejected by the police who warned that if he did not pay in full the case would come to court.

He already had 6 points on his licence and had now 'totted' up points on his licence making him eligible for a driving ban.

Rafiq claimed a ban would cause him exceptional hardship as his son needed to attend upcoming hospital appointments and the car was needed as taxis and public transport was too expensive.

However, the Prosecution pointed out that the hospital was less than a mile away from the family home and many people in the area used public transport.

The Prosecution also said that the ban would cause inconvenience, but not exceptional hardship.

The Court agreed and Rafiq was banned from driving for 6 months.

Emma Smith, expert criminal defence lawyer at Swain & Co says, "Recent cases of use of exceptional hardship defence show that where a person's livelihood is at stake or that the hardship will affect others, there is a higher chance of the defence being successful."

Mail online News

Still driving with 42 points on her licence: Woman is among nine motorists who have 30 or more and are still on the road

- **Despite being three times the ban threshold, the woman is still driving**
- **Another eight have 30 or more points**
- **7,621 people are still driving with 12 points or more on their licence**

By [Ray Massey](#)

PUBLISHED: 01:57, 5 September 2013 | **UPDATED:** 02:41, 5 September 2013

Offender: The record-breaking but unnamed woman driver from Isleworth in west London accumulated 42 points last year

A woman driver has clocked up a record 42 penalty points but is still driving - despite being more than three times over the threshold that would normally lead to a ban.

Eight more motorists are still driving with 30 or more points, figures reveal today.

Another 7,000 drivers have 12 points or more.

Normally, under the 'totting up' system, drivers are banned if they accumulate 12 points on their licence over a three-year period.

The new official Government figures have outraged motoring groups and road safety campaigners who say it makes a mockery of penalty points system and bringing it 'into disrepute'.

They say the ministers at the Departments for Transport and Justice must act to clamp down on the scandal which is leaving potentially dangerous drivers unpunished on the nation's roads.

The statistics were highlighted by the Institute of Advanced Motorists (IAM) (must credit) which collated them from information supplied under a Freedom of Information request to the Government's Driver and Vehicle Licensing

The record-breaking but unnamed woman driver from Isleworth in west London accumulated 42 points last year.

All the points were for failing to disclose the identity of the driver on six occasions between May 26 and December 21 last year - accruing six points each time.

Today's new figures show that the second-highest tally for a person still driving was 36 points clocked up by man from Warrington, Cheshire, who was caught driving without insurance six times in less than two weeks between February and March last year.

Next is a woman from Hull who has accumulated 31 points on six counts - three of speeding and three more for failing to say who was driving .

The IAM said 7,621 people are still driving with 12 points or more on their licence.

It blamed failures to communicate between the courts and the DVLA - particularly when drivers clocked up repeat points over a short time.



Eight more motorists are still driving with 30 or more points, figures reveal today. Another 7,000 drivers have 12 points or more

Some drivers given points for failing to disclose the driver had argued that a series of people had ‘test-driven the car ahead of a sale and they didn’t know who was at the wheel at the time of the offence’, said the IAM.

IAM chief executive Simon Best said: ‘The DVLA and the courts service are upgrading their computer systems to ensure that offence information is shared more efficiently, but this is not due to be in place until October.

But when drivers with 10 speeding offences are getting away with holding a licence, these improvements cannot come quickly enough.’

A spokesman for HM Courts & Tribunals Service said: ‘The vast majority of drivers who get 12 or more penalty points are fined and disqualified from driving.

‘Magistrates can use their discretion to not enforce a driving ban if doing so would cause exceptional hardship, such as losing a job or the ability to care for a dependant. A fine will still be enforced.

Only a very small number of cases are affected by the data-sharing issue and we are working closely with DVLA to improve this.’

A DVLA spokesman said: ‘The DVLA’s role is to record the information provided by the courts. The courts are able to use their discretion to decide whether or not to disqualify a driver.’

Seconds ago these men were cheering on a dance routine by beautiful scantily-clad women in Amsterdam’s Red Light district... so why do they look so shocked and upset when it ends?

The Telegraph

Thousands of motorists escaping totting up driving ban

A driver with 54 penalty points has been allowed to keep his licence by the courts, it has emerged.



The 27-year-old from Teeside is one of more than 11,000 motorists whose licences have not been revoked despite totting up 12 points last year.

Of these 10,000 have been let off by the courts, while another 1,000 are still driving because details of the disqualification failed to reach the Driver and Vehicle Licensing Agency.

Appendix 8

The number of motorists still on the road despite accumulating more points than needed for a driving ban were disclosed, as a result of a Freedom of Information inquiry by a Sunday newspaper.

Around one driver in four facing disqualification has been shown clemency under the "exceptional hardship" provisions which allow the courts a measure of discretion when considering whether to impose a driving ban.

Nick Freeman, the solicitor known as "Mr Loophole", has made a number of successful applications under these provisions.

Last month he persuaded Staines magistrates to suspend a motoring ban faced by Joe Cole, the Liverpool footballer, after telling the court that the England international's wife had been unable to get behind the wheel after being severely traumatised by a carjacking and therefore relied on her husband as a driver.

Courts have shown clemency for a number of reasons, including accepting a plea from a businessman who persuaded magistrates that his company would lose key contracts.

Andrew Howard, the AA's head of road safety, voiced outrage at the number of motorists being let off.

"You are not talking about someone who has made one mistake, but four," he said.

"If a quarter of motorists are getting let off, we seem to have forgotten the purpose of the law is to inconvenience those who repeatedly break it."

A spokesman for the Royal Society for the Prevention of Accidents also voiced concern.

"The points system is there to flag up problem areas of driving and give motorists the opportunity to improve. Ultimately the threat of disqualification does need to be there so people take the enforcement aspect of road safety seriously."

While the Government accepts that courts should be given the power to handle cases on their merits, Mike Penning, the road safety minister, has ordered an urgent inquiry into the cases of the 1,000 drivers who are still on the road despite being disqualified by the courts.

"It is our job to enforce the courts' will," Mr Penning told the Daily Telegraph. "It 10 per cent of cases a court's decision to remove a licence has not reached the DVLA."

"I am adamant that this will not happen in future."

A spokesman for the DVLA said: "The courts are able to use their discretion to decide whether or not to disqualify a driver."

"The DVLA's role is to record the information provided by the courts and work closely with the Courts Service to make sure that there are rigorous processes in place to ensure that only those who are entitled to drive are allowed to hold a licence."

Driver convictions and penalty point accumulation

Number of drivers with 20 points or less (broken down by number of points)

Number of Points	Number of Drivers
3	1122
4	15
5	10
6	366
7	9
8	20
9	96
10	7
11	12
12	16
13	1
14	2
18	1
20	1
Total:	1678

Details of drivers with 10 points

Date driving licence issued	Failing to stop after an accident	Driving without due care & attention	Causing or likely to cause danger – overloaded vehicle	Using a mobile phone while driving	No insurance	Failure to identify driver	Exceeding the statutory speed limit	Exceed speed limit on motorway	Failing to comply with traffic lights signal
22/11/12		5 pts 01/11/12						5 pts 26/09/11	
19/04/12					6 pts		4 pts		

Appendix 9

					14/06/10		23/10/11		
30/07/09			3 pts 17/02/13				3 pts 27/10/12 4 pts 10/06/10		
15/04/97						6 pts 20/01/10	4 pts 15/07/10		
28/09/02		4 pts 05/06/11					6 pts 09/11/09		
23/11/07		7 pts 05/02/10							3 pts 12/12/09
14/11/12	7 pts 19/11/11			3 pts 12/05/12					

Details of drivers with 11 points

Date driving licence issued	Failing to stop after an accident	Driving without due care & attention	Using a vehicle with defective tyres	No insurance	Contravention of pedestrian crossing	Exceeding the statutory speed limit	Exceed speed limit on motorway	Failing to comply with traffic lights signal
03/10/12			3 pts 27/02/11	8 pts 22/07/11				
19/01/12							5 pts 01/02/13 3 pts 22/07/12	3 pts 22/06/11
04/04/12				8 pts 03/11/11		3 pts 04/06/10		
11/11/10				8 pts 03/12/11	3 pts 23/05/12			
29/05/13				8 pts 04/01/11				3 pts 07/01/12
25/05/11			3 pts 30/10/10	8 pts 20/02/10				
11/02/12	5 pts 26/01/11					3 pts 04/06/10 3 pts 19/06/10		
02/06/12	7 pts 26/09/12					4 pts 16/01/10		
05/02/10						3 pts 05/02/11 3 pts 11/01/12 5 pts 18/11/12		

Appendix 9

02/08/12				8 pts 06/06/11	3 pts 10/12/11			
10/11/12	8 pts 02/10/12							3 pts 20/07/13
01/05/10		5 pts 17/03/10				6 pts 24/04/11		

Details of drivers with 12 points

Date driving licence issued	Using a vehicle with defective tyres	Using a mobile phone while driving	Driving/attempting to drive with alcohol levels over the limit	No insurance	Failure to identify driver	Contravention of pedestrian crossing	Exceeding the statutory speed limit	Exceed speed limit on motorway	Failing to comply with traffic lights signal
01/01/92	3 pts 04/09/10						3 pts 27/11/11 3 pts 27/07/11 3 pts 02/04/10		
12/11/11			12 pts 25/06/06						
08/08/08				6 pts 19/02/11		3 pts 25/01/13	3 pts 26/06/11		
20/10/12	3 pts 22/08/13						3 pts 31/01/10 3 pts 28/02/12		3 pts 03/07/11
20/06/12	3 pts 24/11/10						6 pts 12/09/11 3 pts 08/11/09		
12/12/12					6 pts 14/06/11 6 pts 13/04/12				
22/05/12							3 pts	3 pts	

Appendix 9

							12/08/12	25/01/11 3 pts 22/01/11 3 pts 21/01/11	
16/06/11							6 pts 26/08/10		3 pts 13/06/10 3 pts 02/05/12
03/10/10							3 pts 05/07/10 3 pts 17/11/12 3 pts 22/11/12 3 pts 19/12/12		
25/09/73							3 pts 03/03/10 3 pts 24/06/10 3 pts 27/12/11 3 pts 12/02/12		
25/08/01		3 pts 23/07/12 3 pts 18/08/12					3 pts 22/05/11		3 pts 19/01/11
25/01/12		3 pts 23/07/12 3 pts 18/08/12					3 pts 22/05/11		3 pts 19/01/11
23/05/13		3 pts 14/02/11					3 pts 10/07/11		

Appendix 9

		3 pts 06/07/10					3 pts 19/02/11		
18/03/03	3 pts 25/11/12	3 pts 04/09/10					6 pts 24/10/10		
19/07/13	3 pts 25/11/12	3 pts 04/09/10					6 pts 24/10/10		
19/09/12	3 pts 07/09/11	3 pts 07/01/10					3 pts 21/09/10 3 pts 17/03/10		

Details of drivers with 13 points

Date driving licence issued	No insurance	Exceeding the statutory speed limit
04/05/13	7 pts 06/07/12	3 pts 07/02/11 3 pts 14/11/09

Details of drivers with 14 points

Date driving licence issued	Using a mobile phone while driving	No insurance	Exceeding the statutory speed limit	Failing to comply with traffic lights signal
05/04/13		8 pts 02/02/10	3 pts 06/11/11	3 pts 03/02/12
22/01/13	3 pts 27/08/10	8 pts 05/05/10	3 pts 10/07/11	

Details of drivers with 18 points

Date driving licence issued	Using a vehicle with defective tyres	No insurance	Exceeding the statutory speed limit
15/01/08	3 pts 27/02/10 3 pts 27/02/10 3 pts 20/08/10	6 pts 05/03/13	3 pts 05/06/13

Details of drivers with 20 points

Date driving licence issued	No insurance	Disqualification under 'totting up'
21/01/11	8 pts 20/07/12	12 pts 12/11/10

Proposed table - Offences covered under minor motoring convictions

AC10	Failing to stop after an accident
AC20	Failing to give particulars or report an accident within 24 hours.
AC30	Undefined accident offence
CU10	Using vehicle with defective brakes.
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition.
CU30	Using a vehicle with defective tyres.
CU40	Using a vehicle with defective steering.
CU50	Causing or likely to cause danger by reason of load or passengers.
CU80	Breach of requirements as to control of a vehicle, mobile telephone etc
LC10	Driving without a licence.
MS10	Leaving a vehicle in a dangerous position.
MS20	Unlawful pillion riding.
MS30	Playstreet Offences.
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test.
MS60	Offences not covered by other codes.
MS70	Driving with uncorrected defective eyesight.
MS80	Refusing to submit to an eyesight test.
MW10	Contravention of Special Road Regulations (excluding speed limits).
PC10	Undefined Contravention of Pedestrian Crossing Regulations.
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle.
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle.
PL10	Driving without 'L' plates.
PL20	Not accompanied by a qualified person.
PL30	Carrying a person not qualified.
PL40	Drawing an unauthorised trailer.
PL50	Undefined failure to comply with conditions of a Provisional Licence.
SP10	Exceeding goods vehicle speed limit.
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles).
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit.
SP50	Exceeding speed limit on a motorway.
SP60	Undefined speed limit offence.
TS10	Failing to comply with traffic light signals.
TS20	Failing to comply with double white lines.
TS30	Failing to comply with a 'Stop' sign.
TS40	Failing to comply with direction of a constable or traffic warden.
TS50	Failing to comply with traffic sign (excluding 'Stop' sign, traffic lights or double white lines).
TS60	Failing to comply with school crossing patrol sign.
TS70	Undefined failure to comply with a traffic direction or sign.

Proposed table – Offences covered under major motoring convictions

CD10	Driving without due care and attention.
CD20	Driving without reasonable consideration for other road users.
CD30	Driving without due care and attention or without reasonable consideration for other road users.
CU10	As a second offence on DVLA licence
CU20	As a second offence on DVLA licence
CU30	As a second offence on DVLA licence
CU40	As a second offence on DVLA licence
CU50	As a second offence on DVLA licence
CU80	As a second offence on DVLA licence
IN10	Using a vehicle uninsured against third party risks.
BA10	Driving while disqualified by order of Court.
BA30	Attempt to drive while disqualified as under age.
MS50	Motor racing on Highway
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver

Proposed Table - Offences for driving a motor vehicle under the influence of drink or drugs

DR10	Driving or attempting to drive with alcohol level above limit.
DR20	Driving or attempting to drive while unfit through drink or drugs.
DR30	Driving or attempting to drive then refusing to supply a specimen for analysis.
DR31	Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity
DR61	Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive
DR40	In charge of a vehicle while alcohol level above limit.
DR50	In charge of a vehicle while unfit through drink or drugs.
DR60	In charge of a vehicle then refusing to supply a specimen for analysis.
DR70	Failing to provide a specimen for breath test.
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs

Offences where a licence will automatically be refused or a current licence suspended or revoked

CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for alcohol analysis
CD80	Causing death by careless, or inconsiderate, driving
CD90	Causing death by driving: unlicensed, disqualified or uninsured drivers
DD10	Causing serious injury by dangerous driving
DD40	Dangerous driving.
DD60	Manslaughter or culpable homicide while driving a vehicle.
DD70	Causing death by dangerous driving.
DD90	Furious driving
	When applicable to licensed vehicle
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or effused on medical ground
MS70	Driving with uncorrected defective eyesight

All offence codes mean also those alternative codes with differing numbers which mean, aiding, abetting, counselling or procuring; cause, use or permit and inciting offences.

Convictions Consultation: Email Responses

Response From:	Response Details:	Officer Response:	Change to policy:
Eurocabs	<p>There are no suggestions on the terms of convictions for offences committed by Licence holders.</p> <p>Where a Licence holder has been charged with an offence then they must be given an opportunity to present their case to a Licensing Panel as was the case when Lorna Cohen was the chair of the Licensing Committee.</p> <p>This system of having a Licensing Panel gives a Licence holder an opportunity to voice their concern or issue which is their democratic right and by denying them this right the decision is being dictated to them. Any errors, misunderstanding or any evidence a Licence holder may have can be discussed and reviewed and a decision can be made with minimum amount of expense and if any mistakes have been made then they can be changed causing minimum amount of losses on the Licence</p>	Discussed at previous Licensing Committees.	

	<p>holder. Any compensation that needs to be paid for any unnecessary losses incurred by the Licence holder then these will also be kept to a minimum.</p> <p>Incentives like reduced suspensions or revocation of Licence FOR FIRST TIME OFFENDERS ONLY, should be considered if the Licence holder agrees to have a CCTV fitted into their vehicle for offences that have been committed whilst the vehicle was in use or the vehicle was used to commit these offences e.g. plying for hire, low level assault cases should be considered under this scheme.</p>	<p>This has been considered previously and is not considered practical.</p>	
<p>Licensed driver.</p>	<p>I think that a single officer or just the vehicle licensing should not be responsible for revoking or suspending licenses a panel should be responsible for making this decision.</p> <p>On cases where it is not a serious offence a the licensee should be innocent until he is proven guilty. With claims of assault(physical / sexual) then instant suspension or revocation</p>	<p>Dealt with above.</p> <p>The Act is specifically created to deal with dangers before conviction or even without a</p>	

	<p>of license is understandable but again working with the police crown prosecution service the cases should be dealt with as quickly as possible so an innocent driver is not at a loss for too long.</p>	<p>conviction.</p>	
<p>Unite the Union – Leeds Hackney Drivers Branch 302/3</p>	<p><u>Revocation and Suspension of Licences.-</u></p> <p>In summary, Unite agrees with the current policy on revocation and suspension of licences. However, there is scope for improvement and this would be in <i>Sec 2. Conviction Criteria Guidelines</i>. Paragraph 3 is well worded, but Unite feels that the inclusion of ‘<i>and operator</i>’ should be placed in. It is wholly inconceivable that only drivers should be held accountable under this section and firmly believes that accountability should now increase to operators too.</p> <p><i>Sec 4. Requirement to report</i>, would appear to need amending in that it is unfair under both sub-section (c & d) to use these measures for incidents such as a court summons for financial reasons and otherwise for parking ticket issues. Both these sub-sections require greater clarity and Unite would</p>	<p>Already applies to all licence holders.</p> <p>There are a few areas where we would not take action but when we start to dilute the requirement it becomes difficult for drivers to understand.</p>	

	<p>welcome both the removal of such implication that the above could be construed as such in them.</p> <p><i>Sec 5. Suspension, Revocation and Refusal of Licenses</i>, would also appear to need an amendment. Such article is in <i>Sec (b(iv))</i> “Any other reasonable cause”. Unite knows and feels that this section, although part of current legislation is abused by enforcement officers and there is no consistency when adopting this section. If this section were to remain, then Unite would prefer to see an implementation of a ‘<i>Tariff</i>’ of such reasonable causes. This would ensure that drivers would not be placed in an uncompromising position without the knowledge that they had ‘unreasonably’ caused an offence under this section.</p> <p>It is not unreasonable to ascertain such a system given that currently a points system exists for criminal convictions for both applications and renewals of both operator and drivers licences. This would further cement the sections ability to make clear and unambiguous decisions, which could later be challenged by the individuals</p>	<p>The decision making record by Officers based on the policy proves this to be an inaccurate statement.</p> <p>The benefit of the current criteria is its simplicity and easy operation.</p>	
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	<p>concerned.</p> <p>Sec (c) is also in need of a cursory amendment in so far as the wording “currency” in reaching a timescale for a length of a licence. Unite feels that once again, a clear definitive word such as “year” or “for as long as the licence is held” would be clearer and would fall in line with PEC guidelines and their crystal mark scheme.</p> <p>Sec 6. Appendix 1. Would appear to need clearer objectives. Item 2 should be made clearer to ensure that all offences be collated and individually tested for presentation before or after court. No one individual offence should be treated any lesser than the next. An offence is an offence and no arbitration should be given for this nature. Given that, summary offences carry greater sentences than others do. It remains that offences, which are committed, should be attributed and accountable. Moreover, it is felt that <i>item 4 should apply to both items 2 and 3 respectively.</i></p> <p>Sec 7. Unite have a specific view on this point. Unite feel that under current UK court law, ‘it is with a</p>	<p>Please see earlier response.</p>	<p>Please see change proposals.</p>
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	<p><i>preponderance of evidence that a case is dealt with</i>'. Unite therefore feels it is unfair to automatically assume that an applicant must be considered guilty, even though a magistrate or judge has not found them to be so or cannot reach a decision. This completely flies in the belief that <i>'a person is innocent until proven guilty'</i>.</p> <p>Sec 7. Appendix 2. Unite would like to understand where the points criteria tables is established from. On the basis that the points criteria system is questionable, Unite would prefer to see the system suspended until such time as a greater amount of evidence can be presented as to where, how and who was responsible for this.</p>	<p>Officers disagree with this and as highlighted in the reports the Court approve of this system.</p>	
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Report author: Des Broster
Tel: 3781561

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 June 2014

Subject: Hackney Carriage Proprietors (HCP) – appropriate suitability assessment.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. The Council has in place an approved policy for dealing with the transfer of HCP licences which applies a suitability requirement in respect of Disclosure and Barring Service (DBS) convictions check and an English language comprehension assessment.
2. Representations have been made by the Hackney Carriage trade that the English comprehension requirement should be removed on the basis that when a HCP dies the widow could be excluded from taking over the proprietorship because of lack of English language skills.
3. A Licensing Committee Working Group (WG) was formed and it consulted with the trade, Officers and obtained legal advice. The WG has been advised that the initial proposal from the trade that the English comprehension requirement be removed only from the wives of Hackney carriage Proprietors would be in conflict with equality legislation.
4. This has resulted in a recommendation by the WG to the Licensing Committee that the English comprehension requirement be removed for all HCP's.

Recommendations

5. That Members consider all the elements of the report, the potential impact on licensing regulation, enforcement and administrative control along with the legal implications and determine whether the policy should :-
 - (a) Remain in line with the recommendations of the earlier Licensing Committee.
 - (b) The English comprehension requirement be removed only in respect Hackney carriage proprietors.
6. If Members elect to change the policy in favour of recommendations 5(b) that they approve the change in principle and direct Officers to prepare a report for the consideration of the Executive.

1 Purpose of this report

- 1.1 To inform Members of the legislation applicable to Hackney Carriage Proprietors, the existing policy of the Licensing Committee, legal advice and the recommendation of the WG.

2 Background information

- 2.1 The role of the HCP is distinct from that of a HCD or PHD in that they do not have to drive the vehicle, but they are accountable for a wide range of statutory responsibilities, Byelaws and Council conditions. In effect they are responsible for the safety of the vehicle, controlling drivers, some relationships with the public, and responding to the Council when it requires certain statutory actions, for example, complying with vehicle inspections as well as providing information and meeting general licensing requirements.
- 2.2 The extent of the legislation and conditions is set out at paragraph 7 of this report, 'Background documents'.
- 2.3 Licensing and Regulatory Panel on 7 February 2006, determined that every PHD, PHO, HCD and HCP should, within certain terms, undertake English comprehension testing. For reference, the relevant extract of that report is attached at **Appendix 1**.
- 2.4 The administrative process of transferring a HCP licence undertaken by Officers has operated over those intervening years and sympathetic consideration has been applied to individual circumstances in order that decisions can be taken by families beyond the grieving period. This enables potential new proprietors to undertake English comprehension training in line with the UK Citizenship standard.
- 2.5 Licensing Committee agreed that the policy be referred to a WG to consider the removal of the English comprehension requirement on the basis that when a HCP dies some widows could be excluded from taking over the proprietorship because of lack of English language skills.
- 2.6 Following the formation of the WG full consultation was undertaken with the trade. Officers highlighted the issues of concern, the legislation and legal advice was offered by way of guidance and to clarify the variety of ideas which had been proposed on how the formal transfer of the HCP licence could be managed and the licensing responsibilities properly managed by the HCP after transfer.

3 Main issues

- 3.1 The usual 'fit and proper' person test does not totally apply to a HCP licence as there is no necessity for a Proprietor hold a DVLA licence. However, because of the potential links between having control of a HCV and criminal activity, Proprietor responsibilities and the extent of legislation covering the role of a HCP a DBS check and English comprehension requirement was placed upon the grant of a HCP licence. That is referred to at **Appendix 1**.

- 3.2 The representation made to the Council was that some non-English speaking wives of HCP's could be financially disadvantaged by not receiving on-going income from the use of the licensed vehicle upon the death of the Proprietor.
- 3.3 During the WG consultation process Members listened to a range of views, considered the legal implications, the concerns of Officers and balanced those with a recommendation which was considered to be proportionate and fair to the trade and the removal of the pre-requirement for HC Proprietors would then be in line and consistent with current policy for PH Proprietors. It was from those observations that the policy proposal was formed.
- 3.4 Members should note that the policy cannot apply solely to a 'widow' as requested by the trade. In order to meet Equality requirements it must apply to any spouse or civil partner of a HCP. Additionally, it would be discriminatory to apply the policy to women only or those who do not have a recognised legal partnership. The scope of the change would have to apply significantly beyond the trades request and to all HCP's. Attention is drawn to paragraph 4.6. Risk Management.
- 3.5 An amended policy is shown at **Appendix 2** which sets out the process steps for every HCP, not just in the event of a death of a HCP.
- 3.6 Officers commented in the WG meeting that the existing policy had not raised a notable problem and that discretion had been exercised in allowing time to achieve ESOL level 3, the UK Citizenship standard. The original request was not as extensive as it is now and some of the trade wanted the timescales to achieve this standard extended up to a maximum period of 1 year. It was also only requested that it be in place upon the death of the Proprietor but it is difficult to see how it would be defensible to apply a policy in such a restrictive way; it would in effect produce dual standards.
- 3.7 There is a simple solution to the concerns of some trade members in that they can place their wife, partner or any other relation on the Proprietors licence now, as a joint HCV Proprietor and the policy can then reflect a more relaxed time scale to the English comprehension requirement. This is legally acceptable and is quite common in respect of other HCP licences now with other business or family relationships. This also resolves the difficult issue of resolving differing claims that sometimes occur with estate matters in wills.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The WG has met on the following occasions for the purpose indicated:-

25/6/13	Initial planning meeting.
31/7/13	Meeting with Hackney Carriage trade.
15/10/13	Meeting with Elected Members.
15/11/13	Meeting with Private Hire trade.

12/2/14 Working Group considerations of the consultation, legal advice and Officer comment.

17/2/14 Formulation of final considerations.

4.1.2 Public and trade consultation has taken place for one month. There were two forms of feedback, one from the Council's website and the other from the organised collection of pre-prepared questions on the taxi rank by someone, we are unsure who but think it was a taxi marshal. Clearly the main responses have been from the HC trade but Members will note that there has also been some limited feedback to say that this is not an area of concern but opposing concerns also. Clearly the comments are from directly opposing schools of thinking on this subject and it is for Members to balance the self-interest viewpoint of the Hackney Carriage trade and the other consultation responses and the observations of Officers.

4.1.3 **Appendix 3** contains all of the feedback comments.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Screening Assessment has been completed and is available as a background document. There are no contra indicators to this being acceptable practice in terms of equality.

4.3 Council policies and City Priorities

4.3.2 The Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan 2013 -17

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us.

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs,

- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

4.4.1 The transfer process has to take place in any event and the responsibility for making the necessary arrangements will rest with the transferee in which case there would be additional costs and service time. That service time would probably extend to 3 hours. If this was an infrequent event it could be managed with existing resources. The proposed policy reflects the view of the WG to reduce the element of financial risk to the section.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The context of equality law moved the original intention of the trade request to much wider parameters and the background to that is set out at 3.4. Paragraph 3.6 also refers to the risks of restricting a policy unfairly to one small part of the trade that could be unfairly exclusive.

4.5.2 Although the relevant legislation for which HCP's have to be compliant is mentioned in background documents at paragraph 7, Members may wish to view the extent of the relevant legislation and that will be available within the Committee meeting if required.

4.5.3 The legislation around who is the lawful Proprietor is not based just on Council licensing records but on who owns the licensed vehicle. For clarity, the Proprietors licence (the plate) is placed on the vehicle and the law is quite specific; the plate follows the vehicle. If the vehicle is sold then the Proprietor's licence goes with it. The obvious difficulty is overcome by Proprietors purchasing a new vehicle and transferring the 'plate' to that before then selling the unlicensed

old vehicle. The Council is obliged in law to transfer the licence to the person who can demonstrate they are the registered keeper.

4.6 Risk Management

4.6.1 There are several challenges which would need to be safely managed at the adoption of the policy and in the long term:-

Accountability and public safety

Members were insistent that this position could not be compromised on the basis of an argument of lack of knowledge, understanding or control of the driver of the vehicle. Where there were such proven issues the licence should be revoked and returned to the Council. It was felt by Members that this statement and the control measures in the policy would be sufficient to ensure proportionate control of the licence. The policy would also make very clear to Proprietors the absolute necessity to adhere to all the responsibilities of the Proprietors licence and the consequences of failing to do so.

Control measure

At the point of transfer Officers will serve upon the new proprietor the relevant legislation which will be summarised by the interpreter.

The interpreter and Proprietor will each sign statement of understanding detailing what has taken place. This will be an acceptance and understanding of the responsibilities and accountabilities of the Proprietor. It will also set out the consequences of non-compliance to conditions, byelaws or breaches of legislation, or a failure to exercise management or control of the vehicle or driver.

Financial risk

- 1) There was potential for some limited financial risk to the Council by interpreting fees not being paid and it would not be an acceptable proposition to expect the Council to recover such costs through a civil debt procedure. The WG insist that this cost should be met by the individual non English speaking HCP or HCP applicant.
- 2) The engagement with a HCP for all licensing matters would also necessarily involve the Interpreting Services and the WG insist that this cost should be met by the individual non English speaking HCP or HCP applicant.
- 3) Refer to 4.5.4 also

Control measure

- 1) A potential solution is that organised meetings are given time parameters and a schedule of hourly costs obtained from the Interpreting Services in advance. This would enable the interpreting fee to be paid immediately to the Taxi &

Private Hire Licensing Office at the time of transfer or other procedure which could then be re-directed by internal budgets to the Interpreting Service.

- 2) The existing transfer administration fee would also need to be increased in such cases and reflected in the extended timescales for the transfer process as would all of the other licensing functions.

Extent of change impact

To date the number of events involving non English speaking transferees has been minimal but if the practice was to be taken up on a wider basis and further develop into other areas of licensing there could be adverse impact upon proposed training initiatives, enforcement investigations and licensing administration functions. This potential cannot be measured at this time.

Legal challenge

As this is a policy document the route of appeal is by way of Judicial Review and similarly other polices may fall within that arena if Members choose to apply this policy in an exclusive way.

5 Conclusions

- 5.1 Members will note that the original well intentioned request might now have much wider implications for service provision and the report has to deal with three distinct issues. Firstly, the arrangements for the transfer of a HCP licence upon the death of a Proprietor and the English language requirement which is dealt with at **Appendix 2**.
- 5.2 Secondly, how government driven policies to promote English language comprehension on the basis of inclusivity might be viewed.
- 5.3 Thirdly, the potential impact of the licensing section and translation services.
- 5.4 The issue is much wider than first thought by the trade and Members have to balance all of their licensing responsibilities, considerations of the Service against those examples presented by the trade of lack of opportunity or disadvantages to non english speaking relations.

6 Recommendations

- 6.1 That Members consider all the elements of the report, the potential impact on licensing regulation, enforcement and administrative control along with the legal implications and determine whether the policy should :-
 - (a) Remain in line with the recommendations of the earlier Licensing Committee.
 - (b) The english requirement be removed only in respect Hackney carriage proprietors.

6.2 If Members elect to change the policy in favour of recommendations 5(b) that they approve the change in principle and direct Officers to prepare a report for the consideration of the Executive.

7 Background documents¹

Equality impact assessment.

Town and Police Clauses Act 1847 Sections 43, 45 - 55

Local Government (Miscellaneous Provisions) Act 1976 Section 47, 49, 50, 57, 58, 60, 66, 68, 69, 71, 72, 73.

LCC Byelaws

LCC conditions attached to HC Proprietors licence 1-15

LCC Hackney Carriage vehicle conditions

LCC conditions attached to a Wheelchair Accessible Hackney Carriage Proprietor licence 1 -9

LCC Special conditions attached to the grant of a Wheelchair Accessible vehicle Hackney Carriage vehicle licence

Equalities Act 2010 Sections 163, 165, 166, 168

Licensing Committee report and minutes – 11 March 2014

Working Group minutes

Interpreting and Translating Services – Policy and Procedures

Scrutiny Board (Resources and Council Services) report and minutes– 7 April 2014

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Extract of Report

Report of the Director of Legal & Democratic Services

To the Licensing and Regulatory Panel

Date: 7th February 2006

Subject: Knowledge Testing for the Private Hire and Hackney Carriage Trade – Supplementary Report (English literacy, language & numeracy skills).

1.0 Purpose Of This Report

1.1 To enable Members to consider the introduction of testing of English literacy, language and numeracy skills to an approved standard before licences are issued by the Taxi and Private Hire Licensing Section to drivers, Operators and Proprietors.

2.0 Background Information

2.1 The Council issues licences to Hackney Carriage Proprietors and drivers and to Private Hire Operators and drivers. There are standard tests applied prior to the grant of a licence to assess the suitability of the applicant, and thereafter there are Conditions, Byelaws and various other acts of Parliament controlling the conduct of licence holders. There is no element (other than ability to pass a driving test) in any of these controls which reflects on a licence holders ability to read, write and speak English or use basic mathematics.

2.2 In 2003 when Scrutiny Board (Central and Corporate functions) reviewed the Council policy in respect of the issue of additional Hackney Carriage Proprietor licences, several concerns were expressed by Members of their own experiences in respect of licence holders who had difficulty in speaking English. Officers would add weight to those concerns from their experiences of applicants or existing drivers where speaking or understanding English was quite clearly a difficulty in some cases. Similar concerns have been expressed by the trade and the public contacting the Licensing Section.

2.3 In recent years the Government has recognised the need to increase the vocational skills of the workforce and improve the nation's literacy and numeracy skills. A national strategy was launched by the Government in autumn 2000.

2.4 On Tuesday 10th January 2006 the Licensing and Regulatory Panel approved, in principle, the introduction of knowledge testing and customer service commitments for the trades (draft minute 68 refers). Part of the range of skill requirements approved for training and testing the Hackney carriage and Private Hire services was English comprehension and numeracy.

3.0 Main Issues

3.1 Who it affects

The key proposal of this report is that all applicants for an issue of a Hackney Carriage Proprietor or driver or a Private Hire Operator or driver licence satisfy the Council they can speak, read or write English and are sufficiently numerate to enable them to function in their role.

It is proposed that current licence holders are exempted from the requirements to meet this standard unless there is a reasonable cause to believe it should apply to them; for example, a substantiated public complaint or an expressed concern which was considered reasonable.

3.2 The testing standard

Officers have consulted widely to develop an appropriate scheme which meets the needs of the Council, public expectation, is complementary to the Government adult education program, and beneficial to the individual.

4.0 Implications For Council Policy And Governance

4.1 It is considered that the introduction of such testing would not only contribute to the singular aspect of 'customer care' within the trades but would complement a range of issues within the Councils plan and vision. Better to make reference to them if we can

4.2 The whole of this process has been monitored by the Council's Equalities Team who approve of how the process is undertaken, the marking structure and its relevance to the service provided.

5.0 Legal And Resource Implications

5.3 Members are informed that this proposal is one of a number being prepared which are intended to create an entry level to the trades which is commensurate with the standards of customer care and safety and compliance with the law necessary to safely

Vehicle Transfer Policy: Who does my Hackney carriage licence transfer to in the event of my death?

Legislation requires written authorisation before a Hackney carriage proprietor licence can be transferred. You must therefore either have a legally binding Will in place or have notified Leeds City Council of who you intend to transfer your licence to in the event of your death.

I want to transfer the licence to my spouse but they don't speak English very well. How will the transfer process work?

On notification of the death of a licensed proprietor, the Licensing Office will contact the proprietor's Association, where known, and also the family to arrange a meeting to explain the process.

Is there a charge for this?

Yes. The fees may change so you need to check with the licensing office. The policy directs that where a party does not have English comprehension skills to ESOL level 3 that an interpreter from the Council's Interpreting and Translation Service must attend the transfer process and any training at the applicant's expense.

An estimate of time for the transaction and training will be given and this must be paid before the process takes place.

Will the proposed new owner have to undertake a DBS check?

Yes, the new owner must pay the current fee and complete a DBS check before the transfer can take place.

Where any party or an Authorised Officer considers it appropriate, an interpreter will attend at the time of transfer. Any translator requirements, including costs, are the responsibility of the proposed proprietor. Due to potential legal challenges it is appropriate that the translation service is provided by the Council's preferred service.

How can I let you know who I nominate to transfer the plate to?

You can update details of your nominee at any time by informing the Taxi and Private Hire Licensing Section in writing.

You must provide the full name and date of birth of the person you wish to transfer the Hackney carriage proprietor licence to, their full address and their relationship to you.

I am a joint proprietor; can I nominate my share to go to the other proprietor?

In the case of joint proprietors, it is acceptable for them to nominate each other to transfer their share of their plate.

What happens if the information in my Will does not match the information held on my licence file?

In the case of any conflicting claims the vehicle licence will return to the Council to be re-issued.

Will I be reminded to provide this information?

The licence renewal letter will include a reminder for you to update this information. We will keep this information stored on your licence file to be used in the event of your death. Please remember this is your responsibility

I don't know who I want to transfer the licence to... what should I do?

If you haven't yet thought about whom you would transfer your Hackney carriage licence to, now should be the time to do so and you are advised to take legal advice.

If you don't have a will and we do not have a record of your written nomination in place, in accordance with this policy, the proprietor licence will return to the Council to be re-issued. We will ask you to sign a declaration at the time of your next renewal to say you understand that this will happen.

Proprietors are advised that they can include a person of their choice on the licence as a joint proprietor at any stage, subject to a Disclosure and Barring Service check.

Why do you require a signed declaration?

Councillors have recognised that the legal responsibilities of proprietorship are important and these cannot be compromised on accountability.

Leeds City Council must be satisfied that the proposed proprietor understands all terms and conditions of the licence and we will require a signed declaration to this effect.

Any proposed new proprietor, whatever the level of their English comprehension skills, is liable to have their licence revoked on issues of non-compliance so it is extremely important that they fully understand the conditions and legislation surrounding the grant of their licence.

The Taxi and Private Hire Section received 68 survey responses from members of the Hackney carriage trade. These did not originate from the Section and it is assumed that they were distributed by the JTC.

	Yes	No	No response
Do you think every plate holder should pass the English test?	23.5%	70.6%	5.9%

	Yes	No	No response
Do you think plate holders that only drive should pass the English test?	75.0%	22.1%	2.9%

	Yes	No	No response
Do you think that plate holders who do not drive should be exempt from English requirement?	69.1%	30.9%	0.0%

However, there are some anomalies that must be highlighted within these results.

Of the 16 respondents who indicated 'Yes' to every plate holder should pass the English test, the following percentages were recorded as 'Yes' responses for the remaining questions;

	Only plate holders that drive	Plate holders who do not drive exempt
Do you think every plate holder should pass the English test? YES	63%	31%

This confuses the results as although these respondents state that every plate holder should pass the English test, 63% (10) went on to indicate that only plate holders who drive should undertake the test. And 31% (5) of the 16 respondents indicated that plate holders who did not drive should be exempt from the English test.

Of the 48 respondents who indicated 'No' to every plate holder should pass the English test, the following percentages were recorded as 'Yes' responses for the remaining questions;

	Only plate holders that drive	Plate holders who do not drive exempt
Do you think every plate holder should pass the English test? NO	81%	81%

These respondents indicated that not every plate holder should pass the English test; 81% (39) went on to specify that plate holders that drive should undertake the test but also stated that plate holders who do not drive should be exempt from the test.

The following comments were recorded amongst the survey returns:

* Or demonstrate the recognised UK education qualification eg. GCSE/ O level etc. All plate holders should be able to demonstrate competence in the English language.

The following feedback was received from licensed drivers via the Taxi and Private Hire Section's email account:

* It should be clear to every one that being able to speak and understand english is a must if you are a taxi driver working in Leeds as for owning one that is completely different as long as you have access to an interpreter and do not drive the vehicle

* Regards to the transfer of the taxi licence after the death of a driver it should be given to the the next of kin. For Example to the wife or children's regardless whether they can speak English or not. What does the English language got to do with holding a taxi licence. If you are saying about English language that means you're targeting communities who speaks little or no English where is equal opportunities policy gone.

The following feedback was received from Elected Members via the Taxi and Private Hire Section's email account:

* I understand that The Council has in place an approved policy for dealing with the transfer of Hackney carriage proprietor licences which applies a suitability requirement (in respect of Disclosure and Barring Service (DBS) convictions check and an English language comprehension assessment. I also understand that representations have been made by the Hackney carriage trade that the English comprehension requirement should be removed on the basis that when a proprietor dies, the widow could be excluded from taking over the proprietorship because of a lack of English language skills. I am strongly opposed to removing or diluting the English language requirement.

* I feel it is essential that all taxi drivers should have a sound competence in the English Language. In Spain the taxi drivers speaks Spanish irrespective of where they come from. Germany is the same. An anomaly like a wife not being able to take over a business in the event of her husband's death or retirement seems a non sequitur. If all drivers have to be English Speaking she cannot be a driver but who owns the business is a different matter

* I wish to register my view that the English language comprehension assessment should be retained in the policy. This element should be retained when considering the proprietor licence.

The following feedback was received from Eurocabs via the Taxi and Private Hire Section's email account:

* I am not surprised but appalled that licensing officers did not attach the actual next of kin policy as approved in September 2007, to the policy document presented as part of the proposed policy document to the Licensing Committee on 11th March 2014 instead the policy attached was just the English requirement policy as approved in February 2006.

In legal terms any policy agreed some considerable time after the first policy instantly replaces the first policy unless there is clear and precise points that have not been changed or it is clearly noted under what circumstances the policy does apply or not apply.

As there are such points noted in the policy document approved in September 2007 Eurocabs members want that policy which is the latest approved next of kin policy and therefore has to be deemed as the "current policy" to remain in that format and the Licensing officers should work to that policy.

This document does not state that there is a requirement that the vehicle proprietor must pass an English Literacy Test instead it states that "in the opinion of the authorised officer dealing with the transfer, if an interpreter is needed by one or both parties then one should be provided from the council's approved list and the cost must be paid by the person requiring the interpreter".

When I stated this point in the working group meeting Mr Brosters reply was that "there is an error in the policy document" If that is the case why didn't Mr Broster or other legal officers identify this error when the policy was approved and it has taken them nearly 6 years to notice this error. These officers do not pass their own standards of being "fit and proper" to carry out their duties in an efficient and responsible manner as is required from licensed drivers and operators.

The English language requirement should only apply to proprietors that will be driving and they will have to go through the full driving licence applications procedure as required by any Private Hire and Hackney Carriage driver applications.

Further safeguards for the travelling public are that, it is the driver's legal duty to ensure that any vehicle he/she is intending to drive is safe, legal and fit for purpose. This means that all the documents like the vehicle licence, insurance, MOT, their badge are all current and valid. Vehicle check must then be carried to ensure that all tyres are within the safety limits and are legal, all the brake systems are working, all fluids like brakes, engine oil and radiator fluid are to the required levels. Any driver failing to ensure that these checks are carried out could end up losing their HC licence and could have points or fines on their driving licence or could be banned from driving any car depending on the level or seriousness of the offence or offences.

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Report author: Des Broster

Tel: 0113 3781561

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 June 2014

Subject: 3 year driver licences for Private Hire and Hackney Carriage drivers.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. A report was presented to Licensing Committee on 13 May 2013, which set out options for enabling '3 year licences' for drivers. Members debated the issues and resolved to form a Working Group to more closely examine all of the options and consult further with the trades.
2. The Working Group met on 6 separate occasions with representatives of the Private Hire and Hackney carriage trade and Private Hire Operators, taking account of the advantages, concerns and potential risks to public safety. An open invitation was also extended to all Elected Members of the Council.
3. Members of Licensing Committee considered the recommendations of the Working Group on 11 March 2014 and accepted their proposals in principle, directing Officers to release the proposals for public consultation and for the Private Hire and Hackney Carriage trade to consider for a period of one month.

Recommendations

4. That Members approve the attached policy in principle and direct officers to prepare a report for the consideration of the Executive to approve the policy.

1 Purpose of this report

- 1.1 To inform Members of the consultation so that they can further consider their previous 'in principle' approval in light of consultation feedback.

2 Background information

- 2.1 Members will recall the extensive discussions around safeguards recommended by the Working Group and these are reflected in the proposed policy produced at **Appendix 1**.

3 Main issues

3.1 Public safety considerations

- 3.2 Reference is made to previous reports dealing with:

- The starting point for obtaining a 3 year licence (the essence of the policy) including 5 years continuous 'good service' and what makes up 'good service'.
- The necessity for continuous annual on line DBS checks and DVLA checks for drivers;
- The process steps
- When or how a licence might be suspended
- The financial implications

- 3.3 Members accepted that it was too early to evaluate any potential cost savings and also recognised the Sections finances are 'ring-fenced' and protected for the benefit of the trade and that the issue of cost efficiencies could be re-considered at a later date.

- 3.4 A further discussion point was if there was an opportunity to accept instalment payments. This has been looked at and the key issues are:-

- The Section's accounts cannot work in arrears and currently there is a managed cash flow system that protects the Section's and the Council's finances.
- Currently there is no risk of non-payment but such a payment by instalment plan would immeasurably increase that risk.
- There are no technical systems in place which can interface with the Section's standalone licensing system. The development cost for an instalment payments system would be significant and a lengthy process.

- Licensing staffing levels would not necessarily be reduced because of the volumes of daily reconciliation of payments and accounts and ‘chaser’ enquiries.
- There could be significant cost collections debt recovery charges.
- Substantial risk of having to manage a significant debt position with attendant postal on-costs.

The views of IT, Finance and Officers at the Section agree that paying ‘on line’ is desirable but needs a long term solution. Payment by instalments is a much longer term and more complex issue which is not attainable in the short term.

3.5 Lead in time for commencement

3.6 The two main issues from the last Committee meeting were those of consultation and an IT solution for instalment payments. Waiting for the introduction of a Council wide IT solution is a ‘show stopper’ at this time. However, the policy could progress speedily once approved with the payments obstacle removed. It then just becomes a matter of choice.

4 **Corporate Considerations**

4.1 **Consultation and Engagement**

4.1.1 Consultation feedback is attached at **Appendix 2**.

4.2 **Equality and Diversity / Cohesion and Integration**

4.2.1 An Equality Screening Assessment has been completed and is available as a background document. There are no contra indicators to this being acceptable practice.

4.3 **Council policies and City Priorities**

4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan 2013 -17

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes

Make it easier for people to do business with us.

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs,
- Boosting the local economy
- Generating income for the council

Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;

- Getting services right first time
- Improving customer satisfaction

4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

4.4.1 At this time it is not possible to make a reasoned estimate of cost savings or additional expenditure associated to carrying out this policy. It is not however considered to pose any great risk but will of course be subject to continuous evaluation.

4.5 Legal Implications, Access to Information and Call In

4.5.1 With consultation finalised Members can view the policy to ensure they are satisfied it meets the Council's statutory function in respect of public safety which was extensively dealt with by the Working Group and is reflected in the policy document at **Appendix 1**.

4.6 Risk Management

- 4.6.1 Officers are satisfied that the policy is proportionate and can inform Members there would be early intervention in respect of drivers who did not comply with the public safety elements proposed by the Working Group.

5 Conclusions

- 5.1 Officers feel that the policy proposals set out in this report are manageable, financially viable and administratively sustainable providing participating drivers undertake their responsibilities conscientiously.

6 Recommendations

- 6.1 That Members approve the attached policy in principle and direct officers to prepare a report for the consideration of the Executive to approve the policy.

7 Background documents¹

Licensing Committee report 13 May 2013

Licensing committee report 11 March 2014

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Background information

In England (outside London), Hackney carriage and private hire licences are issued by district

Councils to control the safe operation of Hackney carriage and private hire vehicles being used for hire or reward on public roads. In Leeds, licensing and enforcement matters are dealt with by the Taxi and Private Hire Licensing Section.

Section 53 of the Local Government (Miscellaneous Provisions) Act 1976 specifies that a drivers licence may remain in force for three years or for a lesser period as specified by the local authority.

Each licence has a set of Conditions, which the licence holder must comply with. Copies of these Conditions are attached to every licence issued and are readily available upon request at the Taxi and Private Hire Licensing counter.

Am I eligible to apply for a three year licence?

The Council has a statutory responsibility before it grants a licence to ensure an applicant is a 'fit and Proper' person. That responsibility continues throughout the lifetime of a licence.

Licensed drivers are able to choose whether to apply for a either a one year licence or three year licence depending on certain conditions being met.

What are the conditions?

Before a three year licence can be granted, the following condition must be met;

'Five years continuous good service with Leeds City Council'

This means service as either a private hire driver or Hackney carriage driver, or a combination of both, but only with Leeds City Council.

You must demonstrate a maintained standard of public safety, professional service and compliance with all of the legislation, Byelaws, Council conditions and administrative processes.

What do you mean by 'good service'?

Good service can cover the whole range of expectations of a licensed driver but there are particular cases where it will be considered more appropriate to ensure regular face to face contact;

- Where the driver has previously failed to report a matter which is a condition of their licence or required by a relevant Act of Parliament
- Where a driver is found to be or has been in possession of more than one DVLA licence in contravention of DVLA controls
- Where there is conflict with any of the Council's policies relating to convictions, training requirements or driver remedial training
- Where a licence is revoked for any reason, or suspended, as part of a Court finding or Council sanction (or where a period of suspension was imposed instead of revocation)
- Where at the point of renewal the driver licence is suspended as either part of an investigation or prosecution by this or any other Authority
- Although it is not a condition upon a Hackney carriage driver to report matters in the same way as

a private hire driver, the public safety test should still apply; where there has been a non-disclosure of such an incident, the same principles should be met at all times as a consideration in granting a three year licence

- Where there has been a distinct neglect or failure to appropriately follow the administrative process in licensing functions.

Although this list of examples isn't exhaustive, they would constitute a break in good service at any time during the lifetime of a licence. If the good service principle is broken, you would revert back to the starting point of the qualifying period again.

I have five years continuous good service; what do I do next?

Firstly, you must submit an application for a three year licence. You must present your supporting documentation to the licensing office; we may already hold some of these documents so please check with us at the time of application.

Are there any more checks I must undertake?

Prior to granting a three year licence, a full enhanced DBS disclosure must be undertaken. You must also be able to demonstrate that you have signed up to the DBS on-line update service which must be renewed each year. Failure to do so would normally result in the suspension of the licence until a further DBS disclosure had been submitted and you have demonstrated that you have once again signed up to the service.

You must also complete an annual DVLA mandate to enable us to monitor your eligibility to hold either a private hire or Hackney carriage drivers licence. This is to ensure compliance with the Council's policy in respect of motoring convictions or remedial training.

I've been granted a three year licence; can this be suspended or revoked?

Yes. Sometimes licences are suspended as a precautionary public safety measure following an allegation. Where there is to be no further action by the Council following an investigation, this would not normally be considered as a break in the continuity of your licence unless you had 'absented yourself' in a way which realistically prevented the Council taking any sustainable action against you.

Where a licence has been revoked or suspended as a sanction, this would be a break in 'good service'

If I don't renew my licence on time what will happen?

If you drive whilst unlicensed you would be committing a serious offence and liable to prosecution .

We will not chase you for your renewal; it is your responsibility.

If you fail to renew your licence on time because you have overlooked the renewal, we will need to put in place all of the safety checks described earlier. In many cases this can be accommodated in genuine circumstances but on occasions we will insist on the public safety test is satisfied.

A decision may be delayed whilst we undertake further enquiries

Consultation Feedback

Appendix 2

The Taxi and Private Hire Section received 68 survey responses from members of the Hackney carriage trade. These did not originate from the Section and it is assumed that they were distributed by the JTC.

	Yes	No	No response
Do you think your badge should be renewed every year only?	7.4%	82.3%	10.3%

	Yes	No	No response
Do you think an option for a 3 year badge should be available ?	94.1%	5.8%	0.0%

However, 4 respondents answered yes to both questions (80% & 6% of respondents for each question respectively)
3 respondents answered no to both questions (4.8% & 75% of respondents for each question respectively)

	Yes	No	No response
If the option of a 3 year badge is available should the cost stay the same?	14.7%	77.9%	7.3%

	Yes	No	No response
If the option of a 3 year badge is available should the cost be discounted?	89.7%	10.3%	0.0%

The following comments were recorded amongst the survey returns:

- * 3 year badge would save time & costs for both parties
- * With compulsory annual declaration that circumstances have not changed e.g. address/ convictions/ taxi association/ operator/ etc etc & a criminal offence to falsely declare

The following feedback was received from licensed drivers via the Taxi and Private Hire Section's email account:

- * Granted licences ph/hc. for three years is really good idea because council and trades for less hassle I am really impressed for such as this idea
- * I would be in favour of the 3 year license renewals as it would mean fewer trips to renew my license and it would also cut down the current waiting at vehicle licensing office
- * In my opinion Leeds city council should accept this idea because it is time saving and easy for everyone.
- * Regarding the licence for up to 3 years this should be been done long time ago if the driver's are willing to pay for it. I don't think general public has any interest in how long the drivers gets the badges for. It is via how has more interest in the badges than the general public.

The following feedback was received from a licensing authority via the Taxi and Private Hire Section's email account:

Oldham Council has recently reviewed its policy on the issuing of three year licences. The results of this review was to remove the ability for existing drivers, or new drivers, to apply for a three year licence. The reason for this was due to driving offences not being reported to the Oldham Council's Licensing Section, as is required by way on conditions attached to licences, and the Licensing Section only becoming aware of these offence upon renewal of a licence. In one extreme example a licensed driver received a nine month driving ban six months into his 3 year licence period. The driver failed to notify officers of this ban, and they only found out 2.5 years later when the driver renewed his private hire drivers licence.

The following feedback was received from Eurocabs via the Taxi and Private Hire Section's email account:

We and our members are in full support of the option being available to all drivers licenced by Leeds City Council for driving Hackney Carriage or Private Hire vehicles. The NOS Scheme (Notifiable Occupation Scheme) and the three year DBS scheme will ensure that there are no greater risks to public safety compared to the existing annual renewal scheme, and this is also noted in the Best Practice guide.

The three year licence will relieve the footfall pressure that we continually hear about from licensing officers as to the reasons why certain issue and policies cannot be implemented. The delays experienced by the trade members in the waiting time to process their renewals, applications or dealing with other matters are also generally blamed for the greater amount footfall pressures.

The Licence should be discounted to encourage drivers to take up this option and only then will the benefits be noticed. As the time and materials required to process a drivers licence application will only be utilised once every three years then the two years saving should be passed onto the drivers.



Report author: Des Broster
Tel: 3781561

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 June 2014

Subject: De-Regulation Bill 2013

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. The Government has previously announced that it proposed to undertake wide consultation to introduce legislation which would reduce bureaucracy/red-tape across a wide range of legislation.
2. That Bill has now had its second reading in the House of Commons. Officers were alerted to the context of part of the Bill relating to Taxi & Private Hire Licensing enforcement functions which impact on local Authorities, after it had progressed through two stages of the parliamentary readings.
3. A particular section of the Bill relates to relaxing the law on who can drive a licensed Private Hire vehicle for social, domestic and pleasure purposes. It in effect means that unlicensed people can drive a licensed Private Hire vehicle at any time when not carrying out licensed journeys. This raises significant public safety concerns for this Authority and significant enforcement and legal challenges.

Recommendations

4. That Members consider an appropriate strategy to raise awareness and voice their public safety concerns within the parliamentary process.

1 Purpose of this report

- 1.1 To inform Members of the issues and to enable them to consider what actions they might think appropriate to voice their concerns about this particular proposal.

2 Background information

- 2.1 Members will broadly recall the Law Commission consultation on reforming the Private Hire and Hackney Carriage Licensing legislation. Included in the consultation was a proposal to relax the legislation on who could drive a licensed Private Hire vehicle for social, domestic, pleasure purposes. The proposal and the Licensing Committee's response to that part of the consultation is set out below.

Law Commission Provisional proposal 20 in consultation

Leisure and non-professional use of taxis and private hire vehicles should be permitted. There would however be a presumption that the vehicle is being used for professional purposes at any time unless the contrary can be proved. (Page 184)

Formal response of Licensing Committee

Leeds City Council disagrees with this proposal. Licensed vehicles should only be driven by a licensed driver whatever the circumstances as public safety clearly out-weighs family convenience. It is important that drivers of licensed vehicles and other drivers are clearly differentiated and it would prove difficult to enforce if private drivers are found driving licensed vehicles. We already have examples of licensed drivers claiming the journeys are for families or friends when enforcing plying for hire allegations. This would be compounded if the drivers were family members as we would have to prove that the journey was not for leisure or none professional use.

- 2.2 Officers alerted the Licensing Committee to the inclusion of that proposal in the Law Commission's recommendations to Parliament. It was not just this Authority which raised concerns but a wide range of Officers representing other Authorities supported by the National Association of Licensing Officers.
- 2.3 Councillor Charlwood, on behalf of the committee wrote a letter of concern to the Law Commission and an extract of that letter and the Law Commission response is reproduced below

Extract of Councillor Charlwood letter to Law Commission

Use of vehicles for Domestic Use

We understand that for a low income family, a licensed vehicle may be the only vehicle that family can afford to run, and having two vehicles can be out of the question.

At the moment, the law is clear and licensed private hire vehicles can only be used for private and domestic use by a licensed private hire driver. This means that, quite simply, whenever the vehicle is on the road it is being driven by a licensed private hire driver. This makes enforcement and monitoring of the use of these vehicles very clear. Our concerns are for enforcement and monitoring when the vehicle is being used privately by a driver who is not a licensed private hire driver. You can certainly see a situation arising where such a driver visits a hotspot for plying for hire and collects a passenger without any pre-booking. During the investigation the driver can claim that he was using the vehicle privately at the time and was simply giving someone a lift. This will prolong the investigation and dilute the public safety elements that we have built into our local licensing regime.

The dangers to the public from being picked up by unlicensed private hire drivers who have not been through the fit and proper test should not be underestimated. This type of obvious risk to public safety should always be minimised at the core of any revised licensing regime.

Extract of Law Commission response

Use of vehicles for Domestic Use

We appreciate the concerns you raised regarding allowing domestic use of licensed vehicles. It should be possible to presume that licensed taxi and private hire vehicles are being used professionally at any time. However, we think it should be possible for drivers to demonstrate that this is not the case. In London domestic use is permitted and during consultation this was not raised as a problem. We accept that if as a matter of enforcement domestic use became problematic, the Secretary of State and Welsh Ministers should have the ability to prohibit it; and the licensing system should be sufficiently flexible to accommodate this.

- 2.4 The Department for Transport (DfT) has 'extracted' some proposals from the Law Commission paper and, without informing local Authorities, placed them on the Deregulation Bill. The Law Commission reform proposals have not yet started their parliamentary reading stage.

The proposed De-Regulation legislation appears at **Appendix 1**.

- 2.5 Members will note that the thrust of the concerns is about one particular section of the legislation, in summary the other proposals and Officer views are:-

Taxis and private hire vehicles: duration of licences

In the original statute the wording was such that the Council could exercise whatever discretion they wanted for the length of a licence of up to 3 years for Private Hire and Hackney Carriage drivers and 5 years for a Private Hire Operator. The wording of the proposed new legislation seems to move away from complete discretion on the part of the Council to a justifiable discretion within a policy.

It is felt that this issue is already catered for in the policy proposals contained within 3 year licences for Private Hire and Hackney Carriage licences.

Officers feel there may be a need for the introduction of a revised policy in respect of Private Hire Operators but generally having undertaken appropriate training there would be no significant concerns about granting a 5 year licence with reporting safeguards in place.

Private hire vehicles: sub-contracting by Operators

This is a bit of an unknown quantity but is an improvement on what was originally anticipated. The distinction is that journeys can only be passed from one licensed Operator to another where ever those Operators are licensed. This encourages beneficial professional relationships for customers and increased technological solutions using 'apps'. Of course there is more to follow on this but in the interim there is the knowledge that at the very least both Operators are licensed and accountable.

3 Main issues

- 3.1 The Government's position of the purpose of the De-Regulation Bill is perhaps best described by the media statements below, which accompany the proposed Bill.

Press release

Government unveils Deregulation Bill Organisation: Cabinet Office

Published 1 July 2013 Ministers : The Rt Hon Kenneth Clarke QC MP and The Rt Hon Oliver Letwin MP

Public bodies

It reduces bureaucratic requirements on public bodies including:

- *removing prescriptive requirements on local authorities to consult and produce various strategies, giving them more freedom from central control*
- *freeing schools from pointless paperwork and prescriptive central government requirements*

The Bill also brings forward a new mechanism which would allow Parliament to identify and remove uncontroversial legislation more speedily.

The Bill joins other key deregulatory measures introduced by this government including:

- *major simplification of the registration and payment system for company charges, saving businesses more than £21 million*
- *binding new rules to exempt hundreds of thousands of low risk businesses from health & safety inspections*

- *the introduction of a portable Criminal Records check, which employers can view instantly online, saving the need for a new check in the majority of cases*
- *overhauling no-win, no-fee legal claims*
- *increasing the qualifying period for unfair dismissal to two years, saving business £4.7 million*
- *introducing new incentives so that roadworks on the busiest roads are done during quieter times – saving business more than £27 million per year*

3.2 Ken Clarke, Minister without Portfolio, said:

“I am as strongly in favour of sensible regulation as the next man, but only where it is necessary to prevent wrongdoing and protect the public. In recent years a mountain of unnecessary legislation has been piled onto the statute book, usually introduced with the most worthy motives. This regulatory burden wastes time and money for hard-working people and ties honest businesses and public bodies in bureaucratic knots.

“The Deregulation Bill is just the latest offspring of the government’s highly ambitious Red Tape Challenge, which has already identified and removed barriers to the growth of our economy to the tune of £212 million each year. There is much more to come.”

3.3 Oliver Letwin, Minister for Government Policy, said:

“If Britain is to succeed in the global race, we have to make sure that government does not get in the way of hard working business people. Through the Red Tape Challenge we have already been able to remove £212 million worth of burdens per year on business. Some of the key changes we have got in motion include making employment tribunals work for employers as well as employees, hugely simplifying building standards and environmental guidance and getting health and safety law into proper proportion.

“Not only does this Bill bring forward the next tranche of deregulatory legislation, it also creates a new procedure which means that Parliament can identify and remove uncontroversial but burdensome regulations with much greater speed than is currently possible. My hope is that this procedure will become a regular fixture in the parliamentary calendar.”

3.4 Michael Fallon, Minister for Business and Enterprise said:

“Our new growth duty is an important step in changing the mind-set in Whitehall and beyond to focus relentlessly on helping honest businesses to grow. It will help bring the huge resource of more than 50 non-economic regulators with a combined budget of £4 billion to bear on the crucial task of stopping pointless red tape and promoting growth. ”

- 3.5 Officers would say that there is a significant conflict between the purpose of the bill and the inclusion of this particular proposal. Members should consider the potential impact of an influx of unlicensed, unknown drivers from areas throughout West Yorkshire or further. It is a situation that would leave this local Authority in a hopeless position to try and protect citizens in detecting offending, investigatory work and dealing with offenders.
- 3.6 There are no accompanying powers to help local Authorities to control or investigate illegal activity. The proposition that it would be for the intended driver of a licensed vehicle to prove he was behaving lawfully does virtually nothing, in a practical sense, to discourage illegal activity or enable any investigative opportunities. It would not be unreasonable to think the Police would not have the capacity to have a consistent policing strategy in place to deal with such issues 'live' or post incident.
- 3.7 Should the Bill progress through Parliament consideration will be given to information, education, enforcement and multi-agency strategies but in the interim it is recommended that Members consider all opportunities to raise government awareness to these concerns.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Full consultation has previously taken place in the Law Commission consultation exercise. There is no necessity for consultation with the trade on this matter as it is a primary safety consideration for the Council which has previously been expressed in a public document.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 To follow from Kate Coldwell.

4.3 Council policies and City Priorities

- 4.3.1 The Taxi & Private Hire Licensing policies contribute to the following aims:

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4.3.2 The Taxi & Private Hire Licensing policies contribute to priorities:

- Reduce crime levels and their impact across Leeds
- Effectively tackle and reduce anti-social behaviour in communities

4.3.3 Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal obligation to ensure the duty of care for both children and vulnerable adults across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or vulnerable adults.

4.4 Resources and value for money

5.4.1 There would be potentially significant issues to address which cannot be quantified at this time.

4.5 Legal Implications, Access to Information and Call In

5.1 There are no issues to address at this stage.

4.6 Risk Management

5.6.1 Officers feel there are potentially significant risks if the proposal was to be enacted but for the purpose of this report a full risk assessment has not been undertaken.

5 Conclusions

5.1 It is felt that a concern should be voiced by the Council in response to the singular concern in the proposed legislation. Undoubtedly this is a public safety issue and not a matter of bureaucracy. It seems without reason that a public safety issue is dealt with in such a Bill and that the proposal itself is in conflict with all the other safeguards in the existing and proposed legislation.

6 Recommendations

- 6.1. That Members consider an appropriate strategy to raise awareness and voice their public safety concerns to the Parliamentary process.

7 Background documents¹

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

8 Private hire vehicles: circumstances in which driver's licence required

(1) Section 46 of the Local Government (Miscellaneous Provisions) Act 1976 (vehicle, drivers' and operators' licences) is amended as follows.

(2) In subsection (1)(b), for "driver of any private hire vehicle" substitute "driver of any vehicle when it is in use as a private hire vehicle".

(3) After subsection (1) insert—

"(1A) For the purposes of this Act, a reference to a vehicle being in use as a private hire vehicle is a reference to a private hire vehicle which—

- (a) is in use in connection with a hiring for the purpose of carrying passengers;
or
- (b) is immediately available to an operator to carry out a booking for a private hire vehicle."

(4) After subsection (2) insert—

"(3) If, in any proceedings for an offence under this section in which it is alleged that the defendant contravened subsection (1)(b), the prosecution prove that a private hire vehicle was at any time being used on a road to carry one or more passengers, it is to be presumed, unless the contrary is shown, that the vehicle was, at that time, in use in connection with a hiring as mentioned in subsection (1A)(a)."

9 Taxis and private hire vehicles: duration of licences

(1) The Local Government (Miscellaneous Provisions) Act 1976 is amended as follows.

(2) In section 53 (drivers' licences for hackney carriages and private hire vehicles)—

(a) in subsection (1)(a), for "for such lesser period as the district council may specify in such licence" substitute "for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case";

(b) in subsection (1)(b), for "for such lesser period as they may specify in such licence" substitute "for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case".

(3) In section 55 (licensing of operators of private hire vehicles), for subsection (2) substitute—

"(2) Every licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case."

10 Private hire vehicles: sub-contracting

In the Local Government (Miscellaneous Provisions) Act 1976, after section 55 insert—

“55A Sub-contracting by operators

(1) A person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle may arrange for another person to provide a vehicle to carry out the booking if—

(a) the other person is licensed under section 55 in respect of the same controlled district and the sub-contracted booking is accepted in that district;

(b) the other person is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted in that district;

(c) the other person is a London PHV operator and the subcontracted booking is accepted at an operating centre in London; or

(d) the other person accepts the sub-contracted booking in Scotland.

(2) It is immaterial for the purposes of subsection (1) whether or not subcontracting is permitted by the contract between the person licensed under section 55 who accepted the booking and the person who made the booking.

(3) Where a person licensed under section 55 in respect of a controlled district is also licensed under that section in respect of another controlled district, subsection (1) (so far as relating to paragraph (b) of that subsection) and section 55B(1) and (2) apply as if each licence were held by a separate person.

(4) Where a person licensed under section 55 in respect of a controlled district is also a London PHV operator, subsection (1) (so far as relating to paragraph (c) of that subsection) and section 55B(1) and (2) apply as if the person holding the licence under section 55 and the London PHV operator were separate persons.

(5) Where a person licensed under section 55 in respect of a controlled district also makes provision in the course of a business for the invitation or acceptance of bookings for a private hire car or taxi in Scotland, subsection (1) (so far as relating to paragraph (d) of that subsection) and section 55B(1) and (2) apply as if the person holding the licence under section 55 and the person making the provision in Scotland were separate persons.

In this subsection, “private hire car” and “taxi” have the same meaning as in sections 10 to 22 of the Civic Government (Scotland) Act 1982.

(6) In this section, “London PHV operator” and “operating centre” have the same meaning as in the Private Hire Vehicles (London) Act 1998.

55B Sub-contracting by operators: criminal liability

(1) In this section—

“the first operator” means a person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle and then made arrangements for another person to provide a vehicle to carry out the booking in accordance with

section 55A(1);

“the second operator” means the person with whom the first operator made the arrangements (and, accordingly, the person who accepted the sub-contracted booking).

(2) The first operator is not to be treated for the purposes of section 46(1)(e) as operating a private hire vehicle by virtue of having invited or accepted the booking.

(3) The first operator is guilty of an offence if—

(a) the second operator is a person mentioned in section 55A(1)(a) or (b),

(b) the second operator contravenes section 46(1)(e) in respect of the sub-contracted booking, and

(c) the first operator knew that the second operator would contravene section 46(1)(e) in respect of the booking.”

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LICENSING COMMITTEE WORK PROGRAMME 2013/14 - LAST UPDATED 28/05/14 (JG)

ITEM	DESCRIPTION	NOTES	TYPE OF ITEM
Items Currently Unscheduled			

ITEM	DESCRIPTION	Officer	TYPE OF ITEM
	Meeting date: TUESDAY 4 JUNE 2013. HELD. Annual Governance arrangements, Annual Report		
	Meeting date: 25 JUNE 2013. HELD. SEV policy, Law Commission interim statement, Executive PH policies		
	Meeting date: 23 JULY 2013. HELD. Enforcement Activity Update, Trike PH applications, ELS Activity Update, Site Allocation Plan, Late Night Levy		
	Meeting date: 13 AUGUST 2013. HELD. TPHL Decision Making Process, Leeds Festival		
	Meeting date: 10 SEPTEMBER 2013. HELD. Scrap Metal Dealers Act, TPHL Monitoring Proposals (deferred), SEV update		
	Meeting date: 15 OCTOBER 2013. HELD. WYP presentation, TPHL Monitoring proposals, Wi-Fi in Taxis, Shisha Smoking, Budget update, Leeds Festival interim report		
	Meeting date: 12 NOVEMBER 2013. HELD Immediate Suspensions Policy, Sex Shop licence fee review, Petition from Alpha Welfare, Leeds Festival full de-brief		
	Meeting date: 17 DECEMBER 2013 HELD Disclosure and Barring Service, PH Operator Conditions (TPHL), Licensing Act 2003 Statement of Licensing Policy 2014-18, Strong Alcohol Schemes		
	Meeting date: 14 JANUARY 2014 –HELD TPHL – update on the Decision Making process suspensions/revocations, TPH Convictions Criteria (TPHL), ELS – update on ELS activity (including the ELS Enforcement team, Late Night Levy		
	Meeting date: 11 FEBRUARY 2014 – HELD. TPHL Equality Monitoring, WYP Presentation		
	Meeting date: 11 MARCH 2014 – HELD - Communication and Consultation with the Taxi and Private Hire Trade		

Key: RP – Review of existing policy DP – Development of new policy PM – Performance management B – Briefings SC – Statutory consultation

LICENSING COMMITTEE WORK PROGRAMME 2013/14 - LAST UPDATED 28/05/14 (JG)

ITEM	DESCRIPTION	Officer	TYPE OF ITEM
Meeting date: 8 APRIL 2014			
Shisha Smoking issues - update	To receive an update report from LCC Health and Safety Team on shisha smoking in Leeds and the Service's remit on enforcing smoking regulations	R McCormack	B
Wi-Fi in licensed vehicles	To provide an update on the take-up of Wi-Fi within Hackney Carriage Vehicles following amendments to the existing conditions to facilitate its use (Oct 13) and providing information exploring the expansion of the initiative throughout the rest of the licensed vehicle fleet	D Broster	RP
Age Restriction on Advertising on Wheelchair Accessible Hackney Carriage Vehicles – Proposal to Extend	To receive a report on the 'Corporate Advertising' policy applicable to Wheelchair Accessible Hackney Carriages which restrict the applicable age of the policy to those vehicles which are 5 years old from the date of first registration and the potential opportunities to benefit the trade by extending that age limit.	D Broster	RP
Leeds Festival 2014	To provide an update on the arrangements for the Leeds Festival 2014	S Holder	B
Sex Establishment Licences - Fee Review	To seek Members approval for the review of the licence fees charged under the Local Government (Miscellaneous Provisions) Act for the licensing of sex establishments.	N Raper	PM
Meeting date: 13 MAY 2014			
Meeting date: 10 JUNE 2014			
Private Hire Operator Conditions Review	To receive progress and some of the issues around the Review of Private Hire Operators Conditions (Previous report presented December 2013)	D Broster	RP
Hackney Carriage Proprietors – Appropriate Suitability Assessment	To receive a report back following consultation with the Private Hire and Hackney Carriage Trade	D Broster	RP
3 Year Driver Licences to	To receive a report back following consultation with the Private Hire and	D Broster	RP

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LICENSING COMMITTEE WORK PROGRAMME 2013/14 - LAST UPDATED 28/05/14 (JG)

ITEM	DESCRIPTION	Officer	TYPE OF ITEM
PH & HC Drivers and Third Party Renewals	Hackney Carriage Trade		
Conviction Criteria	To receive a report on the conviction criteria for Hackney Carriage Drivers, Private Hire Drivers and Operators	D Broster	RP
De Regulation	To receive a report highlighting implications arising from the De Regulation Bill 2013	D Broster	SC
Meeting date: 8 JULY 2014 (PROPOSED)			
BID UPDATE (Late Night Economy)	To receive a report back on the of Voluntary Initiatives and or the BID	S Holder/M Farrington	DP
Strong Alcohol Schemes	To receive a report back on the strong alcohol schemes	S Holden	DP
Otley Cumulative Impact Policy	To consider proposals for the introduction of a Cumulative Impact Policy for Otley	N Raper	DP
Inner East and Inner West Local Licensing guidance	To consider a report on the Inner East and Inner West Local Licensing guidance	S Holden	
Employment of a Police Constable	To receive proposals for the employment of a Police Constable	D Broster	B
Meeting date: 5 AUGUST 2014 (PROPOSED)			
Entertainment Licensing Section Activity update	To receive an update on activities of the Entertainment Licensing Section for the period January to June 2014	N Raper	PM
TPHL Section Activity Update	To receive a 6 monthly update on the activities of the TPHL Section	D Broster	PM
TPHL Equality Monitoring	To receive an update on the data collection levels achieved so far (January to June 2014) in respect of HC and PH applicants and licence holders,	D Broster	PM
Leeds Festival 2014	To provide an update on the arrangements for the Leeds Festival 2014	S Holder	B
Meeting date: 9th SEPTEMBER 2014 (PROPOSED)			

Key:

RP – Review of existing policy

DP – Development of new policy

PM – Performance management

B – Briefings

SC – Statutory consultation

LICENSING COMMITTEE WORK PROGRAMME 2013/14 - LAST UPDATED 28/05/14 (JG)

ITEM	DESCRIPTION	Officer	TYPE OF ITEM
WYP Presentation	To receive the 6 monthly update		B
Meeting date: 7th OCTOBER 2014 (PROPOSED)			
Wi-Fi in licensed vehicles	To provide a report exploring proposals for free Wi-Fi in Private Hire vehicles	D Broster	DP
Meeting date: 11th NOVEMBER 2014 (PROPOSED)			
Meeting date: 9th DECEMBER 2014 (PROPOSED)			
Meeting date: 6th JANUARY 2015 (PROPOSED)			
Meeting date: 10th FEBRUARY 2015 (PROPOSED)			
Meeting date: 10th MARCH 2015 (PROPOSED)			
Meeting date: WEDNESDAY 8th APRIL 2015 (PROPOSED)			
Meeting date: WEDNESDAY 6th MAY 2015 (PROPOSED)			

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LICENSING COMMITTEE WORK PROGRAMME 2013/14 - LAST UPDATED 28/05/14 (JG)

ITEM	DESCRIPTION	Officer	TYPE OF ITEM

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