

0Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 7 October 2014

Subject: Information and consultation report – Additional licensing safeguarding proposals.

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 1 is considered confidential under Access to Information Procedure Rule 10.4(1) and (2) because it contains information relating to individuals and which is likely to lead to the identification of individuals. It is considered in these circumstances that the public interest in maintaining the exemption from publication outweighs the public interest in disclosing the information. Appendix number: (1)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. The existing licensing controls at the point of entry can be improved upon in respect of non UK residents.
2. The proposals in the report have to be carefully considered to balance the human rights of individuals, areas of equality and the public safety responsibilities.
3. It is suggested that proposals to strengthen the decision making process be put to public consultation for a one month period so members can have the widest range of responses.
4. The current DBS (disclosing and barring service checks) on licensed drivers is every three years and it is proposed that is replaced with an annual on-line DBS requirement which provides financial benefits, and increased access to notifiable information for licensing Officers.

Recommendations

5. That Members consider the report and contribute any considered points before releasing it for public consultation for a one month period.

1 Purpose of this report

1.1 To identify to Members licensing controls which will contribute to increased public safety and reduce the risk of inappropriate behaviour, including sexually motivated behaviour, to the travelling public:-

- By a more appropriate point of entry 'fit and proper person' test for applicants of Hackney Carriage Driver(HCD), Private Hire Driver (PHD), Private Hire Operator (PHO), Permit Driver Licences or Care Escorts. The latter two groups are not licensed drivers but are involved in the driving or escorting of children on Council contracts who have to meet the same threshold on the 'fit and proper' person test as licensed drivers.
- By expanding the reporting requirements of PHD's and HCD's of incidents in which allegations are made about them to the Police.
- By adopting an increased frequency of DBS checking.

1.2 Members, having debated the issues, to then release the proposals for public and trade consultation for one month and to return to Licensing Committee at the first opportunity with a comprehensive report for Members to consider.

2 Background information

2.1 There is little doubt that licensing authorities hold a significant responsibility for carrying out a thorough examination of applicants at application and exercising appropriate diligence during the life time of a licence. The threshold for the point of entry to obtaining a PHD or HCD licence across the country varies significantly and the process in Leeds is not dissimilar to some other licensing Authorities.

2.2 Currently the point of entry measures in Leeds include:-

- English literacy and numeracy screening
- DBS check
- Group 2 medical
- Driving Standards Agency (DSA) test
- Training and testing on equality, conditions, legislation, geography of Leeds.

2.3 The opportunities to monitor licensed drivers include:-

- **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 driver will undertake enhanced 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 drivers.

- Three yearly Disclosure and Barring Service (DBS) check
- Occupational Notifications Scheme (This information is supplied to the authority where the police think appropriate).
- Public complaints

2.4 Disclosure and Barring Service Checks during the lifetime of a licence:-

Since 2001 all applicants have undertaken CRB or DBS checks. Prior to that the responsibility for disclosure rested with the Police and all drivers prior to 2001 were subject to a Police check (DP1).

2.5 In December 2013 the Licensing Committee approved a policy which required all PHD's, PHO's and HCP's to undertake three yearly DBS checks. In the interim information has been received that the Notifiable Occupation Scheme may have been affected by a change in the arrest and custody procedures within the Police Service. This can create a void for the licensing section in being able to take action on criminal intelligence relating to its licensed drivers.

3 Main issues

3.1 Members are aware that a number of licensed drivers are entering this country from other countries, not exclusively but for example from India, Pakistan, Afghanistan and the 'middle east' and from EU member states.

3.2 The DBS process is a credible means of checking on a person's criminal activity, whether convicted or otherwise. The difficulty arises where a person has not been resident in the UK for a period of time which would not allow a proportionate assessment to be made of their character based on criminal behaviour.

3.3 Dealing with EU Member state applicants first, there is a conflict in the standards of recording, retaining and disclosure of information regarding criminal activity across EU member states and a problem of accessing that information for licensing purposes. The primary route for obtaining information from EU Member states is in relation to criminal proceedings. Licensing or employment checks are not as easy and might not be obtainable by the Authorities although Child Protection issues might be considered.

3.4 Licensing Authorities across the country currently have had to satisfy themselves with 'certificates of good character'. These documents take a variety of forms but, generally, they are not able to be checked by licensing staff. The integrity of the document itself, or the relevance of a genuine document, may undermine the principles of a safe licensing regime. What an individual country might regard as recordable or disclose can be entirely different to the DBS.

- 3.5 Officers will be able to demonstrate to members variances in the types of personal character reference documents presented to the Section.
- 3.6 Officers feel that more integrity is now required around this and would seek to require EU applicants to obtain full criminal disclosure from their country of birth and other countries they have resided in, and any other auditable supporting information as required by the Authority to determine the 'fit and proper' test more appropriately.
- 3.7 Members will be aware of the current concerns about the distinct lack of robustness in this arena by some none EU countries. It is of significant importance that robust checking measures are in place for none EU applicants.
- 3.8 The issue of 'certificates of good character' from outside of the EU is even more of an issue and concern for the Authority. Applicants produce documentation which is not auditable. If the documentation has been obtained through a Consul or Embassy the question still has to be asked of "what value is it" if the host country does not properly recognise, record or properly investigate certain types of crime.
- 3.9 The final report to Licensing Committee will contain more background information about these issues.
- 3.10 Legal advice on the sensitivities around these issues but it is being emphasised that the primary purpose of the legislation is public safety and not the opportunity for employment. It is in that light that proposals might include a minimum period of residency in the EU to obtain a credible DBS disclosure.
- 3.11 In respect of DBS checks, in the lifetime of a licence the Licensing Office has been testing the new DBS on-line system and has signed up 116 drivers to that process. The process is cheaper to the driver over a 3 year period and annually thereafter. It also provides increased on-line alerts to the Council in monitoring licensed drivers.
- 3.12 The potential downside is that if a driver does not renew his annual DBS status then his licence would not be renewed or may be suspended. To overcome this, as far as is possible, the section is proposing to change the format of the drivers badge so it has a DBS expiry date on it. Additionally we also intend to move away from postal renewal reminders to text and email reminders to the driver and his Private Hire Operator or Hackney Carriage Association. We are also looking at creating a public record of licences issued which would include the expiry date of a licence and DBS check. Licensed drivers would then have potentially five points of reference to remind them of the expiry date.
- 3.13 For the purpose of consultation information there are two other areas of concern associated with applications.

References:- The majority are of little value in terms of reference to the role and responsibilities are often completed in the spirit of friendship or other relationship.

Conditions upon a licence (highlighted at 2.4):- To extend the requirement to report to any incident where the driver has been interviewed by the Police Service about any allegation specified in the convictions criteria.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 It is important there is a quick turn around on this consultation and in the public interest to protect the Council in its Safeguarding responsibilities. It is proposed the consultation period be for a period of one month.

4.1.2 The main contributor could be the existing trade but it may also raise other contributors with concerns from credible sources.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 A screening document is being completed and will be available prior to final determination of the issues by Members. Reference may also be made to issues of equality in legal advice.

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

4.4 Resources and value for money

4.4.1 The increased administration would have to be reflected in licensing fees and must be spread across the whole trade.

4.5 Legal Implications, Access to Information and Call In

4.5.1 Legal advice is to be sought on the proposals outlined in this report.

4.6 Risk Management

4.6.1 It is considered that the proposals are very necessary to contribute to the Council's Safeguarding responsibilities.

4.6.2 The time frame for moving the licensing service to an annual on-line DBS check is a three year cycle. This is due to the volumes of drivers and the logistical problem of handling nearly 7,000 licence holder applications. This could be short-cut by a small margin with the annual fall-out of licensed drivers who are replaced by first time applicants who will naturally fall into the annual on-line DBS service.

5 Conclusions

5.1 This is a difficult and sensitive area of licensing and Members will be better informed and more able to make proportionate decisions, balancing public safety requirements, when they have the benefit of legal advice and consultation feedback.

6 Recommendations

6.1 That Members consider the report and contribute any considered points before releasing it for public consultation for a one month period.

7 Background documents¹

7.1 Ministry of Justice circular 2010/12

7.2 ACPO Criminal Records

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.

Confidential - Exempt under Access to Information Procedure Rule 10.4(1) and (2).