

Report of Head of Licensing and Registration

Report to Licensing Committee

Date: 10 February 2015

Subject: Safeguarding measures – ‘fit and proper’ assessment for HCD, HCVP, PHD, PHVP, PHO licences, Escorts and ‘permit drivers’ – Information report.

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 2 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.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Appendix number: 2		

Summary of main issues

1. The existing control measures for the grant or renewal of a personal licence or permit have been in place for a considerable time and the opportunities for people to move easily cross national or international borders to gain employment have increased significantly, and in economic terms, beneficially.
2. The statutory responsibilities of the Council have been carefully considered and the challenges that might be presented to a regulatory authority in the light of this, to ensure that applicants for a licence are adequately assessed to minimise the potential risk to children, vulnerable adults, women or passengers generally.
3. The focus of this report, having recognised the challenges, is to balance the opportunity of employment and equality with the significant responsibilities for public safety the Council has.
4. Administrative changes are outlined in the body of the report, but in essence applicants with little credible DBS history in the UK will be required to more comprehensively demonstrate they are a ‘fit and proper’ person, by presenting

accredited and checkable information to the Council so that a satisfactory determination can be made.

Recommendations

5. That Members note the content of the report, particularly the background to the need for a thorough checking system applied to the 'fit and proper' person assessment and make any observations they consider appropriate.
6. That the development of the new policy be included in the Work Program forward plan.

1 Purpose of this report

- 1.1 To enable Members to consider the safeguarding and general public safety statutory responsibility attached to the grant of a personal licence in the context of more open EU borders, reduced employment constraints on EU and foreign nationals from outside of the EU.

2 Background information

- 2.1 Members are reminded that this is a statutory responsibility in respect of a HCD, PHD or PHO and a licensing suitability responsibility in respect of HCVP or PHVP.

- 2.2 The Local Government (Miscellaneous Provisions) Act 1976 requires that:

Section 51 Licensing of drivers of private hire vehicles

Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

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

Section 55 Licensing of operators of private hire vehicles.

Subject to the provisions of this Part of this Act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator's licence:

Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence.

Section 59 Qualifications for drivers of hackney carriages

Notwithstanding anything in the Act of 1847, a district council shall not grant a licence to drive a hackney carriage:

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

- 2.3 In respect of permit drivers and escorts the same principle is applied but by way of Council policy and best practice measures in the absence of primary legislation.

- 2.4 The responsibility of a local authority to exercise good practice in this area has gained momentum and focus in light of the letter to local Authorities from The Rt Hon Eric Pickles MP, Secretary of State, Department for Communities and Local Government. A similar emphasis was adopted in a letter from Baroness Kramer, Department for Transport. **Appendix 1**

3 Main issues

- 3.1 The existing standard appears to have worked well on the information currently available, but nationally there have been examples of some EU citizens going under the radar in respect of their previous criminal history. That could pose a significant threat if a personal licence was granted to such a person.
- 3.2 The situation is complicated in the EU by variations in how criminal record data bases are constructed; how such information is shared between different countries; the differing 'rehabilitation of offenders' time periods; how criminal intelligence around allegations made about a suspect is recorded or released to agencies and whether or not any such information could be shared with a UK Licensing Authority. These inconsistencies are matters of concern.
- 3.3 These problems in respect of non EU countries are increased as there may be no system or low quality systems for the recording of convictions or arrests for crime. It is not unreasonable to say that in some countries a prevailing view might be not to prioritise either the recording of crimes or bringing offenders before the courts in a way we would recognise. These are matters of significant concern.
- 3.4 Currently applicants for personal licences are required to undertake a UK DBS enhanced disclosure. This may reveal nothing if the applicant has not been in the UK for a sufficient period of time. However, it is still necessary to undertake such a check. Further supporting evidence may be supplied in the form of character references. Officer experience has found these predominantly fall significantly short in terms of demonstrating a true knowledge of the individual or a worthwhile employment record of the applicants' true suitability for the role of a licensed driver. Custom and practice has accepted such endorsement for many years across Licensing Authorities.
- 3.5 Additional supporting evidence may be supplied by the applicant in the form of a 'certificate of good conduct'; more usually from Pakistan or India. Some issues around the integrity of such documents have caused concern and Officers feel that the continued reliance on such documents alone may be unsustainable for a safeguarding assessment. Members are referred to those confidential documents under 'Exempt information'.
- 3.6 That situation might improve marginally if the information was supplied via the applicants Consul or Embassy, but may still fall short of a minimum standard to satisfy the Council.
- 3.7 Legal advice has been obtained in respect of how the Council satisfies itself on the 'fit and proper' person test; where the onus lays to demonstrate this; and proportionality and the discriminatory effects of a blanket policy.
- 3.8 For ease of reference the main legal view expressed is set out below in response to a notional standard from Officers:-
- 3.9 "The pre-requirement to the grant of a PHD, HCD, PHO, HCP, PHVP, is that an enhanced DBS must be submitted to the Council which covers a full five year

period of continued residency in the UK for officers to consider and apply a ‘fit and proper’ person character assessment’.”

3.10 Legal advice in respect of that question was; Counsel opinion ...’that it was likely to be considered discriminatory, directly and indirectly particularly so from countries that have convictions recording systems, as an example, France. The imposition of such a policy would make the Council susceptible to Judicial Review. ends

3.11 There are complexities around the obtaining of convictions or other recorded allegations for a local authority and these need more detailed examination from national; agencies, for example;-

3.12 UKCA – ECR (United Kingdom Central Authority for the Exchange of Criminal Records)

The UKCA-ECR’s main responsibility is exchanging criminal record information with countries in the European Union (EU). This work is carried out on behalf of UK Government in support of law enforcement and authorised agencies throughout the country. It involves two main processes – Conviction Notifications and Requests

3.13 ECRIS (European Criminal Records Information System)

Established in April 2012 to achieve an efficient exchange of information on criminal convictions between EU countries and to improve the exchange of information on criminal records throughout the EU. It introduced an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between EU countries in a uniform, speedy and easily computer-transferable way.

The system gives judges and prosecutors easy access to comprehensive information on the offending history of any EU citizen, no matter in which EU countries that person has been convicted in the past.

3.14 NEU –ELL (Non-European Union Exchange of Criminal Records)

The NEU-ECR works in close collaboration with a number of UK law enforcement and government agencies, including all police forces across the UK, the Serious Organised Crime Agency (SOCA), the UK Border Agency (UKBA) and the National Offender Management Service (NOMS).

The NEU-ECR manages foreign criminal conviction information on behalf of these agencies ensuring that databases and registers in the UK are updated and information is available to those who require it. By providing this service to partner agencies, the NEU-ECR can supply UK law enforcement with extra knowledge and data to help police and protect the UK Requests for extracts from non-EU criminal registers are made on behalf of UK law enforcement agencies for persons who are subject to criminal proceedings in the UK or where there are public protection objectives.

3.15 The relationships between these organisations and a Local Authority need formal enquiries and recognition before a conclusive statement of policy can be

introduced in the context of our public protection matters. The issue hinges on whether or not these organisations formally recognise the relationship between public protection and safeguarding when exercised in the civil arena of licensing as opposed to the criminal courts

- 3.16 In the interim, in respect of EU nationals Officers will require non UK applicants to request such information themselves from their home country, and any other country they have resided in. The proposed route for this would be a Data Disclosure request. The emphasis will be completeness and a clear audit trail of authenticity of the detailed application and the response.
- 3.17 In respect of non EU applicants the issue of 'certificates of good conduct' are the subjective of retrospective licensing enquiries to more closely examine the value or fragility of such documents before a final recommendation is made.
- 3.18 As an interim measure the personal production of such documents during an application process will be discontinued and Officers will seek to improve the validity of such certificates by ensuring the character enquiry is approached on a more formal basis through the applicants Consul or Embassy. This might still not provide the levels of assurance required and Officers are looking at other ways of establishing the merits of the applicant's character.
- 3.19 There are no easy solutions to this problem and Officers are aware of the sensitivities involved which have to be balanced with the necessity to ensure the principles of safeguarding are adequately and proportionately met. A final recommendation will be made in due course to Members.
- 3.20 All of these concerns extend also to those non EU citizens who have been granted a 'right to work' by the Border Agency and to those UK and EU citizens who have been out of the UK for more than 3 months.
- 3.21 The issue of personal references from MPs, Elected Members and Officers has been the subject of an Executive decision on 15 December 2014. Officers will require a much higher standard of character reference in the future that is focussed on employment or credible professional assessments with clear trail of authenticity on the part of the provider and the role described in the previous employment.
- 3.22 The tightening up of existing policy in respect of these issues will be explained to future applicants and the trade.
- 3.23 It is considered that these administrative changes to the application process are relatively minor and do not require Executive approval at this stage

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 An earlier report of 7 October 2014 informed Members that it is important there is a quick turn around on this consultation and it is 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. That consultation was not undertaken

because of the developing issues. It is not proposed to undertake consultation until the proposals and information are complete.

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

4.3.3 Safeguarding children and vulnerable adults:

4.3.4 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 Please note risk comments at 4.6

4.5 Legal Implications, Access to Information and Call In

4.5.1 Advice from Counsel has been sought on a number of areas related to this issue and that advice is reflected in the body of the report in one instance. Other areas of advice will continue to be evaluated in the context of developing policy and be taken into account in a future report.

4.6 Risk Management

4.6.1 A risk review of the licensing function by experienced Officers from 'Revenue and Benefits' has recently been undertaken and several areas of potential weakness identified e.g. resource levels, specific fraud training, supervisory overview, conducting renewal decisions in an environment where queue pressure can mitigate against proper diligence, in the validation of documents. These are being further considered by senior management.

5 Conclusions

5.1 The impetus for enhancing processes in respect of safeguarding issues is clear and significant from Central Government. However, the measures identified to enhance the decision making process have to be proportionate and non-discriminatory. Achieving an improved level of safety in one respect is dependent on the protocols not only between the UK agency which might accept a Local Authority enquiry but also the acceptance of the legitimacy of that application within other EU member states.

5.2 Interim administrative measures will be time consuming for staff and applicants and the frustrations of applicants will need to be handled with understanding.

5.3 There is no easy solution to this issue, even in the event of some co-operation from the various intelligence agencies and much depends on developing a process which is thorough but not obstructive and which facilitates credible character references that have a manageable and credible audit trail to enable measured decision making.

6 Recommendations

- 6.1 That Members note the content of the report, particularly the background to the need for a thorough checking system applied to the 'fit and proper' person assessment and make any observations they consider appropriate.
- 6.2 That the development of the new policy is included in Work Program forward plan.
- 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.



**Department for
Communities and
Local Government**

The Rt Hon Eric Pickles MP
Secretary of State

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The Leader

Principal Councils in England

24 September 2014

Dear Leader,

Safeguarding vulnerable children

We are sure that you, like us, have been shocked and saddened by the failure of Rotherham Metropolitan Borough Council together with other local services (including the police) to protect and safeguard some of their most vulnerable children.

The Government has already announced that Rotherham will be subject to a statutory inspection under section 10 of the Local Government Act 1999 in relation to the council's exercise of its functions on governance, children and young people, and taxi and private hire licensing. Louise Casey CB has been appointed to undertake this independent statutory inspection.

We have also asked Louise, in addition to her statutory inspection, to highlight issues that councils, police forces and the justice system generally should consider in their work on child sexual exploitation, and to report on these and any further matters which might help councils and others to improve their services particularly for children and young people. There will be lessons to be learnt that can help better protect vulnerable children everywhere, not just in Rotherham. This was set out in detail in a Written Ministerial Statement to the House of Commons on 10 September, attached to this letter.

Appendix 1

Alongside this section 10 inspection will be a thematic review of Local Authorities' children's services work in combatting child sexual exploitation announced by Ofsted last week, and the publication of an inspection on how effectively South Yorkshire Police safeguards children and young people at risk, undertaken by Her Majesty's Inspectorate of Constabulary. Ofsted are also inspecting Rotherham's arrangements for children in need of help and protection, and services for looked after children.

The Home Secretary is chairing a series of meetings with relevant Secretaries of State to consider the findings of Professor Jay's report and identify what further action is needed at all levels to ensure such failings do not occur again.

We are already taking work forward in a number of key areas. For example, the Chief Social Worker is working with local government and social work experts to understand the lessons from the Jay report for local authorities more widely and any implications for the Government's drive to improve front line social work practice. The National Policing lead for child protection and child abuse investigation has reviewed the national policing child sexual exploitation action plan in light of lessons from the Jay report.

Professor Jay's report highlighted serious failings in the council over a number of years with regard to the safeguarding of children, and also serious failings of corporate governance, leadership, culture, and the operation of the overview and scrutiny function. In advance of Louise Casey's inspection, we ask that every Leader read Professor Jay's report and consider whether you have adequate measures in place to ensure that you cannot be accused of similar failings.

Louise Casey will be writing to you shortly setting out the information and help she will need to undertake her work and we expect that you will give her your full cooperation and support.

We cannot undo the permanent harm that these children have suffered. But we can and should take steps to ensure that this never happens again and make sure that all local authorities deliver on their essential duty to protect vulnerable children.



This letter is copied to all Chairmen of all Health and Wellbeing Boards in England. The Home Secretary is writing in similar terms to Chief Constables, copied to Police and Crime Commissioners.



THE RT HON ERIC PICKLES MP

THE RT HON NICKY MORGAN MP

Annex A - Written Ministerial Statement by the Secretary of State for Communities and Local Government – 10 September 2014

Governance in Local Government

One of the most important duties of local authorities is the protection of vulnerable children. Professor Jay's recent inquiry into child sexual exploitation in Rotherham has painted a horrific and awful picture that the council utterly failed its children.

As Professor Jay noted:

"No one knows the true scale of child sexual exploitation in Rotherham over the years. Our conservative estimate is that approximately 1400 children were sexually exploited over the full Inquiry period, from 1997 to 2013. In just over a third of cases, children affected by sexual exploitation were previously known to services because of child protection and neglect. It is hard to describe the appalling nature of the abuse that child victims suffered. They were raped by multiple perpetrators, trafficked to other towns and cities in the north of England, abducted, beaten, and intimidated. There were examples of children who had been doused in petrol and threatened with being set alight, threatened with guns, made to witness brutally violent rapes and threatened they would be next if they told anyone. Girls as young as 11 were raped by large numbers of male perpetrators. This abuse is not confined to the past but continues to this day."

Following the publication of the Jay report, my right honourable friend the Home Secretary announced to the House on 2 September that I was minded to use my powers to commission an independent inspection of the council. In parallel, I would also be considering the implications of the report's findings for all local authorities in England.

With clearly documented failures by the council on so many levels, the rare step of a statutory inspection is in the public interest. I have now decided to exercise my powers under section 10 of the Local Government Act 1999 to appoint Louise Casey CB to carry out an inspection of the compliance of Rotherham Metropolitan Borough Council with the requirements of Part 1 of that Act, in relation to the council's exercise of its functions on governance, children and young people, and taxi and private hire licensing.

In undertaking her inspection, I have directed her to consider whether, in exercising its functions on governance, children and young people, and taxi and private hire licensing, the local authority:

- allows for adequate scrutiny by councillors;
- covers up information, and whether "whistleblowers" are silenced;
- took and continues to take appropriate action against staff guilty of gross misconduct;
- was and continues to be subject to institutionalised political correctness, affecting its
- decision making on sensitive issues;

- undertook and continues to undertake sufficient liaisons with other agencies, particularly the police, local health partners, and the safeguarding board;
- took and continues to take sufficient steps to ensure only “fit and proper persons” are permitted to hold a taxi licence;
- is now taking steps to address effectively past and current weaknesses or shortcomings in the exercise of its functions, and has the capacity to continue to do so.

As the statute allows, I also intend to appoint on her recommendation, assistant inspectors to ensure that she has all the skills and experience available to her which she believes are necessary for her to fulfil her remit. Louise Casey will report to me by 30 November 2014, or such later date as I may agree with her, whether or not the council is meeting this duty to secure continuous improvement in respect of its governance, the services it delivers for children and young people, and taxi and private hire licensing.

I have appointed Louise Casey to carry out this sensitive task rigorously and independently. I am confident that with her track record of working in public service and particularly in challenging established practices in regard to the most vulnerable—for example, in reducing rough sleeping, as Commissioner for Victims and Witnesses and in her current role as head of the troubled families programme—she has the experience and skills to undertake a robust and independent inspection which will provide a full and comprehensive report on these matters.

Beyond the terms of reference I have set out in this statement, it is for Louise Casey, with any assistant inspectors I appoint on her recommendation, to decide how to carry out this inspection, and her findings and conclusions will be a matter for her alone.

Louise will continue to lead the troubled families programme. While she is carrying out the inspection in Rotherham, arrangements are being put in place to ensure that progress on troubled families is maintained.

If I am satisfied that an authority is failing to comply with its duty under part 1 of the 1999 Act, that Act gives me the power to statutorily intervene in that authority. Intervention may take a number of forms, including directing the authority to take any action that I consider necessary or expedient to secure its compliance with the 1999 Act duty, or directing that certain of the authority's functions be undertaken by me or by a person—a commissioner—appointed by me for that purpose. The inspection report that I receive will assist me in reaching my view as to whether or not Rotherham metropolitan borough council is meeting its duty under part 1 of 1999 Act.

As part of my consideration of the implications of the Jay report for all authorities in England, I shall be asking Louise Casey, in addition to and outside the scope of the statutory inspection, to explore the links between Rotherham metropolitan borough council and the police and justice system, and highlight issues that local authorities, police forces and the justice system should consider in their work on child sexual exploitation, and my right honourable friend the Home Secretary welcomes this.

I will also ask Louise Casey to report to me on whether she considers, as a result of undertaking the inspection or otherwise, there are any further matters which might appropriately be drawn to the attention of authorities and other local service providers generally to assist them to improve the delivery of their services, particularly those relating to children and young people.

In order to assist Louise Casey and help my consideration of the wider issues I will be writing to all leaders of principal councils asking them to consider the implications of the Jay report for their own authority.

I will make a statement to the House in due course on the completion of this work and after due consideration of the report.

We cannot undo the permanent harm that these children have suffered. But we can and should take steps to ensure that this never happens again and make sure that all local authorities deliver on their essential duty to protect vulnerable children.



Department
for Transport

Chief Executive
Local licensing authorities

From the Minister of State
Baroness Kramer

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Our Ref:

Dear Colleague

18 NOV 2014

Taxi and private hire vehicle drivers

I am writing to you about the important issue of ensuring that licensed taxi and private hire vehicle drivers are safe to drive the travelling public.

National and local government have a joint interest in ensuring personal safety of passengers. We recognise the good work that many local authorities have already done through stringent licensing procedures to protect passengers and maintain confidence in taxi and private hire vehicle services.

Licensing authorities have power to undertake enhanced Disclosure and Barring Service checks on all applicants for taxi and private hire vehicle driver licences. These checks will highlight convictions for sex offences and other relevant information that can be taken into consideration when deciding who to license. Furthermore, once a licence has been issued, licensing authorities should have systems in place, including maintaining links with the police, to ensure that drivers continue to be 'fit and proper'. While the decision to revoke or suspend a licence should never be considered lightly, the licensing system is designed to protect the public and it would be wrong to avoid this course of action where it is clearly appropriate.

In the interests of public safety and the reputation of the licensed trade, I encourage you to use all the tools available to ensure that all licensed drivers have undergone a thorough vetting process, their conduct is monitored once licensed, and all available information is fully considered when making licensing decisions.

Baroness Kramer

BARONESS KRAMER

