



Report of the Assistant Chief Executive (Corporate Governance)

Corporate Governance and Audit Committee

Date: 30 June 2010

**Subject: Decision Making in respect of Entertainment, Alcohol and Gaming Licensing;
and Taxi and Private Hire Licensing**

Electoral Wards Affected:

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

This report responds to the request of the Committee to set out the arrangements in respect of decision-making in Entertainment, Alcohol and Gaming Licensing; and Taxi and Private Hire Licensing.

The Committee is asked to:-

- Note the current arrangements and areas highlighted for improvement; and
- Suggest any improvement to the arrangements, which they consider should be made.

1. Purpose of the Report

- 1.1 At its meeting in June 2009, the Corporate Governance and Audit Committee requested an annual report setting out arrangements and giving assurances for decisions taken by the Council in respect of licensing matters.
- 1.2 This report outlines the arrangements that are in place for Assistant Chief Executive (Corporate Governance) in relation to:
- Entertainment, Alcohol and Gaming Licensing
 - Taxi and Private Hire Licensing
- 1.3 It aims to provide assurances to the Committee as to the operation of the arrangements and processes that are in place, confirming they are accountable, transparent, have integrity, and are effective.

- 1.4 Consideration is also giving to the risk of challenge and the measures in place to mitigate any potential risk and to the programme of continuous improvement to ensure that processes take into account best practices.

2. Background Information

- 2.1 The regimes for dealing with licensing in the fields of entertainment, alcohol, and gaming; and taxi and private hire licensing are statute based and for the most part the considerations which apply to applications are prescribed in legislation.
- 2.2 Appendix 1 sets out the range of decision which are taken by the authority in respect of Licensing Decisions other than in relation to Taxi and Private Hire matters; and Appendix 2 sets out the range of decisions taken in respect of Taxi and Private Hire. Those Appendices set out the arrangements for making the decisions. Appendix 3 sets out statistical detail of decisions taken in respect of entertainment licensing matters. Similar statistics are not currently available in respect of taxi and private hire matters, because of current Information Technology issues.
- 2.3 Although the two regimes are dealt with together in this single Report there are significant differences between them. Most fundamentally the Entertainment, Alcohol and Gambling applications are essentially dealt with 'in public' whereas the taxi and private hire applications are dealt with 'in private'. The former are publicized and where contested are referred to Members, whereas the latter are dealt with, initially at least, on a confidential basis.

3. The Decision Making Framework

- 3.1 This Section looks at the framework within which the decision-making occurs.
- 3.2 Part 2 of the Local Government Act 2000 ("the Act") provides for the discharge of a local authority's functions by an executive of the authority unless those functions are specified as functions that are not to be the responsibility of the authority's executive. The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 ("the Regulations"), as amended, specify functions that are not to be the responsibility of the authority's executive or are to be the responsibility of such an executive only to a limited extent or only in specified circumstances.
- 3.3 Paragraph B of Schedule 1 of the Regulations relates to Licensing and Registration functions (in so far as not covered by any other paragraph of the Schedule). A copy of the Schedule is attached as Appendix 1 to this Report. It will be noted that the Schedule provides, amongst other things that the following are not to be the responsibility of an Authority's Executive –
- 3. Power to license hackney carriages and private hire vehicles
 - 4. Power to license drivers of hackney carriages and private hire vehicles
 - 5. Power to license operators of hackney carriages and private hire vehicles
 - 11. Power to grant permits in respect of premises where amusements with prizes are provided
 - 14. Power to issue entertainments licences
 - 14A. Functions relating to licensing (section 5 to 8 of the Licensing Act 2003.
 - 14AC Functions relating to occasional use notices
 - 14B Power to resolve not to issue a casino premises licence
 - 14F Functions relating to the determination of fees for premises licences

- 15 Power to licence sex shops and sex cinemas
- 19. Power to register door staff
- 21. Power to licence night cafes and take-away food shops

3.4 Section 6 of the Licensing Act 2003 provides that (1) each licensing authority must establish a licensing committee consisting of at least ten, but not more than fifteen, members

3.5 The Constitution of the Council sets out in Part 3 the above allocation of responsibility and at pages 81 and 82 provides –

Council (non-executive) Functions	Decision making body	Delegation of functions to Officers (to the extent set out in Section 2C)
Functions relating to licensing.	Licensing Committee	
Taxi, gaming, food and miscellaneous licensing Functions relating to licensing and registration (other than in relation to highways and under the Licensing Act 2003)	Licensing and Regulatory Panel	Director of Environment and Neighbourhoods and Chief Officer (Environmental Services) Director of City Development Assistant Chief Executive (Corporate Governance)

3.6 Part 3 Section 2B of the Constitution sets out the Terms of Reference of the Licensing Committee, The Licensing Sub-Committees and the Licensing and Regulatory Panel.

3.7 As is noted at footnote 4 to the Terms of Reference of the Licensing Committee there is the power of delegation to officers with some exceptions.

3.8 As is noted at footnote 1 to the Terms of Reference of the Licensing Sub-Committees there is the power of delegation to officers with some exceptions.

3.9 As is noted at footnote 1 to the Terms of Reference of the Licensing and Regulatory Panel there is the power of delegation to officers with some exceptions.

3.10 Section 2C of the Constitution sets out the Officer Delegation Scheme (Council (Non-Executive) Functions). The delegations to the Assistant Chief Executive (Corporate Governance) is attached. It will be noted that there are a number of delegations in relation to Licensing and Regulatory matters. As is set out in footnote 3 the fact that a function has been delegated to the Assistant Chief Executive (Corporate Governance) does not require the Assistant Chief Executive to give the matter his/her personal attention and the Assistant Chief Executive (Corporate Governance) may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Assistant Chief Executive (Corporate Governance) remains responsible for any decision taken pursuant to such arrangements.

- 3.11 The Assistant Chief Executive (Corporate Governance) has prepared a sub-delegation scheme. This clearly sets out which officers are authorized to take which decisions, although the Assistant Chief Executive (Corporate Governance) retains overall responsibility for the decision making.
- 3.12 The Constitution (Part 3 Section 5) sets out the arrangements for recording decisions taken by officers under delegated powers. It provides that upon making a decision relating to the exercise of a Council function, the officer, in appropriate circumstances, must provide the Chief Democratic Services Officer with a completed Delegated Decision Notification within two clear working days of the date of taking the decision. The Chief Democratic Services Officer will maintain a record of all such decisions, including any report upon which each decision was made and, subject to any requirement for confidentiality, will ensure that the record of decisions is available for public inspection during all normal office hours and that the public has the right to copy or to be provided with a copy of any part of that record upon payment of a reasonable copying and administrative charge. There is no requirement to maintain a record of Administrative Decisions for the purpose of Councillor or public access, or to report Administrative Decisions to a committee. However, officers are responsible for retaining a record of Administrative Decisions which they take and the reasons for such decisions sufficient for audit and evidential purposes, and for ensuring that all those who need to know are informed promptly of the decision.
- 3.13 Principle 4 of the Council's Code for Corporate Governance provides that the Council should take informed and transparent decisions, which are subject to effective scrutiny and risk management.

4. Officer conflicts of interest

- 4.1 Officers must follow the officer code of conduct and any other rules or requirements in relation to personal conflicts of interest which apply to them. All decision making officers are required to complete a register of interests.
- 4.2 Decision-making officers are aware of the need to ensure that there can be no suggestion that they have exercised bias in their decision-making, for whatever reason (including as a result of a conflict of interest). However whereas there are clear checks and balances in place which safeguard bias, or apparent bias against an applicant (complaints and appeals processes; see later) it is considered that there needs to be introduced additional safeguards to guard against bias in favour of (an unmeritorious or inappropriate) applicant. Consideration is now being given as to introducing a proportionate regime to address this potential issue. At the very minimum a strengthening of the Quality Procedure and officer training would appear to be required.

5. Ensuring Best Practice

- 5.1 Every officer in Legal Licensing and Registration is appraised annually and they have a mid-year appraisal review. As part of their appraisal a Personal Development Plan is drawn up which identifies development areas for officers, relevant to their role.

- 5.2 Before taking up a role on a licensing panel every councillor is trained in the basics of the various regimes and in the committee process. From 2010 training is compulsory for licensing Members under article 8A of the constitution.
- 5.3 Additionally ad hoc training has been provided in the past on new legislation (e.g. the Gambling Act) as well as refreshers where required e.g. this year a session on review and appeals under the Licensing Act 2003 was run.
- 5.4 For the 2010/11 municipal year links have been established with Member development. One new Councillor is receiving training on the basics in Kirklees and because there are new powers relating to Sex Establishments (lap dancing) a training session is being provided regionally for the Members. It is also intended to put on a licensing update session in the autumn (which will become an annual event) as well as specific training in relation to the casino, which will occur nearer to the date that the authority will licence this.
- 5.5 A series of Guidance Notes have been provided in respect of matters dealt with in relation to Entertainment Licensing. A similar set of Guidance Notes have now been produced in respect of Taxi and Private Hire Licensing which will shortly be distributed.
- 5.6 There is a Code of Practice for Determining Licensing Matters contained within Part 5 the Constitution. This is due an extensive re-write following consideration of all local codes and protocols by Member Management Committee. Consideration is being given as to whether there should be a compulsory annual update.

6. Quality of Service and Continuous improvement

- 6.1 The Entertainment Licensing and Taxi and Private Hire Licensing Sections are both accredited to ISO 9001: 2000 British Standard. They have in place Quality Procedures which set out the methodology for dealing with applications. The Quality Procedures are audited both by internal and external auditors. In the May 2010 external audit the systems for entertainment licensing enforcement and inspection were checked as well as a number of new premises applications, scrap metal dealer licences and new gambling premises licence applications. As well as ensuring that procedures are adhered to the audits identify by way of 'observations' areas where there is a need for improvement. In the May 2010 Audit suggested improvements were made to the procedure relating to Enforcement and Inspections.
- 6.2 Taxi and Private Hire were not subject to an external audit in May 2010 but were the subject of a comprehensive internal audit in February 2010. That found that in relation to processing private hire and hackney carriage drivers licence applications "all systems and files were up to date and correct".
- 6.3 In addition to accreditation under ISO 9001:2000 Entertainment Licensing and Taxi and Private Hire Licensing operate within the Performance Management Regime of Legal, Licensing and Registration. Under that regime a monthly report is prepared by each Section for consideration by the Service's Management Team.
- 6.4 The Monthly Performance Management Report measures and records customer and member Evaluation and considers complaints and compliments received. Entertainment Licensing records the percentage of customers who found the service friendly and efficient; and the percentage of customers who found the information helpful and easy to understand. The Sections both draw to the attention of

Management 'High Risk Areas'. Successes, including the outcome of Court proceedings are included in the Report. A client satisfaction survey was carried out by taxi and private hire licensing during January and February 2010 which indicated an overall satisfaction rate of 79%.

7. Monitoring and Review

Management Review

- 7.1 The Section Heads responsible for the Sections dealing with the licensing activity described in this report are appraised, monitored and reviewed by a Head of Service. 1-2-1 review meetings take place on a monthly basis.
- 7.2 Procedures require that a report be prepared for the panel/committee on the outcome of every appeal case in respect of a decision made by the panel/committee. That report will highlight any lessons that need to be learned from the outcome.
- 7.3 However it is recognised that no reports are prepared where appeals are against officer decisions rather than Member decisions. That applies to all the Taxi and Private Hire Appeals. External solicitors are instructed to conduct these appeals and although anecdotal evidence suggests that the success rate is in the region of 95% it is recommended that this should be reported formally on an annual basis to Members and that accurate statistics are kept.

Complaints (and compliments)

7.4

COMPLAINT ANALYSIS January 2010 - June 2010

Service	No of Complaints at Stage 1	Number Upheld	Number partially Upheld	Number of Complaints at Stage 2	Number Upheld
Taxi & Private Hire	8	0	2	0	0
Entertainment and Licensing	1	0	0	0	0

Set out above is detail of the complaints received to-date in 2010 under the Council's Corporate Complaints Policy. None of the complaints set out have been referred to the Ombudsman, although exceptionally that does occur and a complaint from 2009 has recently been adjudicated upon by the Ombudsman and not upheld.

Appeals

- 7.5 There is court oversight of the decision-making and the re-hearing appeal process is straightforward and accessible.

APPEAL ANALYSIS 2008 – to-date

Service	No of Appeals	Won by Council	Lost by Council	Withdrawn by Appellant	Settled
Entertainment and Licensing	13	8	1	2	3

There have been 32 appeals relating to taxi and private hire decisions in the same period although comparable statistics are not currently available. Reference is made to the appeals statistics is referred to above in paragraph 7.3.

- 7.6 There is the possibility of bringing Judicial Review proceedings to challenge any decision on the basis of illegality, irrationality or unfairness or procedural impropriety. One such challenge was brought last year but was successfully resisted.

8. Implications for Council Policy and Governance

- 8.1 The delegation of decision making to officers is necessary to enable the Council to function. The Scheme of Delegation is such that members ultimately control the extent of the delegation. There are no council or policy implications arising as a result of any recommendations contained in this report.

9. Legal and Resource Implications

- 9.1 There are no legal or resource implications arising as a result of any recommendations contained in this report.

10. Conclusions and Recommendations

- 10.1 The Committee will note that there are in place robust arrangements, which are generally accountable, transparent, have integrity and have to-date proved effective. In regard to entertainment licensing members currently have a significant input into the decision-making process and into the oversight of those processes. The Report however highlights areas for improvement in paragraphs 4.2, and 7.3
- 10.2 Members are asked to note the content of the Report and suggest any further improvements to the arrangements, which they consider should be made.

APPENDIX 1

Licensing Decisions (other than taxi and private hire)

Licensing Act 2003 and Gambling Act 2005 applications

Uncontested applications are automatically granted – no decision taken

Contested applications are taken to a Licensing Committee sub-committee except for minor variations

Licensing Act 2003 Minor Variations

Applications are decided by officers

To licence sex shops and cinemas

New applications go to Licensing and Regulatory Panel

Contested renewals go to Licensing and Regulatory Panel

Uncontested renewals are decided by officers

To licence scrap yards

No decision made – this is a registration only and is effectively an entry in the register

To approve premises for the solemnisation of marriages

New and renewal applications that are uncontested and uncontentionous are decided by officers

Contested or contentious applications are taken to Licensing and Regulatory Panel

To licence persons to collect for charitable and other causes

New applications that are uncontested and uncontentionous are decided by officers

Contested or contentious applications are taken to Licensing and Regulatory Panel

To register motor salvage operators

Uncontested applications are decided by officers

Contested applications are taken to Licensing and Regulatory Panel

To impose conditions, limitations or restrictions on above permissions

Decision made by officer (where allowed in the legislation), recorded as part of the licence/permit.

To determine any terms to which they are subject on the above permissions

Decision made by officer (where allowed in the legislation), recorded as part of the licence/permit.

To determine whether and how to enforce any failure to comply

Decision made by officer (where allowed in the legislation), recorded as part of the licence/permit.

To amend, modify, vary or revoke

Decision made by officer (where allowed in the legislation), recorded as part of the licence/permit.

Details of the above decisions are recorded and countersigned on a checklist attached to the file and also on Uniform, a Council database.

APPENDIX 2

Taxi and Private Hire Licensing Matters

Licensing and Regulatory Panel decide on policy issues for taxi & private hire licensing. Examples include (but are not limited to): -

- Conditions for licences (driver, vehicle, proprietor, operator)
- Unmet Demand Survey (i.e. number of hackney carriages to be licensed in Leeds)
- Vehicle Age Criteria (condition on vehicle licence)
- Requirement on drivers to undertake NVQ/VRQ qualifications

Decisions taken by officers

- Grant, suspension or revocation of licences
- Sanctions applied to drivers as a result of enforcement action (verbal, written or final warnings)
- Failure items/Defects/Non compliance with conditions found on vehicle inspections
- Decision to report for prosecution
- Approval of new vehicles to the approved list of vehicles
- Approval of hackney carriage tariff meters
- Approval of corporate advertising on hackney carriages
- Approval of CCTV equipment
- Approval of driver safety shield equipment
- Formal Home Office Cautions are issued by Enforcement Officer and above.

The above decisions are recorded as follows -

- Grant, suspension, revocation or any other sanction against licence holders is recorded on the licence holder's file.
- Failure items/Defects/Non compliance with conditions found on vehicle inspections are recorded on the vehicle licence file
- Decision to report for prosecution is recorded on the relevant licence file and legal prosecution file
- Approval of new vehicles is done by DDN form and recorded by Governance Services in Democratic Services
- Approval of corporate advertising on hackney carriages is an administrative decision recorded on the proprietor's licence file.
- Approval of tariff meters, CCTV, safety shields, etc are considered administrative decisions and recorded in the relevant files held at the Section

APPENDIX 3

Decisions Made In respect of Licences since 01/04/2006

Licence Type	Number of Automatically Granted uncontested applications (where relevant)	Number of Officer Decisions (Where Relevant)	Number of Committee Hearings
Premises Licence / Club Premises Certificates (Grant and Variation)	2,035		435
Transfer of a Premises Licence	1,187		0
Change of Designated Premises Supervisor	2,682		8
Review of a Premises Licence			33
Premises Licence/Club Premises Certificate Minor Variation		55	
Personal Licence	4,984		10
Temporary Event Notice	5,868		9
Gambling Premises Licence (Grant, Variation, Transfer and Provisional Statement)	135		6
Machine and Gaming Permits for pubs and clubs	267		0
AWP 34 5E (Amusements with Prizes Permit)		1	0
Prize Bingo Permit		3	0
Lotteries Registration (GA 2005 and GA 1968)	733		0
Scrap Metal Dealers Registration	26		0
Motor Salvage Operators Permit		14	0
Wedding Venue Licence		52	0
Street Collection Permit		501	1
House to House collection permit		20	0
Sex Establishment Licence		3	3
Hypnotist Permit		0	1
Totals:	17,917	649	506