

## LICENSING BOARD

**Venue:** Town Hall, Moorgate  
Street, Rotherham. S60  
2TH

**Date:** Monday, 15 September  
2014

**Time:** 9.30 a.m.

### A G E N D A

1. To determine if the following matters are to be considered under the categories suggested in accordance with the Local Government Act 1972.
2. To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.
3. Apologies for absence
4. Declarations of Interest
5. Minutes of the previous meeting of the Board held on 11th June, 2014 (Pages 1 - 2)
6. Minutes of the meetings of the Sub-Committee of the Licensing Board (Pages 3 - 7)

*Minutes of the sub-committee meetings, held on:-*

- > 9th July 2014
  - > 13th August 2014
7. Borough-wide Designated Public Place Order - update (Pages 8 - 10)
  8. House to House Collections (Pages 11 - 21)
  9. Hackney Carriage/Private Hire Licences - Points Based Enforcement Scheme (Pages 22 - 25)
  10. Review of the Council's Licensing Processes in relation to Taxis and Hackney Carriages (Pages 26 - 40)
  11. Date and time of next meeting
    - Wednesday 17 September 2014 – sub-committee of five Members;
    - Wednesday 8 October 2014 – sub-committee of five Members;

- Thursday 13 November 2014 – sub-committee of five Members;
- Wednesday 10 December 2014 – a meeting of the full Licensing Board

*Meetings begin at 9.30 am*

**LICENSING BOARD**  
**11th June, 2014**

Present:- Councillor Dalton (in the Chair); Councillors Andrews, Beck, Buckley, Cutts, Foden, Havenhand, Parker, Reeder, Reynolds, Roddison, Sangster, Sharman, Sims and Swift.

Apologies for absence were received from The Mayor (Councillor Dodson) and from Councillors Doyle, Ellis, J. Hamilton, N. Hamilton and McNeely.

**P1. CHAIR AND VICE-CHAIR OF THE LICENSING BOARD**

Members placed on record their appreciation of the services to the Licensing Board of the former Chair, Councillor Wootton and the former Vice-Chair, former Councillor Barron.

**P2. LICENSING BOARD - FUTURE ARRANGEMENTS**

Further to Minute No. 15 of the Annual Council Meeting held on 6th June, 2014, Members discussed the future arrangements and organisation of the Licensing Board, including the use of sub-committees of five Members to consider matters relating to applications for hackney carriage and private hire licences. The full Board membership will continue to meet on a quarterly basis, beginning in September 2014, particularly for consideration of licensing policy and related matters. The first meeting of the sub-committee will be held on Wednesday 9th July 2014.

Resolved:- That the revised arrangements be noted.

**P3. DECLARATIONS OF INTEREST**

There were no Declarations of Interest made at this meeting.

**P4. MINUTES OF THE PREVIOUS MEETING HELD ON 14TH MAY 2014**

The minutes of the previous meeting of the Licensing Board held on Wednesday 14th May, 2014, were considered.

Resolved:- That the minutes of the previous meeting be approved as a correct record for signature by the Chairman.

**P5. EXCLUSION OF THE PRESS AND PUBLIC**

Resolved:- That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in the Police Act 1997 and Paragraphs 3 and 7 of Part I of Schedule 12A to the Local Government Act 1972 (business affairs and prevention of crime).

**P6. APPLICATIONS FOR THE GRANT/RENEWAL/REVIEW OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS' LICENCES.**

The Licensing Board considered a report, presented by the Licensing Manager, relating to applications for the grant, renewal and review of hackney carriage / private hire drivers' licences in respect of Messrs. P.J.A., W.H., M.M.H., M.B.A.M., A.K. and K.J. (the latter concerning the suspension of a driver's licence).

Messrs. P.J.A., W.H., A.K. and K.J. all attended the meeting and were interviewed by the Board.

Members noted that the application in respect of M.M.H. had been deferred until a future meeting and the application in respect of M.B.A.M. had been withdrawn.

The Licensing Board discussed the matter of notices relating to road traffic incidents, which are issued by the Police to vehicle drivers, but which do not usually result in convictions. Such notices are not available to the Licensing Board when considering licence applications. It was therefore agreed that the availability of such information, which may assist Members in their decision-making, be discussed at a future meeting of the full Licensing Board.

Resolved:- (1) That the application for the grant of a hackney carriage/private hire driver's licence in respect of Mr. P.J.A. be approved and he be granted a licence for three years.

(2) That the application for the grant of a hackney carriage/private hire driver's licence in respect of Mr. W.H. be approved and he be granted a licence for twelve months.

(3) That the revocation of the hackney carriage/private hire driver's licence in respect of Mr. A.K., as determined at Minute No. Q48(2) of the meeting of the Licensing Board held on 11th December, 2013, be affirmed.

(4) That the suspension of the hackney carriage/private hire driver's licence in respect of Mr. K.J. shall remain in place, pending the outcome of the further investigations by the South Yorkshire Police, as now reported.

**LICENSING BOARD-SUB-COMMITTEE  
9th July, 2014**

Present:- Councillor Dalton (in the Chair); The Mayor (Councillor John Foden), Councillors Reynolds, Roddison and Sims.

**Q1. EXCLUSION OF THE PRESS AND PUBLIC**

Resolved:- That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the Police Act 1997 and Paragraphs 3 and 7 of Part I of Schedule 12A to the Local Government Act 1972 (business affairs and prevention of crime).

**Q2. HOUSE TO HOUSE COLLECTIONS**

The Sub-Committee of the Licensing Board considered a report, presented by the Licensing Manager, concerning the following application for the grant of a promoter's permit to carry out house-to-house collections:-

Organisation	Area	Date
Tree of Hope	Whole of the Rotherham Borough	14th July, 2014 to 13th July, 2015

Members discussed the proportion of the proceeds of the collections which would be transferred to the charity and the proportion which will be used to defray costs and administration. Reference was made to the relevant provisions of the House to House Collections Act 1939.

The Sub-Committee agreed that future applicants for promoter's permits shall be asked to explain the extent of the direct benefit to residents of the Rotherham Borough area, arising from the operation of the charity.

Resolved:- That the application be approved and a promoter's permit be granted in respect of this organisation.

**Q3. SCRAP METAL DEALERS' LICENCES**

The Sub-Committee of the Licensing Board considered a report, presented by the Licensing Manager, relating to applications for the grant of mobile scrap metal dealers' licences issued in accordance with the provisions of the Scrap Metal Dealers Act 2013. The two applications were submitted by Mr. C.J.E. and by Mr. M.C.H

Mr. C.J.E. attended the meeting and was interviewed by Members. Mr. M.C.H. was unable to attend the meeting and had made written representations in respect of his application. He had also consented to

Members determining his application in his absence.

During consideration of these applications and because scrap metal licensing is a new function for the Licensing Board, the Sub-Committee asked to be provided with more detailed guidelines to assist in the determination of these applications.

Resolved:- (1) That the application in respect of Mr. C.J.E. be approved and he be granted a mobile scrap metal dealer's licence.

(2) That the application for the grant of a licence in respect of Mr. M.C.H. be refused.

**Q4. APPLICATIONS FOR THE GRANT/RENEWAL/REVIEW OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS' LICENCES**

The Sub-Committee of the Licensing Board considered a report, presented by the Licensing Manager, relating to applications for the grant and renewal of hackney carriage / private hire drivers' licences in respect of Messrs. M.M.H. and D.F.C.

Messrs. M.M.H. and D.F.C. both attended the meeting and were interviewed by the Board.

Resolved:- (1) That, further to Minute No. 6 of the meeting of the Licensing Board held on 11th June, 2014, the application for the grant of a hackney carriage/private hire driver's licence in respect of Mr. M.M.H. be approved and he be granted a licence for three years.

(2) That, further to Minute No. 62(1) of the meeting of the Licensing Board held on 18th May, 2011, the application for the renewal of a hackney carriage/private hire driver's licence in respect of Mr. D.F.C. be approved and his licence be renewed for three years.

**LICENSING BOARD-SUB-COMMITTEE**  
**Wednesday, 13th August, 2014**

Present:- Councillor Dalton (in the Chair); together with, The Mayor (Councillor John Foden) and Councillors McNeely, Reeder and Sangster.

**Q5. EXCLUSION OF THE PRESS AND PUBLIC**

Resolved: - That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the Police Act 1997 and Paragraphs 3 and 7 of Part I of Schedule 12A to the Local Government Act 1972 (business affairs and prevention of crime).

**Q6. HOUSE TO HOUSE COLLECTIONS**

The Sub-Committee of the Licensing Board considered a report, presented by the Licensing Manager, concerning the following applications for the grant of a promoter's permit for Personal Fundraising Services Ltd to carry out house-to-house collections on behalf of the charities:-

Organisation	Area	Date
Action for Blind People	Whole of the Rotherham Borough	4 <sup>th</sup> August, 2014 – 3 <sup>rd</sup> August, 2015
Action on Hearing Loss (formerly called The Royal National Institute for Deaf People)	Whole of the Rotherham Borough	4 <sup>th</sup> August, 2014 – 3 <sup>rd</sup> August, 2015
The National Deaf Children's Society	Whole of the Rotherham Borough	4 <sup>th</sup> August, 2014 – 3 <sup>rd</sup> August, 2015

Further information had been requested by the Licensing Manager following initial receipt of the applications regarding the proportion of the proceeds of the collections which would be transferred to the charity from Personal Fundraising Services Ltd. The Sub-Committee of the Licensing Board received the explanation of the arrangement between the charities and Personal Fundraising Services Ltd. The Sub-Committee also took account of the relevant provisions of the House to House Collections Act 1939.

Resolved:- (1) That the three applications, as submitted, be refused.

(2) That the Licensing Manager write to the Cabinet Office on behalf of the Sub-Committee of the Licensing Board to express concerns regarding the limitations of the legislation surrounding House-to-House collections

available to them, specifically, to protect vulnerable people and those living in poverty across the Borough.

**Q7. APPLICATIONS FOR THE GRANT OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS' LICENCES**

The Sub-Committee of the Licensing Board considered a report, presented by the Licensing Manager, relating to applications for the grant of hackney carriage / private hire drivers' licences in respect of Messrs. E.J.S. and M.R..

Messrs. E.J.S. and M.R. both attended the meeting and were interviewed by the Board.

Resolved: - (1) That the application for the grant of a hackney carriage/private hire driver's licence in respect of Mr. E.J.S. be approved and he be granted a licence for three years, subject to him passing the DSA Driving Test and the Group Two Medical.

(2) That the application for the grant of a hackney carriage/private hire driver's licence in respect of Mr. M.R. be approved and he be granted a licence for three years, subject to him passing the DSA Driving Test and the Group Two Medical, and a written warning as to his future conduct be issued to him.

**Q8. APPLICATIONS FOR THE RENEWAL OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS' LICENCES**

The Sub-Committee of the Licensing Board considered a report, presented by the Licensing Manager, relating to applications for the renewal of the hackney carriage / private hire drivers' licences in respect of Messrs. S.H. and Z.I..

Mr. S.H. and Mr. M.R. and his representative Mr. S.B., attended the meeting and were interviewed by the Board.

Resolved: - (1) That the application for the renewal of the hackney carriage/private hire driver's licence in respect of Mr. S.H. be approved and his licence be renewed for one-year, and a written warning as to his future conduct issued to him.

(2) That the application for the renewal of the hackney carriage/private hire driver's licence in respect of Mr. M.R. be approved and his licence be renewed for one-year, with a written warning as to his future conduct issued to him. Mr. M.R. must inform the Licensing Service of the outcome of his October hearing.

**Q9. APPLICATION FOR THE GRANT OF MOBILE SCRAP METAL DEALERS' LICENCES**



The Sub-Committee of the Licensing Board considered a report, presented by the Licensing Manager, relating to an application for the grant of a mobile scrap metal dealers' licence as submitted by Mr. D.L.A. accordance with the provisions of the Scrap Metal Dealers Act 2013.

Mr. D.L.A. attended the meeting and was interviewed by Members.

Resolved:- That the application in respect of Mr. D.L.A. be approved and he be granted a mobile scrap metal dealer's licence.

**Q10. DATE AND TIME OF NEXT MEETING**

Resolved: - (1) That the next meetings of the Sub-Committee of the Licensing Board take place on the following dates beginning at 9.30 a.m. in the Rotherham Town Hall: -

- Thursday 28<sup>th</sup> August, 2014;
- Wednesday 17<sup>th</sup> September, 2014;
- Wednesday 8<sup>th</sup> October, 2014.

(2) That the next meeting of the Licensing Board take place on Wednesday 3<sup>rd</sup> September, 2014, to start at 9.30 a.m. in the Rotherham Town Hall.

<b>ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS</b>
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<b>1.</b>	<b>Meeting:</b>	<b>Licensing Board</b>
<b>2.</b>	<b>Date:</b>	<b>Wednesday 3<sup>rd</sup> September 2014</b>
<b>3.</b>	<b>Title:</b>	<b>Update on the Borough-Wide Designated Public Place Order</b>
<b>4.</b>	<b>Directorate:</b>	<b>Neighbourhoods and Adult Services</b>

### **5. Summary**

The purpose of this report is to update the Licensing Board on the current position and use of the Designated Public Place Order (DPPO) and seek the boards support for the continuation of the order.

### **6. Recommendations**

**It is recommended that the Licensing Board:**

**Notes the current position of the use and effectiveness of the DPPO**

**Supports its continuation in the borough as an effective tool to tackle alcohol related anti-social behaviour (ASB)**

**Receives a further update in twelve months time from the date of todays meeting**

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### **7. Proposals and Details**

On 21<sup>st</sup> March 2012 the Rotherham Licensing Board gave approval for a DPPO to be put in place that is enforceable across the full borough area. The decision was taken after the regulatory process to establish a DPPO was followed and full consultation was undertaken with the public and premises affected by the proposal. The DPPO replaced three Alcohol Exclusion Zones that were in force in the borough at that time.

The request for the order was made by South Yorkshire Police and supported by the council.

A DPPO is a tool that can be used by the Police and local authorities to deal with the problems of anti-social alcohol drinking in public places. Once it is in place the police can use their confiscation powers to enforce the restriction. They continue to be widely used across the country.

It is not an offence to drink alcohol within a designated area and that a DPPO is not a 'ban' on drinking in public places, but failure to comply with an officer's requests to stop drinking and surrender alcohol without reasonable excuse is. Penalties can include:

- a penalty notice for disorder of £50;
- arrest and prosecution for a level 2 fine (max £500);

In Rotherham the DPPO is enforced by Police Officers, Police Community Support Officers and under new shared/accreditation powers, RMBC Wardens, although they will not be able to issue a Penalty Notice for Disorder .

In order to prevent public nuisance and disorder, if an officer suspects that a person(s) has recently drunk alcohol or intends to drink alcohol in a DPPO area, the officer can require that person(s) to:

- stop drinking alcohol (or anything believed to be alcohol)
- hand over the containers they are drinking from (sealed or unsealed)
- hand over any other containers believed to contain alcohol.

South Yorkshire Police work with voluntary, statutory and business partners to deliver an integrated approach to reducing violent crime in the borough. A partnership delivery plan is in place which focuses on maximum visibility, effective use of legislation and joint partnership working. To compliment the work on reducing alcohol related violence the principals of Community Alcohol Partnerships have been rolled out across all wards to reduce alcohol related ASB.

Although the Police do not record the number of times the powers of the DPPO have been used, this partnership work is reliant upon DPPO's to assist officers to prevent drinking in streets / public places which is likely to cause violence or ASB, and the designated DPPO signs act as a visible reminder to potential offenders. The following are examples of how the Police use the power:

- Rotherham United home games to prevent alcohol related disorder. Ensuring no drinking outside pubs which creates a greater risk of disorder and injury from bottles / glasses been used as missiles or simply smashed on pavements. There is also a further risk mitigated as shoppers are not forced to walk around drinkers into the road
- EDL demonstrations and similar as above to prevent unnecessary antagonism between right wing groups and the local community
- Policing the alcohol related conduct in the town centre for all reasons mentioned above as well as allowing improved monitoring / control by door staff.
- Over the past 6 months the DPPO has been used to compliment 'Dispersal Legislation' – Over this period 122 individuals have been issued a Dispersal Notice. Dispersal notices are then followed by a letter of advice that should they be involved in further alcohol related ASB, a breach of DPPO or Disorderly behaviour over the next 2 months then they will be placed on an Acceptable Behaviour Contract (ABC). To date, 104 of these were issued to offenders from the night time economy and 18 to day time drinkers.

- Only 1 from the night time economy has gone on to reoffend and has been placed under an ABC.
- Only 2 from the Day time economy have reoffended and being made the subject of Anti-Social Behaviour Orders (ASBO).
- Those that breach a DPPO or are issued a Dispersal Notice are also provided information on alcohol units and the Milton House Project.

Alcohol Exclusion Zones were replaced by Designated Public Place Orders which in turn will be replaced by Community Protection Orders (Public Space) later this year under the new Anti-Social Behaviour Act. Once again they will be complimented by Dispersal powers and Behaviour Orders under the same Act.

## **8. Finance**

There are no finance issues to consider at this time in respect of the Borough-wide DPPO.

## **9. Risks and Uncertainties**

Tackling crime and ASB is a priority for both South Yorkshire Police and the council in keeping people safe and protecting the most vulnerable. Putting in place and supported a Designated Public Place Order shows a clear commitment towards meeting these priorities.

## **10. Policy and Performance Agenda Implications**

- CP 1 - Stimulating the local economy and helping local people into work
- CP2 - Protecting our most vulnerable people and enabling them to maximise their independence
- CP 3 - Helping people from all communities to have opportunities to improve their health and wellbeing
- CP4 -All areas of Rotherham are safe, clean and well maintained

## **11. Background Papers and Consultation**

N/A

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<b>ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS</b>
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<b>1. Meeting:</b>	<b>Licensing Board</b>
<b>2. Date:</b>	<b>Wednesday 3<sup>rd</sup> September 2014</b>
<b>3. Title:</b>	<b>Determination of Licensing Issues - House to House Collections</b>
<b>4. Programme Area:</b>	<b>Neighbourhoods and Adult Services</b>

**5. Summary**

This report is to update members on the current guidance issued by NALEO (National Association of Licensing and Enforcement Officers), Institute of Fundraising and Cabinet Office (Office for Civil Society) in relation to the determination of applications for House to House Collections.

The report also details information regarding appeals made against the decision to refuse applications dealt with by Licensing Board which are currently pending with the Cabinet Office (Office for Civil Society).

**6. Recommendations**

That member's note the content of the report and take regard of the guidance issued when determining applications for House to House Collections within the Borough.

## 7. Proposals and Details

The licensing of charitable door to door collections is principally governed by the House to House Collections Act 1939 together with the House to House Collections Regulations 1947. With the exception of a limited number of major national charities which hold national exemptions issued by the Cabinet Office, the majority of charitable door to door collectors must first all obtain a licence from the relevant licensing authority.

Under the 1939 Act, a licensing authority may refuse to grant a licence, or where a licence has been issued revoke it, if it appears to the authority that:-

1. The total amount likely to be applied for charitable purposes as the result of the collection (including any amount already so applied) is inadequate in proportion to the value of the proceeds likely to be received including any proceeds already received);
2. Remuneration which is excessive in relation to the total amount aforesaid is likely to be, or has been, retained or received out of the proceeds of the collection by any person;
3. The grant of a licence would be likely to facilitate the commission of an offence under Section Three of the Vagrancy Act 1824, or that an offence under that section has been committed in connection with the collection;
4. The applicant or the holder of the licence is not a fit and proper person to hold a licence by reason of the fact that he has been convicted in the United Kingdom of any offences specified in the Schedule to this Act, or has been convicted in any part of her Majesty's dominions of any offence conviction for which necessarily involved a finding that he acted fraudulently or dishonestly, or of an offence of a kind the commission of which would be likely to be facilitated by the grant of a licence;
5. The applicant or the holder of the licence, in promoting a collection in respect of which a licence has been granted to him, has failed to exercise due diligence to secure that persons authorised by him to act as collectors for the purposes of the collection were fit and proper persons, to secure compliance on the part of persons so authorised with the provisions of regulations made under this Act, or to prevent prescribed badges or prescribed certificates of authority being obtained by persons other than persons so authorised; or
6. The applicant or holder of the licence has refused or neglected to furnish to the Authority such information as they may have reasonably required for the purpose of informing themselves as to any of the matters specified in the foregoing paragraphs.

The Charities Acts 1992 and 2006 place three obligations on Charities with regards to charitable collections:-

- 1 The trustees have a legal duty to act in the best interest of the organisation.
- 2 If a partnership is formed with an external organisation, a contract is required, setting out the benefits and obligations of each party.
- 3 If a commercial party gains financially from the partnership, a solicitation statement is needed. The statement must name the benefiting charity and outline a financial amount that the charity will receive. This statement can be written or verbal, but must be made before a donation is made.

These obligations are there to protect charities best interests and ensure that the public are aware of the true benefit to the charity and can make an informed decision of who to donate to.

### **What constitutes as Charitable Purpose**

Under the 1939 Act a licence can be refused if the proportion of proceeds going for 'charitable purpose' is inadequate.

The 1939 Act defines 'charitable purpose' as any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law. Section Two of the Charities Act 2006 also defines 13 purposes which are considered charitable and are:-

The prevention or relief of poverty;  
The advancement of education;  
The advancement of religion;  
The advancement of health or the saving of lives;  
The advancement of citizenship or community development;  
The advancement of the arts, culture, heritage or science;  
The advancement of amateur sport;  
The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;  
The advancement of environmental protection or improvement;  
The relief of those in need by reason of youth, age, ill –health, disability, financial hardship or other disadvantage;  
The advancement of animal welfare;  
The promotion of the efficiency of the Armed Forces of the Crown, or of the efficiency of the Police, Fire and Rescue Services or Ambulance Services;

Any other purposes within subsection 4, which are:-

Any purposes not contained within the above definitions but recognised as charitable purposes under existing Charity Law or by virtue of Section 1 of the Recreational Charities Act 1958;

Any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of those paragraphs or the paragraph above; and

Any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised under Charity Law as falling within the paragraph above or this paragraph.

### **What is not a Charitable Purpose**

Profit making businesses (including fundraising arms of charities) are not charitable purposes.

### **Relevance of Percentages when considering applications**

In the case of door to door collections the Cabinet Office advice that each case must be considered on its own merit, setting an arbitrary minimum percentage of the total value of the goods going to the Charity is problematic. Such figures usually bear no resemblance to the amount of proceeds raised for the actual charitable purpose. At the point at which goods have been collected, it is unlikely that the value of the proceeds generated for charitable purpose will be much more than 20%, whoever has undertaken the collection.

Typically, the cost of collecting door to door is substantial compared to the actual value of the goods at its point of collection, However there is still some scope for efficient charitable door to door collections to raise substantial sums of money for charity, albeit on relatively small profit margins per tonne of goods collected.

Where the collection is undertaken by a commercial third party, the charity is guaranteed an income (usually based on a per tonne basis), even if it turns out the commercial partner's collection costs are more than the revenue gained through the value of the goods collected. If the charity undertakes its own collection it is likely to raise more per tonne but incurs more risk.

## **How can we be sure that the amount of proceeds going for charitable purpose is adequate?**

Trustees are under a duty to ensure that all actions are in the best interest of the organisation. This will involve considering financial and reputation aspects before entering into a contract.

### **Summary of important issues for consideration when determining an application**

When considering applications the financial information is sometimes difficult to interpret. Unless the applicant is able to clearly identify the proportion that will be donated to a charitable purpose and the Licensing Board are confident in the calculations the applicant should be asked to clarify the information they have provided. If they are unable to clarify information requested, they should be first invited to withdraw the application. If they refuse to withdraw the application following a request for clarification then Licensing Board may be mindful to refuse the licence.

Things to take into consideration:-

- 1 The applicant must provide clear information about who is undertaking the collection (e.g. whether it is an individual, a commercial collection partner, a charity's commercial collection arm or a registered charity itself). It is also important that the application makes a clear distinction between the revenue received by the collector and the proceeds that are actually applied to the charitable purpose.
- 2 The collection costs incurred by the collector will vary dependent upon the method of collection and should be taken into account and deducted before the amount being sent for charitable purposes can be derived.
- 3 If the proportion allocated to the charitable purpose is clear, the Licensing Board must be satisfied that the amount to be given to the charitable purpose is adequate in relation to the proceeds received. The 1939 Act does not make any stipulation as to what constitutes an adequate proportion and it is up to the Licensing Board to make its own decision. The guidance issued is intended to help make the decision.
- 4 In deriving this, the Licensing Board need to be mindful that although the costs of collecting a tonne of clothing can be substantial in relation to the actual value of the clothing, this in itself should not be seen as an automatic reason for refusing a licence.
- 5 When assessing an application to undertake a charitable door to door collection, an assessment should be made whether the proceeds actually going for charitable purpose (after all remuneration/collection costs have been deducted) and should adopt a default position where they will only consider refusals if it is apparent that these proceeds of a particular collection, are significantly lower than those being achieved by other similarly modelled collections operating in the same area at about the same time.
- 6 Licensing Board should also be mindful of the outcome of the 2010 Judicial Review involving Birmingham Council, the Minister for the Cabinet Office and Clothes Aid where the Minister accepted he made an error of law when considering the appeal and that a full merit assessment of Clothes Aid's licence application should have been carried out. As a result the Cabinet Office now carries out a full merit assessment of applications received by them as a result of an appeal.
- 7 As well as appraisal being given to the proportion of proceeds being applied for charitable purpose and remuneration or costs incurred as a result of the collection, the Licensing Board should also consider whether any of the other grounds for refusal stipulated in the 1939 Act and previously highlighted in this report, are relevant to the application being considered.
- 8 If it is known that there will be a too high concentration of charitable door to door collections taking part in the area at around the same time as the proposed collection being considered, the Licensing Board may want to consider undertaking (in order of preference);



Arrange by mutual agreement with the collector to grant a licence to operate a collection on alternative dates;

If this is not possible, make a recommendation to the collector to withdraw the licence application.

A model application form has been devised and it is recommended that this form be used by Licensing Authorities therefore this form will be adapted for use for applicants wishing to apply in Rotherham. **(Appendix 1)**

Attached to this report is a quick checklist **(Appendix 2)** which has been devised by NALEO, the Cabinet Office and Institute of Fundraising for use by Officers when dealing with an application received and before it is brought to Licensing Board for a decision to be made.

### **Current Appeals to the Cabinet Office**

The Cabinet Office are currently dealing with two appeals against the decision by the Council to refuse licences – these are Recycling Solutions North West Limited and Audosta.

### **8. Finance**

Permits for House to House collections in or about the Borough of Rotherham are provided free of charge to applicants. Any relating enforcement and other matters of application processing are financed through the authority's normal budgeting methods.

### **9. Risks and Uncertainties**

Failure to consider each application to the extent that members feel necessary to satisfy themselves they have reached a reasoned decision could lead to inappropriate collections being made within the Borough.

When a licensing authority refuse to grant a licence (or revoke a licence) which has been granted, they shall forthwith give written notice to the applicant or holder of the licence stating upon which one or more of the grounds set out in subsection (3) of this section the licence has been refused (or revoked) and informing him of the right of appeal given by this section, and the applicant or holder of the licence may thereupon appeal to the Cabinet Office against the refusal or revocation of the licence as the case may be and the decision of Cabinet Office shall be final. The time within which any such appeal may be brought shall be fourteen days from the date on which notice is given under subsection (4) of this section.

### **10. Policy and Performance Agenda Implications**

The granting of House to House permits is consistent with the Corporate Plan and community strategy as it ensures the delivery under the themes of a Safer and Fairer Rotherham; also ensuring that the Council continues to maintain its statutory functions and undertakes appropriate enforcement to support the delivery of safe communities in Rotherham.

**11. Background Papers and Consultation**

**NALEO – Guidance for Licensing Officers issuing licences for charitable door to door collections – England and Wales – published September 2011 (updated October 2011)**

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**APPENDIX 1**

**House to House Collections Act 1939  
House to House Collections Regulations 1947**

**Model Application Form for licence to undertake Charitable Door to Door Collections.**

To the [Licensing Authority] for (here insert name of [licensing area]).

In pursuance of section 2 of the House to House Collections Act 1939, I hereby apply for a licence authorising me to promote the collection, of which particulars are given below.

Date ..... (Signed) .....

**PARTICULARS OF COLLECTION**

1. Surname of applicant (in block letters).

Other names.

2. Address of applicant.

3. Particulars of charitable purpose to which proceeds of collection are to be applied. (Full particulars should be given including name of organisation, registered address, registered charity number (if applicable) and appropriate contact details, Furthermore, where possible, the most recent account of any charity which is to benefit should be enclosed).

4. Over what parts of the [licensing area] is it proposed that the collection should extend?

5. During what period of the year is it proposed that the collection be made?

6. Is it proposed to collect money?

7. Is it proposed to collect other property? If so, of what nature? and is it proposed to sell such property or to give it away or to use it?

8. Approximately how many persons is it proposed to authorise to act as collectors in the area of which the application is addressed?

9. Is it proposed that remuneration\*\* should be paid out of the proceeds of the collection-

(a) to collectors

(b) to other persons?

If so, at what rates and to what classes of persons?

10. Is application being made for licences for collections for the same purpose in other [licensing areas]?

If so, to what [licensing authorities]?

And, approximately, how many persons in all is it proposed to authorise to act as collectors?

11. Has the applicant, or to the knowledge of the applicant, anyone associated with the promotion of the collection, been refused a licence or order under the Act, or had a licence or order revoked?

12. Is it proposed to promote this collection in conjunction with a street collection? If so, is it desired that the accounts of this collection should be combined wholly or in part with the account of the street collection?

13. If the collection is for a War Charity, state if such charity has been registered or exempted from registration under the War Charities Act 1940, and give name of registration authority and date of registration or exemption.

\*\* Remunerate (definition) - to pay, recompense, or reward for work, trouble, etc.

## APPENDIX 2

### Quick Check List for handling charitable door to door goods collection licence applications.

Below is a quick check list, which has been developed to help licensing officers make decisions on a day to day basis, as to whether a licence should be granted for a charitable door to door goods collection.

This check list forms part of the guidance developed by NALEO in conjunction with the Institute of Licensing, Institute of Fundraising and trade representatives The guidance expands on the issues dealt with below. It is recommended that licensing officers ensure that they familiarise themselves with the contents of the full guidance as well as make use of the quick check list.

1. Has the applicant answered all the questions in the “Model Application Form” (see below)?

- If yes, go to question 2
- If no, return application form and ask applicant to complete.

2. Who is applying for the licence?

It is important to be aware of who is undertaking the collection to ascertain that applicants are fit and proper.

3. Has the collector clearly identified all tangible costs that they have been asked to provide in the “Model Application Form”?

- If yes, go to question 4.
- If no, return form to applicant.

4. Has a statement been provided by the benefiting charitable purpose stating that they are aware of their legal requirements, that they have exercised due diligence and that the collection will raise the maximum possible benefit for the charitable purpose?

- If yes, go to question 5.
- If no, return form to applicant.

The statement can be signed by someone from the fundraising department, management team or the trustees.

This statement is important as it ensures that the charitable purpose has stated that they have considered whether they have got the best deal. It also means that licencing officers have dealt with their duty to ensure that appropriate returns are going to the charitable purpose, without second guessing or overruling decisions made by the charitable purpose.

5. Is it clear what proceeds (in terms of Pounds Sterling/for every tonne collected) will be going to the charitable purpose?

- If yes, go to question 6.
- If no, see special costs considerations note below.

If you think that the proceeds going for charitable purpose may be too low, then you may wish to consider talking to the applicant to see if this can be reviewed. However, it is important to bear in mind that the commercial or fundraising arm of a charity is not likely to be considered a charitable purpose and collection costs must be considered and deducted, whoever undertakes the collections.

6. Are there any other licensed charitable door to door goods collections proposed to be taking place at around the same time in the same area?

- If yes, you may wish to consider deferring the collection to a later date if there is too high a concentration of collections in the area over the period.
- If no, go to question 7.

7. Are there any other reasons listed under 1939 House to House Collections Act, section 2, paragraph 3 for refusing a licence? (See Section 3.2)

- If no to question 7, and you are happy with the answers to the other questions and the model form then you should be minded to grant a licence. See special cost considerations below.
- If no to question 7 but you are not happy around amounts going to charity, please see special costs considerations note below.
- If yes to question 7 then you should approach the applicant to see if the matter(s) can be resolved.

### **Special Cost Considerations Note.**

Sometimes it may be difficult to establish what proceeds are being applied for charitable purpose. However, the 1939 House to House Collections Acts requires licensing officers to consider how much is being applied for charitable purpose. For reasons shown below it is important to establish what the associated costs of running the collections are and deduct these so that the amount applied for charitable purpose can be worked out.

Basic formula for working out profit

In economics to work out the profit of any venture, the following formula is applied.

Profits = Revenue Generated – Total Costs incurred by profit making venture.

To work out the amount of money being applied for charitable purpose, the following terms could be substituted and applied to the above formula, so that it would now read.

Profits applied for Charitable Purpose = Revenue Generated (through sales of clothing) – total costs incurred through collections.

Therefore, in order for licenses offices to be able to establish how much money is applied for charitable purpose, they need to know how much revenue is generated and what the collection costs are.

The 1939 House to House Collections Act requires any applicant by law to declare such refusals or revocations truthfully. However, the refusals process has always been done one way and because it was very complex, it was very difficult for to successfully appeal against a decision to refuse a licence. Any refusals which were issued before the review by the Cabinet Office into the appeals process and the issuing of this NALEO guidance should be considered with this in mind.

**ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS**

<b>1.</b>	<b>Meeting:</b>	<b>Licensing Board</b>
<b>2.</b>	<b>Date:</b>	<b>Wednesday 3<sup>rd</sup> September 2014</b>
<b>3.</b>	<b>Title:</b>	<b>Introduction of a Points Based Enforcement Scheme for the Hackney Carriage/Private Hire Trade</b>
<b>4.</b>	<b>Directorate:</b>	<b>Neighbourhoods and Adult Services</b>

**5. Summary**

To start formal consultation on the possible introduction of a points based enforcement scheme for vehicles, drivers and operators licensed by the Licensing Authority.

**6. Recommendations**

Its recommended that the Licensing Board agree to:

- 6.1 Commence consultation on the possible introduction of a points based enforcement scheme for the Hackney Carriage/Private Hire Trade, and**
- 6.2 Require a further report detailing the outcome of consultation at a future Licensing Board**



## 7. Proposals and Details

### 7.1 Background

The Council, as Licensing Authority, has a duty to regulate certain types of passenger carrying vehicles. The main objective being to protect the travelling public and maintain the quality and safety of the licensed trade. In doing this it aims to ensure that all licensed individuals operate to conditions to protect the reputation and fair competition within the trade.

Where serious breaches of legislation or licence condition occur, the issue can either be presented to the Magistrates' Court or to the Licensing Board (Sub Committee). This provides an effective legal remedy for the more serious offences whereby suspension or revocation of licences can be considered.

The position, however, for minor breaches of licence condition / legislation is limited in the outcome, in that, current minor breach interventions provide either a verbal or written officer reprimand. These minor breaches represent a reduction for the quality of the service offered to the public and helps create a culture of neglect within the trade.

The introduction of a points based approach would allow these minor breaches to be formally recognised, whereby drivers, operators or owners would be issued with points by authorised officers of the Council. It would provide a fast and efficient way of dealing with the minor breaches with offenders, and those, who habitually disregard the less serious aspects of the licence regime, would accumulate points which would, therefore, reflect their compliance record.

The points system would be in addition to all existing enforcement options available to the Council and will help provide an open and transparent method of how a licence holder will be assessed in terms of the 'fit and proper person' test contained within the law.

This proposal has been discussed with both Private Hire and Hackney trade representatives. It is proposed that a wider consultation with all licensed drivers and businesses will underpin consideration of the scheme. This would be done by letter.

### 7.2 Proposal

It is proposed that Licensing Enforcement Officers would operate the following scheme:

#### **a. Issuing:**

- Points issued to a Licence holder will be confirmed in writing within ten working days from becoming aware of the contravention or at the conclusion of an investigation into a complaint.
- 3 Points will be issued per incident and will accumulate on a licence until they reach the "trigger level" of 12 points. At this "trigger level" the licence holder will be referred to Licensing Board Sub Committee for consideration.

- The system will be administered by the Community Protection Unit. The system will be used for offences or breach of license condition, where the circumstances of that breach are of a minor nature and are admitted and resolved by the license holder. This type of breach would not normally trigger a referral to Licensing Board Sub Committee or Court.
- Points could be used for any contravention if the circumstances dictate it appropriate; however points will not normally be issued where the offence presents a safety risk to the traveling public.
- To ensure consistency of application of the points system, authorised Enforcement Officers will meet weekly with their manger to monitor the circumstances where points are issued.
- The points will be recorded on the licensing holders personal record held on the Council's specialist licensing database (LALPAC).
- Points will also be available for Licensing Board Sub Committee, should the Committee wish to attach points to a licence, in addition to any warning issued.

**b. Period of validity**

- Points will remain on a licence for two years from the date of issue, unless they are considered in that period by the Licensing Board Sub Committee. In considering the matter the Sub Committee may replace the points for a formal sanction or extend the period the points remain on the licence.
- Where a licence holder accumulates the "trigger level" more than once in any three year period, the Licensing Board Sub Committee will consider whether they believe the accumulation of points indicate that the driver is not a 'fit and proper person'. Each case will be considered on its own merits.
- The Council may cancel points issued to a licence and replace them with a formal sanction, if additional information becomes available subsequent to the issuing of points which would persuade the Council that the severity of the issue warrants a more formal approach.

**c. Appeal**

- Any licence holder who contests the issuing of penalty points may request a hearing before the Licensing Board Sub Committee for consideration and determination. A driver will retain the right to be represented at any meeting of the Licensing Board Sub Committee either legally or otherwise, and to state any relevant mitigating circumstances.

The penalty points system will operate without prejudice to the Council's ability to take other action under appropriate legislation.

## 8. Finance

This proposal is an enforcement policy & associated procedural change and represents, other than the consultation cost, no additional operational cost so can be accommodated within the existing revenue budget of the Community Protection Unit.

## 9. Risks and Uncertainties

The points based system has been successfully operated by a number of other local authorities.

A judicial review into the use of a points based enforcement regime has been heard and the use of a penalty points system recognised. The key issue in the judgement was that the all the facts should be considered by the Board ie not only the most recent incident leading to the Board hearing but also the ones which had led to previous penalty points being issued.. The final decision on the licence should then be made in light of the statutory “fit and proper” test and not by the simple totting up of points. The Judge also recognised it was good practice to have a policy to demonstrate how the Council exercises its discretion in relation to the revocation or suspension of a driver. The system proposed for Rotherham ensures that this principal and that the points systems only provides a “trigger” to bring the driver before the Board.

## 10. Policy and Performance Agenda Implications

Following the consultation and subject to Licensing Board approval, the Council's Enforcement Policy would require amending. The Council will re-issue and publicise its ‘Hackney Carriage and Private Hire Enforcement Guidance’, explaining how enforcement procedures relate to the the Hackney Carriage/Private Hire Trade.

Enforcement of the hackney carriages/private hire trade in Rotherham contributes to the Council's Corporate Plan priority of ensuring all areas of Rotherham are safe, clean and well maintained and contributes, by ensuring that standards are complied with to provide a consistent and transparent level playing field, to help stimulate the local economy.

## 11. Background Papers and Consultation

- Taxi and Private Hire Vehicle Licensing: Best Practice Guidance – Department of Transport, March 2010
- Initial consultation with the Hackney Carriage/Private Hire trade
- Consultation with Legal Services – Ian Mashed

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<b>ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS</b>
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<b>1. Meeting:</b>	<b>Licensing Board</b>
<b>2. Date:</b>	<b>15 September 2014</b>
<b>3. Title:</b>	<b>Review of the Council’s Licensing Processes in relation to Taxis and Hackney Carriages</b>
<b>4. Directorate:</b>	<b>Neighbourhoods and Adult Services</b>

## 5. Summary

This report outlines the current processes that are followed with regard to the issuing of licences to drivers, vehicles and private hire operators. The report also sets out proposals to improve driver and vehicle standards, strengthen existing policy and processes, and provides an overview of the actions that the Licensing team will be taking in light of the findings of the Independent Inquiry into Child Sexual Exploitation in Rotherham 1997 – 2013 (Prof Alexis Jay OBE) into Child Sexual Exploitation in Rotherham.

## 6. Recommendations

- That Members note the current processes in relation to driver licence applications, suspensions and revocations and confirm that the Licensing Board are satisfied that these arrangements satisfactorily discharge the Council’s obligations in relation to taxi/private hire licensing.
- That the actions proposed by the Licensing team in light of the findings of the Independent Inquiry into Child Sexual Exploitation in Rotherham be accepted and supported by the Licensing Board.
- That the clarification of the delegation to officers by the Licensing Board, as detailed in Appendix 2, be accepted and agreed.
- That Members agree to the development of proposals to strengthen the application process (in consultation with the taxi/private hire trade and other relevant stakeholders), with a view to bringing a report to the Licensing Board Meeting in December 2014 seeking the introduction of the revised application process.
- That Members agree to the development of revised/consolidated vehicle standards (in consultation with the taxi/private hire trade and other relevant stakeholders), with a view to bringing a report to the Licensing Board meeting in December 2014 seeking the introduction of the revised vehicle standards.
- That Members agree to receive a consolidated and comprehensive Taxi and Hackney Carriage licensing policy within the next three months, suitable for public consultation.

## 7. Proposals and Details

### 7.1 Overview of the licensing of hackney carriages, private hire vehicles, private hire operators and drivers.

The following represents an overview of the current legislative framework that governs the licensing of hackney carriages and private hire vehicles/drivers. This report seeks to reassure the Licensing Board that the processes that are currently in place adequately discharge the council's obligations in relation to hackney carriage/private hire licensing. Furthermore, it is intended to demonstrate that the council achieves an appropriate balance between safeguarding members of the public, whilst at the same time ensuring that the licensing process is not overly bureaucratic and prescriptive.

#### Hackney Carriage Vehicles:

The expression "taxi" refers to a hackney carriage. There are statutory requirements that have to be complied with before a hackney carriage licence may be granted.

- It is for the Licensing Authority to lay down conditions to regulate the type of vehicle which can be used for hackney carriage work. It may cover the size, appearance, method of access and egress, colour, number of seats, number of doors, specific matters such as turning circle and luggage space, etc.
- It is for the Licensing Authority to choose whether or not it will regulate the number of hackney carriage vehicle licences on the road in the licensing authority area. Following the guidance issued in 2006 the majority of authorities no longer restrict market forces by the regulation numbers, however Rotherham MBC presently restrict the number of hackney carriages that it licenses to 52.
- The licensing authority can control the fares charged for a hackney carriage journey.
- A hackney carriage may "Ply for Hire" on the streets and from allocated ranks
- Only a person who is a licensed driver may drive a licensed hackney carriage vehicle.
- A hackney carriage may take work from a licensed private hire company (operator).
- The licensing authority cannot take into account any aspect of a vehicle owner's character when deciding whether to licence the vehicle.

#### Private Hire Vehicles:

Private hire vehicles were not created until the adoptive legislation of the Act 1976. The word "taxi" does not cover private hire vehicles and neither does the word "minicab" which is not referred to in any legislation.

- It is for the Licensing Authority to lay down conditions to regulate the type of vehicle which can be used for private hire. It may cover the size, number of doors, passenger space, seats, luggage space, condition, etc.
- But a private hire vehicle may not give the public a reason to believe it is a hackney carriage, this includes by appearance.
- The Licensing Authority may not regulate the number of private hire vehicle licences on the road in the licensing authority area it is for market forces to regulate numbers.
- The licensing authority cannot control the fares charged for a private hire journey.
- A private hire vehicle may not “Ply for Hire” on the streets, from hackney carriage ranks; or “rank up” on the streets in public view.
- A licensed private hire vehicle may only accept pre-booked work issued from a licensed private hire Operator (company)
- Only a person who is a licensed driver may drive a licensed private hire vehicle.
- The private hire vehicle cannot operate independently of the private hire operator.
- The licensing authority cannot take into account any aspect of a vehicle owner’s character when deciding whether to licence the vehicle.

### Private Hire Operators:

The Operator takes bookings and dispatches drivers to fulfil the requirements of the booking.

The legislation places considerable duties on the licensed operator to ensure that vehicles and drivers which they operate are properly licensed

- The authority may consider the fit and properness of the individual applying to become an operator, (there is no legal definition for/of “fit and proper”) and fewer mechanisms which allow the licensing authority to impose tests and conditions to attempt to determine the “fit and properness” of an operator. The tests vary greatly in type and quality across the country.
- The authority may not consider the fit and properness of any employee of the operating company and cannot regulate, licence or place restrictions on those persons employed.
- The operator takes the bookings from the public and dispatches them to a vehicle (driven by a licensed driver) working from their system.
- The authority may impose conditions to govern behaviour and conduct of the licensed person.

In Rotherham, Private Hire Operator licences are renewable annually.

Licensed drivers:

Some authorities choose to licence Private Hire and Hackney Carriage drivers separately, however Rotherham MBC (like many other local authorities) operate a 'dual licence' system. This allows a licensed driver to drive both licensed Hackney Carriages and Private Hire Vehicles.

There are statutory tests that have to be complied with before a driver licence may be granted. These primarily concern the fit and properness of the individual. Although there is no legal definition for/of "fit and proper", there are mechanisms which allow the licensing authority to impose tests and conditions to attempt to judge the test of "fit and properness". The tests vary greatly in type and quality across the country.

In Rotherham, applicants for a driver licence are required to undertake the following:

- Pass a medical examination by the applicant's own registered medical practitioner.
- Obtain an enhanced disclosure from the Disclosure and Barring Service (DBS) – formerly the Criminal Records Bureau (CRB).
- Pass a driving test administered by the Driving Standards Agency, which includes elements specifically directed at drivers involved in taxi/private hire work.
- Pass a test that checks local knowledge and awareness of licensing law and licence conditions.

Once these items have been satisfactorily completed, the licence is issued for a period of 1 to 3 years. If the medical examination or DBS disclosure reveal adverse information then the applicant is referred to the Licensing Board who will determine whether the applicant is an appropriate person to hold a licence. In making this decision the Licensing Board refer to statutory guidance produced by the Department for Transport (in the case of the medical examination) or internal guidance in relation to adverse information being revealed as a result of the DBS disclosure.

Once licensed, a driver must observe the law relating to hackney carriage/ private hire licensing and also the conditions attached to the licence. Failure to do this may result in the driver being referred to the Licensing Board, who may choose to suspend or revoke the licence should they consider that the holder is no longer a fit and proper person to hold a licence.

In Rotherham, there are currently (as at 3<sup>rd</sup> September 2014):

86 Private Hire Operators

840 Private Hire Vehicles

## 52 Hackney Carriage Vehicles

1158 Licensed drivers (Hackney Carriage and Private Hire Vehicle)

### Additional related processes:

#### Police Notifications:

The occupation of 'taxi driver' is a notifiable occupation so when a licensed driver is arrested/being the subject of an investigation or is charged/convicted of an offence if they have disclosed their occupation as a taxi driver then the Licensing Authority are made aware formally with a letter from the PNC Bureau at Atlas Court or other Police Authority if not South Yorkshire.

This information is used when considering immediate suspensions of licences in particular and is demonstrated in the cases highlighted.

#### Immediate Suspensions:

The powers came in with the Road Safety Act 2006. Prior to this, suspensions required 21 days' notice. It was adopted on 15 March 2007.

Immediate suspensions allow the Licensing Authority to suspend a licence with immediate effect. It amended the Local Government (Miscellaneous Provisions) Act 1976 which is the legislation used to licence taxi drivers.

If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

#### Responsible Authorities Meeting:

This meeting is an officer meeting to share and discuss licensing matters primarily in relation to premises licensed under the Licensing Act 2003. However, other matters related to licensing are also discussed - in particular taxi/private hire licensing, and safeguarding issues in relation to other licensed premises (such as late night takeaways). Taxis are a standing item on the meeting's agenda.

These meetings were introduced in 2006, but significantly revised and improved in 2010 to include a wider range of issues and improved attendance, this now includes South Yorkshire Police, RMBC Child Safeguarding, SY Fire and Rescue, RMBC Planning, RMBC Food, Health & Safety, RMBC Trading Standards, RMBC Community Protection, NHS Public Health and the Gambling Commission. The meeting is chaired by the RMBC Licensing Manager.

Formal minutes / notes of the meeting are produced and circulated to all members of the group. Actions are agreed and monitored.



### 7.2 Actions to be taken by Licensing following publication of report of the Independent Inquiry (Jay Report) into Child Sexual Exploitation in Rotherham 1997 - 2013

Although the report acknowledged that the licensing function was one area that the council had strengthened as a result of the emergence of child sexual exploitation, the report highlighted a number of issues that need to be addressed. Whilst all are not mentioned in the Jay Report, the key issues that will be addressed by the service are as follows:

- Ensuring we have effective processes for reporting child protection concerns. Revision and re-issuing of the service-wide reporting protocol in relation to child and adult safeguarding.
- Reviewing existing procedures that relate to the licensing of limousines with fewer than 9 seats, and ensuring that all vehicles and drivers that should be licensed by the Council are in fact appropriately licensed.
- Formally contacting the Driver and Vehicle Standards Agency to express concern in relation to the safeguards that are in place regarding their assessment of the suitability of limousine drivers.
- Consideration of the introduction of a 'CabSafe' rating scheme for Private Hire Operators, the intended outcome being to give members of the public reassurance in relation to the standard of private hire operators within the Borough.
- Establish communication with young people in order to identify the concerns that they have in relation to the use of hackney carriages and private hire vehicles in Rotherham, and what can be done to address these concerns.
- Reviewing historical cases of CSE in Rotherham, in order to identify any perpetrators that may be licensed drivers so that action can be taken in order to safeguard members of the public.

Work has already commenced on these actions, and it is proposed that a full update in relation to them is provided to the Licensing Board at its December meeting.

### 7.3 Clarification of the current scheme of delegation and proposal for revised delegation in relation to hackney carriage and private hire licensing

The statutory authority for the issuing of licenses regarding hackney carriages and private hire vehicles /drivers is contained within the Town Police Clauses Act 1847 (as extended by the Public Health Act 1875), the Local Government Act 1972, the Transport Act 1985 and the Local Government (Miscellaneous Provisions) Act 1976.

The determination of taxi/private hire licences is a non-executive function of the council and is delegated to the Licensing Board under the annually agreed RMBC Scheme of Delegation for Members and Officers.

The Scheme of Delegation authorises the Licensing Board to determine all matters relating to the Council's statutory licensing functions in relation to:

- Hackney Carriage and Private Hire;
- Charitable collections (Street Collections and House to House Collections);
- Marriage and Civil Partnership Premises;

- Small Bus Permits;
- Scrap Metal Dealers;
- Motor Salvage Operators;
- Sex Establishment Licences (including variation and revocation);
- Hypnotism

At the meeting of The Council on 6 June 2014, the Scheme of Delegation was amended to introduce the ability for the Licensing Board to appoint members to a sub-committee to determine applications for Hackney Carriages and Private Hire Licences. Further details on this are attached to this report as Appendix 1 (extract of report to Council meeting on 6 June 2014).

The sub-committee structure will allow the expedient determination of applications for Private Hire/Hackney Carriage licences, and will meet at least monthly.

The full Licensing Board will meet every quarter (although this frequency may be changed with the agreement of the Chair of the Licensing Board).

However, to facilitate the efficient delivery of the council's obligations, the Director of Housing and Neighbourhood Services has the delegated authority to issue, renew and suspend licences in certain circumstances. This authority has been established over a number of years following decisions made by Licensing Board, however there is no consolidated document that clearly sets out the circumstances under which the Licensing Board must hear applications, and which applications may be determined by officers.

In relation to hackney carriage and private hire licensing, all new applicants that have a criminal conviction (regardless of the length of time that has elapsed since the date of the conviction) are referred to the Licensing Board.

Officers have the delegated authority to grant or renew licences in the following circumstances:

- The applicant's DBS Disclosure Certificate shows no convictions or adverse information (new applications).
- The applicant's DBS Disclosure Certificate shows no additional convictions or adverse information that has not previously been considered by the Licensing Board, and there has been no break in the licence period since the matter was considered (renewal applications).

The suspension of driver/vehicle licences can presently be undertaken by both the Licensing Board and officers. Suspensions may be issued for a variety of reasons, including:

- Administrative discrepancies, for example vehicle insurance/DVLA driving licence details not being provided.
- As a sanction in cases where conduct is below the standard that is expected of a licensed driver.

- Where information is made available regarding pending criminal investigations that give rise to uncertainty that the driver is considered to be a fit and proper person to hold a licence.

A licence holder may appeal against the suspension of their licence; this appeal is made to the Magistrates Court and must be done within a prescribed timescale (21 days).

If the suspension is appealed within this time, then the suspension does not take effect until the appeal has been determined by the Magistrates Court. If no appeal is lodged, or if the appeal is unsuccessful, the suspension takes effect 21 days after it is issued.

In certain circumstances, suspensions can be issued that take effect immediately. There is a right of appeal against the issuing of these suspensions; however the suspension will remain in place pending the appeal. Immediate suspensions are only issued where such action is deemed necessary for the purposes of public safety – for example, serious concerns regarding the activities of a licensed driver or significant defects with a licensed vehicle being identified during an inspection. The immediate suspension of a licence is delegated to the Director of Housing and Neighbourhood Services.

The revocation or refusal to grant a licence is the sole preserve of the Licensing Board.

Since 2009, the Licensing Board have revoked the licences of 105 drivers. The revocations were for a wide variety of matters.

Action has been taken against seven licensed drivers as a result of their involvement in Child Sexual Exploitation or related offences:

- Four drivers have had their licences revoked (this figure is included in the total number of revocations referred to above).
- One driver's licence was suspended by the council, the licence was then voluntarily surrendered by the driver before the decision could be made to revoke the licence.
- One driver's licence was suspended for a period of three months – this was due to inappropriate behaviour in the presence of a young person.
- One licensed driver is currently suspended from working as a taxi/private hire driver pending the outcome of a police investigation.

In order to facilitate the efficient delivery of the council's obligations, and to consolidate current guidance, the scheme detailed in Appendix 2 is proposed (in so far as it relates to hackney carriage and private hire licensing):

These proposals will ensure the efficient discharge of the council's licensing functions, whilst maintaining public safety and confidence.

#### 7.4 Proposals to strengthen the existing application process

Whilst the processes that are currently in place with regard to hackney carriage/private hire licensing are considered to be satisfactory, a number of additional/revised processes are being proposed. The matters will be brought to the Licensing Board for full consideration in due course, however this report introduces the proposals and seeks the agreement of the Licensing Board to begin the process of developing the proposals, which will include an element of consultation with the hackney carriage/private hire trade as appropriate.

##### Mandatory child safeguarding and other training:

At a meeting on 5 March 2012, the Licensing Project Manager for Sheffield Safeguarding Board agreed to develop a training package that could be delivered to taxi drivers to increase awareness of adult and child safeguarding issues.

On 24 September 2012, an event was held at the Magna Centre where the package was presented to members of the taxi/private hire trade across South Yorkshire. Feedback was requested from drivers following this meeting, collated and fed back to the South Yorkshire Joint Licensing Authority Meeting in November 2012. A number of further development requirements were identified that would enable a revised training package to be developed by mid-2013, and further consultation with local authorities and the licensed trade could be undertaken.

Unfortunately there has been significant delay in this issue, but Sheffield City Council have now confirmed that the package has been developed, and can be introduced/adopted in Rotherham with relative ease. The process by which the training should be integrated into the Rotherham application process, and the format that the training will take, will be the subject of consultation with the trade.

It is intended that the package will be delivered to all new applicants in Rotherham (different arrangements exist in other areas) – this will be mandatory as part of the application process. Existing drivers will be targeted in a phased way, with the intention being that over time all drivers will have received some adult and child safeguarding awareness training.

It is also proposed that the child safeguarding training will be complemented with training in disability awareness, adult safeguarding and customer care. These training packages have yet to be developed, but it is envisaged that this could be done to enable these packages to be implemented in conjunction with the child safeguarding training referred to above.

##### Vehicle standards:

At the present time, the standards for vehicles are essentially based on circulars/memos/other documents that have been produced and amended over a number of years. There is a lack of clarity over what the standards are, and it is therefore often the case that the council is drawn into dispute over what is and is not allowed.

By introducing a consolidated set of standards, we will ensure that there is clarity over what standards we expect from the vehicles that we licence. It will include mechanical/safety aspects, requirements for CCTV if this is fitted in vehicles, location and type of vehicle identification (location and fixing of plates and door signs) and identification of hackneys and private hire (differentiation between the two).

A revised set of standards has been drafted based on the National Inspection Standards for Hackney Carriages and Private Hire Vehicles. Representatives of private hire drivers, hackney carriage drivers and private hire operators have viewed these standards and largely accept them as being an improvement to the existing framework. Further development of the standards, following the comments made by the trade representatives, will be undertaken before more widespread consultation.

Knowledge test:

The current driver licence knowledge test has remained unchanged since its inception many years ago. It is proposed that the knowledge test should be updated to include additional questions around the safeguarding of adults and children, disability awareness, customer care and more robust questioning around the terms and conditions of the driver licence. In addition, the current paper based multiple choice format of the test could be modernised to enable a wider, and more random, variety of questions for each applicant.

A proposal for a revised test and testing format will be developed, in consultation with the licensed trade, and brought before the Licensing Board in due course.

Comprehensive, Consolidated, Taxi and Hackney Carriage Policy

The council's approach to licensing issues whilst soundly based on both legislation and national guidance is, nevertheless, not consolidated within one overarching policy document. This can be confusing for both members of the trade and public alike. In addition a range of service improvements as identified above are being planned. Consequently it is proposed to develop a comprehensive consolidated policy document, which will need to be the subject of consultation in regard to any enhanced requirements.

The proposed policy will hopefully go some way to reassure the public about the licensing standards in operation within the borough. As such it is proposed to bring this matter to the board at the earliest possible opportunity.

**8. Finance**

These proposals will be delivered within existing service revenue budgets, there are no additional financial implications.

## **9. Risks and Uncertainties**

Members must be satisfied that the processes relating to the issuing of licences ensure that licences are only granted to those individuals that are considered fit and proper to hold a licence. In addition, the Licensing Board must be satisfied that the authority has the ability to take robust and urgent action in relation to those licence holders that do not meet the standards required. Failure to ensure that processes are fit for purpose will introduce the risk that licences may be granted to individuals that pose a threat to the safety and wellbeing of the public due to the acts or omissions of the individual being issued with a licence.

However, the need to protect the public must be balanced against the need for licensed drivers and vehicle owners to operate on a commercially viable basis. Failure to do this may lead to an increase in the number of unlicensed vehicles/drivers, or to a reduction in the number of drivers/vehicles to a level that cannot meet the needs of the public.

## **10. Policy and Performance Agenda Implications**

The contents of this report promote the advancement of the Council's priorities in relation to the protection of vulnerable people and supporting the economic growth of the town.

## **11. Background Papers and Consultation**

Report of the Independent Inquiry into Child Sexual Exploitation in Rotherham 1997 – 2013 (Prof Alexis Jay OBE).

RMBC Licensing Board Minutes:

7<sup>th</sup> November 2007

17<sup>th</sup> February 2010

12<sup>th</sup> October 2011

20<sup>th</sup> March 2013

16<sup>th</sup> April 2014

12<sup>th</sup> June 2014

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**Appendix 1 – extract from report to 6<sup>th</sup> June 2014 Council meeting regarding structure of Licensing Board**

**Licensing Board**

A review of the decision-making process in respect of applications determined by the licensing Board has been undertaken. The Board considers applications for private hire and hackney carriages (taxis), charitable collections, marriage and civil partnership premises, small bus permits, scrap metal dealers, motor salvage operators, sex establishment licenses and hypnotism. This report recommends changes to the way decisions are made in respect of these applications.

In respect of taxi licensing, this power is delegated to the Board. The straightforward applications are determined by officers and the more contentious matters are referred to the Board.

Currently applications are considered by the full Licensing Board, which has 21 Members. Consideration of such applications is a quasi-judicial function which is most appropriately undertaken by a small sub-committee, which can articulate the reasons for its decision clearly and efficiently. Therefore it is recommended that such applications are dealt with by a sub-committee of 5. To assist with the smooth running of the sub-committees it is proposed that a quorum of 3 should be included in the delegation arrangements to ensure that the sub-committees can proceed in the absence of up to 2 members.

The amendment to the current Scheme of Delegation will be:-

‘The Licensing Board may appoint from time to time sub-committees in order to effectively discharge its functions. The sub-committee shall be comprised of 5 Members, with a quorum of 3.’

**Appendix 2 – proposed scheme of delegation to officers and the Licensing Board**

Grant or renewal of driver licences:

The Director of Housing and Neighbourhood Services is authorised to issue licences in the following circumstances:

- A new application where the applicant's DBS Disclosure Certificate shows no convictions or adverse information.
- A new application where the applicant's DBS Disclosure Certificate shows only convictions / cautions under the following circumstances:
  - 11 years have elapsed since the date of the most recent conviction, and
  - it is the applicant's only offence, and
  - the offence did not result in a custodial sentence, and
  - the offence did not involve a sexual element, violence (or fear of violence) or illegal / controlled drugs, and
  - there is no additional information on the Disclosure Certificate that has been provided at the discretion of the Chief Officer of Police.
- A renewal application where the applicant's DBS Disclosure Certificate shows no additional convictions or adverse information that has not previously been considered by the Licensing Board, and there has been no break in the licence period since the matter was considered.

In all other circumstances, the licence application will be determined by the Licensing Board.

Suspension of driver licences:

The Director of Housing and Neighbourhood Services is authorised to suspend driver licences in the following circumstances:

- Where an immediate suspension is considered to be necessary in the interests of public safety. This decision will only be taken with the agreement of senior departmental management. The case will be brought before the Licensing Board for ratification by the Board at the earliest opportunity (unless the suspension is lifted before the meeting of the Board).
- Where a suspension is required for administrative reasons, such as failure to provide satisfactory documentation.

Grant or renewal of vehicle licences:

The Director of Housing and Neighbourhood Services is authorised to determine all vehicle licence applications.



Suspension of vehicle licences:

The Director of Housing and Neighbourhood Services is authorised to suspend vehicle licences in the following circumstances:

- Where an immediate suspension is considered to be necessary in the interests of public safety (such as when the vehicle is in such a state of disrepair that it presents a risk to public safety).
- Where a suspension is required for administrative reasons, such as failure to provide satisfactory documentation.

Grant or renewal of Private Hire Operator Licences:

The Director of Housing and Neighbourhood Services is authorised to issue licences in the following circumstances:

- A new application where the applicant's DBS Disclosure Certificate shows no convictions or adverse information.
- A new application where the applicant's DBS Disclosure Certificate shows only convictions / cautions under the following circumstances:
  - 11 years have elapsed since the date of the most recent conviction, and
  - it is the applicant's only offence, and
  - it did not result in a custodial sentence, and
  - the offence did not involve a sexual element, violence (or fear of violence) or illegal / controlled drugs, and
  - there is no additional information on the Disclosure Certificate that has been provided at the discretion of the Chief Officer of Police.
- A renewal application where the applicant's DBS Disclosure Certificate shows no additional convictions or adverse information that has not previously been considered by the Licensing Board, and there has been no break in the licence period since the matter was considered.

In all other circumstances, the licence application will be determined by the Licensing Board.

Suspension of Private Hire Operator licences:

The Director of Housing and Neighbourhood Services is authorised to suspend operator licences in the following circumstances:

- Where an immediate suspension is considered to be necessary in the interests of public safety. This decision will only be taken with the agreement of senior departmental management. The case will be brought before the Licensing Board for ratification by the Board at the earliest opportunity (unless the suspension is lifted before the meeting of the Board).
- Where a suspension is required for administrative reasons, such as failure to provide satisfactory documentation.

Matters relevant to all licences:

- Licences may only be revoked by the Licensing Board.
- The Licensing Board retains the right to review any licence / licence application should it consider it necessary to do so.
- The Director of Housing and Neighbourhood Services reserves the right to refer any application to the Licensing Board should it be considered necessary to do so.