

LICENSING BOARD

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

Date: Monday, 24th September
2018

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(s) which the Chairman is of the opinion should be considered later in the agenda as a matter of urgency.
3. Apologies for absence
4. Declarations of Interest
5. Minutes of the previous meeting held on 23rd April, 2018 (Pages 1 - 4)
6. Rotherham MBC Sex Establishment Policy (Pages 5 - 48)
7. Taxi and Private Hire Licensing Performance and General Update Report (Pages 49 - 81)
8. Licensing Enforcement Penalty Points Scheme (Pages 82 - 95)
9. Date and time of next meeting - to be confirmed

Shea Kemp.

Chief Executive

Membership 2018/19

The Mayor (Councillor Buckley) and Councillors Beaumont (Vice-Chairman), Clark, Elliot, Ellis (Chairman), Fenwick-Green, Hague, Jones, McNeely, Mallinder, Marriott, Napper, Reeder, Rushforth, Senior, Sheppard, Steele, Taylor, Vjestica and Wyatt.

LICENSING BOARD
Monday, 23rd April, 2018

Present:- Councillor Ellis (in the Chair); Councillors Beaumont, Buckley, Clark, Elliot, M. Elliott, Jones, McNeely, Napper, Reeder, Sheppard, Steele, Taylor, Vjestica and Williams.

Apologies for absence were received from Councillors Hague and Wilson.

9. WELCOME

The Chair welcomed everyone to today's full Licensing Board and in doing so wished to thank all Members for their contributions and diligence in licensed activity over the last year. Whilst there had been a tremendous amount of progress to date there was still more to be done and the Chair looked forward to meeting those challenges in the next municipal year.

10. DECLARATIONS OF INTEREST

There were no Declarations of Interest to report.

11. TAXI AND PRIVATE HIRE LICENSING PERFORMANCE AND GENERAL UPDATE REPORT

Consideration was given to the report presented by Alan Pogorzelec, Licensing Manager, which provided an update in relation to the Licensing Team's performance against the Taxi and Private Hire Licensing Performance Framework.

In addition, an update was provided on key issues/activities and actions undertaken and year-end results for the performance framework since the previous update report to the Licensing Board.

Particular reference was made to the five demonstrated outcomes, the measures with and without targets, processes for review; some of which were yet to be presented to the Licensing Board, complete implementation of the Council's Hackney Carriage and Private Hire Policy, performance in relation to the requirements of the Policy, significant developments in the final quarter and the detail contained the Licensing Performance Management Framework.

The Board, in considering the detail, welcomed the progress in the report, but sought clarification on a number of points:-

- Data Protection Regulations.
- Voluntary National Database and the Private Members' Bill.
- Content and security around the LGA funded Voluntary National Database.

LICENSING BOARD- 23/04/18

- License revocations and lessons learnt from previous decisions.
- Timeframe for listing appeals to the Magistrates' Court.
- Applications to work in other areas by drivers subject to proceedings.
- Challenges being faced in Rotherham and recognition of the work being undertaken nationally.
- Proactive work by Members of Parliament promoting Rotherham's Licensing Policy.
- Training updates and spot checks.

The Committee went on further to consider the Council's approach to enforcement and how individual enforcement was adhering to the Principles of Good Regulation.

The report outlined the enforcement work undertaken in relation to the licensing function and how such activity complied with the requirements of the Council's General Enforcement Policy.

Reference was made to Appendix 2 which detailed the 2017/18 Quarter 3 and Quarter 4 Enforcement Data. The last six months had seen complaint numbers triple, but this was attributable to proactive action by officers and the public becoming more familiar with reporting routes.

The installation of cameras had proved invaluable for complaints regarding the conduct of drivers and it was for this reason, due to demand, a role was to be created two days per week primarily to deal with taxi camera downloads. Whilst the Committee suggested a reasonable realistic charge be made to insurance companies and third parties for downloads data, this had not been considered at the moment.

Reference was made to the proactive/multiagency enforcement operation undertaken during 2017 and the early part of 2018 and the partnership work undertaken with the Security Industry Authority.

Although the report primarily related to Hackney Carriage/Private Hire Licensing a number of other enforcement work had been undertaken and details in the report illustrated both the volume and variety of work by the Licensing Team.

It was also noted that an investigation was ongoing in relation to one private hire operator, which was to be presented to the Licensing Board once completed.

The Board again welcomed the progress in the report, but sought clarification on:-

- Taxi camera diagnostics and specifications.
- Advantages to having cameras in vehicles.
- Annual figures of enforcement data, direct comparisons and performance monitoring.

- Capacity within the Licensing Team, use of agency staff and the ongoing recruitment processes.
- Working relationships with the National Crime Agency.
- Role of Commissioner Ney as a decision maker.
- Use of acronyms.
- Success rate of appeals and excellent working arrangements between Licensing and Legal Services.
- Action and decisions taken by the Licensing Board and Officers.
- Broad comparative data against other Local Authorities.
- Wearing of cameras by Enforcement Officers and if this was an option in the future.

The Chair wished to place on record the Board's thanks and appreciation to Clive Betts M.P. and his support for Rotherham's Licensing Policy. A further updated report and evidence would be forwarded onto him in due course.

Resolved:- (1) That the report be received and the contents noted.

(2) That the progress made regarding the implementation of the Council's Hackney Carriage and Private Hire Licensing Policy be noted.

12. ROTHERHAM MBC HOUSE TO HOUSE COLLECTIONS POLICY

Consideration was given to the report presented by Alan Pogorzelec, Licensing Manager, which detailed how the licensing of house to house collections, whilst governed by national legislation, provided for local discretion. It was considered that a clear and transparent policy would assist applicants' understanding of the process and facilitate consistent decision making by the Council.

All applications for House to House Collection Permits were considered by the Council's Licensing Board and this report sought their views in readiness for a further report to the Cabinet Member for Waste, Roads and Community Safety seeking approval to consult on the draft policy prior to implementation.

It was noted also that any applicant aggrieved by a decision by the Council may only appeal to the Secretary of State within twenty-one days of being given the notice of the decision.

Background and general information regarding to house to house collections was highlighted.

It was important to note, however, that many local and national charitable organisations relied upon the funding that was allocated to them as a result of house to house collections and, therefore, the policy must strike the correct balance between ensuring that permits were only granted in appropriate circumstances and providing proportionate application criteria that did not introduce unnecessary barriers to for legitimate and well-

meaning individuals and/or organisations.

Following consideration of this policy by the Licensing Board, any comments or suggestions would be incorporated into the policy and a report prepared for consideration by the Cabinet Member for Waste, Roads and Community Safety. There would then be a period of public consultation prior to the introduction of the policy (subject to the agreement of the Council's Executive).

The Board in considering the current Policy took account of the regulatory framework for house to house collections, the application process, granting and refusal of house to house collection permits and the consideration of financial information.

The Board welcomed the opportunity to comment on the House to House Collection Policy and raised a number of queries. These related to:-

- Consistency of decision making.
- Percentage of allocated amount to the collection beneficiary.
- Appeals process.
- Reduced numbers of face to face collections.
- Identification of permit holders.
- Exemptions.
- Collections from business premises for charitable purposes.
- Need to ensure process was clear.
- Addressing concerns of the Board for consistency.
- Capacity of the Licensing Team to cope with demand and the potential to charge for administration costs.
- Risk of unlawful collections and enforcement activity.

The Board, in asking a number of questions, were happy for the draft House to House Collections Policy to be updated and forwarded to the Cabinet Member in due course. However, in doing so asked for the following to be incorporated:-

- A clause to remove an application from collecting organisations should they fail to provide the necessary information.
- That in order to be consistent the amount allocated to the collection beneficiary should be no less than or exceed 80% of the total amount collected.

Resolved:- That the draft House to House Collections Policy with the comments above be forwarded to the Cabinet Member for Waste, Roads and Community Safety seeking approval to consult on the draft policy prior to implementation.

Public Report
Licensing Board

Summary Sheet

Council Report

Licensing Board – Monday 24th September 2018

Title

Rotherham MBC Sex Establishment Policy

Is this a Key Decision and has it been included on the Forward Plan?

Yes.

Director Approving Submission of the Report

Tom Smith, Assistant Director of Community Safety and Street Scene

Report author(s):

Alan Pogorzelec – Licensing Manager, Regulation and Enforcement, 01709 254955,
alan.pogorzelec@rotherham.gov.uk

Ward(s) Affected

All wards

Executive Summary

This report introduces an amendment to the Local Government (Miscellaneous Provisions) Act 1982 that classifies lap dancing clubs (and similar venues) as sex entertainment venues.

In addition, the amended Act will give local communities a greater say in the relation to the presence of sex establishments (which include sex entertainment venues, sex shops and sex cinemas) and allows the local authority to more effectively regulate such premises.

This reports seeks the Licensing Board's views and comments in relation to the adoption of the amendment and also a proposed Sex Establishment Licensing Policy.

Recommendations

- That the Licensing Board consider and provide comment in relation to the proposed Rotherham MBC Sex Establishment Policy.
- That Members of the Licensing Board give their view in relation to the proposal to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- That the comments and views of the Licensing Board are incorporated into a further report to Cabinet in relation to both of the above matters.

List of Appendices Included

- Appendix 1 - Draft Rotherham MBC Sex Establishment Policy

Background Papers

- Home Office Guidance for England and Wales in relation to Sexual Entertainment Venues

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Decision is to be made by Cabinet – report is presented to Licensing Board for information and comment only.

Council Approval Required

No.

Exempt from the Press and Public

Not exempt.

Rotherham MBC Sex Establishment Policy

1. Recommendations

- 1.1 That the Licensing Board consider and provide comment in relation to the proposed Rotherham MBC Sex Establishment Policy.
- 1.2 That Members of the Licensing Board give their view in relation to the proposal to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- 1.3 That the comments and views of the Licensing Board are incorporated into a further report to Cabinet in relation to both of the above matters.

2. Background

- 2.1 Any sex shop and sex cinema located within the Borough of Rotherham requires a licence from the Council issued under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”). Such premises are referred to in the 1982 Act as “Sex Establishments”.
- 2.2 At the present time, all premises in Rotherham that provide lap dancing or similar activity require a premises licence issued under the Licensing Act 2003.
- 2.3 Although the Licensing Act provides local authorities with the ability to regulate establishments where lap dancing or similar entertainment takes place, it is generally accepted that this legislation did not give communities sufficient powers to control where lap dancing clubs etc. were established, or give local authorities sufficient powers in relation to their regulation (such as the requirement for sex establishments to apply for an annual licence – with appropriate conditions being attached as appropriate) .
- 2.4 In order to address these concerns, the Government amended Schedule 3 of the 1982 Act by way of section 27 of the Policing and Crime Act 2009 (“the 2009 Act”).
- 2.5 Section 27 of the 2009 Act came into effect in April 2010 and had the effect of reclassifying lap dancing clubs and similar as ‘sexual entertainment venues’ and added these to the category of “sex establishment” within the 1982 Act (along with sex shops and sex cinemas). These provisions allow local authorities to consider and determine applications on potentially wider grounds than is permitted under current law and will give local people a greater say over the regulation of sex establishments in their area.
- 2.6 Importantly, the amended Schedule 3 allows local authorities to set a policy in relation to the licensing of sex establishments that sets out the

authority's approach to the licensing of these premises – including the setting of licence conditions, restrictions on locations and limits on the number / type of sex establishments within the authority's area.

- 2.7 However, the amendments to Schedule 3 of the 1982 Act will only apply where they are adopted by local authorities. This report outlines the reasons why adoption is considered necessary, and introduces a proposed policy for the control of sex establishments within Rotherham.
- 2.8 The scheme of delegation has yet to be confirmed, however as the Licensing Board is currently responsible for determining matters around sex shops, the views of the Board are important in the development of any policy regarding a function which is relevant to their work.
- 2.9 Once the Licensing Board have given their views, these will be incorporated into a report to the Council's Cabinet. If Cabinet is minded to adopt the amended Schedule 3 and the proposed Sex Establishment Policy then officers will commence the relevant processes (which will include a period of public consultation) , before a bringing a report back to the appropriate Council meeting seeking formal adoption of Schedule 3 and the Sex Establishment Policy.

3. Key Issues

- 3.1 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 provides local licensing authorities with adoptive licensing provisions for sex establishments, comprising the categories of sex shops and sex cinemas.
- 3.2 The majority of venues providing lap dancing, table dancing or other similar striptease entertainment currently need hold only premises licences with music and dancing issued under the 2003 Act to operate lawfully. Applications for premises licence under the 2003 Act are subject only to considerations relevant to the four licensing objectives:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance and
 - The protection of children from harm.
- 3.3 Paragraph 2A of Schedule 3 as inserted by Section 27 of the Policing and Crime Act 2009 defines the newly created category of 'sexual entertainment venue' as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer". The meaning of 'relevant entertainment' is "any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)".

3.4 Guidance produced by the Home Office provides that while local authorities should judge each case on its merits, the definition of relevant entertainment would be expected to apply to the following forms of entertainment as they are commonly understood:

- Lap dancing
- Pole dancing
- Table dancing
- Strip shows
- Peep shows
- Live sex shows

3.5 The guidance emphasises that although reference is made to “live display of nudity” the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided ‘solely or principally for the purpose of sexually stimulating any member of the audience’.

3.6 Schedule 3 sets out the definition of a ‘display of nudity’. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man, it means exposure of his pubic area, genitals or anus.

3.7 The provisions do include some clarifications and exemptions. Spontaneous displays of nudity or a lap dance by a customer or guest will not result in the premises being classified as a sexual entertainment venue. Furthermore, paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:

- Sex shops and sex cinemas (which fall into other categories under the 1982 Act);
- Premises which provide relevant entertainment on an infrequent basis. These are defined as where:
 - No relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - No such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - No such occasion has lasted longer than 24 hours.

3.8 Premises which provide relevant entertainment on an occasional basis will continue to be regulated by the 2003 Act. Premises which provide relevant entertainment on a regular basis will require a licence under the 1982 Act and, in all probability, a further licence under the 2003 Act should alcohol or late night refreshment sales be intended, but they will no longer be able to operate only under a 2003 Act licence alone.

Application process

3.9 Schedule 3 of the 1982 Act outlines the application process for a sex establishment licence, and provides details of the circumstances that merit (or may merit) refusal of an application for a licence.

3.10 Applications for a licence should be made in writing and should provide all details as set out in the 1982 Act and the Council's Sex Establishment Licensing Policy.

3.11 In addition, the application process will require:

- The payment of a reasonable fee
- Public advertisement of applications by way of a notice exhibited at the premises for a period of 21 days and a notice published in a local newspaper
- Written objections to be lodged relevant to the ground for refusal of a licence and
- Public hearing of the application and any objection(s) to the application.

3.12 The 1982 Act sets out mandatory grounds for the refusal of an application and makes it clear that a licence must not be granted

- To a person under the age of 18
- To a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months
- To a person, other than a body corporate, who is not resident in an EEA State or was not resident throughout the period of six months immediately preceding the date when the application was made or
- To a body corporate which is not incorporated in an EEA state or
- To a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.13 Additionally, a Council may choose to refuse a licence on discretionary grounds where:

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason

- If the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself
- The number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality
- That the grant of the licence would be inappropriate, having regard:
 - To the character of the area or the relevant locality, or
 - To the use to which any premises in the vicinity are put, or
 - To the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.14 Further information in relation to locality considerations is provided below.

Locality

3.15 As stated above, a local licensing authority may refuse applications on grounds related to an assessment of the 'relevant locality'. The Home Office guidance establishes that it is reasonable and potentially useful to future applicants for a local authority to decide in advance of receiving applications that certain areas are, or are not, appropriate locations for sex establishments or a particular number of sex establishments.

3.16 The proposed Rotherham MBC Sex Establishment Licensing Policy identifies examples of such sensitive locations, and these include:

- Residential areas
- Parks / play areas
- Places of worship
- Women's refuge facilities
- Family leisure facilities such as cinemas, theatres and concert halls
- Youth facilities
- Places used for celebration or commemoration
- Schools and other education establishments
- Cultural leisure facilities such as libraries and museums
- Historic buildings
- Retail shopping areas

3.17 The locations will be specifically referenced during the public consultation period that will take place as part of the adoption process. The views of

respondents will be taken in account when considering the appropriateness of these locations for inclusion in the policy.

- 3.18 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries.
- 3.19 Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition.
- 3.20 Nevertheless a local authority's view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, and therefore it would be appropriate for the licensing authority to confirm their interpretation of the term "relevant locality" on a case by case basis.
- 3.21 Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.
- 3.22 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality. 3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.
- 3.23 The draft policy proposes that rural, built up and residential areas are unacceptable localities for sexual entertainment venues to be located – however this proposal will be considered as part of the public consultation.
- 3.24 The policy further proposes that all areas outside of Rotherham town centre are unacceptable localities for sexual entertainment venues to be located due to their proximity to rural, built up or residential areas.
- 3.25 Although there is residential accommodation within the town centre, it is considered that the late night economy means that the town centre would be an acceptable locality to locate sexual entertainment venues. Again, this will be considered as part of the public consultation.
- 3.26 The extent of the town centre area referred to above is detailed in the Council's Sex Establishment Licensing Policy.
- 3.27 Taking the above into consideration, it is proposed that it would be inappropriate to issue a licence to a sexual entertainment venue outside of the town centre.

3.28 The policy proposes to limit the number of sexual entertainment venues within the town centre area to a maximum of two, providing those premises are not too near and / or do not impact properties with sensitive uses or in sensitive locations. It is considered that this limit will allow for any demand for such venues in Rotherham to be met, whilst facilitating commercial competition between premises.

3.29 There is no proposal to place a limit on the number of premises in relation to sex shops or sex cinemas. However, applicants will be required to take into consideration sensitive use premises and areas when submitting applications for a licence. Such applications will be dealt with on a case by case basis, and may be refused if their presence in the locality is inappropriate or likely to have an adverse impact on the local community (including amenity and environment).

Conditions

3.30 When granting licence to a sex establishment, a local authority is able to impose terms, conditions and restrictions on that licence. It is proposed that standard conditions are attached each category of sex establishment. These conditions are intended to protect the general public, customers, performers and the local environment.

3.31 In addition to safeguards around safety and welfare, Rotherham MBC consider it essential that the employees at sex entertainment venues are protected from exploitation and as such it is proposed that specific conditions to address this are attached to all sex entertainment venue licences.

3.32 The appropriate proposed standard conditions will be applied to all sex establishment licences issued by Rotherham MBC. The Council does however reserve the right to amend these conditions or attach additional conditions as appropriate.

4. Options considered and recommended proposal

4.1 Option 1 – the Council does not adopt the amended Schedule 3 to the 1982 Act.

This option will retain the status quo, and therefore limit the ability of local people to challenge the presence of sex establishments in their area.

In addition, the current position of regulating lap dancing clubs via by utilising the Licensing Act 2003 will remain – limiting the ability of the Council's licensing team to deal with any concerns around lap dancing clubs via the most effective means.

4.2 Option 2 – the recommended option.

The Council considers the adoption of the amended Schedule 3 to the 1982 Act and approves the commencement of consultation on both the adoption of Schedule 3 and the introduction of the proposed Sex Establishment Licensing Policy.

5. Consultation

- 5.1 This report constitutes consultation with the Licensing Board Council's – the views of the Board will be incorporated into any further reports / documents regarding this issue.
- 5.2 Should Cabinet approval be given to begin consultation on the proposals within this report, licensing officers will commence a period of public consultation.
- 5.3 The consultation period will commence following agreement of the approach by Cabinet and Commissioners in October 2018, and will be for a period of 8 weeks. All appropriate consultation methods will be used in order to ensure that the consultation is both effective and meaningful, this will include direct contact with Representatives of local businesses, representatives of existing licence holders, South Yorkshire Police and the Safer Rotherham Partnership.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Public consultation will commence during December 2018, with a view to seeking final approval of the policy, subject to consultation responses, early / mid 2019
- 6.2 In the event that the adoptive provisions are to be taken up, the Council must pass a resolution stating this decision and which specifies the day (the first appointed day) that the provisions will come into effect in the area. The specified date must be more than one month after the day on which the resolution was passed.
- 6.3 The resolution and the date of the first appointed day must then be published in notices appearing for two consecutive weeks in a local newspaper circulated in its area. The first publication of the notices must give at least 28 days' notice of the specified date.
- 6.4 A 'transitional period' then commences lasting twelve months beginning with the first appointed day. The process that follows is set out below:
 - To allow time to comply with the new regime, existing operators, who immediately before the first appointed day, hold a premises licence issued under the 2003 Licensing Act, which allows the licensee to lawfully use premises as a sex entertainments venue

will be allowed to continue to provide relevant entertainment until either the third appointed day (which falls twelve months after the first appointed day) or until such time as any application they have submitted is determined.

- New operators (who do not hold relevant 2003 Act premises licences) who wish to use premises as sexual entertainment venues after the first appointed day will not be able to use those premises until they have been granted a sexual entertainment venue licence.
- After the second appointed day (which falls six months after the first appointed day) the local authority must consider all applications received since the first appointed day, together. New applications granted will then take immediate effect. Licences granted to existing operators come into effect on the third appointed day.
- Applications made after the second appointed day shall be considered when they are made but only once all applications made before the second appointed day have been determined.

6.5 The decision to adopt the amended Schedule 3 is one which must be made at a meeting of the full Council. Council may also determine to delegate the decision making in relation to applications and other matters to a Council Committee or Regulatory Board – this matter will be addressed further in the final report that will be brought before Council following public consultation.

7. Financial and Procurement Implications

- 7.1 Schedule 3 to the 1982 Act states that the application for grant, renewal, variation or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authority, but does not expand upon what would be considered to be reasonable.
- 7.2 Currently the fee for a new sex establishment licence is £7,560 (this is the fee for a sex shop licence).
- 7.3 In the event that the new provisions are adopted a costings exercise will be carried out aimed at establishing appropriate application fees on a cost recovery basis. Regard will be had to existing guidance issued by central government in relation to locally set licence fees.
- 7.4 The cost of consultation will be met from within existing service budgets.
- 7.5 There are no anticipated procurement implications introduced as a result of the proposals within this report.

8. Legal Implications

1.1 All legal implications are detailed elsewhere in this report.

2. Human Resources Implication

2.1 There are no HR implications arising from this report.

3. Implications for Children and Young People and Vulnerable Adults

3.1 A failure to effectively regulate sex establishments may expose children and young people to psychological harm as a result of coming into contact with activities that are intended for adults only.

3.2 In addition, vulnerable adults may be exploited by the practices of sex entertainment venues (in particular) and therefore it is essential that such premises are appropriately regulated in order to ensure that vulnerable people are not exposed to physical, emotional and psychological harm.

3.3 It is considered that the adoption of the amended Schedule 3 along with the introduction of the Sex Establishment Licensing Policy will allow for the effective regulation of sex establishments in Rotherham and the mitigate the risk of harm that is presented to children, young people and vulnerable adults.

4. Equalities and Human Rights Implications

4.1 A full Equality Assessment will be undertaken in order to ensure that the proposed adoption and policy has no adverse impacts on equalities and human rights.

4.2 The findings of the assessment will be incorporated into the final policy.

5. Implications for Partners and Other Directorates

5.1 There are no implications anticipated for partners or other Directorates.

6. Risks and Mitigation

6.1 See section 10.1 to 10.3 above.

6.2 There are no other apparent risks in relation to the proposals within this report.

7. Accountable Officer(s)

7.1 Alan Pogorzelec – Licensing Manager, Regulation and Enforcement,
01709 254955, alan.pogorzelec@rotherham.gov.uk

This report is published on the Council's website or can be found at:-

<http://moderngov.rotherham.gov.uk/ieDocHome.aspx?Categories=>

**Rotherham MBC
SEX ESTABLISHMENT LICENSING POLICY
September 2018 (DRAFT)**

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1. Introduction

1.1. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009, provides for local authorities to adopt a policy and standard conditions relating to the regulation of:

- sexual entertainment venues
- sex shops
- sex cinemas

1.2. Rotherham Borough Council (the Council) adopted the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 on XXXXXXXX, with effect from XXXXXXXX.

1.3. This policy sets out the Councils approach to the regulation of the premises detailed in paragraph 1.1 above under the provisions of the 1982 Act.

1.4. This policy should be read with reference to the statutory Statement of Licensing Policy published under the Licensing Act 2003.

1.5. This policy will be reviewed regularly.

1.6. Interpretations can be found at Appendix A.

2. Purpose and Scope

2.1. This policy is concerned with the regulation of sex establishments as defined by the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009 (the Act), namely

- sexual entertainment venues;
- sex shops; and
- sex cinemas

2.2. The full legal definition of a sexual entertainment venue, sex cinema and sex shop can be found at sections 2, 2A, 3 and 4 of the Act.

2.3. The aim of this policy is to ensure that sex establishments operate within the authority area in a safe, fair and discreet manner. The policy addresses sensitive areas and premises by dealing with locality. Standard conditions address advertising, external appearance, crime and disorder safe guards and staff welfare.

2.4. The Council has also had regard to guidance issued by the Home Office.

2.5. The Council will impose conditions where necessary to promote responsible licensed activity and will use effective enforcement to address premises where there are problems, in partnership with key agencies such as:

- South Yorkshire Police
- South Yorkshire Fire & Rescue Service
- Safer Rotherham Partnership

2.6. The Council will keep the policy under constant review and make such revisions it considers appropriate.

2.7. The Council held a public consultation from XXXXXXXX to XXXXXXXX, to gain the views of residents and businesses with regard to the draft policy (including the appropriate localities and number of sexual entertainment venues). A total of XXXXX online survey responses were submitted. The results of this consultation have assisted in the formulation of this policy.

2.8. Following the initial public consultation the Council has consulted on the policy, the following organisations and people were consulted:

- Representatives of local residents
- Representatives of local businesses
- Representatives of existing licence holders
- South Yorkshire Police
- Safer Rotherham Partnership

3. General Principles

- 3.1 In determining licensing applications the Council will treat each application on an individual basis, on its own merits, taking into account this policy, the guidance issued by the Home Office and the Act.
- 3.2 A decision to refuse the licence application may not be made on moral grounds or that the establishment may cause offence.

Mandatory grounds for the refusal of an application

- 3.3 Mandatory grounds for the refusal of an application for a sex establishment are that the applicant:
- is under the age of 18;
 - is for the time being disqualified from holding a sex establishment licence;
 - is not a body corporate, and is not resident or has not been resident in an EEA state for six months immediately preceding the date of the application;
 - is a body corporate which is not incorporated in an EEA state;
 - has in the period of 12 months preceding the date of the application been refused the grant or renewal of a licence for the premises, vehicle, vessel, or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

Discretionary grounds for the refusal of an application

- 3.4 Discretionary ground for the refusal of an application for a sex establishment are that:
- the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
 - if the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he made the application himself;
 - the number of sex establishments, or sex establishment of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - the grant would be inappropriate, having regard –
 - to the character of the relevant locality;
 - to the use to which any premises in the vicinity are put;
 - to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Suitability of applicant

- 3.5 When considering the suitability of the applicant to hold a licence the Council will take into

account such matters as it considers to be relevant including but not limited to whether the applicant:

- is honest;
- is qualified by experience to run the type of sex establishment in question;
- has a clear understanding of the conditions that may be attached to the licence;
- has no unspent conviction of a nature that deem him/her unsuitable;
- a management structure is in place which delivers compliance with the operating conditions, e.g. through managerial competence, presence, a credible management structure, enforcement of rules internally, a viable business plan and policies for welfare of dancer / performers;
- will act in the best interests of dancer / performers / performers, e.g. the facilities they enjoy, how they are protected and how and by who their physical and psychological welfare is monitored;
- can be relied upon to protect the public, e.g. transparent charging, freedom from solicitation;
- can show a track record of management of compliant premises, or that he/she will employ individuals who have such a track record.

3.6 The Council will require the applicant to identify the proposed manager or beneficiary of the business. In considering the suitability of these persons the Council will apply the principles at 3.5 of this policy.

Appropriate numbers and localities

3.7 There is provision within the Act which enables the Council to impose a numerical control on the number of sex establishments in a particular locality. The control applies not only to the number of sex establishments overall, but also to the number of each kind premises.

3.8 The Council may refuse a licence on the grounds that the number of licences of that type is equal to or exceeds the number which the authority considers is appropriate for that locality. The Council has considered the authority area in order to identify whether there are any localities in which the licensing of sex establishments is appropriate.

3.9 The Council considers that sexual entertainment venues are inappropriate in the vicinity to premises / places with particular sensitive uses, as follows:

- Residential areas
- Parks / play areas
- Places of worship
- Women's refuge facilities
- Family leisure facilities such as cinemas, theatres and concert halls
- Youth facilities

- Places used for celebration or commemoration
- Schools and other education establishments
- Cultural leisure facilities such as libraries and museums
- Historic buildings
- Retail shopping areas

3.10 It is the Council's view that these uses are sensitive and that sex establishments are generally not appropriate near them.

3.11 The Council has considered the authority's area and has determined that all areas outside of the town centre to be unacceptable localities for sexual entertainment venues to be located due to their proximity to rural, built up or residential areas. It does however consider that the Rotherham Town Centre late night economy area would be an acceptable locality to locate sexual entertainment venues.

3.12 The extent of the town centre area is indicated on the following map:



3.13 Therefore, it is the Council's policy that there is no locality outside the town centre area (identified above) in which it would be appropriate to licence a sexual entertainment venue. Accordingly the appropriate number of sexual entertainment venues outside of this area is nil.

3.14 Taking into consideration all the matters mentioned in this section the appropriate number of sexual entertainment venues in the town centre area is a maximum of two, providing those premises are not to near and / or do not impact properties with sensitive uses or in sensitive locations.

3.15 The Council has not determined a limit on the number or locality in relation to sex shops or sex cinemas. These applications will be dealt with on a case by case basis. Applicants should, however, take into consideration paragraph 3.9 of this policy with regard to sensitive use premises and areas.

Links to other Legislation

3.16 The Council will consider and have regards to the following legislation when applications are determined:

- a) Crime and Disorder Act 1998
- b) The Provision of Services Regulations 2009
- c) Equality Act 2010
- d) Human Rights Act 1998

Planning

3.17 The use of premises is subject to planning control. Such use will require planning permission or must otherwise be lawful under planning legislation. Planning permission is generally required for the establishment of new premises or the change of use of premises.

3.18 In general, all premises which are the subject of an application, should have the benefit of planning permission, or be deemed permitted development. The onus will be on the applicant to demonstrate that planning permission has been granted or that the premises have the benefit of permitted development rights.

3.19 In addition, all new developments and premises which have been subject to works that require an application covered by Building Regulations should have building control approval in the form of a Building Regulations Completion Certificate. The onuses will be on the applicant to demonstrate that any such works have been approved by a building control body.

3.20 Any decision on a licence application will not consider whether any decision to grant or refuse planning permission or building consent was lawful and correct.

Advertising

3.21 As part of the standard conditions attached to licences there is a requirement that all advertising and the external appearance of the premises must be approved by the Council. This approval will be sought at a sub-committee hearing. Applicants will be entitled to attend the hearing. Please contact the Licensing Section for further information on how to submit changes to advertising material and external appearance.

Staff Training

- 3.22 The Council recommends that all persons employed on licensed premises are trained and made aware of their responsibilities in relation to the Act, especially the offences under the Act, and the conditions of the licence.
- 3.23 Licensed premises will be required to document training undertaken by staff. Such records will be kept for a minimum of one year and will be made available for inspection on request by an authorised officer or the police.

Fining

- 3.24 The Council is aware that in some sexual entertainment venues it is the usual practice of some businesses to fine dancer / performers for misdemeanours such as chewing gum, wearing inappropriate clothing or being late for a shift. The practice of fining can lead to an air of mistrust and resentment in the work place. More importantly the Council is aware that in a majority of cases of fining that have been noted in premises the (predominantly male) management fine female dancer / performers; however they do not fine bar staff or door staff.
- 3.25 Therefore, for reasons of gender inequality, a standard condition has been imposed on all new and renewed licences to prohibit the practice of fining.

Exemptions

- 3.26 Under the Act there is an exemption for sexual entertainment venues for premises which provide relevant entertainment on an infrequent basis. These are defined as premises where –
- no relevant entertainment has been provided on no more than 11 occasions within a 12 month period;
 - no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - no such occasion has lasted longer than 24 hours
 - other premises or types of performances or displays exempted by an order of the Secretary of State.
- 3.27 This exemption does not apply to sex shops or sex cinemas.

4. Application procedure

4.1. Applications must be made to the Council in the form prescribed, which is available from the Licensing Section.

4.2. The applicants / operators suitability will be checked before a licence is granted. The suitability of the applicant/operator is important to ensure that the interests of the public are protected. The Council will use the methods detailed below to ensure that the proposed licence holder and operator:

- is honest
- has a clear understanding of the conditions that may be attached to the licence
- has a suitable business plan which will deliver compliance of the standard conditions
- has no unspent convictions of a nature that deem him/her unsuitable

4.3. Applicant / operator suitability checks may be achieved by the following means:

- application form
- criminal record check
- personal interview
- accreditation

4.4. On receipt of the application it will be sent to South Yorkshire Police who may conduct a check. Applicants/operators may be asked to provide basic Disclosure and Barring Service checks, or attend an interview, to support their application.

4.5. Applications for sexual entertainment venue sex establishment licence will also show that there are clear policies and codes of conduct in place, to protect staff and the interests of customer, in relation to:

- employee welfare policy
- code of conduct for employees
- code of conduct for customers
- pricing policy

4.6. These criteria will be taken into account when the Council determine the licence. Non-compliance with one or more of the criteria will not necessarily exclude the operator from holding a licence, providing the applicant is able to prove to the Council that the interest of the public is protected.

4.7. Checks/enquiries may also be made with regard to the operator's company structure, to ensure that the operator is not working on behalf of an individual or company that would not be granted a licence in their own right.

4.8. These checks/enquiries may be made via South Yorkshire Police, Companies House, personal interview or applicants may be asked to provide business records.

Fees

4.9. The fee must be submitted as part of the application. The fee is based on the recovery of costs incurred by the Council in determining the application.

Notices

4.10. It is a legal requirement that the applicant must advertise the application in the following ways:

- publish an advertisement in a local newspaper within 7 days of the application being submitted to the Council
- display a notice of the application on or near the premises for 21 consecutive days
- send a copy of the notice of application to the Chief Officer of Police for South Yorkshire within 7 days of the application being submitted to the Council

4.11. Proof that the applicant has advertised the application will be required.

Objections

4.12. Anyone can object to an application for a sex establishment. Objection should be received by the Council no later than 28 days after the date that the application was received by the Council. Objections can be on any matter but should not be based on moral grounds/values. Appropriate weight will be given to objections which relate to the purpose of the legislation which is the control of sex establishments.

4.13. The Council will notify the applicant in writing of the general terms of any objection it receives within the 28 days of the application. Objectors will, however, remain anonymous and efforts will be made to redact the contents of the objections so the objector's identity remains anonymous. If the objectors wish for their details to be released to the applicant they should make this clear in their objection.

Hearings - decision making process

4.14. It is the Council's practice to provide notice of committees and sub-committee hearings to all interested parties (applicants and objectors) five days before the hearing as laid down in the Local Government Act 1972. This notice will provide the date and time of the hearing, the procedure for the hearing, and will require the addressee to confirm their attendance and the attendance of any witnesses they may wish to call. The hearing will take place in public except where the public interest requires otherwise.

4.15. In determining licence applications under the Act the Council will take into consideration the application before it, any objections received as well as local knowledge including local issues and cultural sensitivities.

4.16. Every decision to refuse or revoke a licence made by the Licensing Board, sub-committee or officers will be accompanied by clear reasons for the decision.

4.17. Where possible a decision will be given verbally at the sub-committee hearing, with the written reasons to follow in due course. However in exceptional circumstances the sub-committee may defer the decision in order to allow further consideration of the case and in such circumstances the decision and reasons will be issued in writing to all parties.

Conditions

4.18. The Council will impose standard conditions on all licences. However, if deemed necessary, the Council may add to, change or replace the standard conditions with conditions that are relevant to the application. The standard conditions can be found at Appendix B.

4.19. Through the standard conditions the Council seeks to ensure that sex establishments are well managed and supervised, restrict sexual entertainment activities and the manner in which they are permitted to be provided, protect performers, protect customers and control the impact that the premises has in relation to the general public and locality.

4.20. Any change to the standard conditions will be applied to licences at the time of renewal when all conditions are reviewed.

4.21. Where it is considered appropriate the Council may attach conditions, in addition to the standard conditions, to a licence in the individual circumstances of an application.

Right of appeal

4.22. Only the applicant has the right to appeal the Council's decision to the Magistrate's Court and only on limited grounds, within 21 days of written reasons of decision. There is no right to appeal for objectors or statutory authorities. Further information can be found at Section 27 of the Act.

Term of licence

4.23. A sex establishment licence shall remain in force for a maximum period of one year. The authority may grant a shorter licence period if it thinks fit. A licence may be brought to an early end by being surrendered or revoked.

Renewal / transfer

4.24. The process for applying for a renewal or transfer of the licence is the same as when applying for a new licence.

4.25. Applications for the renewal of a licence must be made prior to the date of expiry. The licence is deemed to continue until the application is withdrawn by the applicant or determined by the licensing authority.

Variation

- 4.26. A licence holder can apply to vary the terms, conditions or restrictions of a licence at any time. The 1982 Act does not set out procedural requirements in relation to variations.
- 4.27. Licence holders should contact the Licensing Section before making their application to discuss if a new application is more suitable.

Revocation

- 4.28. The Council may revoke the sex establishment licence if information is received in relation to either the mandatory grounds, detailed at paragraph 4.3, or the first two of the discretionary grounds, details at paragraph 4.4.
- 4.29. Should the Council consider revocation of the licence to be appropriate, the licensee will be given an opportunity to appear before and be heard by the Licensing Board or Sub-Committee.
- 4.30. The licensee will be given a statement in writing of the reasons for revocation within seven days of the requirement being made.
- 4.31. The revocation will take effect once the appeal period has expired, or if an appeal is lodged after the determination or abandonment of the appeal.

Waiver

- 4.32. Provisions within the Act allow licensing authorities to waive the need for a licence. Should the Council decide that a licence would be unreasonable or inappropriate, it may waive the need for a licence, for example in the case of a medical book shop, sex clinic, in border line cases, to correct errors or for minor or temporary events.
- 4.33. The Council would only waive the need for a licence where activity is low risk and/or temporary. However, a waiver will not be considered in the cases where a licence is reasonable and appropriate or where there is public interest.
- 4.34. The application for a waiver uses the same form as an application for a new licence, this should be accompanied by a letter which describes the circumstances under which the need for a licence should be waived. There is no requirement to advertise the application. There is a fee. Applicants should contact the Licensing Section before making their application.
- 4.35. The decision to waive the need for a licence will be taken at a licensing sub-committee hearing and a Notice of Waiver will be issued in due course.
- 4.36. Unsuccessful applications for waivers will be notified accordingly and provision will be made for them to make a formal application for a sex establishment licence.

Interpretation

Advertisement means any word, letter, image, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or partly for the purposes of, advertisement or announcement.

Authorised officer means an officer employed by Rotherham Metropolitan Borough Council and authorised by the Council to act in accordance with provisions of the Local Government (Miscellaneous Provisions) Act 1982.

The Council means Rotherham Metropolitan Borough Council.

Display of nudity means:

- (a) in the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
- (b) in the case of a man, exposure of his pubic area, genitals or anus.

Dancer / performer / performer means dancer / performer, entertainment, performer, or other such person employed, or otherwise, to provide relevant entertainment.

Licence means any sex establishment that the Council can grant under this Act.

Licensee means the holder of a sex establishment licence.

Licensed area means the part of the premises marked on the plan where licensable activities are to take place.

Premises includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted.

Relevant entertainment means any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

Responsible person means the person nominated by the licensee who has personal responsibility for and be present on the premises whilst the premises is open to the public. This may be the manager or the relief manager.

Sex shop means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles or other things intended for use in the connection with, or for the purpose of stimulating or encouraging sexual activity.

Sexual entertainment venue means any premises at which relevant entertainment is provided before a live audience, directly or indirectly for the financial gain of the organiser (i.e. a person who is responsible for organisation of management of the entertainment or the premises).

Standard conditions will mean any terms, conditions or restrictions contained or referred to in the schedule to a licence granted under Schedule 3, but does not include any private dwelling to which the public is not admitted.

Unsolicited (in relation to advertising) means any material that is unasked for, not looked for or unsought, i.e. newspaper advertising, flyers, posters, radio advertisements, television advertising, advertising hoardings etc.

Vehicle means a vehicle intended or adapted for use on roads.

Standard Conditions**Sexual Entertainment Venues****General**

1. In accordance with Home Office guidance, where a condition conflicts with a condition in a Licensing Act 2003 premises licence, the more onerous applies.
2. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the Council.
3. The licence may be revoked by the Council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
4. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
5. The name of the premises must be approved by the Council in writing. Any change to the name of the premises must be approved by the Council in writing.

Exhibition of the licence

6. The licence or a certified copy must be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence must be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

7. Except with the written consent of the Council, the premises will only open to the public during the following hours:

Monday	21:00 – 00:00	Friday	21:00 – 01:00
Tuesday	21:00 – 00:00	Saturday	21:00 – 01:00
Wednesday	21:00 – 00:00	Sunday	21:00 – 01:00
Thursday	21:00 – 00:00		

Conduct of the premises

8. Relevant entertainment will only be performed by the dancer / performer. There must be no audience participation.
9. Dancer / performers will only perform on the stage area, or in booths / areas for VIPs as identified on the plan attached.
10. Any performance will be restricted to dancing and the removal of clothes. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes

kissing.

11. Sex toys must not be used and penetration of the genital area by any means must not take place.
12. Dancer / performers shall re-dress at the conclusion of the performance.
13. Customers will not be permitted to throw money at the dancer / performers.
14. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.
15. No person shall take any photographs, videos or other similar recordings (including mobile phones and video streaming) of the authorised relevant entertainment.
16. Performers must never be alone in the company of a customer except in an area open to the public within the premises.
17. The licensee is to ensure a sufficient number of staff are employed ('floor supervisors') inside the premises whilst sexual entertainment is provided to supervise the performers and customers.
18. Performers must not perform a nude table dance unless in a supervised area or within five metres of a floor supervisor.
19. Performers are never to be in the company of a customer except in an area open to the public within the premises (excluding the toilets).
20. Notices must be clearly displayed on each table, each bar and at the entrance to the premises stating:
 - (1) there is no physical contact between customers and performers;
 - (2) a minimum distance of 300 millimetres must be maintained between performers and customers;
21. Performers must not:
 - (1) climb on furniture provided for patrons
 - (2) stimulate sex acts
 - (3) remain in a state of undress once they have completed their act.
22. Performers shall at all times wear a non-transparent G-string or similar piece of clothing on the appropriate part of the body, and at no time will it reveal any part of their genitalia or anus.
23. The licensee must ensure that during the performance of a table dance:
 - (1) customers must be seated in an upright position against the back of the booth or seat with their hands by their sides before a dancer can start a table dance;
 - (2) customers must remain seated during the entire performance of the dance;
 - (3) for the purpose of restraint only, performers may only touch a customer above the customers chest with their hands only;
 - (4) performers must not sit or straddle the customer;
 - (5) performers must not place their feet on the seats.
24. The licensee must ensure that during performances to which this licence relates:
 - (1) performers may not perform any act that clearly stimulates any sexual act;

- (2) performers may not intentionally touch a customer any time during the performance unless absolutely accidentally or due to a third party;
- (3) performers may not use inappropriate, suggestive or sexually graphic language at any time;
- (4) performers must never intentionally touch the genitals or breasts of another dancer or to knowingly permit another dancer to intentionally touch their genitals or breast;
- (5) performers must not engage in communications that could be deemed as acts of prostitution or solicitation, even if the performer has no intention of carrying out the act;
- (6) performers only perform nude or semi-nude dancing (of any description) within areas specified by the Council.

25. The licensee must ensure that during performances to which the licence relates:

- (1) customers may not dance at any time except in areas specifically designated by the Council as being separate from areas for sexual entertainment;
- (2) customers must remain appropriately clothed at all times.

External appearance

26. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE

This premises operates a Challenge 25 policy.
Persons who appear to be under the age of 25 will be required to show proof of age.

27. The external appearance of the premises must be approved by the Council in writing. Any change to the external appearance must be approved by the Council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the Council in writing before work is undertaken.
28. Access to the licensed area of the premises should be through a lobby area which is constructed in such a way that the inside of the licensed premises where relevant entertainment takes place is not visible to passing members of the public when the doors of the premises are opened.
29. Windows and opening to the premises, other than entrances, shall be obscured in a manner and with such material approved by the Council. Door entrances shall also be obscured by blinds or material approved by the Council so as to prevent any member of the public from seeing through to the premises whilst relevant entertainment is taking place.
30. External signage will only be illuminated between 9.00pm and 5.00am, and movable signs placed outside the premises will be removed between 4.30am and 9.00pm.

Advertising

31. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the Council in writing.
32. Staff employed or subcontracted by the premises will not verbally or otherwise promote, tout or advertise the premises, except by way of flyers. Staff employed or subcontracted by

the premises will not direct potential customers to transport connected with the premises.

33. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Therefore, the distribution of flyers is only permitted between the hours of 9.00pm and 3.30am. The licensee will remove any leaflets/flyers from the highway within a 100 metre radius of the premises by 5.00am. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

34. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
35. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
36. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the Council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the Council.
37. Where works necessitate the premises being closed for a long period of time, the premises shall not reopen for the purpose of the licence, until the licensee has been notified in writing by the Council of the satisfactory completion of the work.
38. All parts of the premises shall be well maintained and kept in a clean condition to the satisfaction of the Council.

Management of the premises

39. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the Council within 14 days of such change. Such details as the Council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the Council.
40. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst relevant entertainment is being performed. Any such nomination will be produced on demand to an authorised officer of the Council or the police.
41. The licensee will ensure that any person nominated by him/her under the above:
 - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
 - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
42. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue ("the manager"), is convicted of an offence, they must, as soon as practicable after the conviction, inform the Council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.

43. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The Council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee's control of the premises.
44. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the Council.
45. No person under the age of 18 will be admitted to the premises.
46. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
47. The licence holder will not employ any person under the age of 18 in any capacity.
48. The licensee will comply with all statutory provisions and any regulations made hereunder.
49. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of practice for the dancer / performers. This code must be given to all dancer / performers and displayed in staff areas. This code must be made available upon request to both the police and authorised officers.
50. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of conduct for customers, this must be printed in a manner which is clear and easy to read during normal operation of the premises. This code must be prominently displayed at each entrance to the premises, at the entrance to any private dance areas and in suitable locations within the licensed premises, such locations to be agreed with the Council, such as at bars.
51. Price lists for both drinks and sexual entertainment will be clearly displayed at each entrance to the premises, at each bar and at each table.
52. Suitable and sufficient training will be provided to all staff including the nominated responsible person. The training will be recorded and the training records must be made available upon request to both the police and authorised officers.
53. The name of the person responsible for the management of the premises, whether the licensee or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he/she is responsible for its conduct.

Safety and security

54. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
55. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors, stairways, each dance booth and VIP areas (excluding within toilets and changing rooms). The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, beer gardens, smoking areas and car parks.
56. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with South Yorkshire Police and the Council.

57. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
58. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
59. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
60. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
61. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
62. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the Council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
63. A minimum of two Security Industry Authority registered door staff (numbers to be subject to police and licensing authority approval) will be present on the premises during the performance of relevant entertainment.
64. An incident log shall be kept at the premises, and made available on request to the Licensing Authority or the Police, which will record the following:
 - a) all crimes reported to the venue;
 - b) all ejections of patrons;
 - c) any complaints received;
 - d) any incidents of disorder;
 - e) seizures of drugs or offensive weapons;
 - f) any faults in the CCTV system or searching equipment or scanning equipment;
 - g) any refusal of the sale of alcohol;
 - h) any visit by a relevant authority or emergency service;
 - i) any breach of licence conditions reported by a Performer
65. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
66. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

Staff welfare

67. Dancer / performers will be aged 18 years or over.
68. Before a dancer / performer is permitted to work on the premises the licensee will ensure that the dancer / performer:
- a) has not been convicted of theft, drug offences or prostitution
 - b) has the right to work in the UK
- The licensee will keep records of the checks, including copies of any documentation such as a basic disclosure, passport, visa, driving licence or national insurance number provided by the dancer / performer.
69. All premises that provide relevant entertainment will provide dancer / performers with copies of the following documents:
- a) A copy of the conditions attached to the Sex Establishment Licence;
 - b) Details of any other conditions applied by management of the premises;
 - c) A copy of the code of practice for dancer / performers;
 - d) A copy of the code of conduct for customers;
 - e) Price lists for drinks and sexual entertainment.

The licensee must ensure that a record is kept of the provision of these documents, and that the record is signed and dated by the dancer / performer.

70. Dancer / performers will be provided with separate secure dressing rooms, facilities to secure valuables and proper sanitation facilities. No person other than performers and authorised staff will be allowed in or near the dressing rooms, therefore safe and controlled access will be maintained at all times. The documents detailed in condition 60 will be displayed in the dressing rooms.
71. There will be at least one female member of staff authorised to be responsible for the safety and welfare of the dancer / performers. This staff member must on the premises at all times when licensable activities are taking place.
72. All booths and VIP areas used for private dances must be visible to supervision and must not have closing doors, any curtains used must be approved by the Council in writing.
73. All booths and VIP areas used for private dances must be directly supervised by either a SIA registered door supervisor, or a member of staff who has direct contact with a SIA registered door supervisor working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
74. Dancer / performers will only be present in the licensed area in a state of nudity when they are performing on stage or providing a private dance.
75. Any person on the premises who can be observed from outside the premises will be properly and decently dressed.
76. The practice of fining is prohibited.
77. Customers and staff must not be allowed to interact while using the smoking area, and where possible a separate smoking area should be provided for staff. Dancer / performers must be covered up at all times with knee length robes or coats whilst using the smoking areas.
78. Throughout the lap or table dance customers will remain seated and fully clothed, with their hands clearly visible, either resting on the arms of the chair/sofa or on the seat cushion, or

customers must be asked to sit on their hands.

79. If a dancer / performer is invited to have a drink with a customer, the dancer / performer will remain fully clothed during this period. Dancers / performers will not be paid commission on the sale of beverages.
80. On leaving the premises dancers / performers will be escorted to their transport by a SIA registered door supervisor.
81. Individual records shall be kept at the premises of the real names, stage names and addresses of all dancers / performers working at the premises. The record will include either a copy of their birth certificate, current passport, EU driving licence or national identity card and shall be made immediately available for inspection by the Police and/or the Licensing Authority upon request.

Vessels, vehicles and stalls

82. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
83. The requirements of condition 82 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
84. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

85. The Council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
86. The licensee may apply to the Council to vary any of the terms of the licence.
87. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

Standard Conditions

Sex Shops

General

1. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the Council.
2. The licence may be revoked by the Council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
4. The name of the premises must be approved by the Council in writing. Any change to the name of the premises must be approved by the Council in writing.

Exhibition of the licence

5. The licence or a certified copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence shall be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

6. Except with the written consent of the Council, the premises will only open to the public during the following hours:

Monday	09:00 – 20:00	Friday	09:00 – 20:00
Tuesday	09:00 – 20:00	Saturday	09:00 – 20:00
Wednesday	09:00 – 20:00	Sunday	12:00 – 20:00
Thursday	09:00 – 20:00		

Conduct of the premises

7. The premises will be conducted primarily for the purpose of the sale or hire of goods by retail.
8. The licensee, or any other person concerned in the conduct or management of the premises, will only obtain custom by means of personal solicitation or touting from the premises in such a way that it does not cause concern to the public or the licensing authority. All literature used will not contain images or text of a sexually explicit, obscene or offensive nature.

9. No part of the premises will be used by prostitutes.
10. All sex articles or other items displayed for sale, hire, exchange or loan within the premises will be clearly marked to show the price being charged.
11. All printed material offered for sale, hire, exchange or loan will be available for inspection prior to purchase and a notice to this effect will be displayed in a conspicuous position within the premises.
12. No film, DVD or video recording (or computer game) will be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect.
13. No moving picture will be provided on display at the licensed premises unless it is that of advertising videos on a loop system or allowing a prospective purchaser a short preview of films upon request, being no longer than 3 minutes in length.
14. Items offered for sale, hire, exchange or used in any promotion/advertising must not contravene any current legislation i.e. Section 12 Video Recordings Act 1984 (as amended).

External appearance

15. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE

This premises operates a Challenge 25 policy.
Persons who appear to be under the age of 25 will be required to show proof of age.

16. The external appearance of the premises must be approved by the Council in writing. Any change to the external appearance must be approved by the Council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the Council in writing before work is undertaken.
17. The frontage of the licensed premises will be of such a nature that the inside of the licensed premises are not visible and the contents of the licensed premises should not be visible when the doors of the licensed premises is open.
18. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises on the public highway.

Advertising

19. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the Council in writing.
20. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

21. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
22. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
23. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the Council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the Council.

Management of the premises

24. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the Council within 14 days of such change. Such details as the Council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the Council.
25. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst the premises are open to the public. Any such nomination will be produced on demand to an authorised officer of the Council or the police.
26. The licensee will ensure that any person nominated by him/her under the above:
 - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
 - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
27. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue ("the manager"), is convicted of an offence, they must, as soon as practicable after the conviction, inform the Council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.
28. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The Council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee's control of the premises.
29. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the Council.
30. The holder of the licence will keep a record of all employees who are asked to work on the premises which will include their full name, date of birth, current and previous address and any convictions recorded against that person (subject to the Rehabilitation of Offenders Act 1984).

31. An authorised and certified copy of the full personal record or a record of an individual will be produced on demand to an authorised officer of the Council or the police.
32. No person under the age of 18 will be admitted to the premises.
33. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
34. The licence holder will not employ any person under the age of 18 in any capacity.

Vessels, vehicles and stalls

35. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
36. The requirements of condition 35 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
37. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

38. The Council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
39. The licensee may apply to the Council to vary any of the terms of the licence.
40. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

Standard Conditions

Sex Cinemas

General

1. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the Council.
2. The licence may be revoked by the Council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
4. The name of the premises must be approved by the Council in writing. Any change to the name of the premises must be approved by the Council in writing.

Exhibition of the licence

5. The licence or a certified copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence shall be kept on the premises and be available for inspection by an authorised officer of the Council.

Hours of opening

6. Except with the written consent of the Council, the premises will only open to the public during the hours specified in the licence.

Conduct of the premises

7. The premises will be conducted primarily for the purpose of the exhibition of films.
8. The licensee, or any other person concerned in the conduct or management of the premises, will only obtain custom by means of personal solicitation or touting from the premises in such a way that it does not cause concern to the public or the licensing authority. All literature used will not contain images or text of a sexually explicit, obscene or offensive nature.
9. No part of the premises will be used by prostitutes.

External appearance

10. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

<p>STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE</p>

<p>This premises operates a Challenge 25 policy. Persons who appear to be under the age of 25 will be required to show proof of age.</p>
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11. The external appearance of the premises must be approved by the Council in writing. Any change to the external appearance must be approved by the Council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the Council before work is undertaken.
12. The frontage of the licensed premises will be of such a nature that the inside of the licensed premises are not visible and the contents of the licensed premises should not be visible when the doors of the licensed premises is open.
13. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises.

Advertising

14. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the Council in writing.
15. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

16. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
17. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
18. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the Council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the Council.

Management of the premises

24. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the Council within 14 days of such change. Such details as the Council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the Council.
25. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst the premises are open to the public. Any such nomination will be produced on demand to an authorised officer of the Council or the police.

26. The licensee will ensure that any person nominated by him/her under the above:
 - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
 - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
27. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue (“the manager”), is convicted of an offence, they must, as soon as practicable after the conviction, inform the Council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.
28. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The Council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee’s control of the premises.
29. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the Council.
30. The holder of the licence will keep a record of all employees who are asked to work on the premises which will include their full name, date of birth, current and previous address and any convictions recorded against that person (subject to the Rehabilitation of Offenders Act 1984).
31. An authorised and certified copy of the full personal record or a record of an individual will be produced on demand to an authorised officer of the Council or the police.
32. No person under the age of 18 will be admitted to the premises.
33. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
34. The licence holder will not employ any person under the age of 18 in any capacity.

Safety and security

35. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
36. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors and stairways. The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, smoking areas and car parks.
37. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with South Yorkshire Police and the Council.
38. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
39. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on

a daily basis for accuracy.

40. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
41. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
42. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
43. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the Council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
44. Regular checks will be carried out in the auditorium(s) when screenings are taking place.
45. A refusals/incident/accident register will be maintained and shall record all refusals relating to alcohol, access to the premises and all incidents or accidents.
46. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
47. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

Vessels, vehicles and stalls

48. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the Council of such intended removal. The Council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
49. The requirements of condition 48 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
50. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

51. The Council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
52. The licensee may apply to the Council to vary any of the terms of the licence.
53. Applications to vary conditions of the licence must be advertised by the licensee in the

same manner as the application for the grant, renewal or transfer of the licence.

Summary Sheet

Council Report

Licensing Board Monday 24th September 2018

Title

Taxi and Private Hire Licensing Performance and General Update Report

Is this a Key Decision and has it been included on the Forward Plan?

This is not a key decision.

Director Approving Submission of the Report

Tom Smith – Assistant Director of Community Safety and Street Scene

Report author(s):

Alan Pogorzelec – Licensing Manager
Regeneration and Environment
01709 254955, alan.pogorzelec@rotherham.gov.uk

Ward(s) Affected

All wards

Executive Summary

This report provides an update in relation to the Licensing team's performance against the Taxi and Private Hire Licensing Performance Framework.

In addition, the report provides an update to the Licensing Board on key activities and actions undertaken by the Licensing team in the first six months of 2018/19.

Recommendations

- That the Licensing Board notes the content of the update report.

List of Appendices Included

- Appendix 1 - Quarter 1 and 2 performance against the Licensing Performance Management Framework.
- Appendix 2 - Quarter 1 and 2 Enforcement Data.
- Appendix 3 - Quarter 1 and 2 Licensing Admin Team Data.
- Appendix 4 - Statistical record of the cases and decisions of the Licensing Board Sub-Committee (during 2018)

Background Papers

- Rotherham MBC Hackney Carriage and Private Hire Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Not applicable.

Council Approval Required

No.

Exempt from the Press and Public

Not exempt.

Taxi and Private Hire Licensing Performance and General Update Report

1. Recommendations

1.1 That the Licensing Board notes the content of the update report.

2. Background

2.1 The performance of the licensing service is demonstrated in two ways:

2.1.1 The Council's Corporate Plan includes two priority measures that are related to licensing, these are reported quarterly to the Council's Strategic Leadership Team and elected members. These measures were introduced at the beginning of 2018/19 and replace the previous measures regarding compliance with the Hackney Carriage / Private Hire Licensing Policy (although this still forms part of the Performance Management Framework referred to below). The relevant measures are:

- 3.A4(a) - the number of on the spot inspections of taxis
- 3.A4(b) - the % of taxis found to be compliant with the licensing regime during on the spot inspections

2.1.2 Performance against the Licensing Service Performance Management Framework is reported to Directorate / Strategic Leadership Teams and the Licensing Board on a six-monthly basis. This framework includes the following:

- Elements that are related to the implementation of the Council's Hackney Carriage and Private Hire Licensing Policy.
- The performance of the Council's licensing team in relation to quality assurance and administrative aspects of the service.

2.2 In addition to the update on performance, this report also provides details of developments in relation to:

2.2.1 Enforcement actions and other activity undertaken by the licensing service.

This report provides a summary of enforcement action that took place between April 2018 and September 2018 (inclusive). It includes details of actions taken by enforcement officers (what could be considered to be traditional enforcement actions) along with enforcement actions taken by other officers within the licensing service, and the outcomes of Licensing Board Sub-Committee hearings.

It also provides an update on actions that have been taken into the enforcement priorities that were agreed with the Licensing Board in February 2017 for the financial year 2017/18.

2.2.2 Service restructure / staffing update.

There have been a number of staffing related developments within the Licensing Service – this report provides further detail on these.

2.2.3 Update in relation to some key initiatives and project work that have been ongoing within the Licensing Service.

The licensing service have been actively involved in the development and introduction of new systems and processes that are intended to provide a more streamlined service to customers, and more effective enforcement / regulation.

In addition, officers from the service have been involved with work at a national level seeking improvements in relation to taxi and private hire licensing throughout the UK.

3. Key Issues

3.1 Performance Update

3.1.1 Corporate performance measures – second quarter update

- 3.1.1.1 The Licensing service proactively inspected 56 vehicles and drivers during the first two quarters of 2018/19 (to the date that this report was drafted).
- 3.1.1.2 Of these, 64% of vehicles (36) and 77% of drivers (43) were found to be compliant with licensing requirements.
- 3.1.1.3 There were 21 defects identified in the 20 non-compliant vehicles. 13 of the defects related to signage and were dealt with by way of a formal warning. Warnings were also issued in relation to defective bulbs / lamps (5) and tyres approaching the legal limit (2). One vehicle was suspended due to tyres at the legal limit. All defects were rectified during the inspection, or were found to have been rectified following re-inspection the following day.
- 3.1.1.4 13 drivers were found to be non-compliant; 11 of these were due to the driver not wearing their ID badge (despite the badge being present within the vehicle), these drivers were issued with warnings and instructed to wear their ID badge in accordance with their licence conditions (which they then did). One driver was issued with a warning regarding their standard of driving. The final driver was found to have failed to activate their taxi camera system, the investigation remains ongoing in relation to this matter.

- 3.1.1.5 Licensing enforcement officers will continue to undertake unannounced random checks in order to assess and ensure compliance with the requirements of the licensing policy and licence conditions.

3.1.2 Licensing Performance Framework – second quarter update.

- 3.1.2.1 The overall judgement outlined in the Louise Casey’s inspection report (February 2015) stated that:

“Inspectors have found that Rotherham has not taken, and does not take, sufficient steps to ensure only fit and proper persons are permitted to hold a taxi licence. As a result, it cannot provide assurances that the public, including vulnerable people, are safe.”

- 3.1.2.2 In order to ensure the Council’s Licensing Service is effective, fit for purpose, and has addressed the concerns raised in Louise Casey’s report; it is considered that the following outcomes must be demonstrated:

Outcome 1 All licence holders are “fit and proper” to hold licences.

Outcome 2 Trained decision makers must make high quality, appropriate and timely decisions that protect the public from risk of harm.

Outcome 3 The Licensing Service uses all available statutory powers appropriately, proactively and reactively, to disrupt criminal activity (including CSE and related activity).

Outcome 4 The licensing team must consistently provide high quality, timely processing of licensing applications.

Outcome 5 The Council’s Private Hire and Hackney Carriage Licensing Policy will be effectively implemented.

- 3.1.2.3 In order to address each of these outcomes, the Licensing Service has implemented a Performance Management Framework. The framework gives detail on a number of measures that will indicate whether the desired outcomes are being met.

- 3.1.2.4 Full detail on the performance against each of the measures is given in Appendix 1 to this report. Explanatory narrative is provided where there is an element of underperformance against the stated targets.

- 3.1.2.5 Targets have been set against a total of 16 performance measures, there are an additional four measures that are being monitored but a target has not been set in relation to them. The measures without a target are detailed below, along with explanatory narrative.
- 3.1.2.6 Of the 16 measures with targets, 5 were off target at the time of measurement – further detail on the reason for underperformance is given in Appendix 1, along with any management action that will / has been taken to address the underperformance.
- 3.1.2.7 The measures without targets are as follows:

Delivery against individual training and development plan for each individual member of staff (contributing to Outcome 1).

The training and development of staff is routinely monitored by the Principal Officer and Team Manager via monthly 1:1s and the Corporate PDR process. At the time of writing this report, all but one member of the Licensing Team had been through the PDR process. This staff member will receive a full PDR on their return from annual leave.

Data sharing concerns (when apparent) to be escalated by Assistant Director in a timely manner (contributing to Outcome 3).

There has been one data sharing concern raised during the period covered by this report.

This concern related to the sharing of National Crime Agency information / intelligence relating to suspects designated under Operation Stovewood (or a sub-operation). Although the relationship between the National Crime Agency and Rotherham MBC Licensing is generally very good, there has been an instance where the licensing service have been provided with information verbally, but this has not then been followed up with sufficient written detail in order for a justified decision to be made.

Licensing officers and the Assistant Director of Community Safety and Street Scene have been involved in a series of discussions with the National Crime Agency, Rotherham MBC Multi Agency Safeguarding Hub (MASH) and Rotherham MBC Legal Services. These discussions have resulted in the adoption of an agreed process that allows the efficient and effective sharing of information relating to designated suspects so that appropriate action can be taken as swiftly as possible.

Documented processes provided to and understood by all staff (contributing to Outcome 4).

Documented procedures remain in place in relation to key processes within the team, these are subject to review periodically.

Processes are reviewed and (if appropriate) refreshed as required (contributing to Outcome 4).

Processes are continually reviewed and where appropriate amended and reissued. During the first six months of 2018/19, the Licensing Manager has identified one issue that has required amendment to current working practices. This related to the way that lease / hire vehicles are issued with a licence (such as when an existing vehicle is involved in an accident). Since the amendment of this process, the service has a much more appropriate level of control over the way that these vehicles are licensed and used.

3.1.3 Enforcement actions undertaken by the licensing service (including current position in relation to Court appeals).

3.1.3.1 In June 2015, the Council introduced a revised General Enforcement Policy (this policy is currently under review and will be considered by the Council's Cabinet in November 2018). This policy sets out the Council's approach to enforcement and demonstrates how individual enforcement services are adhering to the Principles of Good Regulation.

3.1.3.2 This report outlines the enforcement work undertaken in relation to the licensing function, and provides detail on how the services ensure that such activity complies with the requirements of the Council's General Enforcement Policy.

3.1.3.3 Enforcement relating to the Council's licensing function takes two forms:

- Enforcement related to the issuing of driver, vehicle and operator licences. This includes the appropriate application of the 'fit and proper' test (further details are contained within the Hackney Carriage and Private Hire Licensing Policy). The correct application of the policy will result in the grant, refusal, suspension or revocation of a licence. This process is administered by the licensing admin team in conjunction with the Licensing Board. Action may be taken as a result of information provided by the licensing enforcement team, police, National Crime Agency or other statutory / non-statutory agency.
- Reactive investigations and proactive operations to establish / evaluate compliance with regulatory provisions

and licence conditions. This takes the form of complaint investigations, pre-arranged enforcement operations (such as vehicle safety checks) and observations to identify non-compliance with licensing requirements. Action may ultimately lead to the referral of licence holders to a sub-committee of the Council's Licensing Board and / or the instigation of legal proceedings in the criminal courts.

3.1.3.4 The Council is required to undertake enforcement in relation to its licensing function, however the way in which enforcement activity is undertaken is at the discretion of the Council. The vast majority of complaints are dealt with on an informal basis which means that they do not result in criminal proceedings.

3.1.3.5 The licensing service exercises its regulatory activities in a way which is:

- Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities.
- Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
- Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

3.1.3.6 In undertaking its enforcement activities, the Council's licensing service needs to demonstrate compliance with these elements.

3.1.3.7 Information in relation to the activities of the licensing enforcement team is attached to this report as Appendix 2.

3.1.3.8 Information in relation to the activities of the licensing admin team is attached to this report as Appendix 3 (please note that this also includes enforcement actions undertaken as a result of decisions made following consideration of a matter by a sub-committee of the Council's Licensing Board).

- 3.1.3.9 Any person aggrieved by such a determination has the right of appeal to the Magistrates' Court, which must be exercised within 21 days of receipt of written notification of the decision.
- 3.1.3.10 Between April 2018 and September 2018 (inclusive) there have been 10 appeals lodged in relation to decisions made by licensing officers and / or the Licensing Board (all of these relate to driver matters only). The Council has successfully defended five of these (including one by way of a Public Interest Immunity hearing).
- 3.1.3.11 Of the remaining five cases:
- Three have not yet been resolved and so remain ongoing.
 - One was initially successfully defended, but the decision was set aside and the case reopened (this therefore remains ongoing).
 - One appellant was successful in his appeal at the Magistrates Court, however the Council has appealed this decision to the Crown Court – this case therefore also remains ongoing.
- 3.1.3.12 Therefore, the Council has successfully defended 100% of the appeals that have been before a Court.
- 3.1.3.13 Further detail in relation to individual appeals is available on request. If Members wish to discuss any of these cases in further detail then this may be dealt with in the confidential part of the agenda.
- 3.1.3.14 Initial enforcement in relation to costs that are awarded is via the sundry debtors' process. Thereafter any costs remaining unpaid are pursued by Legal Services through the civil enforcement processes available through the County Court.
- 3.1.3.15 At its meeting in February 2017, the Licensing Board set priorities for the licensing team during the financial year 2017/18.
- 3.1.3.16 Unfortunately, the service has experienced some difficulties in relation to the number of operational enforcement officers that are available to the service. This has been for a number of reasons, including promotion to other roles within the service, maternity leave, resignation and sickness absence.
- 3.1.3.17 Despite these difficulties, the service has maintained an effective enforcement role – one which is considered to be much improved from previous years. However, it has been unavoidable that resources have been directed towards

reactive complaint investigation and enforcement of matters directly related to public safety. That said, a significant amount of work has been undertaken in relation to the priorities that were agreed by the Licensing Board.

3.1.3.18 The priorities and the actions taken in relation to them are outlined below:

– Private Hire Operators

The specific actions in relation to Private Hire Operators were as follows:

- Review of the way that the Council's fitness and propriety requirements are applied to all operators that are licensed by Rotherham MBC.
- Review the business practices of Operators in order to evaluate whether these practises have an effect on the activities of the drivers that they operate.
- Review and analyse complaints, statistics and other information in relation to Operators to identify any trends / patterns of behaviour that may indicate the need for further scrutiny of individual Operators.

Officers have undertaken a number of inspections / visits to the premises of licensed Private Hire Operators. These visits exposed several failings amongst operators which were initially addressed via advice and guidance (this is in accordance with the Council's General Enforcement Policy).

However, despite being provision of advice and guidance, several Operators have continued to act in contravention of their licence conditions (and in some cases legal requirements).

The most serious of these related to the case of a Private Hire Operator that was brought before the Licensing Board on 3rd September 2018. Concerns in this case included:

- The use of unlicensed vehicles and drivers (some of which were subsequently convicted of sexual offences against children).
- Inability to maintain accurate records.
- Aggressive / intimidating behaviour towards licensing officers.
- Dishonesty / disregard for licensing requirements.

The outcome of the hearing is not detailed in this report as (at the time of drafting) the decision had not been communicated to the licence holder.

In addition to the above, action is also likely in relation to the following cases:

Operator 1 - likely referral to Licensing Board as a result of failing to keep operator records as defined by the Policy, failing to produce vehicle for a compliance test and displaying an expired PHV rear plate.

There also be offences of using unlicensed vehicles and driver which are currently being investigated.

Operator 2 - currently under investigation for suspicion of using unlicensed vehicles and drivers (4), failing to keep operator records as defined by the Policy.

Operator 3 - currently under investigation for using unlicensed vehicles and drivers (3) and failing to keep operator records as defined by the Policy.

Operator 4 - currently under investigation for using unlicensed vehicles and drivers (2) and failing to keep operator records as defined by the Policy.

Operator 5 – currently under investigation for supplying unlicensed vehicles and drivers to other licensed Private Hire Operators and for failing to comply with the request of an authorised officer.

Operator 6 – currently under investigation in relation to operator records, further enquiries are ongoing.

Due to the complexity of these cases, it is unlikely that cases will be brought before the Licensing Board in the immediate future – however progress should be made in the final quarter of the current financial year.

– Takeaways / late night restaurants

The specific actions in relation to Private Hire Operators were as follows:

- The identification of opportunities to work with partners to raise awareness of safeguarding matters within the takeaway / restaurant trade.
- Review work that has been identified as good practice nationally with a view to developing and implementing similar projects / schemes in Rotherham.

- Further development of information / intelligence sharing pathways between the council's licensing service and South Yorkshire Police, the National Crime Agency and other relevant partners.

Due to the amount of work undertaken with Operators and the demands of reactive work, the service has not been able to focus on late night takeaways to the desired extent.

That said, licensing officers have undertaken the following work in relation to licensed late night takeaways:

- Undertaken late night visits with police officers and immigration officials to identify illegal workers and address any concerns in relation to the presence of young people near takeaways late at night.
- Worked with the National Crime Agency and South Yorkshire Police to undertake disruption activity where there is information that premises are linked to child safety concerns.
- Reviewed National good practice through attendance at seminar and conferences (including the recent work undertaken by Swinton Lock) with the intention of identifying good practice and developing similar schemes within Rotherham.

3.1.4 Service restructure / staffing update.

3.1.4.1 Following a recent round of recruitment, the following appointments have been made within the Licensing Service:

- Rachel Williams has been appointed to the post of Licensing Enforcement Officer. Rachel will commence employment with the Council on 1st October 2018.
- The vacant post of Licensing Technical Support Officer (0.4 FTE) has been filled subject to all relevant pre-employment checks being satisfactorily completed. This individual is able to start work at very short notice.

3.1.4.2 As a result of this recruitment, all vacancies within the Licensing team are now filled.

3.1.5 Update in relation to some key initiatives and project work that have been ongoing within the Licensing Service.

3.1.5.1 Other significant activities / actions of note in the first six months of the year include:

- The National Register of Revocations and Refusals (NR3) went live in August 2018 – NR3 is hosted by the National Anti-Fraud Network (NAFN). The Council's Licensing Service will undertake a check of the database as part of the process of assessing an applicant's fitness to hold a Hackney Carriage / Private Hire Driver's licence in Rotherham.

Council licensing officers initially contacted NAFN in March 2017 and suggested that a shared database of revocations and refusals would be useful, and that the existing NAFN system could be adapted to provide this.

Following this contact, other local authorities expressed an interest in the scheme (some of whom had also contacted NAFN) and a "local authority user group" was established in July 2017 (hosted by the Local Government Association).

Officers from Rotherham MBC were part of this user group, and over subsequent months officers were involved in the development and testing of NR3.

- Council officers have worked with colleagues in the Change and Innovation Team to review and amend existing processes to make them more streamlined and user friendly.

This will see the introduction of online accounts for all licence holders, and allow them to make applications online rather than visit Riverside House in person.

- The review of the Council's knowledge test has been completed, and is due to be introduced in November 2018. This test is more comprehensive than the current one and will ensure that the standard of driver that is licensed in Rotherham is further improved.
- The Council's Safeguarding Awareness Training Course has been reviewed and amended following feedback from participants and Members of the Licensing Board that had attended the training.

The training is now significantly more comprehensive and includes an assessment which attendees must pass in order to satisfactorily complete the course (100% pass mark).

3.1.5.2 The following work is planned for the coming months:

- Introduction of a window sticker that will be displayed in licensed vehicles – this sticker will confirm that the vehicle

is licensed by Rotherham MBC and provide details of the way that passengers can obtain further information about the vehicle and raise a concern about / compliment the driver. It is anticipated that these stickers will be introduced in licensed vehicles during October / November 2018.

- There will be a general review of the conditions that are attached to Hackney Carriage / Private Hire licences. This will ensure that the licence conditions continue to provide the highest levels of protection for passengers that travel in licensed vehicles. This work is expected to commence in early 2019.
- There will be a review of the way that camera systems used in licensed vehicles are procured and approved. This is likely to involve a tendering process and the identification of an approved supplier(s).

Further updates will be provided in relation to all of these matters in due course.

4. Options considered and recommended proposal

4.1 The report is for information only, and therefore no options / proposals are recommended.

4.2 However, in relation to enforcement work, the service has a number of options available to it:

4.2.1 Compliance Advice, Guidance and Support

4.2.1.1 The Council uses compliance advice, guidance and support as a first response in the case of many breaches of legislation / licence condition that are identified. Advice is provided, sometimes in the form of a warning letter, to assist licence holders in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence and will illustrate a graduated, proportionate response in relation to enforcement.

4.2.2 Refusal / Suspension / Revocation of Licences

- 4.2.2.1 Licence applications will be refused where applicants are not considered to meet the standards / requirements that are required by the Council.
- 4.2.2.2 Where a licence holder fails to adhere to certain standards, acts inappropriately or breached a licence condition, the Council will review the licence by referring the matter to a sub-committee of the Council's Licensing Board. If it shown, on the balance of probabilities, that the licence holder is no longer considered to be a 'fit and proper' person to hold a licence then the review may lead to a revocation or suspension of the licence.
- 4.2.2.3 When considering future licence applications, the Council may take previous breaches and enforcement action into account.

4.2.3 Prosecution / simple caution

- 4.2.3.1 Licence holders that are shown to have committed significant breaches of licence condition (or unlicensed individuals that have undertaken licensable activity) may be the subject of legal proceedings by the Council. This may take one of two forms, a simple caution or a prosecution. Either of these options may be considered in conjunction with a revocation or suspension of a licence.
- 4.2.3.2 Simple cautions (previously known as 'formal cautions') are issued as an alternative to prosecution for some less serious criminal offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, the Council will proceed to a prosecution of the individual.
- 4.2.3.3 A simple caution for a criminal offence will appear on the offender's criminal record. It is likely to influence how the Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment.
- 4.2.3.4 Simple cautions will be used in accordance with Home Office Circular 016/2008 and other relevant guidance.

- 4.2.3.5 The Council may prosecute in respect of more serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, the Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.
- 4.2.3.6 Prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).
- 4.2.3.7 Before deciding that prosecution is appropriate, the Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:
- Seriousness of the offence committed
 - The level of culpability of the suspect
 - The circumstances of, and the harm caused to the victim?
 - Was the suspect under the age of 18 at the time of the offence?
 - What is the impact on the community?
 - Is prosecution a proportionate response?
 - Do sources of information require protecting?
- 4.2.3.8 A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence.
- 4.2.3.9 The conviction of an individual for an offence will require proof beyond reasonable doubt.
- 4.2.4 The selection of the most appropriate enforcement option in relation to a particular situation is determined by the investigating officer. That said, all enforcement cases are signed off by the Principal Licensing Officer prior to the investigation being closed. In addition, a sample of completed investigations is evaluated by service management as part of the Performance Management Framework in order to confirm that the correct action has been taken in all cases.

5. Consultation

- 5.1 Extensive consultation took place in relation to the development of the policy requirements.
- 5.2 Consultation with representatives of the licensed trade was undertaken during the development of the implementation scheme, with the proposed scheme was agreed by Commissioner Ney in August 2015 following consultation with members of the Advisory Licensing Board.

6. Timetable and Accountability for Implementing this Decision

6.1 This report is for information and comments only

7. Financial and Procurement Implications

7.1 There are no financial or procurement implications directly associated with this report.

7.2 There is, however, the risk of financial penalties (as outlined below) resulting from potential legal challenges if the Council does not provide an effective licensing service.

8. Legal Implications

1.1 Failure of the licensing service to effectively implement and administer the requirements of the Council's policy may result in a legal challenge being made against the Council.

1.2 A successful legal challenge will have a financial and reputational impact on the Council – it is therefore essential that the policy is implemented effectively and administered appropriately.

1.3 The Council must be able to demonstrate effectiveness of the policy and provide confidence and reassurance regarding its implementation.

2. Human Resources Implication

2.1 In order to ensure the effective implementation and application of the policy and the ability to meet the performance measures, it is essential that all staff involved have the necessary knowledge and capability to undertake their role.

2.2 Staff understanding and awareness of the policy and its effective application will be monitored by team / service management at team meetings and periodic 1:1 meetings. Any development needs will be identified at these meetings and action taken as appropriate.

2.3 Effective communication within the team, particularly in relation to policy and performance matters, will ensure that the Council delivers a consistent approach to the implementation of the policy. This will also provide a common understanding and appreciation of any issues that arise as a result of the policy (and its implementation) – allowing the Council to clarify or amend requirements as required.

2.4 In order to ensure the effective delivery of the Council's licensing enforcement function it is essential that all staff involved have the necessary skills, knowledge and capability to undertake their role in accordance with legislative requirements, published guidance and the Council's General Enforcement Policy.

2.5 Competency is maintained via the undertaking of appropriate training and continued professional development, and assessment of competency as 1:1 / supervision meetings which complement the annual Performance and Development Review cycle.

2.6 Any issues identified in relation to the enforcement work that is carried out are discussed with individual officers and corrective actions undertaken where necessary.

3. Implications for Children and Young People and Vulnerable Adults

3.1 Both the Jay report into Child Sexual Exploitation (CSE) in Rotherham and the subsequent Corporate Governance Inspection led by Louise Casey CB identified issues, amongst which was the importance of having an effective taxi licensing service.

3.2 In order to ensure the Council's Licensing Service is effective, fit for purpose, and has addressed the concerns raised in Louise Casey's report; the following outcomes must be demonstrated:

- All licence holders are "fit and proper" to hold licences.
- Trained decision makers must make high quality, appropriate and timely decisions that protect the public from risk of harm.
- The Licensing Service uses all available statutory powers appropriately, proactively and reactively, to disrupt criminal activity (including CSE and related activity).
- The licensing team must consistently provide high quality, timely processing of licensing applications.
- The Council's Private Hire and Hackney Carriage Licensing Policy will be effectively implemented.

3.3 In order to address this, the service has developed a performance management framework and improvement plan to provide assurance that the outcomes identified above are achieved.

3.4 At the heart of the new policy, service improvement plan and the performance framework lies a commitment to the protection of the public, safeguarding children and the vulnerable and the prevention of crime and disorder. The effective implementation of the licensing policy and the standards that it contains plays an important part in the protection of children and vulnerable people in Rotherham.

3.5 Since the publication of the report, the licensing team have been working with colleagues in Children's Services to ensure that those involved in the care and support of looked after children are aware of the key contacts within licensing, the nature of information that can be passed on to the licensing team and the action that the team can take as a result. This

has been achieved by identifying single points of contact within the Business Regulation Service and Children's Services, and an agreed protocol for the sharing of information between services (making use of the formal, documented Local Authority Designated Officer procedures within Children's Services)

- 3.6 In addition, action has been taken to repair and formalise the information sharing processes within the Council and between its partners. This includes the regular attendance of a senior manager from the Council's regulatory service at the weekly CSE Intelligence Sharing Meetings that are chaired by South Yorkshire Police. Information that is discussed at the weekly meetings includes detail on offenders, victims and locations of concern. These meetings also provide a forum where a multiagency approach to a problem can be discussed – if need be with formation of a separate task and finish group consisting of the various Council services and partner agencies.
- 3.7 The service has also developed an excellent working relationship with the National Crime Agency, this sees the regular exchange of information in relation to potential concerns around licensed individuals / premises – and on more than one occasion has resulted in the revocation of driver licenses with immediate effect.
- 3.8 The Council's Hackney Carriage and Private Hire Licensing Policy makes it clear that non-conviction information can be taken into consideration when making decisions regarding licensing matters (there had previously been a criticism that officers acted only when a licence holder had actually been convicted of an offence). The policy confirms that the safety of the travelling public must be the paramount concern.

4. Equalities and Human Rights Implications

- 4.1 In undertaking its licensing function, the Council comply with relevant legislative requirements including the Human Rights Act 1998.
- 4.2 The policy (along with the Council's General Enforcement Policy) will ensure the consistent and fair determination of licences – recognising that every individual is entitled to dignity and respect.
- 4.3 When making licensing decisions the Council and its officers aim to ensure there is no discrimination on the grounds of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.
- 4.4 Adherence to these requirements are assured by means of officer awareness, observation, case reviews and both customer satisfaction and complaints received into the service. In addition, those affected by licensing decisions have the legal right to challenge that decision in the Magistrates Court.

5. Implications for Partners and Other Directorates

5.1 It is recognised that enforcement and compliance activity often cannot be carried out in isolation by the Council. Its key partnerships with other agencies e.g. South Yorkshire Police, HM Revenue and Customs and the Driver and Vehicle Standards Agency are critical to ensure a comprehensive approach to regulation.

6. Risks and Mitigation

6.1 Failure of the Council to effectively discharge its licensing function may compromise public safety.

6.2 The Hackney Carriage and Private Hire Licensing Policy and draft performance framework must give confidence to licence holders and the public of the effective performance management of Council processes and the transparency and fairness of the Council's approach to enforcement.

6.3 Responsibility for ensuring compliance with the policy rests with team and service management, with appropriate overview and scrutiny by Commissioner Ney and members of the Licensing Board.

6.4 Failure of the Council to effectively discharge its licensing enforcement functions may compromise public safety.

6.5 Compliance with the General Enforcement Policy gives confidence to business and individuals of the transparency and fairness of the Council's approach to enforcement, without which the Council's reputation might be at risk.

7. Accountable Officer(s)

7.1 Alan Pogorzelec – Licensing Manager
Regeneration and Environment
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Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
Outcome 1. All licence holders are “fit and proper” to hold licences.			
% of applications that are determined only after all required checks have been undertaken.	100%	100%	Target has been met in full.
% of complaints / information referrals where the initial response meets service standards (response within 3 working days).	100%	96%	Team / Service Management have reviewed 25 cases over the first six months of the year and have identified that one had not been responded to within the required target time. The failure to respond within the required timescale was due to the absence of an enforcement officer due to annual leave and sickness.
% of complaints / service requests where no formal action has been taken that have been appropriately investigated.	100%	100%	<p>Team / Service Management have reviewed 20 cases over the first six months of the year and have confirmed that all of them have been investigated appropriately.</p> <p>All enforcement cases are reviewed by a senior officer prior to being “closed off” – there is therefore a high level of confidence that investigations are undertaken to an appropriate standard.</p>

Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
Outcome 2. Decision makers make high quality judgements that protect the public from risk of harm.			
% of case hearing information provided to Committee Services by to the agreed deadline.	100%	56%	<p>The Licensing Board Sub-Committee has met nine times during the first six months of 2018/19. Reports for five of these hearings were provided within the required timescale.</p> <p>Of the reports that were provided after the deadline, 3 were 1 day past the deadline, and 1 was 2 days past the deadline).</p> <p>Additional officers have been included in the report drafting process which it is envisaged will avoid delay in the production of future reports.</p>
% of Licensing Board members that have received training in the role.	100%	95%	The Licensing Board consists of 21 Councillors; all but one Councillor has attended the training and this Councillor will not take part in a Licensing Board Sub-Committee hearing until the training has been received.
% of Licensing Board decisions that are made in accordance with the Council's policy.	100%	100%	Target has been met in full.
% of licensing decisions that are made in accordance with the scheme of delegation to officers and members / commissioners.	100%	100%	Target has been met in full.

Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
Outcome 3. The licensing service make maximum use their statutory powers (where appropriate) to disrupt criminal activity (including CSE and related activity).			
Attendance of licensing team at weekly CSE intelligence meetings (chaired by South Yorkshire Police).	80%	64%	<p>There were 22 meetings held in the first six months of the year (up to 12/9/2018), and the Licensing Manager attended 14 of these. The reasons for non-attendance are as follows:</p> <ul style="list-style-type: none"> • Annual leave (3 occasions) • Presenting at CSE Conference (1 occasion) • Meeting conflict (4 occasions) <p>The Chair of the meeting has previously confirmed that it would not be appropriate to send a delegate to the meeting in normal circumstances, and that any actions / relevant information will be provided directly to the Licensing Manager as appropriate. In addition, the meeting is attended by other RMBC officers, and information would be fed back to the Licensing Manager by them as an additional safeguard. It has been confirmed that this officer attended on 8 occasions that the Licensing Manager did not – this officer provided an update to the Licensing Manager following the meeting. If these 8 meetings are taken into consideration then Licensing were represented (or had information passed to them by a member of RMBC staff) for every meeting.</p>

Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
Circulation of key contacts to partners for use in cases of referrals and for data sharing.	Once every six months	Completed	Target has been met.
Number of multiagency operations undertaken	4 (annually)	5	<p>The target of 4 is an annual target based on one multiagency operation per Quarter. The operations may be proactive or reactive in nature and will include partners such as South Yorkshire Police, Her Majesty’s Revenue and Customs and the Vehicle and Operator Standards Agency.</p> <p>During the first six months of the year, there have been three multi agency operations, two operations have been conducted with the Police, two with the Immigration Service and one with the Security Industry Authority.</p> <p>Two test purchase operations have been conducted in operations involving the Police, Licensing and Trading Standards.</p>

Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
Number of proactive operations undertaken	6 (annually)	3	<p>The target of 6 is an annual target based on one RMBC lead proactive operation every two months. Operations may involve RMBC in isolation or may be multiagency operations involving RMBC and partners.</p> <p>Two operations were undertaken in relation to vehicle and driver compliance with licence conditions, and one in relation to the operations of Private Hire Operators</p>

Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
Outcome 4. The licensing team consistently provides high quality processing of licensing applications.			
% of applications that are processed in accordance with the licensing policy.	100%	99%	<p>Service standards require a licence to be determined within 3 working days of all required checks being completed (the determination will either be for the licence to be issued, or the application referred to a case hearing meeting at a future date).</p> <p>During the first six months of the year:</p> <p>177 driver licenses were issued, all but 10 were determined within 3 working days of all necessary checks being completed.</p> <p>452 vehicle licences were issued, all of which were determined within 3 working days.</p> <p>49 Private Hire Operator Licences were issued, all of which were determined within 3 working days.</p>
% of licensing records that contain all required information in a secure but accessible format.	100%	100%	<p>Management have reviewed 20 driver and vehicle records throughout the first six months of the year. No instances were identified where officers had failed to record information on Lalpac.</p>

Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
Outcome 5. The Council’s private hire and hackney carriage licensing policy will be effectively implemented.			
% of licensed vehicles that have a taxi camera fitted in accordance with the Council’s policy.	100%	100%	<p>This figure represents the number of licensed vehicles that require a camera and have had one installed.</p> <p>Licences (and intermediate plates) are not issued unless a camera system has been fitted into the vehicle.</p>
% of driver licence holders that are required to have maintained a subscription to the DBS online update service and have done so.	100%	100%	<p>This figure indicates the number of eligible licence holders that have subscribed to the DBS online update service. The subscription is an annual subscription; however there are a number of licence holders that have been required to renew their subscription within the first six months of the year. Any licence holders that fail to maintain their subscription will be required to undertake another DBS check and subscribe to the update service.</p>

Performance against the Licensing Performance Management Framework – Quarters 1 and 2 2018/19

Performance Measures	Target	Outturn	Comments
<p>% of licence holders that demonstrate adherence to the requirements of the Council’s policy.</p>	<p>Figures for each sub-indicator: 1) 100% 2) 100%</p>	<p>Figures for each sub-indicator: 1) 100% 2) 100%</p>	<p>Adherence to the policy is demonstrated by compliance levels in relation to four sub-indicators. Two of these sub-indicators are dealt with above, with the remaining two being as follows:</p> <p>1) % of drivers that have completed the Council's safeguarding awareness course. 100% of drivers have completed the Council's safeguarding training.</p> <p>2) % of drivers that have obtained the BTEC / NVQ qualification. 100% of drivers have demonstrated that they obtained the BTEC / NVQ qualification (either by provision of the certificate or via confirmation from the training provider that they have passed the course).</p>

APPENDIX 2 – 2018 / 19 Quarter 1 and 2 Enforcement Data

Detail	Number	Prosecution	Revoked / refused	Suspended	Notice Issued	Warning	Advice Given	No further action	Insufficient evidence to proceed	Investigation ongoing	Disclosed	Disclosed to another Authority	Awaiting attendance at Licensing Board
Operator complaint	12		1				5			6			
Dangerous Driving	9					4			1	4			
Poor driving	15					7	4	1	1	2			
Indecency - child	1		1										
Indecency - adult	1		1										
Indecency in public place	0												
Conduct of driver	47		7	3		21	7	4		5			
Appearance of driver	0												
Health/medical concerns of driver	1			1									
Charging issue	4						2		2				
Plying for hire	6					4	1		1				
Parking issue	7						7						
Disability issue	2						2						
Smoking in vehicle	4					4							
Using phone whilst driving	5					5							
In-car camera issue	9				2		7						
Breach of conditions	3						1			2			
Condition of vehicle	18			1	4	8	5						
Taxi camera download request	25										25		
Information request	4										4		
School transport enquiry/complaint	4		1			3							
Vehicle licensed by another Authority	2											2	
Rear plate in back window	0												
Failing to meet English requirement	0												
Total	179	0	11	5	6	56	41	5	5	19	29	2	0

2018 / 19 Quarter 1 and 2 Enforcement Data – Licensing Admin Team

	Licensing Board	Officer	Total
Driver licences granted	6	171	177
Driver Licences Granted with additional conditions	0	0 ^a	0
Driver licences suspended	3	0 ^a	3
Driver licences revoked	7	0 ^a	7
Driver licences immediately ^b revoked for:			
- Medical reasons	0	0	0
- Driver conduct	0	5	5
- DVLA licence issues	0	0	0
Driver licence – formal warning issued	1	0 ^a	1
Driver licence – licence reviewed, no further formal action taken	0	0 ^a	0
Driver Licence – application refused	7	0 ^a	7
PH Operator licences issued	1 ^c	49	50
PH Operator licences refused / revoked	1	0	0
Vehicle licences issued:			
- Hackney Carriage	0 ^d	24	24
- Private Hire	0 ^d	428	428
Current licence numbers (at time of report drafting):			
Hackney Carriage / Private Hire Driver Licences ^e		1054	
Private Hire Vehicle Licences ^f		846	
Hackney Carriage Licences ^f		55 (3 of which are hire vehicles)	
Private Hire Operator Licences ^g		76	

2018 / 19 Quarter 1 and 2 Enforcement Data – Licensing Admin Team**Footnotes:**

- a Officers do not have the delegated authority to attach conditions, suspend or revoke a licence (except if the circumstances require a revocation or suspension to take effect immediately).
- b Suspensions or revocations of a licence may take effect immediately if it is considered necessary in the interests of public safety. In any other circumstance a revocation or suspension will take effect at the end of 21 days beginning on the day on which the suspension or revocation notice is issued.
- c Only referred to a hearing if the removal / amendment of a condition is required – officers do not have the delegated authority to amend licence conditions.
- d The determination of vehicle licences is largely an administrative process as there is no subjective assessment of fitness. As such, vehicle licence applications are almost always determined by officers using delegated authority.
- e Licences typically valid for a three year period.
- f Since 6th January 2016, all vehicle licences issued are valid for a period of 12 months.
- g Licences are valid for a one year period.

PRIVATE HIRE AND HACKNEY CARRIAGE

Meeting Date	Taxi Cases Listed	Did not attend	Defer	Licence Granted	Licence Refused	No action	Suspend Temporarily	Revoke Licence	Warnings Issued	House to House Grant	House to House Refuse
2018											
15 January	2	2	2	-	-	-	-	-	-	-	-
05 February	4	1	1	1	1	-	-	1	-	-	-
05 March	4	-	-	1	-	1	1	1	-	-	-
19 March	3	2	2	-	1	-	-	-	-	-	-
26 March	4	-	-	2	-	-	1 *	-	1	-	-
09 April	4	1	1	1	1	-	1	-	-	-	-
30 April	5	2	2	-	1	1	1	-	-	-	-
21 May	4	1	1	-	-	-	-	3	-	-	-
11 June	5	2	2	2 **	1	-	-	-	-	1	-
16 July	4	2	2	1	-	-	-	1	-	1	-
23 July	4	-	-	1	1	-	1 ***	1	-	-	-
13 August	4	-	-	2	2	-	-	-	-	-	-
03 September	1	-	-	-	-	-	-	1 +	-	-	-
10 September	3	1	1	1	1	-	-	-	-	-	-
08 October											
15 October											
TOTAL	51		14	12	9	2	5	8	1	2	-

Notes

- (1) – 19 March 2018 - the Sub-Committee deferred two applications for the grant of a private hire operator licence
- (2) – *26 March 2017 meeting – the Sub-Committee, upon review of a driver’s licence, decided to suspend the driver’s licence for a period of three months and required the driver to attend and complete the Safeguarding course prior to the end of the suspension period.
- (3) – 26 March 2018 - the Sub-Committee approved one application for the grant of a private hire operator’s licence.
- (4) – 09 April 2018 - the Sub-Committee approved one application for the grant of a private hire operator’s licence.
- (5) – 30 April 2018 – the Sub-Committee suspended a driver’s licence until such time as the driver had completed a practical driving test to DVLA standards.

- (6) – 30 April 2018 – the Sub-Committee refused a request for an exemption from the Licensed Vehicle Age Policy and refused to renew the private hire vehicle licence because the vehicle had reached the age of ten years.
- (7) – 30 April 2018 – the Sub-Committee reminded an applicant for the renewal of a driver’s licence of the requirement to attend and successfully complete the BTEC course as part of the application process.
- (8) - **11 June 2018 - the Sub-Committee, in approving a new application for a driver’s licence, imposed an additional condition on the licence that any misdemeanour or transgression by the licensed driver would immediately result in an appearance before the Sub-Committee to answer as to the driver’s conduct.
- (9) – *** 23 July 2018 - the Sub-Committee suspended a driver’s licence for two months and required the driver to re-take the Safeguarding course and provide further medical evidence about his fitness to drive.
- (33) – + 03 September 2018 meeting – the Sub-Committee undertook the review of both the private hire operator licence and the driver’s licence in respect of the same individual; and the Sub-Committee decided to revoke both of those licences.

LICENSING ACT 2003 (SUB-COMMITTEE) DECISIONS

- 08 January 2018 – the application for the grant of a premises’ licence (outdoor events) was approved and the licence was granted with various additional conditions imposed.
- 08 January 2018 – the Sub-Committee undertook a review of a premises’ licence and revoked the licence with immediate effect.
- 12 February 2018 – the Sub-Committee undertook a review of a premises’ licence and revoked the licence with immediate effect.
- 22 June 2018 – the application for the grant of a premises’ licence was approved and the licence was granted, subject to the standard conditions.
- 13 August 2018 – the application for the grant of a premises’ licence was approved and the licence was granted with various additional conditions imposed.

Public Report
Licensing Board

Summary Sheet

Council Report

Licensing Board – 24th September 2018

Title

Licensing Enforcement Penalty Points Scheme

Is this a Key Decision and has it been included on the Forward Plan?

No.

Director Approving Submission of the Report

Tom Smith, Assistant Director of Community Safety and Street Scene

Report author(s):

Alan Pogorzelec – Licensing Manager, Regulation and Enforcement, 01709 254955,
alan.pogorzelec@rotherham.gov.uk

Ward(s) Affected

All wards

Executive Summary

The Licensing Enforcement Penalty Points Scheme is a method by which licenced drivers, operators or owners can be issued with points against their Council Licence by authorised officers of the Council.

Points would be used for less serious breaches of licence condition or legislation. The issuing of points formalises the previous practice of issuing warnings. The aim is to encourage licence holders to comply with all legislation, licence conditions and behave in an acceptable manner at all times, thereby improving the professionalism and reputation of the licensed vehicle trade. The points system would operate in addition to all existing enforcement options and would have regard to the principles of the councils 'General Enforcement Policy'.

Recommendations

- That the Licensing Board consider and approve the proposed Enforcement Penalty Points Scheme.

List of Appendices Included

- Appendix 1 - Schedule of Enforcement Penalty Points

Background Papers

- Rotherham MBC Hackney Carriage and Private Hire Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None.

Council Approval Required

No.

Exempt from the Press and Public

Not exempt.

Licensing Enforcement Penalty Points Scheme

1. Recommendations

- 1.1 That the Licensing Board consider and approve the proposed Enforcement Penalty Points Scheme.

2. Background

- 2.1 The Licensing Enforcement Penalty Points Scheme will be used as a method by which licenced drivers, operators or owners can be issued with points against their Council Licence by authorised officers of the Council.
- 2.2 Points would be used for less serious breaches of licence condition or legislation. The issuing of points formalises the previous practice of issuing warnings and is intended to provide a fast and efficient way of dealing with lesser breaches of legislation or local condition. Licensees who habitually disregard the less serious aspects of the licence regime will accumulate points. Points will be issued according to a scale developed by the council as part of the scheme. Points will accumulate on a licence until they reach the trigger level. At which time the licence holder will be referred to Licensing Board for consideration regarding the licence holder's fitness to hold a licence.
- 2.3 The points will be administered by authorised enforcement officers and recorded on the Council's licensing database. The system will be used for offences which would not normally trigger a referral to Licensing Board or Court and which are resolved by the licence holder after it is brought to their attention. Points will also be available for Licensing Board, should they wish to attach points to a licence, in addition to any warning issued. The scheme 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 Council's Hackney Carriage and Private Hire Licensing Policy.
- 2.4 Points will remain on a licence for two years from the date of issue, unless they are considered by Licensing Board before that time, when the Board may exchange the points for a formal sanction or extend the period the points remain on the licence.
- 2.5 Where a licence holder accumulates the trigger level of penalty points more than once in any three year period, the Licensing Board will consider whether a licence should be revoked or suspended if they believe the accumulation of points indicates that the driver is not a 'fit and proper person'. Each case will be considered on its own merits.
- 2.6 Any licence holder who contests the issuing of penalty points may request a hearing before the Licensing Board for decision – the Licensing Board will have the discretion to reduce, remove or increase the number of points applied to the licence. 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.

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

3. Key Issues

- 3.1 The points system aims to provide a fast and efficient way of dealing with breaches of legislation or condition. The Hackney Carriage and Private Hire Policy will be fully considered by authorised officers when determining the manner on which any breach of legislation or the requirement of the Policy are dealt with.
- 3.2 The Penalty Points Scheme will operate without prejudice to the Licensing Authorities ability to take other action under appropriate legislation or as provided for by the Policy.
- 3.3 The Penalty Points Scheme identifies a number of breaches of conditions, byelaws and/or statutory provisions. It then indicates the number of points to be invoked should the breach be proven and by whom the points can be awarded.
- 3.4 Licensees who habitually disregard the licensing regime will accumulate penalty points. Points will accumulate on the licence until either the expiry date has been reached or the licensee has reached the 'trigger' level of points. The trigger level is proposed as 12 points.
- 3.5 At the time the licence holder reaches the trigger level they will be referred to Licensing Board for consideration regarding the licence holder's fitness and propriety to hold that licence.

Issuing of points.

- 3.6 Where it is decided that the use of the Penalty Points Scheme is appropriate, the points will be issued in accordance with the Schedule.
- 3.7 The issuing of penalty points against a driver who is an employee will not necessarily result in the additional issuing of points to his/her operator. However the Licensing Authority will issue penalty points to drivers, proprietors, driver / proprietors and operators for a single contravention if the circumstances warrant it, i.e. the breach is one against all these licences and is considered joint responsibility is held.
- 3.8 Points issued to a driver, proprietor or operator will be confirmed in writing within 10 working days of the completion of enquiries into the contravention or upon discovery of the breach.
- 3.9 Points issued to a licensee will be recorded on the Council's licensing database within the licensees file.

- 3.10 Points will be imposed upon licences by either Licensing Officers or the Licensing Board Sub-Committee.
- 3.11 The Authority 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 Authority that the severity of the issue warrants a more formal approach.
- 3.12 Penalty points will remain on the licence in accordance with Appendix S of the Private Hire and Hackney Carriage Licensing Policy. The length of time is currently set at two years from the date of issue, unless the licence holder is considered at licensing board before that time, when board may exchange the points for a formal sanction or extend the period the points are on the licence for. Licensing board can impose penalty points alongside other sanctions and warnings.
- 3.13 Where a licence holder accumulates the 'trigger' level of penalty points more than once in a 3 year period, the licensing board will consider whether a licence should be revoked if they believe the accumulation indicates the driver is not a 'fit and proper' person. Each case will be considered on its own merits.
- 3.14 A schedule giving an indication of the points that will be awarded for various matters is attached to this report as Appendix 1.

Appeals

- 3.15 Should a licence holder wish to dispute the issuing of penalty points made by an officer, then they have the right to appeal. This appeal will be by way of a hearing before the Licensing Board who have the discretion to reduce, remove or increase the number of points applied to a licence, subject to the maximum points identified in the Schedule. Each case will be considered on its own merits.
- 3.16 The licence holder will retain the right to be represented at any hearing of the Licensing Board either legally or otherwise, and to state any mitigating circumstances.

4. Options considered and recommended proposal

- 4.1 Only one option is proposed, and this is the recommended proposal.

5. Consultation

- 5.1 This introduction of a Penalty Points Scheme was considered as part of the general consultation process during the development and implementation of the Council's Hackney Carriage and Private Hire Licensing Policy in 2015.
- 5.2 The detail in relation to the scheme will be provided to representatives of the licensed trade in Rotherham, however there will be no further consultation in relation to the implementation of the scheme.

6. Timetable and Accountability for Implementing this Decision

6.1 Subject to working procedures being developed, the scheme will be introduced with immediate effect.

7. Financial and Procurement Implications

7.1 All proposals within this report will be delivered within the service's existing budgets.

7.2 There are no anticipated procurement implications introduced as a result of the proposals within this report.

8. Legal Implications

1.1 All legal implications are detailed elsewhere in this report.

2. Human Resources Implication

2.1 There are no HR implications arising from this report.

3. Implications for Children and Young People and Vulnerable Adults

3.1 Both the Jay report into Child Sexual Exploitation (CSE) in Rotherham and the subsequent Corporate Governance Inspection led by Louise Casey CB identified issues, amongst which was the importance of having an effective taxi licensing service.

3.2 The introduction of the enforcement penalty points scheme will have a positive impact on the effective enforcement of licensing requirements.

4. Equalities and Human Rights Implications

4.1 In undertaking its licensing function, the Council comply with relevant legislative requirements including the Human Rights Act 1998.

4.2 The scheme will facilitate a consistent and fair approach in relation to the way that breaches of licensing requirements are handled.

5. Implications for Partners and Other Directorates

5.1 There are no implications anticipated for partners or other Directorates.

6. Risks and Mitigation

6.1 Failure of the Council to effectively discharge its licensing enforcement functions may compromise public safety. This scheme will assist in transparent and consistent decision making regarding enforcement of licensing requirements.

6.2 In addition, compliance with the General Enforcement Policy gives confidence to business and individuals of the transparency and fairness of the Council's approach to enforcement, without which the Council's reputation might be at risk.

6.3 The Licensing Service Performance Management Framework includes measures that are designed to demonstrate that the correct enforcement actions are being taken by officers during investigations. Any deviations from the policy will be addressed directly with the member of staff concerned.

7. Accountable Officer(s)

7.1 Alan Pogorzelec – Licensing Manager, Regulation and Enforcement, 01709 254955, alan.pogorzelec@rotherham.gov.uk

This report is published on the Council's website or can be found at:-

<http://moderngov.rotherham.gov.uk/ieDocHome.aspx?Categories=>

Appendix 1 - Schedule of Enforcement Penalty Points

Ref No.	Offence	Penalty Points
1	Failure to notify the Licensing Authority of relevant change to licence details within the time specified in the associated licence conditions.	2
2	Failure to notify the Licensing Authority of change of operator through whom he/she works.	2
3	Failure of a licence holder to disclose convictions as specified in the associated licence conditions.	9-12
4	Failure to notify a medical condition or change in medical circumstance.	9
5	Failure to report without reasonable excuse an accident within one working day.	3
6	Failure to submit an accident report form without reasonable excuse to the Licensing Authority within 5 working days.	4
7	Failure to return hackney carriage or private hire driver's licence within 7 days following its expiry.	6-12
8	Concealing or defacing a vehicle licence plate.	6
9	Failure to display or maintain external plates as issued by the Licensing Authority or displaying them incorrectly i.e. in the window of a vehicle.	3-6
10	Failure to produce a hackney carriage or private hire licence upon request.	3
11	Failure to wear hackney carriage or private hire licence as specified in the associated licence conditions.	3
12	Failure to comply with the licensed driver dress code.	2
13	Failure by a private hire operator to ensure that all vehicles operated are adequately insured.	12
14	Failure of a private hire operator to keep the operating premises in accordance with the Licensing Authorities requirements.	3-12
15	Failure of a private hire operator to undertake sufficient checks to ensure the suitability of both drivers and vehicles that are employed or contracted.	6
16	Failure of a private hire operator to maintain public liability insurance cover for the operating premises.	9
17	Failure of a private hire operator to produce records of private hire bookings or other documents required.	9
18	Failure of a private hire operator to keep records of private hire bookings or other documents required.	12

Ref No.	Offence	Penalty Points
19	Operating/using a vehicle that is not in a safe condition internally or externally	6-12
20	Operating/using a vehicle that is not clean and tidy internally or externally	2
21	Operating/using a vehicle that does not comply with the Local Authority's licensing policy or relevant legislation where such a breach of policy/legislation is not otherwise specified herein.	4-12
22	Failure to ensure the safety of passengers	12
23	Failure to comply with the requirements for the safe carrying of a wheelchair.	6
24	Failure to comply with the requirements for the safe carrying of a child.	6
25	Permitting the vehicle to be used for any illegal or immoral purposes.	12
26	Driving with no insurance or inadequate insurance for the vehicle.	12
27	Using a non – hands free mobile telephone whilst driving/engine running	6-12
28	Smoking in the vehicle at any time	4
29	Conveying a greater number of passengers than permitted.	6-12
30	Modifying a licensed vehicle without the consent of the Licensing Authority.	6-12
31	Allowing a Private Hire vehicle to stand in such a position as to suggest that it is plying for hire or using a hackney carriage stand.	6
32	Private hire vehicles soliciting for hire or accepting a fare that is not pre-booked.	9-12
33	Affixing or displaying a roof sign on a private hire vehicle.	3
34	Displaying a sign or advertisement on a licensed vehicle that does not satisfy the policy requirements or has not been approved by the Licensing Authority.	3
35	Failure to operate the taximeter from the commencement of the journey and/or charging more than the fixed charge for hire of a hackney carriage.	9-12
36	Using a taximeter that does not conform to Licensing Authority requirements.	6

Ref No.	Offence	Penalty Points
37	Failure to provide a written receipt for a fare when requested.	2
38	Failure to give reasonable assistance with passenger's luggage.	1
39	Failure to display a correct up to date fare card	3
40	Driving or allowing a hackney carriage vehicle to be driven with tinted windows which do not conform to licence conditions.	3
41	Refusal to take a fare without reasonable excuse	6-12
42	Leaving a hackney carriage unattended whilst parked on a taxi rank	3
43	Failure to observe rank discipline.	3
44	Inappropriate behaviour whilst on a taxi rank	1-12
45	Driving or allowing a hackney carriage or private hire vehicle to be driven without displaying the door signs, displaying the signs incorrectly or attaching signs other than in accordance with the Council's policy.	2
46	Failure to produce Hackney Carriage or Private Hire Vehicle for re-testing when required	6
47	Failure to return vehicle licence plate within 7 days after due notice following expiry of such licence.	9-12
48	Failure to return vehicle licence plate immediately following suspension or revocation of such licence.	12
49	Failure to comply with request of an authorised officer	6
50	Failure to attend a pre-arranged appointment at the request of the Licensing Authority for interview without reasonable cause.	2
51	Obstruction of an authorised officer or police officer wishing to examine a licensed vehicle	9-12
52	Unsatisfactory behaviour or conduct of driver	3-12
53	Failure to behave in a civil and orderly manner, or bringing the trade into disrepute.	3-12
54	Unsatisfactory condition of vehicle either interior or exterior	3
55	Failure to carry an approved and in date fire extinguisher	2

Ref No.	Offence	Penalty Points
56	Failure to carry a fire extinguisher marked with vehicle registration.	1
57	Failure to carry a first aid kit.	2
58	Failure to carry a first aid kit marked with vehicle registration.	1
59	A licensed vehicle with a bald, dangerous or defective tyre (points awarded per tyre).	9
60	A licensed vehicle with a tyre below the Local Authorities minimum required tread depth of 2mm. (points awarded per tyre)	3
61	Failure to install a taxi camera system	6-12
62	Failure to maintain taxi camera system to ensure it is fully operational whilst the vehicle is a licensed vehicle.	6
63	Failure to ensure video recording is switched on at all times during working hours.	6
64	Failure to comply with request of an authorised officer to access taxi camera footage	6-12
<u>Local Government (Miscellaneous Provisions) Act 1976.</u>		
65	S46 (1) (a) – A licensed driver using an unlicensed vehicle for private hire purposes.	12
66	S46 (1) (b) – Driving a private hire vehicle without a private hire driver's licence.	12
67	S46 (1) (c) – Proprietor of a private hire vehicle permitting or employing an unlicensed driver to drive a private hire vehicle.	12
68	S46 (1) (d) – Operating a private hire vehicle without a private hire operators' licence.	9-12
69	S46 (1) (e) – Operating an unlicensed vehicle as a private hire vehicle.	12
70	S46 (1) (e) – Operating a private hire vehicle when the driver is not licensed as a private hire driver.	12
71	S48 (6) – Failure to display a private hire vehicle plate.	3-6
72	S49 – Failure to notify the transfer of a vehicle licence.	3
73	S50(1) – Failure to present a hackney carriage or private hire vehicle for inspection upon request	6

Ref No.	Offence	Penalty Points
74	S50 (2) – Failure to inform the Licensing Authority where a hackney carriage or private hire vehicle is stored, if requested.	3
75	S50(3) – Failure to report an accident to the Licensing Authority within one working day	3
76	S50 (4) – Failure to produce the vehicle and/or insurance upon request.	6
77	S53 (3) – Failure to produce a driver’s licence upon request.	6
78	S54(2) –Failure to wear a private hire driver’s badge	3
79	S56(2) – Failure of a private hire operator to keep proper records of all bookings, or failure to produce them upon request of an authorised officer of the Licensing Authority or a Police Officer within reasonable time/or time specified.	6-12
80	S56(3) – Failure of a private hire operator to keep proper records of all private hire vehicle licenses and driver licenses, or failure to produce them on request of an authorised officer of the Licensing Authority or a Police Officer within reasonable time/or time specified.	6-12
81	S56 (4) – Failure of a private hire operator to produce his licence upon request.	3
82	S57 – Making a false statement or withholding information to obtain a hackney carriage/private hire driver’s licence.	12
83	S58(2) – Failure to return a plate after notice has been given following expiry, revocation, or suspension of a hackney carriage or private hire vehicle licence.	9-12
84	S61 (2) – Failure to surrender a driver’s licence or badge on or after suspension, revocation, or refusal to renew.	12
85	S64 – Permitting a private hire vehicle to wait on a hackney carriage rank.	6
86	S66 – Hackney Carriage charging more than the meter fare for a journey ending outside the district, without prior agreement.	9
87	S67 - Hackney Carriage charging more than the meter fare when a hackney carriage is used as a private hire vehicle.	9
88	S69 – Unnecessarily prolonging a journey.	9
89	S71 – Interfering with a private hire taximeter with intent to mislead.	12

Ref No.	Offence	Penalty Points
90	S73 (1) (a) – Obstruction of an authorised officer of the Licensing Authority or a Police Officer.	9-12
91	S73(1)(b) – Failure to comply with a requirement of an authorised officer of the Licensing Authority or Police Officer	6-12
92	S73 (1) (c) – Failure to give information or assistance to an authorised officer of the Licensing Authority or Police Officer.	4-12
<u>Town and Police Clauses Act 1847</u>		
93	S40 – Giving false information on a hackney carriage application.	6-12
94	S44 – Failure to notify change of address on a hackney carriage licence.	2
95	S45 – Plying for hire without a hackney carriage licence.	12
96	S47 – Driving a hackney carriage without a hackney carriage driver's licence.	12
97	S47 – Lending or parting with a hackney carriage driver's licence.	12
98	S47 – Hackney carriage proprietor permitting or employing an unlicensed driver to drive a hackney carriage vehicle.	12
99	S48 – Failure of a proprietor to retain in his/her possession copies of any hackney carriage driver's licence that permits them to drive their vehicle.	3
100	S48 – Failure of a proprietor to produce on request by an authorised officer any hackney carriage driver's licence for whom he has permitted to drive his/her vehicle.	3
101	S52 – Failure to display a hackney carriage plate.	3-6
102	S53 - Refusal to take a fare without reasonable excuse.	6-12
103	S54 – Charging more than the agreed fare.	9
104	S55 – Obtaining more than the legal fare (including failure to refund).	9
105	S57 – Failure to wait after a deposit to wait has been paid.	12
106	S58 – Charging more than the legal fare.	8-12
107	S59 – Carrying persons other than with the consent of the driver	6

Ref No.	Offence	Penalty Points
108	S60 – Driving a hackney carriage without the proprietor's consent	12
109	S60 – Allowing a person to drive a hackney carriage without the proprietor's consent	12
110	S62 – Driver leaving a hackney carriage unattended	3
111	S64 – Hackney carriage driver obstructing other hackney carriages.	3
112	S68 – Breach of byelaws	3-12