

Summary Sheet

Council Report

Commissioner M Ney with the Advisory Licensing Board 26th September 2016

Title

Taxi and Private Hire Licensing 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

Karen Hanson – Assistant Director of Community Safety and Street Scene

Report author(s):

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

Ward(s) Affected

All wards

Executive Summary

In July 2015, the Council introduced a revised policy in relation to Private Hire and Hackney Carriage licensing.

The changes introduced by the policy were significant and wide ranging and it was therefore considered appropriate to use a phased approach to introduce the changes effectively. To facilitate this, a Policy Implementation Scheme was developed that detailed the timescales within which certain requirements would take effect.

On 20th January 2016, the Advisory Licensing Board received a report that detailed the progress that had been made against the implementation scheme, along with an update in relation to the enforcement carried out by the licensing service.

This report has been requested to provide an update on implementation of the policy, along with a general update on matters affecting the Licensing service generally, including:

- A 12 month review of the workings of the Hackney Carriage and Private Hire Licensing Policy
- Enforcement actions undertaken by the licensing service (including current position in relation to Court appeals)
- Service restructure update

Recommendations

- That the Advisory Licensing Board note the content of the update report and the progress that has been made regarding the implementation of the Council's Hackney Carriage and Private Hire Licensing Policy.

List of Appendices Included

Appendix 1 (enforcement data), Appendix 2 (enforcement data, Licensing Admin team), Appendix 3 (appeals heard in Court) and Appendix 4 (cases considered by the Commissioner and Advisory Licensing Board).

Background Papers

- Rotherham MBC Hackney Carriage and Private Hire Licensing Policy
- Rotherham MBC Hackney Carriage and Private Hire Licensing Policy Implementation Scheme
- Report of meeting of Advisory Licensing Board, 20th January 2016

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Not applicable.

Council Approval Required

No.

Exempt from the Press and Public

Not exempt.

Title (main report)

Taxi and Private Hire Licensing Update Report

1. Recommendations

- 1.1 That the Advisory Licensing Board note the content of the update report and the progress that has been made regarding the implementation of the Council's Hackney Carriage and Private Hire Licensing Policy.

2. Background

- 2.1 In July 2015, the Council introduced a revised policy in relation to Private Hire and Hackney Carriage licensing.
- 2.2 The changes introduced by the policy were significant and wide ranging and it was therefore considered appropriate to use a phased approach to introduce the changes effectively. To facilitate this, a Policy Implementation Scheme was developed that detailed the timescales within which certain requirements would take effect.
- 2.3 On 20th January 2016, the Advisory Licensing Board received a report that detailed the progress that had been made against the implementation scheme, along with an update in relation to the enforcement carried out by the licensing service.
- 2.4 This report has been requested to provide an update on the implementation of the policy, along with a update on matters affecting the Licensing service generally, including:
 - 2.4.1 A 12 month review of the workings of the Hackney Carriage and Private Hire Licensing Policy.

In the Foreword to the Hackney Carriage and Private Hire Licensing Policy, Commissioner Mary Ney gave an undertaking to review the workings of the policy and the progress made in relation to its implementation.

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

At the meeting in January 2016, members of the Advisory Licensing Board were provided with a summary of enforcement actions to between April 2015 and December 2015. This report provides a summary of enforcement action that took place between January 2016 and August 2016 (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 case hearing meetings.

2.4.3 Service restructure update

Members will be aware that a restructure of the Business Regulation Service commenced in January 2016. Recruitment to the new structure is almost complete, and this report will provide an update on the progress that has been made in relation to this matter.

3. Key Issues

3.1 Implementation of the Hackney Carriage and Private Hire Licensing Policy.

3.1.1 With the exception of those detailed in the implementation scheme, all of the requirements contained within the Hackney Carriage and Private Hire Licensing Policy took effect on 4th July 2015.

3.1.2 An update in relation to those items contained within the implementation scheme, is provided below.

3.1.3 **Driver Audit:**

3.1.3.1 An audit of currently licensed drivers against the requirements of the revised policy has now been completed. This audit resulted in the identification of 67 drivers who may not meet the requirements in relation to criminal convictions etc. (6% of the 1123 drivers that were licensed by the council at the time when the review was undertaken).

3.1.3.2 All drivers identified in the audit have had the opportunity of a hearing with Commissioner Ney sitting with Members of the Advisory Licensing Board. As a result of these hearings, around 60% no longer hold a licence. As of 12th September 2016, 58 cases had been prepared for consideration by Commissioner Ney. Of these 58, three cases surrendered their licences prior to the hearing and one was adjourned pending further enquiries. The remaining 54 cases were determined as follows:

- 30 licences were revoked (two with immediate effect)
- 1 was suspended until the expiry date of the licence
- 3 licences were suspended pending completion of the DVSA driving test
- 4 formal warnings were issued
- 2 licences were renewed following expiry
- 1 licence was refused

- No further action was considered appropriate in 13 cases

3.1.3.3 Of the remaining 9 cases identified during the audit:

- 5 allowed their licence to expire and did not apply to renew their licence.
- 2 have applied to renew their licence but have not yet completed all the required elements of the application.
- Information has been requested from the Crown Court in relation to one case.
- One case was identified during the audit, but was subsequently found not to be a cause for concern (information held on the system was inaccurate).

3.1.3.4 In addition, the hard copy files of all drivers that have held licences since before 2009 have been reviewed. This has been done to assess any information that is contained in these files that may indicate concerns regarding the fitness and propriety of the licence holder (some information held on the paper file may not have been picked up during the audit referred to in section 3.1.3.1 above).

3.1.3.5 There are 1304 driver files held in the council's archive, 744 of these relate to drivers that are currently licensed. All 744 files that relate to currently licensed drivers have been reviewed by an appropriately qualified and experienced licensing professional.

3.1.3.6 The review has seen the assessment of all information held within the file to identify whether any of it impacts on the fitness and propriety of the driver involved. The information that has been reviewed includes:

- Application forms and associated paperwork
- Any correspondence for statutory / non-statutory agencies (including South Yorkshire Police, Disclosure and Barring Service, safeguarding boards etc.)
- Meeting notes, witness statements, complaint investigations (as applicable)
- Any correspondence regarding the driver / allegations made against the driver
- Any files notes that may be present

3.1.3.7 Of the 744 files that have been reviewed, 9 have been identified as contained information that required further review by a senior manager. This review identified that there is a potential need to take further action in

relation to three cases. Enquires have been made of South Yorkshire Police with a view to bringing the incidents to a case hearing meeting in the near future.

3.1.3.8 Reports are being prepared in relation to the two remaining drivers who may not meet the requirements in relation to criminal convictions etc. These will be presented to a case hearing meeting within the next 8 weeks.

3.1.4 Subscription to Disclosure and Barring Service online update service:

3.1.4.1 The council requires all drivers to subscribe to the online update service provided by the Disclosure and Barring Service. This service will significantly reduce the delay experienced by drivers when renewing their licences, and also allow instant checking of a drivers DBS certificate status.

3.1.4.2 At the time of writing this report, 509 drivers had subscribed to the update service. The remaining 524 will not be able to subscribe until the next DBS check is carried out when their licence is renewed (which may be as late as 2018).

3.1.4.3 Subject to the budget being available, the council is considering a one off payment to the DBS that will allow all remaining drivers to be subjected to an Enhanced check outside of the renewal process – this will allow drivers to subscribe to the online update service prior to the renewal date.

3.1.4.4 Legal services have considered this proposal and commented that the council has the power to do this under the Safeguarding Vulnerable Groups Act 2006 which allows the council to require and pay for DBS Checks.

3.1.5 Child and Adult Safeguarding Awareness Training:

3.1.5.1 963 licence holders have attended training sessions in relation to the safeguarding of children and vulnerable adults that were hosted by the council between September 2015 and May 2016.

3.1.5.2 156 drivers failed to attend the training, and their licences were suspended as a result. The suspension required the licence holders to undertake the training in order for the suspension to be lifted.

- 3.1.5.3 115 of the 156 suspended drivers undertook the training within 21 days of the notices being issued. The remaining 41 drivers were prevented from working until such time as they undertook the training, and to date all but 27 have either attended the training or voluntarily surrendered their licence. The 27 licence holders have all been contacted and asked to return their driver's badges to the council. A small number have yet to comply with this request, stating that they are not currently working as a licensed driver (and have not done so for some time) and have lost the licence / badge or are otherwise unable to locate it. None of the drivers that have not returned their driver's badge to the council currently have a licensed vehicle (which supports their assertion that they are not currently working as a licensed driver).
- 3.1.5.4 The names of all 27 suspended licence holders have been circulated to operators who have been instructed to remove them from their systems.
- 3.1.5.5 A rolling programme of safeguarding training sessions will be arranged that will allow for new applicants to undertake the training prior as part of the application process.

3.1.6 **Taxi Cameras:**

- 3.1.6.1 The council's requirement for all licenced vehicles to be fitted with a taxi camera became effective on 7th July 2016. Prior to this date, the requirements only applied to new vehicles.
- 3.1.6.2 Licensing records indicate that of the 790 currently licensed vehicles, cameras have been installed (or arrangements made for the installation of cameras) in 504 vehicles. Of the remaining 286 vehicles, approximately 250 are not required to have cameras installed until the date that the vehicle licence is renewed (which may be up to 5th January 2017). Enforcement options are being considered in relation to the remaining vehicles.
- 3.1.6.3 Seven licence holders have lodged an appeal in relation to the condition requiring the installation of a taxi camera in their vehicle. This appeal will be robustly defended by the council, and will be heard at Sheffield Magistrates Court on 13th December 2016.

3.1.7 **BTEC Requirement:**

- 3.1.7.1 The council has introduced a requirement for all licence holders to possess the BTEC Level 2 in "Introduction to the Role of the Professional Taxi and Private Hire Driver". From 6th January 2016, licences have not been issued unless the applicant possesses this qualification (or an equivalent qualification).
- 3.1.7.2 As of 7th July 2016, this requirement has been applied to renewed licences.
- 3.1.7.3 To date, 573 drivers possess the BTEC qualification (or equivalent). Remaining drivers will be contacted and enquiries made regarding the progress they are making in obtaining the qualification. The council is currently taking a proportionate approach in relation to the enforcement of this requirement, and recognises the cost and effort involved in obtaining the qualification. However, robust enforcement action will be taken in relation to any drivers that have not made any attempt to obtain the qualification, or are unlikely to obtain it within a reasonable timescale.

3.2 Review of the workings of the Hackney Carriage and Private Hire Licensing Policy

- 3.2.1 In general terms, feedback from those involved with licensing is that the policy and associated implementation scheme have provided clear justifiable reasons for decisions that are made in relation to licensing. This is further supported by comments made by applicants, drivers and operators who are experiencing improved clarity in relation to the licensing process and requirements.
- 3.2.2 However, in order to provide additional clarity and to ensure that the policy achieves the intended outcomes, a number of minor amendments have been made to the council's policy. All of these amendments have previously been considered and agreed by Commissioner Ney and the Advisory licensing Board, and are summarised below:
 - 3.2.2.1 Wheelchair accessible vehicles:
 - 3.2.2.1.1 As a result of receiving queries and concerns from licence holders, the council has given some consideration to the meaning of "purpose built, wheel chair accessible vehicle" in relation to licensed vehicles.
 - 3.2.2.1.2 As the policy is silent on the meaning of the term "purpose built, wheelchair accessible vehicle" the council has clarified

the that the term should be taken to mean any vehicle that has been manufactured or adapted specifically to carry a passenger seated in a wheelchair. This is subject to a number of provisions around the standard and quality of the conversation.

3.2.2.2 Carriage of children in the front seat of a vehicle:

3.2.2.2.1 Concerns have been raised by the RMBC Corporate Transport Unit that some children that are transported as part of a home to school contract have mobility or other issues that make it difficult for them to sit in the rear of a vehicle.

3.2.2.2.2 Having taken into consideration the comments from the Corporate Transport Unit, the council has amended the standard driver's conditions so that unaccompanied children can travel in the front seat of a licensed vehicle under certain and very specific circumstances.

3.2.2.3 Requirement to install taxi cameras in licensed vehicles:

3.2.2.3.1 Having taken into consideration the views of the licensed trade, and in recognition of the significant financial investment that the taxi camera represents for drivers, the council permitted an extension to the deadline by which cameras must be installed in **new** vehicles.

3.2.2.3.2 This amendment applied only to those vehicles that were not currently licensed – the requirements in relation to existing vehicles remained unchanged.

3.2.2.3.3 In addition to the amendment regarding the timescale within which cameras must be fitted, the council also amended the specific requirements around the recording of audio in licensed vehicles. These amendments were agreed by Commissioner Ney (in consultation with elected members) in February 2016 and were made following detailed discussions with the Information Commissioner's

Office. The amendments are summarised below:

- 3.2.2.3.3.1 The requirement for continuous audio recording between 10pm and 6am has been removed and replaced with the option for either the driver or the passenger to activate audio (and deactivate it once they have activated it) at any time.
 - 3.2.2.3.3.2 The requirement for the audio function to operate whenever an unaccompanied child or vulnerable person is in the vehicle remains in place.
 - 3.2.2.3.3.3 There is a requirement for an indicator to be displayed in the vehicle when the audio is active.
 - 3.2.2.3.3.4 There will be the ability to reset the audio feature (rather than it running for 15 minutes) when the passenger leaves the vehicle and before the next passenger.
- 3.2.2.4 Prohibition on Private Hire Operators operating vehicles and drivers that are not licensed by Rotherham MBC:
- 3.2.2.4.1 The council's policy did not allow Rotherham Operators to use out of town hackney carriages to fulfil bookings after 6th October 2015. The only exception to this was if an out of town hackney driver had applied to for a driver licence with Rotherham MBC before 6th October – in this case, the driver could continue working until 6th January (by which time their licence must have been granted).
 - 3.2.2.4.2 Commissioner Ney amended this requirement in October 2015 following representations from Private Hire Operators and licensed drivers – the deadline was moved to the 6th November 2015. Drivers that submitted applications before this date were able to work for Rotherham operators until 6th February 2016 (previously this date was the 6th January 2016).

3.2.2.4.3 Following enforcement activity regarding the use of out of town hackney carriages, it would appear that there is some confusion in relation to this requirement amongst Private Hire Operators. With that in mind, all Private Hire Operators have been written to and informed of the requirements and conditions that have been placed on their licence. Any operators that continue to breach the conditions on their licence are likely to be referred to a case hearing meeting for a decision to be made regarding their fitness to hold a licence.

3.2.3 Other than the above, it has not been necessary to introduce any other amendments in relation to the policy or the implementation scheme. However, during the implementation of the policy requirements it became evident that further guidance is required in relation to the interpretation of certain policy requirements. This has led to the development of agreed working practices in relation to a number of requirements, including:

3.2.3.1 Guidance for the council's vehicle inspectors so that they are able to interpret the requirements regarding taxi cameras in a clear consistent manner.

3.2.3.2 Clarification on the requirements around the exceptional condition criteria.

3.2.4 A number of local authorities have been in direct contact with Rotherham seeking information regarding the standards that have been applied, and the council's experience in relation to the implementation of certain requirements.

3.2.5 In addition, a number of councils have recently revised their licensing policies and would appear to have increased their standards as a result. Furthermore, the improvements in Rotherham have received national attention from the Local Government Association which recognises the impact that the improvements have had both regionally and nationally.

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

3.3.1 In June 2015, the council introduced a revised General Enforcement Policy. This policy sets out the council's approach to enforcement and demonstrates how individual enforcement services are adhering the Principles of Good Regulation.

3.3.2 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.

3.3.3 Enforcement relating to the council's licensing function takes two forms:

3.3.3.1 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 Commissioner Mary Ney and members of the Advisory 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.

3.3.3.2 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 case hearing meeting and / or the instigation of legal proceedings in the criminal courts. The licensing enforcement team is was formerly located within the Community Protection Unit, however following the service restructure the team became part of the Business Regulation Service in February 2016.

3.3.4 Part 2 of the Legislative and Regulatory Reform Act 2006 requires the Council to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out in relation to the council's licensing service.

3.3.5 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.

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

- 3.3.6.1 Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- 3.3.6.2 Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
- 3.3.6.3 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.
- 3.3.6.4 Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
- 3.3.6.5 Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.
- 3.3.7 In undertaking its enforcement activities, the council's licensing service needs to demonstrate compliance with these elements.
- 3.3.8 Information in relation to the activities of the licensing enforcement team is attached to this report as Appendix 1.
- 3.3.9 Information in relation to the activities of the licensing admin team is attached to this report as Appendix 2 (please note that this also includes enforcement actions undertaken as a result of decisions made following consideration of a matter at a Case Hearing Meeting chaired by Commissioner Ney).
- 3.3.10 Members will recall that since the inception of the new Hackney Carriage and Private Hire Licensing Policy in July 2015, Commissioner Ney has heard and determined a number of applications for the grant, renewal or review of Hackney Carriage and Private Hire drivers' licences. The majority of these hearings have been to review existing drivers' licences following a review of existing licences against the more stringent conditions, particularly in relation to previous convictions, cautions etc., contained in the new Policy.
- 3.3.11 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.
- 3.3.12 To date 30 such appeals have been determined. A further 19 appeals have been allocated hearing dates stretching over the next 3 months. Included in this figure is a raft of 9 appeals which

are seeking to challenge the mandatory requirement to install and operate taxi cameras in all taxis. Out of the appeals so far adjudicated upon the Licensing Authority have successfully defended 22 with an order for costs being made in the Authority's favour in 21 of those cases (this includes cases dealt with prior to the period covered by this report).

- 3.3.13 The Authority has "lost" 8 of the appeals heard to date but it is fair to say that in the vast majority of those cases new or additional information has been adduced at the appeal hearing which has put a different perspective upon the case. The majority of these appeals have been heard and determined by District Judge Foster as opposed to a lay bench of magistrates. From consideration of his judgements it has been clear that he has understood the events that had occurred in Rotherham which had provided the catalyst for the new Policy and he has applied the more stringent provisions of the new Policy to existing drivers' licences.
- 3.3.14 There is a further level of appeal beyond the magistrates' court which is to the Crown Court. Appeals in the Crown Court are heard and determined by a Circuit Judge who is assisted by 2 lay magistrates. To date notification of 7 appeals from the decisions of the magistrates have been received and they have been listed to be heard over the course of the next 3 months.
- 3.3.15 The right of appeal to the Crown Court is also available to the Licensing Authority and in one case that right of appeal has been exercised. It is a case where there is a strong element of alleged grooming-like behaviour by the taxi driver concerned and Commissioner Ney is firmly of the view that it is of the utmost importance, in view of the nature of the case, to pursue this case with the utmost vigour.
- 3.3.16 Details of appeals are attached as Appendix 3. 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.
- 3.3.17 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.
- 3.3.18 There are a number of challenges in relation to enforcement within the licensing service, the principal challenge being the lack of enforcement capacity.
- 3.3.19 In order to address the issues around enforcement capacity, the council is taking the following action:

- 3.3.19.1 Seconding a Police Community Support Officer (PCSO) from South Yorkshire Police into the Licensing team. The PCSO will undertake the role of a Licensing Enforcement Officer. It is anticipated that this officer will take up the role in early October.
- 3.3.19.2 Considering the secondment of a licensing enforcement officer from another local authority into the licensing team. These discussions are almost concluded and it is expected that the seconded officer will take up the role in late October.
- 3.3.19.3 The Principal Licensing Officer is providing additional support to the Licensing Enforcement Officer, this includes close supervision and direction (however, although new in post, the enforcement officer is already well established and operating at a more than satisfactory level).

3.3.20 A full list of cases heard by Commissioner Ney and members of the Advisory Licensing Board is attached to this report as Appendix 4.

3.4 Service restructure update.

- 3.4.1 The restructure of the Business Regulation Service has now been completed, in relation to the Licensing Service the following appointments have been made:
 - 3.4.1.1 Ivan Thompson has been appointed as the Trading Standards and Licensing Manager. Ivan has overall management responsibility for the Licensing and Trading Standards team and is supported in his role by a Principal Trading Standards Officer and a Principal Licensing Officer. Ivan reports directly to the Business Regulation Manager.
 - 3.4.1.2 Steve Shallow has been appointed as the Principal Licensing Officer. Steve has operational responsibility for the Licensing service – this includes both the enforcement and administration functions. Steve is supported in his role by the Senior Licensing Enforcement Officer and the Senior Licensing Support Officer. Steve reports directly to the Trading Standards and Licensing Manager.
 - 3.4.1.3 Lisa Parkin has been promoted to the role of Senior Licensing Support Officer. Lisa has management / supervisory responsibility for the licensing support officers and is responsible for ensuring that the day to administration of licences is undertaken in accordance

with the necessary processes. The role also includes the maintenance and development of the Lalpac database, ensuring that the system is effective and being used to its maximum potential.

3.4.1.4 Rachael Winstanley has been appointed to the role of Licensing Enforcement Officer. Rachael is responsible for the enforcement of legislation / conditions across all areas covered by the licensing service. This includes the investigation of complaints, service of statutory notices and proactive enforcement work (including out of hours).

3.4.1.5 Sharon Scales has transferred from the Food, Health & Safety team into the role of Licensing Support Officer. This role involves the day to day administration of licensing matters, including applications.

3.4.2 The post of Senior Licensing Enforcement Officer remains vacant at the current time. A recent recruitment exercise did not identify any applicants that were considered suitable for the role. The position will be re-advertised in the near future.

3.4.3 There is vacant Licensing Support Officer vacancy within the team. This post is currently covered by an agency contractor, and will be recruited to on a permanent basis as soon as possible (the current intention is to appoint with effect from the end of November 2016).

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 hearing before Commissioner Ney and members of the Advisory 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

- 8.1 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.
- 8.2 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.
- 8.3 The Council must be able to demonstrate effectiveness of the policy and provide confidence and reassurance regarding its implementation.

9. Human Resources Implication

- 9.1 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.
- 9.2 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.
- 9.3 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.

- 9.4 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.
- 9.5 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.
- 9.6 Any issues identified in relation to the enforcement work that is carried out are discussed with individual officers and corrective actions undertaken where necessary.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.

- 10.5 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)
- 10.6 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.
- 10.7 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.
- 10.8 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.

11. Equalities and Human Rights Implications

- 11.1 In undertaking its licensing function, the Council comply with relevant legislative requirements including the Human Rights Act 1998.
- 11.2 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.
- 11.3 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.

11.4 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.

12. Implications for Partners and Other Directorates

12.1 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.

13. Risks and Mitigation

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

13.2 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.

13.3 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 Advisory Licensing Board.

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

13.5 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.

14. Accountable Officer(s)

14.1 Alan Pogorzelec – Business Regulation Manager
Regeneration and Environment
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=>