

Summary Sheet

Council Report

Licensing Board 30th October 2017

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

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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 2017/18.

Recommendations

- That the 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 - Second Quarter Performance against the Licensing Performance Management Framework.
- Appendix 2 - Second Quarter Enforcement Data.
- Appendix 3 - Second Quarter Licensing Admin Team Data.
- Appendix 4 - Licensing Board Sub-Committee – summary of meetings

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 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 The Licensing Service has implemented a Performance Management Framework – this framework includes the following:

- 2.1.1 Elements that are related to the implementation of the Council's Hackney Carriage and Private Hire Licensing Policy.
- 2.1.2 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 2017 and September 2017 (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.

- 2.2.2 Service restructure / staffing update.

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

3. Key Issues

- 3.1 Licensing Performance Framework – Second Quarter Results.

- 3.1.1 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 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.

3.1.3 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.

3.1.4 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.

3.1.5 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.

3.1.6 Of the 16 measures with targets, 7 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.

3.1.7 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 members of the Licensing Team had been through the PDR process (except where this had not been possible due to long term absence from work).

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

There have been no data sharing concerns during the period covered by this report.

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

Documented procedures have been developed in relation to key processes within the team, all of these have been communicated to staff.

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 2017/18, the Licensing Manager has identified two issues that require amendments to current working practices:

- Applications that have been pending for a significant period of time.
- The referral of cases to Board prior to the completion of all elements of the application process.

Both of these matters have been referred to the Licensing Board for consideration.

3.1.8 The implementation of the Council's Hackney Carriage and Private Hire Policy is now complete. As a result, licences are no longer issued to individuals / vehicles unless all of the policy requirements have been met. The Council can therefore be confident that the standards that are set for those that are licenced are amongst the highest in the country.

3.1.9 Adherence to the policy is demonstrated by adherence to four key requirements:

- Number of drivers that have subscribed to the Disclosure and Barring Service Online Update Service.
- The number of drivers that have completed the Council's safeguarding training.
- The number of vehicles that have had a taxi camera fitted (where one is required).
- The number of drivers that have obtained a BTEC Level 2 Qualification in the "Introduction to the Role of the Professional Taxi and Private Hire Driver" or hold an equivalent qualification.

3.1.10 Three out of the four requirements have seen very good compliance rates of 100%.

Other significant developments of note in the second quarter of the year include the following:

3.1.11 Performance in relation to the remaining element (number of drivers that hold the BTEC or equivalent qualification) has improved over the second quarter of the year, with performance now standing at 87%.

3.1.12 This increase is due to enforcement action that has been taken by the licensing service, which involved all drivers that had not provided evidence of them having a satisfactory qualification being contacted by post and asked to provide a copy of their certificate within a set timescale. Drivers were told that a failure to provide their certificate may lead to the suspension of their licence without further notice.

3.1.13 Drivers that had not obtained the qualification were asked to provide details of the steps they had taken to achieve compliance (such as being booked onto a training course in the near future). If a driver stated that they had booked onto a course then the Council requested written confirmation from the course provider that this was indeed the case, such confirmation was received in relation to 9% of drivers.

3.1.14 This means that 96% of drivers have either provided documentary evidence that they have undertaken the training, or have booked onto a training course within the next 3 months.

3.1.15 The remaining 4% of drivers will be contacted by enforcement officers before the end of October and given a final chance to provide evidence of their qualification (or confirmation that they

have booked onto a course), and drivers that do not respond positively to this second request will see their licences suspended without further notice.

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

- Council officers have been working with the Institute of Licensing and Local Government Association in the development of a National database of revoked / suspended / refused drivers and applicants. This work will continue throughout the rest of the year, with the launch expected to take place in the final quarter of the year.
- Licensing officers have been involved in joint operations with RMBC Parking Services to target illegal / unlawful parking of licensed vehicles in the town centre. This resulted in six written warnings being issued to licensed drivers.
- The Council's website has been reconfigured to allow the publication of public registers in relation to licensed drivers, vehicles and drivers. This will also allow licensing officers to access the details of licence holders when working away from the office.
- Following a round of recruitment, three appointments have been made to key roles within the service – these are the Principal Licensing Officer, Senior Licensing Officer and Licensing Support Officer. Recruitment to the vacant post of Licensing Enforcement Officer is underway.
- Work has started on the redevelopment of the Council's Driver Knowledge Test. This revised test will allow a more effective and comprehensive assessment of driver / applicant suitability to hold a hackney carriage / private hire driver licence.
- Licensing enforcement officers have uncovered and effectively terminated an operation that could have resulted in the issuing of potentially fraudulent BTEC certificates. No evidence of fraudulent activity was uncovered, however the Council has temporarily suspended acceptance of certain BTEC certificates pending the outcome of an external investigation.

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

- 3.2.1 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.

3.2.2 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.

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

3.2.3.1 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 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.

3.2.3.2 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.

3.2.4 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.

3.2.5 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.

- 3.2.6 The licensing service exercises its regulatory activities in a way which is:
- 3.2.6.1 Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
 - 3.2.6.2 Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures.
 - 3.2.6.3 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.
 - 3.2.6.4 Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.
 - 3.2.6.5 Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.
- 3.2.7 In undertaking its enforcement activities, the council's licensing service needs to demonstrate compliance with these elements.
- 3.2.8 Information in relation to the activities of the licensing enforcement team is attached to this report as Appendix 2.
- 3.2.9 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 at a Case Hearing Meeting, or more recently the Licensing Board).
- 3.2.10 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.
- 3.2.11 Between April 2017 and September 2017 (inclusive) there have been 9 appeals and we have successfully defended 8 of them (success rate of 88%). There are a further 3 appeals still pending (as at the time of writing this report). All of these relate to driver matters only.
- 3.2.12 One appeal was withdrawn from the Magistrates Court by the appellant – this was due to them being charged with series of sexual offences against children. The council will pursue an order for costs against this individual.

3.2.13 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.

3.2.14 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.

3.3 Service restructure / staffing update.

3.3.1 There have been a number of changes to the staffing arrangements within the Licensing Service:

3.3.1.1 Alan Pogorzelec has been appointed to the recently established post of Licensing Manager.

3.3.1.2 Chris Burnett has been appointed to the role of Principal Licensing Officer.

3.3.1.3 Keeley Ladlow has been appointed to the role of Senior Licensing Enforcement Officer.

3.3.1.4 Alix Watson has been appointed to the role of Licensing Support Officer.

3.3.2 There is currently one vacant Licensing Enforcement Officer post at the current time. This post is currently being recruited to.

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 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)

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