

## Summary Sheet

### Council Report

Licensing Board 11<sup>th</sup> June 2019

#### Title

Taxi and Private Hire Licensing Year End Performance and 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](mailto:alan.pogorzelec@rotherham.gov.uk)

#### Ward(s) Affected

All wards

#### Executive Summary

This report provides details performance in relation to the Licensing team's performance against the Taxi and Private Hire Licensing Performance Framework for the 2018/19 financial year.

In addition, the report provides an overview of the key activities and actions undertaken by the Licensing team during 2018/19, and seeks the Board's views on the proposed priorities for the current year.

## **Recommendations**

- That the Licensing Board notes the content of the update report.
- That the Licensing Board endorses the priorities for the Licensing Service during the 2019/20 financial year.

## **List of Appendices Included**

- Appendix 1 - 2018/19 performance against the Licensing Performance Management Framework.
- Appendix 2 - 2018/19 Enforcement Data.
- Appendix 3 - 2018/19 Licensing Admin Team Data.

## **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.
- 1.2 That the Licensing Board endorses the priorities for the Licensing Service during the 2019/20 financial year.

## 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 March 2019 (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.

## 2.2.2 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.

## 2.2.3 Proposed priorities for the Licensing Service in 2018/19.

Officers from within the Council's Licensing Service have developed a number of key priorities for the service that will be delivered during the 2018/19 financial year. This report provides further detail on those priorities and seeks that agreement and endorsement of the Licensing Board in relation to them.

### **3. Key Issues**

#### **3.1 Performance Update**

##### **3.1.1 Corporate performance measures**

3.1.1.1 The Licensing service proactively inspected 127 vehicles and drivers during 2018/19.

3.1.1.2 Of these, 72% of vehicles (92) and 82% of drivers (104) were found to be compliant with licensing requirements.

3.1.1.3 There were 37 defects identified in the 35 non-compliant vehicles. The vast majority of these related to signage and were dealt with by way of a formal warning. Warnings were also issued in relation to defective bulbs / lamps, tyres approaching the legal limit, missing first aid kits, and missing fire extinguishers. Two vehicle licences were suspended due to significant faults, one for tyres at the legal limit, and one due to a taxi camera system that did not meet the Council's requirements. With the exception of the taxi camera suspension, all defects were rectified either during the inspection, or were found to have been rectified following re-inspection the following day. The taxi camera issue was resolved after 3 days, and the suspension was lifted.

3.1.1.4 23 drivers were found to be non-compliant; almost all 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, and another was found to have failed to activate their taxi camera system – this was shown to be a system fault and resulted in the vehicle licence being suspended.

- 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

- 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 have been two data sharing concerns raised during the period covered by this report.

The first 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.

The second data sharing concern related to the dissemination of information regarding the arrest of a taxi driver. The information was held by another team within Council, but it had not been passed to licensing despite it being known that the arrested individual was a taxi driver.

The Licensing Manager and Assistant Director of Community Safety and Street Scene discussed this issue with the relevant service management, and appropriate measures have been taken to avoid a recurrence of the data sharing concern in future.

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 comprise of the templates within the Lalpac system. Following a number of staffing changes within the service, it has been identified that additional procedures need to be developed to assist licensing officers in the discharge of their duties – this issue will be addressed in the coming months by the Principal Officer and Licensing Manager.

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

Processes are continually reviewed and where appropriate amended and reissued. During t 2018/19, the Licensing Manager has identified two issues that have required amendment to current working practices.

The first 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.

The second issue related to the way that medical examination reports are assessed, and the need for medical records to be viewed as part of the examination. Tighter control has been introduced as a result of a number of issues that were apparent and officers are now confident that licence holders meet the relevant medical requirements.

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 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.

3.2.2 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:

- 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.

3.2.4 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.

3.2.5 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.

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

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

3.2.8 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).

3.2.9 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.

3.2.10 During 2018/19, 15 appeals have been 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 7 of these (including two by way of a Public Interest Immunity hearing).

3.2.11 Of the remaining eight cases:

- Six were not resolved during the period covered by this report (however four of these will have been concluded by the time that this report is considered by the Licensing Board, one of the remaining cases was adjourned at the

request of the licence holder due to the arrest for a serious offence – the other was adjourned due to witness unavailability).

- One appeal was not defended due to additional information becoming apparent whilst the matter was awaiting consideration by the Court.
- One further appeal was allowed by the Magistrates Court – the Magistrates determined that the Council's decision was wrong.

3.2.12 Therefore, the Council has successfully defended 77% of the nine appeals that have been before a Court during 2018/19.

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

3.3.1 As has been previously reported, the service has experienced some difficulties in relation to the number of operational enforcement officers that are available to the service. This was due to a number of reasons, including promotion to other roles within the service, maternity leave, resignation and sickness absence.

3.3.2 In spite of these difficulties, the service has maintained an effective enforcement role – one which is considered to be much improved from previous years. The increase in enforcement activity has had a corresponding impact on caseloads for the individual officers, and it has therefore been necessary to screen reactive work to ensure that enforcement resources are directed at those issues that are considered to present the highest risk.

3.3.3 Key enforcement actions that have been undertaken during 2018/19 are outlined below:

#### Private Hire Operators

Throughout 2018/19 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 3<sup>rd</sup> September 2018. The Operator's licence was revoked at this meeting, and a subsequent appeal to the Magistrates Court was successfully defended by the Council. Preparations are ongoing in relation to the prosecution of the former holder by the Council's Licensing Service.

A further two investigations into Private Hire Operators have been concluded. Two of these investigations resulted in reports being prepared for consideration by the Licensing Board – however before these cases could be heard, the licence holders surrendered their licences. Legal proceedings have commenced in relation to one of the former licence holders.

Two other Private Hire Operators are being investigated for prosecutable offences – these investigations are particularly complex, but are nearing conclusion.

#### Licensed premises

Although outside of the scope of this report, it is considered appropriate to bring to the Board's attention the significant amount of work that has been undertaken in relation to licensed premises throughout the Borough.

This work has resulted in the adoption of additional powers aimed at controlling sexual entertainment venues and the development of a policy regarding sex establishments. In addition, there has been an increase in the proactive inspection of licensed premises, and this has led to licence reviews and action planning of problem premises.

Throughout the year, there has been a significant amount of support provided to South Yorkshire Police in relation to licensed premises. The provision of this support has been resource intensive, but the results have been worthwhile, which much improved partnership work and operational relationships being developed.

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

- National Register of Revocations and Refusals

Officers from Rotherham MBC were part of a user group, which developed and tested The National Register of Revocations and Refusals (NR3). This scheme, hosted by the National Anti-Fraud Network, went live in August 2018 and 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.

- Process changes

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.

Further development work is taking place in relation to the introduction of online accounts for all licence holders. This service enhancement will allow applications to be made online rather than visit Riverside House in person.

- Knowledge test

The review of the Council's knowledge test has been completed, and is due to be introduced imminently. 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. A demonstration of the new system can be provided at the meeting today.

- Safeguarding training

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).

- Public Interest Immunity Hearing

In December 2018, the Council presented a land mark case at Sheffield Crown Court in front of the Recorder of Sheffield. This case led to a judgement being made that stated that the Courts are entitled to take into consideration information that may affect the suitability of a person to hold a taxi licence, even if that information is not made available to the individual concerned. This is the first time that this process, referred to as Public Interest Immunity, has been considered in a Crown Court in relation to taxi cases and will allow the Council (and Courts) to take action in those exceptional cases where there is significant information regarding a licence holder, but that information is so sensitive that it cannot be revealed to the licence holder.

This judgement is now the subject of a challenge to the High Court, papers have been served and a date in Court is awaited.

- Issue with 4Eyez camera systems

In November 2018, the Council were made aware of an issue with the 4Eyez camera system which potentially affected 314 vehicles. Following a period of upgrade / repair work by the cameras supplier, all but 40 Rotherham licensed vehicles had the upgrade work carried out within a three month period.

4Eyez have tried to contact all drivers using email, telephone and text, but as yet have been unable to make arrangements to undertake the work on these vehicles.

Those vehicles that have not had the systems updated will have their licences suspended without further notice. Initial information is that all vehicles have been repaired, and therefore it will not be necessary to suspend any vehicle licences – however work remains ongoing in relation to this issue.

Once all of the vehicles have been repaired, we will begin a programme of spot checking the vehicles that were affected by this issue. Checks have already been carried out on a small number of vehicles and all appears in order, however more widespread testing will take place throughout June and July – this will include random spot checks and downloads undertaken as a result of complain investigations etc.

### 3.4 Proposed priorities for the Licensing Service in 2019/20.

Licensing officers are proposing that the following matters are considered to be priority actions for the 2019/20 municipal year.

#### 3.4.1 Review of Hackney Carriage / Private Hire Licensing Policy

In July 2015, the Council published a policy that for the first time set out the Council's approach to Hackney Carriage and Private Hire licensing. This policy set what were generally accepted as being the highest standards with regard to taxi / private hire licensing in the UK, and many of the standards have subsequently been adopted by other local licensing authorities.

The Council is fully committed to the concept of continual improvement, and acknowledges that the passage of time will often mean that policy requirement should be reviewed to ensure that the policy continues to deliver the outcomes that the Council seeks. Furthermore, the Council will strive to build on the foundation created

by the 2015 policy, and maintain the position of Rotherham MBC as being recognised as one of the leading authorities nationwide in relation to taxi and private hire licensing.

The policy document itself makes it clear that the periodic review of the policy is essential towards ensuring its success. To that end, the policy set out the following review process:

- A review of the workings of the policy 12 months after its introduction. This review commenced in July 2016 and concluded with a report to Commissioner Ney and the Advisory Licensing Board in September 2016.
- Following the initial evaluation, a formal review of the policy would be undertaken at least every three years.

It is therefore now considered necessary for the policy to be subjected to a formal review. This briefing note sets out the proposed review process, along with relevant timescales for key actions.

The Hackney Carriage and Private Hire Policy that was introduced in July 2015 was the result of the largest overhaul of Rotherham MBC licensing policy and practice ever to have taken place.

The policy brought about significant improvement in the regulation of the taxi and private hire trade in Rotherham and ensured that the standard of our drivers, vehicles and operators are second to none.

The policy document is now due for a formal review. It is envisaged that this review will ensure that the standard of driver, vehicle and operator that we licence in Rotherham is further enhanced through the introduction of improved processes and standards that will ensure that the calibre of licence holder in Rotherham is second to none.

In addition, the formal review will allow for the adoption of identified good practice from elsewhere in the UK, including:

- Any Government guidance or other national guidance introduced since July 2015,
- Processes that have been adopted by other local authorities that would be considered to be of benefit to Rotherham if they were to be introduced here.

Furthermore, the formal review is particularly timely considering that the Department for Transport is currently developing Statutory Guidance for Licensing Authorities. A review will of course allow for the principles detailed in the Statutory Guidance to be incorporated into Rotherham's policy.

As with all policies, it is essential that those affected by the policy are appropriately involved in its development. The licensed trade and members of the public will therefore be fully consulted throughout the review process, and their views and suggestions taken into consideration as the policy is developed. Formal consultation will take place on the final draft policy prior to its ratification and introduction by the Council.

The views of Elected Members (particularly those that have a role in relation to Taxi and Private Hire Licensing) are also critical to the review process, and consequently arrangements will be made for full engagement with appropriate Councillors and Council bodies.

The engagement process is still to be determined, but an approximate outline is detailed below:

- Formal review process commences.

The scope of the review will be confirmed at this stage. It is anticipated that some non-technical sections of the policy (such as section 2 – Definitions) will only be subjected to an administrative review only. Sections that will be subjected an administrative review only will not be included in the formal consultation process.

It is expected that all technical sections of the policy will be fully reviewed and consulted upon.

A desktop review of the current policy and evaluation of national guidance and good practice will take place throughout this period. At this stage, the Council will identify key aspects of the current policy that are likely to be revised.

- Initial consultation with representatives of the local licensed trade will take place shortly after the actions referred to above have been completed.

This initial consultation will confirm the scope of the review, and allow for trade engagement processes to be agreed (for example the use of a focussed working group). The agreed engagement process will allow for the trade to submit their initial suggestions to the Council on areas of the policy that should be revised. It will also provide an opportunity for the trade to be given an early indication of the policy elements that are the Council considers necessary for revision.

The Council will take the trade's initial suggestions into account in the development of the initial draft of the revised policy.

- The initial draft will then be reviewed by appropriate Elected Members and Member groups. This will include, but is not necessarily limited to, the Licensing Board and the Cabinet Member for Roads, Waste and Community Safety. Where necessary, the initial draft will be revised as a result of comments / suggestions obtained during this stage of the process. It is expected that this stage will be completed, and a consultation draft developed. An initial Equality Impact Assessment will be conducted prior to the commencement of consultation.
- Subject to the relevant Council approvals being obtained, the consultation draft will then be subjected to a period of comprehensive consultation. Consultation will take place with the following individuals / groups:
  - Representatives of the local Licensed Trade
  - Council Members
  - Members of the public
  - South Yorkshire Police
  - Groups representing older people, young people, people with disabilities and other similar groups
  - Groups representing the interests of passengers
  - NACRO
  - Groups representing survivors / victims of crime

The consultation will run for a period of 8 - 12 weeks

- The results of the consultation will be analysed, and the policy will be revised as appropriate. The final draft of the policy document will then be submitted for approval via the relevant Council process.

### 3.4.2 Operational priorities – taxi and private hire

In addition to the policy review, it is proposed that the following matters are considered to be priority actions for the 2019/20 municipal year:

#### Private Hire Operators

It is proposed that the licensing service build on the work that was undertaken during 2018/19 and undertake further, focussed enforcement activity directed towards Private Hire Operators.

It is proposed that the following specific actions are taken:

- 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.

#### Out of town vehicles

Over the past 3 years, significant efforts have been made to reduce the number of out of town cars in Rotherham. However, recent developments in relation to the business models of local operators have resulted in an increase of out of town vehicles working in Rotherham.

The licensing service considers the ability of out of town cars to work in Rotherham to be the single biggest threat to the maintenance of high standards in Rotherham. It is therefore considered to be extremely important that the Council takes whatever action possible to address this issue. This will include:

- Identification of additional powers / disruption tactics that can be used to lawfully restrict the activities of out of town vehicles in Rotherham.
- Communications and marketing activity to raise awareness of the issues associated with out of town vehicles.
- Lobbying other local authorities that have a propensity to licence individuals that are intending to work outside of their districts.
- Taking appropriate action against local operators to ensure that any sub-contracting operations are carried out lawfully.

3.5 These priorities are in addition to the priorities related to the measures detailed in the Council's Corporate Plan (and referred to earlier in this report). The licensing service will continue to undertake reactive and proactive work intended to ensure that licensed drivers and vehicles continue to meet the standards that are detailed in the Council's policy – the priorities above complement rather than replace this activity.

#### 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 the

Cabinet Member for Waste, Roads and Community Safety 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  
01709 254955, [alan.pogorzelec@rotherham.gov.uk](mailto: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=>