

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1. Meeting:	Licensing Board
2. Date:	15 September 2014
3. Title:	Review of the Council’s Licensing Processes in relation to Taxis and Hackney Carriages
4. Directorate:	Neighbourhoods and Adult Services

5. Summary

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

6. Recommendations

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

7. Proposals and Details

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

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

Hackney Carriage Vehicles:

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

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

Private Hire Vehicles:

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

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

Private Hire Operators:

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

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

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

In Rotherham, Private Hire Operator licences are renewable annually.

Licensed drivers:

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

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

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

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

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

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

In Rotherham, there are currently (as at 3rd September 2014):

86 Private Hire Operators

840 Private Hire Vehicles

52 Hackney Carriage Vehicles

1158 Licensed drivers (Hackney Carriage and Private Hire Vehicle)

Additional related processes:

Police Notifications:

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

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

Immediate Suspensions:

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

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

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

Responsible Authorities Meeting:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.4 Proposals to strengthen the existing application process

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

Mandatory child safeguarding and other training:

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

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

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

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

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

Vehicle standards:

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

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

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

Knowledge test:

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

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

Comprehensive, Consolidated, Taxi and Hackney Carriage Policy

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

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

8. Finance

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

9. Risks and Uncertainties

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

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

10. Policy and Performance Agenda Implications

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

11. Background Papers and Consultation

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

RMBC Licensing Board Minutes:

7th November 2007

17th February 2010

12th October 2011

20th March 2013

16th April 2014

12th June 2014

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Appendix 1 – extract from report to 6th June 2014 Council meeting regarding structure of Licensing Board

Licensing Board

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

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

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

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

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

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

Grant or renewal of driver licences:

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

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

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

Suspension of driver licences:

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

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

Grant or renewal of vehicle licences:

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

Suspension of vehicle licences:

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

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

Grant or renewal of Private Hire Operator Licences:

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

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

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

Suspension of Private Hire Operator licences:

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

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

Matters relevant to all licences:

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