

Public Document Pack

Mid Devon District Council

Regulatory Committee

Tuesday, 21 March 2017 at Time Not Specified
Exe Room, Phoenix House, Tiverton

Those attending are advised that this meeting will be recorded

Membership

Cllr K Busch
Cllr R J Chesterton
Cllr Mrs F J Colthorpe
Cllr D R Coren Chairman
Cllr Mrs G Doe
Cllr C J Eginton Leader
Cllr P H D Hare-Scott
Cllr T G Hughes
Cllr D J Knowles
Cllr J L Smith
Cllr L D Taylor
Cllr R Wright

A G E N D A

Members are reminded of the need to make declarations of interest prior to any discussion which may take place

1 **APOLOGIES AND SUBSTITUTE MEMBERS**

To receive any apologies for absence and notices of appointment of Substitute Members (if any).

2 **PUBLIC QUESTION TIME**

To receive any questions relating to items on the Agenda from members of the public and replies thereto.

3 **MINUTES** (*Pages 5 - 12*)

To approve the minutes of the last meeting.

4 **PRE-APPLICATION ADVICE AND CHARGING FOR LICENSING APPLICATIONS** (*Pages 13 - 24*)

To receive a report from the Public Health Manager regarding pre-

application advice and charging for licensing applications.

5 **HACKNEY CARRIAGE AND PRIVATE HIRE FEES** (Pages 25 - 34)

To receive a report from the Lead Licensing Officer regarding Hackney Carriage and Private Hire Fees.

6 **ANIMAL LICENSING UPDATE**

To receive a verbal update regarding Animal Licensing.

7 **ENFORCEMENT UPDATE**

To receive a verbal update regarding enforcement.

Stephen Walford
Chief Executive
Monday, 13 March 2017

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Tel: 01884 234209

E-Mail: jstuckey@middevon.gov.uk

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Public Document Pack Agenda Item 3

MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **REGULATORY COMMITTEE** held on 11 November 2016 at 2.00 pm

Present

Councillors

D R Coren (Chairman)
R J Chesterton, Mrs F J Colthorpe,
Mrs G Doe, C J Eginton, T G Hughes,
P H D Hare-Scott and J L Smith

Apologies

Councillor(s)

K Busch, D J Knowles, L D Taylor and R Wright

Also Present

Officer(s):

Simon Johnson (Legal Services Manager), Thomas Keating (Lead Licensing Officer) and Julia Stuckey (Member Services Officer)

8 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from Cllrs K Busch, D J Knowles, L D Taylor and R Wright.

9 **PUBLIC QUESTION TIME**

There were no members of the public in attendance.

10 **MINUTES OF THE LAST MEETING**

The Minutes of the last meeting were approved as a true record.

11 **ACCESS TO INFORMATION ACT - EXCLUSION OF THE PRESS AND PUBLIC**

It was **RESOLVED** that under section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual.

(Proposed by the Chairman)

12 **ENFORCEMENT UPDATE**

The Lead Licensing Officer provided an update to Members regarding two cases that had been investigated by the team, including one that had resulted in the decision to refuse a licence by a Sub Committee.

Following discussion of these items the meeting reopened to the public.

The Lead Licensing Officer provided the following update regarding recent and current enforcement action:

- Since the last meeting of the Committee in July five interviews had been held under caution, including;
 - An allegation that one taxi driver had thrown a cup of tea at another;
 - A driver parking a private hire vehicle in a taxi bay;
 - Two operators operating without at MOT.
- Action taken in these cases included simple cautions, no further action and one matter was pending.
- The Officer explained that six Sub Committee hearings had been called in November, a number higher than in the entire previous year.
- Two of the hearings had been due to licenced drivers not submitting paperwork in good time, which resulted in warnings being given and one hearing that had been held in private.
- Since July the team had inspected 31 vehicles, 16 of which were undertaken alongside the Police in multi-agency work.
- In the same period 2 new Dog Boarding Premises Licences had been issued and there were 5 new applications pending.

When asked why there had been such a spike in the number of hearings the officer informed the Committee that the Licencing Team were being more proactive in their approach.

13 **DRIVING QUALIFICATIONS (0.10)**

The Committee had before it a report* from the Director of Corporate Affairs and Business Transformation regarding driving qualifications for new and existing Hackney Carriage and Private Hire Drivers. The Lead Licencing Officer explained that Mid Devon District Council required all new Hackney Carriage and Private Hire drivers to complete a Driving Vehicle Standards Agency (DVSA) Driver Assessment as part of the application process. Existing drivers were sometimes required to take this test if there had been concerns about their standard of driving.

The officer explained that the DVSA had recently notified the licensing authority that this test would be withdrawn from 31 December 2016, although it appeared from the relevant website that bookings could no longer be made. As a result, the licensing authority needed to research and establish suitable testing alternatives.

On behalf of a number of Councils, the Local Government Association had raised concerns with the Department for Transport over the short period of notice given for this decision. It was initially hoped that this would lead to a temporary extension of the existing qualification, however it did not look like that would now be the case.

In order to ensure that the licensing process could carry on with as little disruption as possible, especially to new applicants, it was important that alternative options were put in place as soon as possible

The report suggested that, in the absence of a single recognised qualification provided by a national government agency, the Council maintained a list of

appropriate driving qualifications which it considered to be suitable for licensing purposes. Applicants for new Hackney Carriage and Private Hire driver's licences would then be required to select from this list and pass a relevant qualification as part of the application process. Similarly, those existing drivers required to take a qualification for enforcement purposes could choose from the list.

It was further suggested that the maintenance of such a list, including the addition and removal of qualifications, be delegated to the Public Health and Professional Services Manager and the Lead Licensing Officer. This would allow the list to be updated faster and help to ensure that in future, delays were kept to a minimum should the qualifications available be altered.

Discussion took place regarding:

- The possibility of specifying a qualification that met the required standard and asking agencies to provide testing for that qualification;
- It was believed that DVSA instructors were being used by new providers;
- Disappointment in the limited amount of notice given by the DVSA;
- The possibility of using the Fire Service who were running driver instructor training and could be in a position to run tailor-made courses.

It was **RESOLVED** that;

- a) All applicants for a Hackney Carriage/Private Hire driver licence be required to produce evidence of successful completion of a driving qualification which was included within a list of acceptable qualifications maintained by the Council (replacing the previous requirement of the DVSA taxi driver assessment).
- b) That authority to establish a list of acceptable qualifications be delegated to the Public Health and Professional Services Manager and the Lead Licensing Officer. This would also include the authority to add, amend and remove qualifications from the list.

(Proposed by Cllr R J Chesterton and seconded by Cllr P H D Hare Scott)

Note: a) Report * previously circulated and attached to signed Minutes.

b) Cllr Mrs F J Colthorpe declared an interest as she was a Member of the Fire Authority.

14 **RE-ADOPTION OF PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 (0.20)**

The Committee had before it a report * from the Director of Corporate Affairs and Business Transformation regarding re-adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976 within the District of Mid Devon.

The Lead Licencing Officer explained that the purpose of the report was to set out the final stage of the legal process to confirm the re-adoption of the provisions of Part

II of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') for the whole of the Mid Devon administrative area. Part II of the 1976 Act contained provisions relating to the licensing of Private Hire and Hackney Carriage vehicles, drivers and operators.

Adopting the 1976 Act therefore enables the Council's taxi licensing function to operate including the setting of fees and for carrying out its enforcement duties.

The officer informed the Committee that after the 1976 Act came into force, in May 1994 under the constitution in place at the time, the Environment and Amenities (E&A) Committee resolved that the Council should adopt Part II of the 1976 Act. Following compliance with the statutory procedures this came into effect from 18 August 1994.

A routine service review of the adoption of the Act completed during August 2016 evidenced the resolution above, unfortunately during the intervening twenty-two years the original press notices and the parish/town council notices did not fully survive, therefore could not be produced.

The outcome of the above review was subsequently highlighted in the report of an audit of the Licensing team by internal audit services also in August 2016. The report recommendation E.2 had set out that the adoption of the Act be re-evidenced and therefore that Regulatory Committee formally (re)adopt the Act (to the extent it was not already in force) as a high priority. A target date of no later than 31 December 2016 had been fixed in order to allow for statutory procedures to be followed. The audit outcomes were reported and agreed at the meeting of the Audit Committee on 20 September 2016.

The officer explained that since records could now be scanned/duplicated and held electronically there was a significantly greater chance that the records of adoption would be traceable in the future.

He further clarified that there was no intention to change the existing position with respect to Part II of the 1976 Act therefore all policies, practices, conditions and delegations would continue unchanged where applicable.

The officer confirmed that two notices had been placed in local newspapers and all Town and Parish Councils had been notified. All statutory requirements had been complied with.

It was **RESOLVED:**

- a) To the extent that they are not already in force the provisions of Part II of Local Government (Miscellaneous Provisions) Act 1976 Act, (other than section 45), are to apply to the whole area of the Council on and after the appointed day;
- b) The appointed day for the purposes of this resolution shall be 12 December 2016 (being not before the expiration of the period of one month beginning with the day on which this resolution is passed).

- c) All powers, duties and provisions in the Council's Constitution relating to Part II of the Local Government (Miscellaneous Provisions) Act 1976 and all existing policies, practices and conditions relating thereto shall continue to apply on and after the appointed day.

(Proposed by Cllr J L Smith and seconded by Cllr T G Hughes)

Note: - Report * previously circulated and attached to Minutes.

15 **CHANGES TO LEGISLATION (AND PROPOSED CHANGES) AFFECTING HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING (0.24)**

The Committee had before it and **NOTED** a report * from the Director of Corporate Affairs and Business Transformation regarding changes to legislation (and proposed changes) affecting Hackney Carriage and Private Hire licensing.

The Lead Licencing Officer explained that the purpose of the report was to inform the Committee of proposed changes to the Hackney Carriage and Private Hire licensing process as a result of the Policing and Crime Bill and the Immigration Act 2016.

The officer informed the Committee that the new legislation would mean officers checking the immigration status to work in this country for both new applicants and current licence holders. Officers had undertaken Home Office training and were having to re-send some application forms that had already been sent out due to changes in information required. Officers would need to sit down with applicants and those renewing licences to check documents such as passports, which in the short term would generate a lot of additional work. Some authorities who had already converted to online applications were having to revert back to face to face work.

The Lead Licencing Officer informed Members that it was important to learn lessons from what had taken place in Rotherham. He provided a brief summary of what had been reported about Rotherham Metropolitan Borough Council following investigations that had revealed that over 1400 children had been sexually exploited between 1997 and 2013.

Inspectors had found that Rotherham was behind the times as the licensing service appeared to have few written policies and attempts to draw them up were stymied by interested parties. Inspectors found that the Council's conditions relating to vehicle, driver and operator licences had not changed since 1976, bearing out this contention.

The officer reminded Members that the Mid Devon District Council policy had been reviewed earlier in the year and the document was lengthened to include a number of appendices to ensure the majority of policies and procedures were located in one place. The Policy regarding previous convictions had been greatly expanded and also included 'other relevant information', (not necessarily convictions) that would impact on whether or not someone should be considered fit and proper. The team were currently awaiting new guidance from the Department of Transport and once this was available would once again review the policy to ensure it reflected best practice, in as far as this is possible.

The officer informed Members that the licensing team were looking at introducing training for Hackney Carriage and Private Hire drivers around the safeguarding of

children and vulnerable adults. A further report outlining the specifics of this training would be brought to this committee in the first quarter of 2017 for discussion and agreement.

Discussion took place regarding:

- Taxi drivers were in a position to see a lot that was going on within the district such as a child being transported in a distressed state and should be encouraged to report this;
- The use of the DVLA database to ensure that driving licences were valid.

Note: - Report * previously circulated and attached to Minutes.

16 **PROPOSED CONSULTATION ON THE ADOPTION OF NEW MODEL CONDITIONS AND GUIDANCE FOR DOG BOARDING ESTABLISHMENTS (0.37)**

The Committee had before it a report * from the Director of Corporate Affairs and Business Transformation providing Members with information regarding consultation on the adoption of new model conditions and guidance for dog boarding establishments

The Lead Licencing Officer explained that the Authority was responsible for licensing a number of dog boarding establishments and currently had a set of model conditions in place. These conditions set out the general expectations and requirements for premises and guided officers in carrying out inspections.

The Chartered Institute of Environmental Health (CIEH) had recently issued new model conditions and guidance and this report sought agreement to consult with the trade, a relevant authorised vet and the general public on the adoption of these in 2017.

The authority had granted licences to 8 premises that offered a traditional dog boarding establishment to which the new model conditions would apply.

The current conditions in place, also produced by the CIEH, dated back to 1995.

The document was similar in concept to previous CIEH model conditions that had been adopted by the authority and covered areas such as the construction of the premises (from design to build), types of material that should be used, kennel size, areas for exercise, diets, interactions between dogs and general health and welfare issues.

The officer explained that at this point the Licencing Team wished to consult with those that were licenced, a vet duly authorised to undertake inspections under the Animal Boarding Establishments Act 1963 as well as the public via our website, to get views on the proposed conditions. It was hoped that this would provide a better understanding of the implications of the new conditions before deciding firstly, whether or not to adopt or amend them and secondly, to establish a timeline for premises to comply (if they were to be adopted).

He informed the Committee that by consulting in early 2017 a clear agreement could be in place before animal boarding licences were required to be renewed as all licences expired at the end of the calendar year as a result of the legislation.

Discussion took place regarding:

- Dog day crèches and the increase in their popularity;
- Less traditional facilities that allowed dogs to mix rather than being contained within a kennel;
- An action plan that would be put in place to allow establishments time to reach the required standards;
- Establishments within Mid Devon that were not licenced and education that was required regarding this;
- The requirement to check both premises and licence holder;
- The frequency of inspections.
- There were no licences for day crèche facilities and this was something that Devon Authorities were working together to look into;
- The level of fees and the need for them to be cost neutral.

It was **RESOLVED** that;

- a) The Licensing team consult the existing licensed trade; a relevant authorised Vet and the general public (via the Council's website) on the new 'Model Licence Conditions and Guidance for Dog Boarding Establishments 2016' for a period of 12 weeks from January 2017.
- b) Following the completion of this consultation a further report be brought to this Committee setting out the responses received and providing a recommendation of proposed action (i.e. to adopt, not adopt or amend the proposed conditions and guidance).

(Proposed by Cllr T G Hughes and seconded by Cllr J L Smith)

Note: - * Report previously circulated and attached to Minutes.

(The meeting ended at 3.06 pm)

CHAIRMAN

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AGENDA ITEM

REGULATORY COMMITTEE

21 March 2017

REPORT OF THE DIRECTOR OF OPERATIONS

PRE-APPLICATION ADVICE AND CHARGING FOR LICENSING APPLICATIONS

Responsible Officer: Simon Newcombe, Public Health and Professional Services Manager

REASON FOR REPORT

1. To set out proposals for the introduction of a discretionary chargeable service for the provision of pre-application advice for licensing applications

RECOMMENDATIONS

1. That the Regulatory Committee recommends to Council the introduction of the discretionary chargeable service for the provision of pre-application advice for relevant licensing applications as set out in Section 2 and Annexe 1 of the report.
2. That the Regulatory Committee recommends to Council that the Scheme of Delegation for the Regulatory Committee be updated within the Constitution to include the Localism Act 2011 to enable consequential reviews and updates to scheme charges to made by these committees.

RELATIONSHIP TO CORPORATE PLAN

1. There are no direct links to the Corporate Plan, nonetheless the proposed scheme will improve licensing standards within the district and contribute to the economy in addition to ensuring public safety of our community and visitors.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS	
Financial	<p>The proposed scheme will generate income to enable the Council to recover of the costs of what is currently a free, discretionary advice service.</p> <p>It is not proposed that this income will form part of the Licensing team (Public Health Services) savings target for 2017/18 due to unknown uptake of the scheme and to allow for adequate time for the scheme to become established. The scheme will be formally reviewed within 12-months of operation and this will inform budget setting in future years.</p>
Legal	The legal implications under the relevant licensing legislation and the Localism Act 2011 are set out in the report.
Risk Assessment	No key risks identified. Matters relating to the adequate resourcing of the proposed service and for separation of duties are relevant and outlined in the report.

CONSULTATION CARRIED OUT WITH:
1. The Member Services Manager
2. Lead Officer – Licensing Team
3. The Chief Executive and Leadership Team
4. Legal Services

1.0 INTRODUCTION

1.1 The Localism Act 2011 (the Act) introduced a ‘general power of competence’. It gives local authorities the legal capacity to do anything that an individual can do that is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power. This general power of competence can be exercised for the benefit of the authority, its area or person(s) resident or present – or otherwise.

1.2 The Act also allows authorities to make a charge where it is not under a duty to provide the service and the person has agreed to the service being provided.

1.3 There is also a duty to ensure that taking one financial year with another, the income from charges does not exceed the costs of provision of the service, in other words the Council cannot make a profit from charging for the service.

1.4 As this proposed service covers functions of both the Licensing Committee and the Regulatory Committee, this report has been written with both in mind. It is hoped that this saves on duplication and provides a complete overview of the proposals. Where required, the functions of each specific Committee has been made clear in the body of the report.

2. **Current Arrangements**

2.1 The licensing team deal with a wide range of licensable activities under a range of different legislation. In particular, the following applications are the most complex and time-consuming:

Within the scheme of delegation of the Licensing Committee:

- Licensing Act 2003: Sale of alcohol, entertainment and the provision of late night refreshment (i.e. new premises, variations, transfers and changes of Designated Premises Supervisors)
- Gambling Act 2005: Gambling (i.e. new premises, variations, transfers)

Within the scheme of delegation of the Regulatory Committee:

- Animal welfare including breeding/boarding, dangerous wild animals, riding establishments, pet shops and zoos (various Acts)
- Hackney carriage and private hire trade (Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847)
- Sex establishments (Local Government (Miscellaneous Provisions) Act 1982)
- Acupuncture, tattooing, electrolysis, ear or body piercing (Local Government (Miscellaneous Provisions) Act 1982)
- Scrap metal dealers (Scrap Metal Dealers Act 2013)

2.2 Under licensing legislation, the licensing authority is both responsible for the administration and determination of applications.

2.3 Although there exists a statutory duty on the Council to administer applications, that duty does not extend to the provision of pre-submission advice and assistance.

2.4 In 2016, the licensing section received 431 applications under the aforementioned legislation. The majority of the more time consuming applications are made under the

Licensing Act and require some form of statutory consultation with responsible authorities.

2.5 Notwithstanding the fact that the licensing team also process many more straightforward applications and notices, it is proposed that discretionary pre-application fees only apply to those matters set out in Section 2.1 above. This is due to the fact that these applications are more complex in nature and as a consequence licensing officers can spend a considerable amount of time with applicants.

3. **Reasons for recommendations**

3.1 The proposal to introduce discretionary services holds benefits for the Council. Officers believe that the assistance offered under the proposed discretionary scheme will benefit residents and persons present in the Mid Devon area.

3.2 From discussions with applicants, officers know that some are put off, for example, by the length of application forms and the amount of sometimes technical information required in submitting a completed application. Guidance notes and policies are publicly available to applicants on our website, but the prescribed application process is inherently complicated mainly because it is closely linked to the primary legislation and applicants do not always have time to consider the guidance that is available.

3.3 In addition, officers routinely reject incomplete or incorrectly served applications which are delayed or not resubmitted because applicants perceive the process to be too difficult and onerous.

3.4 Investment in the district is invariably affected by this because without the necessary licence, businesses cannot trade which has obvious implications in terms of inward investment, local economic growth and potentially deprives local communities of welcome amenities.

3.5 Conversely, less experienced operators can also submit very poorly thought through applications that result in poor business practice and compliance. In many cases this results in adverse impacts on community well-being, for example by causing public nuisance or attracting crime and disorder.

3.6 Where poor applications are submitted the Council is not empowered in itself to impose new conditions unless relevant representations are made. Conditions offered up by an applicant can be reworded to ensure they are clear, concise and enforceable but this can sometimes take up considerable amounts of staff time.

3.7 It is likely many of the perceived obstacles and issues outlined above can be overcome with pre-submission advice and assistance.

4. **Proposals & Process**

4.1 The proposal is that potential applicants or persons indicating an interest in applying for a licence will be given the opportunity to take advantage of officer assistance at the appropriate discretionary fee.

4.2 The level of pre-application advice and assistance required is determined by the type of application to be completed and experience of the applicant. In order to try and be as inclusive as possible, it is proposed to offer three levels of service for the majority of applications, ranging from low to high (1 hour to 3 hours) of officer time. Costs are then calculated based on the hourly rate (including on-costs) of the licensing officer post for 2017/18.

4.3 In general, the fees are set as follows:

Level of assistance required	Officer time	Fee
Low	1 hour	£30.00
Medium	2 hours	£60.00
High	3 hours	£90.00

4.3 The type of pre-application advice and assistance given will depend on the requirements of the applicant but examples of what the service may consist of include (not exhaustive):

- Advice and assistance with completing the application forms;
- Advice on appropriate conditions taken from the pool of standard conditions or in consultation with responsible authorities;
- Advice on drawing up plans and other technical documents to accompany the application in accordance with the relevant requirements,
- Advice on nominating an appropriate designated premises supervisor,
- Assistance with completing the statutory notices and advertising, and
- On-site visit(s) to ensure plans are compliant with prescribed regulations and the appropriate statutory notices are correctly on display.

4.4 The scheme will apply to those applications set out in Section 2.1 above. The scope of the scheme will be reviewed on an annual basis to determine if there is any merit from a customer and authority perspective in extending the scheme, for example to include a basic 'check and send' type service or to encompass other licence types currently not included, for example mobile home sites and personal licences.

4.5 The proposed fee structure is set out in Annexe 1 and will apply initially for the 2017/18 financial year. Fees will be reviewed on an annual basis as part of wider

performance monitoring to ensure they are fit for purpose. Annex 1 indicates the likely advice given by officers for each service.

- 4.6 Applicants who decide not to take advantage of the proposed new process will still be signposted to the relevant guidance notes and policies. It is also important to ensure that the new process does not become overly bureaucratic. As a consequence, no fees will be charged for straightforward queries that can easily be dealt with over the phone or email and do not require significant officer time. Additionally, where the Council has the ability to set fees locally, these already include a provision for minor queries as part of the applications process.
- 4.7 A log will be kept detailing the amount of time spent on each application. If there is major discrepancy between the time predicted and the actual time spent then a decision will be made as to whether to refund part of the fee. No extra charge will be made if additional time is spent, as an agreement would have been made prior to the advice being given.
- 4.8 The log will also support the annual fee review process and enable monitoring of scheme uptake. In any case, dedicated cost-accounting codes will be used on the Council financial management system to clearly identify income arising from the scheme going forward.
- 4.9 An application form for applicants wishing to take advantage of the discretionary service is attached at Annexe 2. Members will note that the form clearly sets out the terms and conditions under which the discretionary service will be provided to avoid any doubt. It will also be important to agree the likely assistance required in advance of advice being given in order to ensure everyone is clear on what has been agreed. The service will stop once an application is submitted.

5. **Separation of duties and monitoring**

- 5.1 It is anticipated that the majority of applicants wanting to use the pre-application advice service will want to submit applications under the Licensing Act. As a result, licensing officers will only have delegated authority to determine unopposed applications i.e. those where no adverse relevant representations are received. Applications that are opposed have to be referred to a licensing sub-committee for determination. As a result, it is not envisaged that the operation of the new process would cause significant problems with the administration and determination process.
- 5.2 Notwithstanding this, it is important for the avoidance of doubt that arrangements for clear separation exist between officers who supply pre-application assistance and those who are responsible for the subsequent processing and/or determination of that application.

- 5.3 It is therefore proposed that the officer involved with pre-application assistance and advice will not have any subsequent involvement with processing or determination of that individual application. This will help to ensure that a potential conflict can neither be seen nor occur, especially with those applications decided by officers under delegated authority.
- 5.4 There are considered to be sufficient staffing resources in place at the moment to accommodate this arrangement; however the lead officer and service manager will review staff resources regularly to ensure the Council is able to adequately deliver the scheme especially during any lengthy periods of staff absence or where scheme uptake is exceptional.
- 5.5 Around ten local authorities have been identified as having taken advantage of the provisions in legislation and introduced charging for discretionary pre-application advice in licensing services. Adopting such a scheme for Mid Devon would therefore place the Council very much in the top percentage of local authorities nationally in this regard.
- 5.6 From available published sources it is apparent that the identified schemes in place currently have embedded successfully within routine service delivery locally. Cheltenham Borough Council for example have had a scheme in place since 2013 and reported within 12-months that around one on four relevant applicants took up their discretionary service. It is proposed that this will be used as an informal benchmark figure for initial review and resource monitoring of the proposed scheme in Mid Devon.
- 5.7 The introduction of the proposed discretionary fee structure will not affect the Council's statutory duties. Officers will still carry out their statutory functions of processing the licence application and fulfil their role as the Licensing Authority and this will not be included in the discretionary charges.
- 5.8 The service manager will be responsible for on-going performance and compliance management of the scheme. Day to day operation and compliance monitoring will be completed by the lead officer for licensing.

6. **Exemptions and equality impact**

- 6.1 Certain premises are exempt from statutory application fees and these are set out Licensing Act 2003 (Fees) Regulations 2005.
- 6.2 Where an application relates to the provision of regulated entertainment only (not alcohol) and that application is by or on behalf of an educational institution e.g. a

school or college or a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building, no fee is payable on application. Consequently it is proposed to extend this exemption and not charge for pre-application advice for these premises.

- 6.3 An equality impact assessment has been undertaken and no adverse effects on equality practice have been identified as a result of this report and recommendations.

Contact for any more information	Simon Newcombe, Public Health and Professional Services Manager (01884 244615 or snewcombe@middevon.gov.uk)
Background Papers	Localism Act 2011 / various pieces of legislation
File Reference	SN/Public Health/Licensing
Circulation of the Report	Chief Executive / Leadership Team Member Services Manager Lead Officer – Licensing Team Licensing and Regulatory Committee

ANNEXE 1 – TOTAL HOURS AND FEES

Licence Type	Examples of the assistance and advice given					Total time / Cost
	Level of advice	Application	Inspection	Conditions	Advertising & Notices	
Alcohol, Entertainment and Late-Night Refreshment	Low	30 minutes	N/A	N/A	30 minutes	1 hour / £30.00
Animal related	Medium	1 hour	N/A	30 minutes	30 minutes	2 hours / £60.00
Gambling						
Acupuncture, tattooing, electrolysis, ear or body piercing	High	1 hour	1 hour	30 minutes	30 minutes	3 hours / £90.00
Sex establishments						
Hackney Carriage and Private Hire	Low	1 Hour	N/A	N/A	N/A	1 hour / £30.00
Scrap Metal	Low	1 Hour	N/A	N/A	N/A	1 hour / £30.00

ANNEX 2 - PRE-APPLICATION ADVICE REQUEST FORM



To make a request for pre-application advice please complete this enquiry form. Please read this document carefully and provide as much information as possible.

1) Type of application (please tick the relevant box)

- Alcohol, entertainment and late night refreshment
- Animal Welfare
- Gambling
- Hackney carriage and private hire
- Scrap metal
- Sex establishment
- Acupuncture, tattooing, electrolysis, ear or body piercing

2) What level of service do you require? (for information about what each category may include, please see the pre-application fee sheet)

- Low (1 hour - £30.00)
- Medium (2 hours - £60.00)
- High (3 hours - £90.00)

3) Your details

Name: _____

Home address: _____

Tel No. _____ Email: _____

4) Business details

Business name: _____

Premises address: (including postcode)

5) Description of proposal: (please provide as much information as possible, including the specific type of application you wish to submit)

6) History

Have you previously contacted the licensing team about this (or a similar) proposal?

Yes No

If yes, please give dates and the name of the officer involved:

7) What we will do: (please note these are examples only and the specific services provided depend on the application type and the level of assistance requested)

- Assist with the application forms
- Assist with the content of notices
- Assist with completing the plan for the premises
- Offer advice and guidance on appropriate conditions, which may be taken from a standard pool of conditions, if applicable
- Consult with relevant Responsible Authorities in relation to possible conditions they believe may be appropriate
- Visit the site to ensure that plans are correct and that notices are placed in the correct location

8) Important information:

- The final decision on your application will be made by Council Members or under delegated authority by an officer. Depending on the type of application, it may be subject to a statutory consultation period after submission. You should therefore be aware that the Council's officers are unable to give any guarantees about the decision that will be made in relation to your application
- The Council will not deal with your request for advice until payment has been made
- The Council are not responsible for advertising your application (if required), this must be done by the applicant themselves
- The pre-application advice service will end once an application is submitted
- A new officer (i.e. different from the officer providing pre-application advice) will deal with your application once it has been submitted
- Mid Devon District Council is under a duty to protect the public funds it administers and to prevent and detect crime, and to this end may use the information you have provided on this form within this authority for the prevention and detection of fraud or crime. It may also share this information with other bodies administering public funds solely for these purposes.

9) Declaration

I confirm that I have read and understood the above information.

Date: _____

Signature: _____

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AGENDA ITEM

REGULATORY COMMITTEE

21 March 2017

REPORT OF THE DIRECTOR OF OPERATIONS

HACKNEY CARRIAGE / PRIVATE HIRE FEES

Responsible Officers Tom Keating, Lead Licensing Officer

REASON FOR REPORT

1. To recommend the adoption of licence fees set out in this report.

RECOMMENDATIONS

1. That the Regulatory Committee approves the fees set out in this report and they be introduced as soon as possible, in compliance with the requirements to advertise and consider objections.
2. If there are objections to the fees when they are advertised then delegated authority be given to the Public Health and Professional Services Manager, in conjunction with the Chair of the Regulatory Committee, to consider the objection(s) and set a further date, not later than two months after the first specified date on which the variation will come into force, with or without modification.

RELATIONSHIP TO CORPORATE PLAN

1. These fees link directly to the licensing function with the aim of ensuring the safety and wellbeing of both our community and visitors to the district.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Financial	Licence fees should be set at a level to recover the cost to the Council.
Legal	Various statutes empower the Council to set fees for licences. An overview of these powers (relevant to this report) is contained within the 2017 fee spreadsheet.
Risk Assessment	Fees must be set in compliance with the relevant legislation. Failure to do so may result in the Council being challenged in the Courts.

CONSULTATION CARRIED OUT WITH:

1. The Council's Accountancy Team to determine the costs of the function.

1.0 BACKGROUND

- 1.1 Mid Devon District Council has statutory responsibility for the administration and enforcement of a wide range of licences, registrations and permits. Many of these schemes allow the Council to charge a fee, payable by an applicant for a licence, in order to cover the costs (or a proportion of the costs) of the administration of those licence types. In some cases, costs can include other aspects of providing the regulatory scheme, such as monitoring compliance.
- 1.2 The general principle in setting these fees is to ensure full cost recovery, or as close to this as possible. A number of legal cases over the years have confirmed that licensing fees may not be used to generate a profit for Councils, and that fees should be reviewed regularly to ensure they remain accurate. Additionally, it has become increasingly clear that authorities must be able to demonstrate how fees have been calculated.
- 1.3 Although every effort can be made to predict future income and expenditure there are always variables that are difficult to foresee. Examples include complaints received that then need to be investigated and the work required to implement a new legislative requirement. Because of these potential 'unknowns' it is important that consideration is given to previous surpluses or deficits that have accrued. These can legitimately be carried forward and redistributed or recouped, as necessary.
- 1.4 Some application fees are set nationally (i.e. fees under the Licensing Act) so the local authority has no discretion on what it charges. Others are set by the Council themselves and these include fees for:
 - Hackney carriage and private hire licences
 - Animal related licences
 - Scrap metal licences
 - Acupuncture, tattooing, ear-piercing and electrolysis registrations
- 1.5 Hackney carriage and private hire related fees, together with fees paid under the Licensing Act, make up the main bulk of the licensing department's work and subsequent income.
- 1.6 For member's information, the fees relating to animal, acupuncture, tattooing, ear-piercing and electrolysis licences will be reviewed later this year. This report focuses solely on the fees payable for hackney carriage and private hire licences.

2.0 HACKNEY CARRIAGE AND PRIVATE HIRE FEES – FEE SPREADSHEET

- 2.1 The current fees for licences were adopted in October 2015 and were calculated using a cost spreadsheet that was introduced at the time.

2.2 The fee spreadsheet was introduced on the basis that it would provide greater details on the cost of each individual application and the associated processes. It will also make it simpler to review and amend specific fees in the future.

2.3 If Members of the Committee (or any interested party) wish to see or discuss the full spreadsheet for 2017 in advance of the meeting, we ask that they contact the licensing team. The spreadsheet will be available to view at the meeting but as an overview, it contains the following information:

- An introductory tab that provides a brief overview of the relevant legislation along with an explanation of how the spreadsheet itself works.
- A 'base' cost tab which contains a number of details, including staff hourly rates (with certain on-costs) and the cost of specialist materials / software. It also includes the number of applications received in previous years which provide an average for the number of applications to expect in the future.
- A 'fee' tab which provides an overview of the total final cost of each application, adding together the base cost, administration cost, monitoring compliance cost (if applicable) and the specific application process cost.
- An 'administration' tab which outlines the general time and costs allocated year on year to the maintenance of the regime (not specific to the processing of an individual application). This includes things like general admin, updating web pages, staff training and policy and procedural amendments / developments.
- A 'monitoring compliance' tab that outlines the time spent dealing with complaints, pro-active monitoring and joint operations with partner agencies. These costs are applied to vehicle applications only.
- Separate individual tabs for each application which show the approximate average time it takes to administer, from initial enquiry to the issuing of a licence.

3.0 PROPOSED FEES

3.1 A table comparing the current fees with those being proposed is attached as Annex 1.

3.2 Benchmarking the proposed fees with neighbouring authorities does provide some context but it must be noted that each authority is different and can legitimately charge different amounts. Variables such as the number of applications, number of staff, on costs and previous deficits / surpluses are all relevant and are not factored in to straightforward comparisons. With this in mind, a comparison of the proposed fees with some of our neighbouring authorities is attached as Annex 2 for context.

3.3 Changes have been made to the spreadsheet for 2017 and a summary of some of these amendments is provided below. There have also been changes in some of the time spent by licensing officers on specific tasks and additional information is also provided on these.

Base costs

- 3.4 The 2015 fees were calculated using hourly rates for staff which included some of the general on-costs of the licensing team. These on-costs included things like Lalpac (licensing software), general equipment, stationary, books and advertising. Accounting for these costs separately (i.e. removing them from the hourly rate calculations and applying them individually) is a more transparent way of working out the fees and helps to ensure correct cost recovery. This is therefore how it has been done for 2017 and it has resulted in the base cost per licence increasing and the hourly rates for staff decreasing.
- 3.5 Additional time has been allocated for the Public Health System Administrator to work on the online functionality of licensing software. This will have the benefit of automating administrative process (i.e. allowing drivers to directly check when documents are due) and potentially allowing online applications which directly feed in to the licensing database.
- 3.6 Inflation based increases associated with the administration tab have now been included for licences that last multiple years. These inflation estimates are not currently included in the calculations of existing costs but will be in the future.

Monitoring compliance costs (vehicles)

- 3.7 These totals have generally increased and this is a reflection of the increased compliance work carried out by the licensing team. This has resulted in additional investigatory and follow up work which is sometimes dealt with by officers under delegated authority and sometimes referred to a Regulatory Sub-Committee. The table below provides an overview of these increases. Please note that these figures relate to those issues linked to vehicles only and do not include matters linked specifically to drivers and operators.

Year	Number of formal interviews	Number of committee hearings
2015	1	0
2016	5	3

- 3.8 For Member's information, the total number of formal interviews and hearings linked to drivers, vehicles and operators for 2015 and 2016 was as follows:

Year	Number of formal interviews	Number of committee hearings
2015	1	1
2016	6	8

Amendments to specific application processes

- 3.9 Drivers and operators are now required to undergo an immigration check as a result of the Immigration Act and this has taken up more of staff time. Going forward, fewer renewal applicants will require these checks having already established a permanent right to work in the UK so subsequent recharges may decrease in 2018.

- 3.10 As a result of some changes in administrative and working practices, certain times for processes have reduced. An example of this includes the ability to check MOT status online which means the licensing team no longer have to send letters (although they still need to be checked and potentially chased up).
- 3.11 A charge has been introduced for new drivers who need to retake a component of the new driver test.
- 3.12 There has been an increase in the number of matters referred to a regulatory sub-committee. This includes issues where someone has submitted an application that does not comply with policy or when information has come to light during the licensing process which calls in to question an individual's fitness to hold a licence.
- 3.13 The time that officers spend checking operator records has decreased on an annual basis as the licensing team now request that the operator provides a sample of their records as opposed to trying to arrange meetings or checking them while out and about.

4.0 PREVIOUS INCOME AND EXPENDITURE

- 4.1 In terms of previous income and expenditure, it is important to note that the proposed fees do not attempt to recover the likely deficit accrued since 2015. A review of the fees at that time showed that the service was not recovering its full costs but in light of the introduction of the new fee spreadsheet (and increases to a number of fees) it seemed prudent to give the new method of calculating fees some bedding in time before reviewing the situation. The 2015 fees were therefore set at a level to be cost neutral going forward.
- 4.2 Having reviewed the 2015 income and expenditure in advance of calculating the 2017 fees, the likely surpluses / deficits accrued in the year following the introduction of the 2015 fees are as follows:

Licence type	Surplus / Deficit
Hackney Carriage / Private Hire Drivers	-£817
Hackney Carriage Vehicle	-£1,021
Private Hire vehicle	-£746
Private Hire Operator	+£12
Total	-£2,572

- 4.3 During this period, the total income in relation to these applications was £38,549. The total deficit therefore represents approximately 6.6% of income. Please note that this figure does not include other fees for things like DBS checks, interviews as part of the new driver process and replacement badges.
- 4.4 Once again, the 2017 fees have been set at a level that aims for cost neutrality across the year and does not seek to recover the deficits outlined above. As this is the first

complete review of the fee spreadsheet, this is felt to be a reasonable approach and has resulted in increases ranging from 2 – 17% for some application fees. It should be noted that some decreases are also being proposed.

- 4.5 In comparison to the total income of £38,549 highlighted above in Paragraph 4.3, the proposed fees applied to the same period would have generated an income of £41,604. This represents an increase of 7.9%. Once again, this figure does not include other fees such as those for DBS checks, new driver interviews and replacement badges.
- 4.6 In terms of being cost neutral, members should be aware that the legislation is worded in such a way that a fee is payable on condition of a licence being granted. Therefore if an application is unsuccessful then the application fee needs to be refunded.
- 4.7 The fees will once again be reviewed in 2018 and, in light of the accuracy of those being proposed, a decision can be made on whether or not it is appropriate to seek to recover a previous deficit (if one still exists). To be clear, it is not intended to continually run a deficit, no matter how relatively minor it may be, and the licensing team is committed to recovering all possible costs in the future. Such decisions do however need to be evidenced and also balanced with the impact on the trade.

5.0 ADVERTISING REQUIREMENTS

- 5.1 Whenever it is proposed to vary vehicle and operator fees so that they exceed £25, the legislation requires that a notice is published in a local newspaper stating the proposed fees and giving a date, not less than 28 days from the date on which the notice is first published, for objections to be made. If no objections are made, or if they are made and subsequently withdrawn, the new fees come into effect on the expiration of the period in the notice.
- 5.2 A copy of the notice must also be available at the council offices for inspection at all reasonable times.
- 5.3 Where objections are made and not withdrawn, the Council must consider the objections before determining the fee level and setting a further date, not later than two months after the first specified date, on which the new fees shall come into force.
- 5.4 Whilst there are no formal advertising requirements for driver licences, these will nevertheless be advertised too. The advertisement will be placed in a local newspaper following the Committee's decision.

6.0 RECOMMENDATIONS

- 6.1 In consideration of the above, it is recommended that:

- The Regulatory Committee approves the fees set out in this report and they be introduced as soon as possible, in compliance with the requirements to advertise and consider objections.
- That if there are objections to the taxi fees when they are advertised then delegated authority be given to the Public Health and Professional Services Manager, in conjunction with the Chair of the Regulatory Committee, to consider the objection(s) and set a further date, not later than two months after the first specified date on which the variation will come into force, with or without modification.

7.0 TIMESCALE

- 7.1 The fees set will take effect as soon as possible, in compliance with the relevant legislation.

Contact for any more information	Tom Keating (01884 244618)
Background Papers	HC / PH Fees 2015; LG(MP) Act 1976
Circulation of the Report	Public Health and Professional Services Manager Legal Services Regulatory Committee

ANNEX 1 - CURRENT AND PROPOSED FEE COMPARISON

<u>Drivers</u>	Current	Proposed	Difference
HC/PH driver licence – New 1 year	£108	£122	+£14
HC/PH driver licence – New 3 year	£244	£249	+£5
HC/PH driver licence – Renewal 1 year	£93	£108	+£15
HC/PH driver licence - Renewal 3 year	£229	£232	+£3
DBS fee (total)	£63	£61	-£2
New driver test / interview	£36	£33	-£3
New driver re-test	N/A	£9	N/A
Replacement badge	£10	£7	-£3
<u>Vehicles</u>			
Hackney Carriage - New	£180	£194	+£14
Hackney Carriage - Temporary (2 months)	£73	£75	+£2
Hackney Carriage - Renewal	£162	£176	+£14
Private Hire - New	£174	£186	+£12
Private Hire - Temporary (2 months)	£67	£77	+£10
Private Hire - Renewal	£162	£176	+£14
Transfer of interest	£35	£24	-£11
Replacement vehicle plate	£26	£17	-£9
<u>Operators</u>			
Private Hire Operator licence - New 1 Year	£86	£101	+£15
Private Hire Operator licence - New 3 Year	£233	£228	-£5
Private Hire Operator licence - New 5 Year	£377	£357	-£20
Private Hire Operator licence - Renewal 1 Year	£86	£96	+£10
Private Hire Operator licence - Renewal 3 Year	£233	£222	-£11
Private Hire Operator licence - Renewal 5 Year	£377	£351	-£26

ANNEX 2 - LICENSING FEES: Comparison against other local authorities

	Mid Devon Proposed	East Devon	South Hams	West Devon	North Devon	Torrige
Vehicle Applications						
Hackney Carriage - New	£194	£262	£228 (non-wheelchair) £110 (wheelchair)	£168 (non-wheelchair) £117.60 (wheelchair)	£204	£200
Hackney Carriage (2 month)	£75	6 month - £150	N/A	N/A	N/A	£22.50 p/m
Hackney Carriage -Renewal	£176	£262	£228 (non-wheelchair) £110 (wheelchair)	£168 (non-wheelchair) £117.60 (wheelchair)	£204	£200
Private Hire - New	£186	£262	£216 (non-wheelchair) £100 (wheelchair)	£157 (non-wheelchair) £109.90 (wheelchair)	£142	£120
Private Hire (2 month licence)	£77	6 month - £150	N/A	N/A	N/A	£22.50 p/m
Private Hire - Renewal	£176	£262	£216 (non-wheelchair) £100 (wheelchair)	£157 (non-wheelchair) £109.90 (wheelchair)	£142	£120
Driver Applications						
1 Year Driver – New	£122	£104	£135	£101	£228	£175
3 Year Driver – New	£249	£229	£360	£272	£401	£390
1 Year Driver – Renewal	£108	£104	£135	£101	£138	£175
3 Year Driver - Renewal	£232	£229	£360	£272	£301	£390

	Mid Devon Proposed	East Devon	South Hams	West Devon	North Devon	Torrige
Private Hire Operator Applications						
PHO – New 1 Year	£101	£130	£118	£118	£71	£79 per vehicle
PHO – New 3 Year	£228	N/A	N/A	N/A	N/A	N/A
PHO – New 5 Year	£357	£390	£470	£531	£213	£301
PHO – Renewal 1 Year	£96	£130	£118	£118	£71	£79 per vehicle
PHO – Renewal 3 Year	£222	N/A	N/A	N/A	N/A	N/A
PHO – Renewal 5 Year	£351	£390	£470	£531	£213	N/A
Additional Fees						
DBS Checks (admin fee)	£61 (£17)	£67 (£23)	N/A	£50 (£6)	£59 (£11.40 / £24)	£55 (£11)
Transfer of Interest	£24	£80	£50	£50	N/A	£79
Replacement Plate	£17	£46	£29	N/A	N/A	£22.50
Replacement Badge	£7	£15	N/A	£10	N/A	£10
Driver Interview / Test	£33	N/A	£47	£45	£31.00	N/A
Driver test re-take	£9	N/A	£32.00	£32.00	£12.00	N/A