

**REPORT OF THE DIRECTOR OF CORPORATE AFFAIRS AND BUSINESS
TRANSFORMATION**

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

Responsible Officer: Tom Keating, Lead Licensing Officer

REASON FOR REPORT

1. 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.

RECOMMENDATIONS

1. **That Committee Members note the content of the report.**

RELATIONSHIP TO CORPORATE PLAN

1. There are no direct links to the Corporate Plan. It should be noted that the licensing process does however contribute to the safety of our community, as well as visitors to the district.

FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

Financial	The legislative implications may result in additional work for the licensing team which may impact on the fees that are charged.
Legal	The Council must ensure that the licensing process is compliant with relevant legislation.
Risk Assessment	The Council must ensure that the licensing process is compliant with relevant legislation or risk licensing people who are not fit and proper.

CONSULTATION CARRIED OUT WITH:

1. N/A

1.0 Policing and Crime Bill

- 1.1 This Bill is still progressing through the legislative process and amendments have been made in relation to hackney carriage and private hire licensing. The initial amendment stated that Licensing Authorities would have to 'carry out its functions with a view to preventing child sexual exploitation'. This has now been replaced by the following:

'The Secretary of State may issue guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised as to protect children, and vulnerable individuals who are 18 or over, from harm'.

- 1.2 The overall purpose of the licensing regime is to protect the public and this includes protecting children and vulnerable adults from harm, irrespective of this potential new guidance. In considering the proposed new guidance, we are still waiting for the following information:

- Whether or not the guidance will actually be introduced (the wording states that it 'may' be introduced)
- The likely timeline for consulting and publishing the guidance
- Whether or not authorities will be expected to follow the guidance, unless there is a good reason not to.

- 1.3 Members should be aware that the licensing team are looking at this area already, with a view to 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 will be brought to this committee in the first quarter of 2017 for discussion and agreement.

- 1.4 In recent years there have been a series of child sexual exploitation cases linked closely to hackney carriage and private hire licensing. It is vital that authorities reflect on what has taken place nationally and ensure that practices and processes are reviewed in light of what has happened.

- 1.5 In order to emphasise the importance of these issues it is sobering to remind ourselves of what happened in Rotherham. What follows is a brief summary of what was reported about Rotherham Metropolitan Borough Council following investigations which revealed that over 1400 children had been sexually exploited between 1997 and 2013.

- 1.6 As a whole, the investigation revealed:

- a Council in denial about serious and on-going safeguarding failures
- an archaic culture of sexism, bullying and discomfort around race
- failure to address past weaknesses, in particular in Children's Social Care
- weak and ineffective arrangements for taxi licensing which leave the public at risk
- ineffective leadership and management, including political leadership

- no shared vision, a partial management team and ineffective liaisons with partners
- a culture of covering up uncomfortable truths, silencing whistle-blowers and paying off staff rather than dealing with difficult issues

2.0 Issues directly related to the licensing service

2.1 What follows is a summary of the issues found in Rotherham that directly related to the licensing service. We have included a note on each issue reflecting on the current situation in Mid Devon.

Division of service

2.2 The Councils taxi licensing service was split in to two branches:

- The Policy team which dealt with policy, applications, renewals, suspensions and revocations
- The Enforcement team which dealt with complaints and investigations

2.3 The split of these functions is not common in other licensing authorities and Inspectors found evidence of conflict between the two branches, notably on what kind of evidence could be presented when the Licensing Committee met to consider whether to revoke or suspend a licence.

2.4 The two branches of licensing also used different databases which did not interface, resulting in records being kept in multiple places and inconsistent recording of information in general.

2.5 Meetings were rarely held across the entire service and some officers said that the visibility of senior leaders was poor.

2.6 The licensing team at Mid Devon District Council are not split and actually sit as one group, with the Public Health and Professional Services Manager also located in the same area. This helps to ensure continued contact and helps information flow to all relevant people. Furthermore, there are regular discussions between officers concerning ongoing investigations.

2.7 The licensing team use one piece of software as much as possible and have recently moved to a 'paperless' system where documents are scanned on. However, a separate spreadsheet is maintained to record complaints received as the existing system is limited in this respect.

Lack of policy

- 2.8 Inspectors 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.
- 2.9 Members will be aware that our Policy was reviewed earlier this 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 has been greatly expanded and also includes 'other relevant information', (not necessarily convictions) that will impact on whether or not someone should be considered fit and proper.**
- 2.10 We are currently awaiting new guidance from the Department of Transport and once this is available we will once again review our policy to ensure it reflects best practice, in as far as this is possible.**

Trade influence and the role of Members

- 2.11 Inspectors were often told that the licensed trade in Rotherham was vocal and demanding and some officers expressed the view that the licensing service seemed more geared towards facilitating the trade than protecting the public.
- 2.12 Members added to this pressure to support the trade. Some who had previously held taxi licences or 'badges' sat on the Licensing Committee. At one point, the Committee had been reluctant to hear any cases not related to matters showing up on DBS checks. That means where there were no actual convictions they would not suspend or revoke licences.
- 2.13 Licensing officers reported that they had received phone calls from Members over perceived delays in the processing of individual applications. Officers would be urged to 'stop wasting time'.
- 2.14 There were instances of Members making representations on behalf of the trade or individual drivers. For example, one Councillor wrote to the Crown Court offering a reference on behalf of a driver who had his licence revoked.
- 2.15 The licensing team at Mid Devon District Council engage with the trade but there is no evidence that they exert pressure to the point that the system is more geared towards issuing licences than protecting the public. The same can be said for Members and from the licensing team's perspective; we have never experienced interference from Members in terms of carrying out the day to day job, issuing licences or taking enforcement action against applicants and licence holders.**

Complaints and investigations

- 2.16 There were major concerns over the licensing service's ability to undertake thorough investigations giving rise to a perception of undue weight being given to the need to protect drivers' livelihoods over and above the safety of the public.
- 2.17 The service had set too high a threshold of evidence before considering suspension and revocation of a licence. Officers are entitled to apply a 'balance of probabilities' test to alleged offences by drivers, but instead appeared to apply a test of whether something was 'beyond all reasonable doubt'.
- 2.18 Members of the Licensing Committee had not been given sufficient bespoke training on dealing with taxi hearings. Furthermore, after Member complaints the number and nature of documents being provided to Members in advance of suspension / revocation hearings had been reduced. This could diminish the quality of the judgements made and could lead to outcomes which place the public at risk.
- 2.19 The licensing team have always been able to make decisions under delegated authority where concerns arise around a driver's suitability or a vehicles safety and take immediate action (i.e. suspend or revoke). With the re-appointment of a full time enforcement officer in 2015 we are now better equipped to investigate complaints and take a more pro-active approach in enforcement. This includes vehicle inspections and dealing with contraventions. The team are fully aware however that continued efforts must be made in terms of enforcement activity as failing to do so would undermine the licensing process.**
- 2.20 There is now a standard item on committee meetings for an enforcement update and it is hoped this will give Members a good indication of the work undertaken by the licensing team and give them the opportunity to ask any questions they may have.**
- 2.21 When hearings generate a lot of paperwork we now arrange a briefing with Members in the days leading up to the hearing, rather than wait until the day of the hearing itself. It is hoped that this gives everyone enough time to read the documents in full and properly understand the matter(s) for consideration. Furthermore, Members are kept informed of relevant training events and also changes to the licensing process via reports like this one.**

Pressure on staff

- 2.22 Long term sickness had depleted the Principal Officer grade on the enforcement side for some time and an unresolved contractual issue over late working had meant that there was no enforcement around the night time economy. Enforcement officer caseloads were unevenly spread and officers clearly felt understaffed, with one officer commenting that it was sometimes impossible to log off from a telephone which rang incessantly.
- 2.23 The licensing team at Mid Devon District Council is relatively small, currently containing four members of staff (two of which are part time). As a result of the nature of the work (i.e. complaints or information may come to light at any time) workloads and caseloads need to be carefully monitored.**

2.24 Out of hours work is now becoming more regular than it has been, with night time economy checks being carried out approximately every quarter (in addition to general day to day checks). To put this in to perspective, there were practically no pro-active out of hour's checks in 2014 and nothing regular in 2015. Recent checks carried out with the Police have the benefit of splitting resources and being highly visible to both the trade and members of the public.

3.0 Additional information about the licensing team and future work

3.1 Disclosure and Baring Service (DBS) checks are carried out on initial application and then every 3 years, in line with best practice guidance issued by the Department for Transport.

3.2 Applicants are advised on making their application that their details may be shared with other agencies to prevent or detect crime. Furthermore, additional questions have recently been added to application forms asking for details of any 'pending' convictions along with information on any previous driving licences they may have held (or been refused) and whether or not these had been suspended or revoked (this is all potential information that would not show up on a DBS).

3.3 Members of staff within the Licensing Team have undertaken safeguarding training although this will need to be updated and refreshed from time to time.

3.4 As noted in paragraph 1.3 above, the licensing team will be working on introducing safeguarding training to all drivers (and new drivers going forward) as they have the potential to be a vital source of information. It is therefore important that we provide them with the necessary information on spotting and reporting safeguarding issues.

3.5 The licensing team are also, at the time of writing this report, working on producing some cards for licence holders that contains information on who to contact in the event of safeguarding issues. It also contains some general points about safeguarding and the idea is that this can be kept in their vehicle so they have the information to hand when it is needed.

3.6 Although the licensing team do use one piece of software for the administration of the service it is limited in terms of logging and recording complaints (although this may improve following development upgrades). To this end a separate spreadsheet is currently kept and going forward the licensing team should consider the use of different software packages which enable all of this information to be stored in one place.

3.7 Finally, it must be stressed that the work and processes undertaken by the licensing team must be reviewed regularly, evolve where necessary and reflect any future legislative requirements.

4.0 Immigration Act 2016

4.1 The Immigration Act received Royal Assent on Thursday 12 May 2016. In general terms it will:

- introduce new sanctions on illegal workers and rogue employers
- provide better co-ordination of regulators that enforce workers' rights
- prevent illegal migrants in the UK from accessing housing, driving licences and bank accounts
- introduce new measures to make it easier to enforce immigration laws and remove illegal migrants

4.2 The Act can be seen in full here:

<http://www.legislation.gov.uk/ukpga/2016/19/schedule/5/enacted>.

4.3 In terms of the specific impact on licensing, it will introduce new requirements for hackney carriage and private hire licensing by placing a duty on Local Authorities to ensure that applicants for hackney carriage and private hire driver licences, and private hire operator licences are entitled to work in the UK. This includes those already licensed and this may ultimately be at a cost to the Council (potentially rechargeable).

4.4 No official start date for these licensing amendments has been set but at the time of writing this report, it has been suggested that it may be October.

4.5 The Immigration Act essentially amends the Local Government (Miscellaneous Provisions) Act 1976 in a variety of ways and a summary of these amendments is provided below:

Disqualified persons

4.6 Licensing Authorities will have to ensure that applicants have permission to work in the United Kingdom (UK) before granting a driver or operator licence. The Act then stipulates who would be 'disqualified' from holding a licence as a result of immigration status.

Licence duration (driver and operator)

4.7 The Licensing Authority will be prohibited from issuing these licences for a period of time beyond which the applicant has permission to remain in the UK. Licences can however be issued for a shorter period if required.

Lapse of licence

4.8 In relation to both drivers and operators, if the person loses the right to remain in the UK during the lifetime of the licence then the licence itself ceases to have effect.

Return of licence (and driver badges)

- 4.9 In relation to both drivers and operators, the licence (and badges for drivers) must be returned to the Licensing Authority within 7 days of the expiry of the licence. Similarly, they must be returned within 7 days when the licences have ceased to have effect due to the loss of the right to remain in the UK.

Offences

- 4.10 Where the licence has either ended or ceases to have effect, failure to surrender it (and the badges for drivers) to the Licensing Authority within 7 days is an offence.

5.0 Implications

- 5.1 The Licensing Authority must have regard to guidance issued by the Secretary of State when carrying out its new duties. As we are still waiting for this guidance it is not currently known how these additional conditions will work in practice. However, these checks will require additional work on the part of licensing staff and training provided by the Home Office is scheduled to take place in November.
- 5.2 Furthermore, as these checks and additional processes will result in more work for the licensing team it is suggested that once the full implications are realised, the fees currently charged be reviewed and amended where necessary to ensure full cost recovery. The matter will be referred back to this committee should the fees need to be changed.

6.0 Recommendations

- 6.1 That Committee Members note the content of the report and future work required of the licensing team.

Contact for any more information	Tom Keating, Lead Licensing Officer (4618) Simon Newcombe, Public Health and Professional Services Manager (4615)
Background Papers	Immigration Act 2016; Policing and Crime Bill
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Circulation of the Report	Regulatory Committee