



Derby City Council

## **LICENSING COMMITTEE**

**19 October 2015**

# **ITEM 4**

Report of the Acting Strategic Director of  
Communities and Place

### **Interim Proposal: Driver Licence Renewals**

#### **SUMMARY**

- 1.1 Following the introduction of changes brought about by de-regulation legislation to the taxi licensing processes already agreed by Committee, the practical impact is beginning to be felt by the trade.
- 1.2 One inevitable consequence has been that some drivers will be unable to undertake work whilst they are waiting for their new Disclosure and Barring Service certificates to be returned.
- 1.3 Following a request from the Chair and a number of members to officers, to assess whether and if so what alternative means there may be to overcome the potential for members of the trade being unable to trade pending a clear DBS certificate being received, advice has been sought from counsel about the reasonableness and lawfulness of accepting a declaration from drivers in lieu of a certificate. The outcome of that request is now set out in paragraph 4.12 of the report.
- 1.4 The proposals set out in the report seek approval to introduce, for a limited time period only of 4 months i.e. until 31 January 2016, a process whereby the Council is able to accept a 'Statutory Declaration', in lieu of a DBS certificate, from drivers who have applied for a new DBS check but are awaiting its return.

#### **RECOMMENDATION**

- 2.1 To adopt the statutory declaration process set out in the report.
- 2.2 To approve the use of the statutory declaration notice provided at Appendix 2.
- 2.3 To approve the application of the statutory declaration process for four months, until 31 January 2016.
- 2.4 To agree that, in the event that a subsequent DBS certificate is received that identifies undeclared relevant antecedence which conflicts with the statutory declaration, the licence holder must be referred to a sub-committee of the Committee by officers with a recommendation that the licence be revoked.

- 2.5 To agree that in the event that a licence holder fails to produce a DBS certificate to the Council within 14 days of its receipt, they should be referred to a sub-committee for consideration of a sanction that would exclude no action or a warning.
- 2.6 To agree that, in the event that following receipt of a DBS certificate, should a driver not subscribe to the DBS Update Service within 19 days of the date of receipt, this should be deemed as a breach of conduct necessitating referral back to a sub-committee for consideration of a sanction that would exclude no action or a warning.

#### **REASONS FOR RECOMMENDATION**

- 3.1 To address the member concern that a legitimate process to enable drivers to remain licensed pending receipt of their DBS certificates should be devised, as a temporary measure.

#### **SUPPORTING INFORMATION**

- 4.1 The Deregulation Act 2015 came into force on 1 October 2015 and has introduced changes to the length of time taxi-related licences are issued for. For both hackney carriage and private hire drivers, this is now three years. Licences for private hire operators' has been extended to five years. The duration of licences for both hackney carriage and private hire vehicles remains the same as now, i.e. an annual licence.
- 4.2 At the meeting on 24 September, the Licensing Committee agreed a number of changes that needed to be put in place to ensure the Council met its statutory responsibilities in order to be able to administer licences from 1 October 2015, while at the same time striking the regulatory balance in needing to safeguard the public.
- 4.3 As is currently the case, every licensed driver will continue to need to undertake a Disclosure and Barring Service (DBS) check and a medical examination, prior to being issued with a licence or having a licence renewed. Changes have been introduced to the timing of these checks so that they coincide with the start of a driver's new three year licence. This means that for all drivers, the DBS check and validity of the medical will in future be the same as the date of issue of licences. This means that for some drivers, they will have to undertake a fresh DBS check or medical examination within the next 12 months irrespective of when they last had a check or examination carried out if either the last check or examination was more than 3 months ago; for others whose renewal dates for the check or examination are imminent, they will not be affected.

- 4.4 In addition to this, when a driver undertakes a DBS check, it is now a requirement that they sign up to the DBS's Update Service and provide access details to the Council. Access to the update service, an online facility, enables the Council to be updated on any relevant changes to an individual's DBS status. Access to that information is essential to enable the Council, from time to time as may be appropriate, to re-assess whether individuals remain fit and proper to continue to hold a licence during its three year life. Therefore, if a driver does not sign up to this service, which they must do within 19 days of receiving a DBS certificate, they will only be issued with a licence for one year and will subsequently have to undertake another DBS check and medical examination the following year.
- 4.5 As an added value service to licence holders, the Council writes out to all drivers three months before a licence is due for renewal to remind of the need to book in for a check or examination, as appropriate. It is now even more important that drivers react to the letter, and understand the changes, and give themselves plenty of time for any new checks and examinations to be carried out. If they are not done by the time a driver's licence expires, the Council will not be able to issue a new licence, which means the driver will not be able to undertake any licensed work until satisfactory checks and examinations have been undertaken.
- 4.6 The implementation of the rule changes have now kicked in and the practical impact is beginning to be felt by the trade. In some instances, the advice set out in the renewal letters has not been taken and individuals are now faced with long waits for a DBS certificate; there are also others who have applied for a new DBS in relatively good time who are still waiting for them to be returned.
- 4.7 Following a request from the Chair, some urgent legal advice from Counsel has been requested to explore the lawfulness of the Council being able to accept a 'Statutory Declaration', in lieu of a DBS certificate, from drivers who have applied for a new DBS check but are awaiting its return.
- 4.8 The legal advice has been received and considers that it would be entirely reasonable and proportionate to adopt a temporary measure in the interim to enable drivers to remain licensed. This means that a driver, subject to an affirmative declaration, would be able to work whilst waiting for the DBS check to be returned. Where it is a negative declaration e.g. it discloses a trigger for referral to a sub-committee, similar to what happens when such information is identified in a DBS certificate, a referral to sub-committee would follow.
- 4.9 The officer's proposal is that in lieu of a DBS, a statutory declaration signed in the presence of an officer of the court or a solicitor will be accepted. A copy of the proposed Statutory Declaration is attached at Appendix 2.
- 4.10 In effect, officers acknowledge that the Council will be deeming the licence holder 'fit and proper' at the point of re-issue but should any negative information subsequently come to light which has not been disclosed on the statutory declaration, that would amount to a breach of their licence terms (i.e. dishonest conduct), necessitating a referral to a sub-committee with a recommendation to revoke.

- 4.11 There is also a residual issue that making a statutory declaration knowing it to be false amounts to criminal conduct, in its own right and the Council would reserve judgement on whether or not it looks to pursue this.
- 4.12 In the advice provided, Counsel makes a number of observations:
- a) The use of a Statutory Declaration should be an interim measure and we should make it clear that we have adopted this exceptional course purely as a temporary measure [until the end of January 2016 only] and that driver's will be expected to meet the requirements [approved by committee on 24 September 2015] thereafter.
  - b) The process should be prescriptive, sending a message that the Statutory Declaration route is not a soft option and that we require complete transparency.
  - c) The process provides a cast iron case for revocation if the information provided turns out to be false.
  - d) We are temporarily putting a degree of trust in the trade, but this will be backed ultimately by the forthcoming DBS and the condition requirement of subscription to the Update service.
  - e) Consequently we are adopting a stringent method of ensuring fitness and propriety and are doing so in a proportionate way, acknowledging that the policy change will take a little time to implement fully.
- 4.13 Consequently it also proposed that the statutory declaration process should only be applied for four months, until the end of January 2016.
- 4.14 For the avoidance of doubt and in the interest of clarity, it is not being proposed that the measures this report seeks to introduce should be implemented as an option in perpetuity. It is being proposed to acknowledge the short lead-in time available between the decision of 24 September 2015 and the trigger date for the coming into effect of the Deregulation Act 2015, and hence its short term status that expires after 31 January 2016. Drivers who, in future, do not act on the advice in the added value letter referred to in paragraph 4.5 by making a DBS application diligently, should fully expect to remain unable to drive pending receipt of a DBS certificate, after that date.

## OTHER OPTIONS CONSIDERED

- 5.1 Making no changes to the current process. Drivers who have applied but not received their new Disclosure and Barring Service check when their current drivers licence expires will be unable to work.

**This report has been approved by the following officers:**

<b>Legal officer</b>	Olu Idowu
<b>Financial officer</b>	-
<b>Human Resources officer</b>	-
<b>Estates/Property officer</b>	-
<b>Service Director(s)</b>	-
<b>Other(s)</b>	Michael Kay

<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Sandra Mansell 01332 641931 <a href="mailto:sandra.mansell@derby.gov.uk">sandra.mansell@derby.gov.uk</a> None Appendix 1 – Implications Appendix 2 – Proposed Statutory Declaration
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<b>IMPLICATIONS</b>
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**Financial and Value for Money**

1.1 None arising from this report.

**Legal**

2.1 As set out in the report.

**Personnel**

3.1 None arising from this report.

**IT**

4.1 None arising from this report.

**Equalities Impact**

5.1 None arising from this report.

**Health and Safety**

6.1 None arising from this report.

**Environmental Sustainability**

7.1 None arising from this report.

**Property and Asset Management**

8.1 None arising from this report.

**Risk Management**

9.1 As set out in the report.

**Corporate objectives and priorities for change**

10.1 The proposals set out in this report will deliver **better outcomes for communities**.

## Appendix 2

### Statutory Declaration

The usual rules about spent convictions do not apply to this statutory declaration. No conviction is ever considered spent for the purpose of this form. This means you **MUST** include all convictions of any nature, including motoring convictions on this form **EVEN** if the conviction is **SPENT**.

I, (insert full name)

of (insert full address)

Postcode

Date of Birth:

National Insurance No.

Do solemnly declare as follows (please tick all that are applicable):

☐ I have been convicted of, and/or have received a reprimand, a warning or fixed penalty notice, or been subject to a restorative justice sanction (together referred to as 'sanction') for an offence or offences. **I am aware that an offence also includes 'spent' convictions and any Police Cautions and that these must also be stated.** I list below every such sanction including the date of the offence, the place that the offence was committed and the sanction imposed whether by the Court or 'other' sanctioning authority

☐ I am currently [charged with a criminal offence or offences]\* and/or [subject to bail in relation to an ongoing criminal investigation/allegation]\*, the details of which are set out below

☐ I am not currently charged with a criminal offence or offences, or subject to bail in relation to an ongoing criminal investigation/allegation

☐ I have never been convicted of, nor received a reprimand, a warning or fixed penalty notice, or been subject to a restorative justice sanction (together referred to as 'sanction') for any offence (including spent convictions), or received a police caution

\*delete as applicable

Date	Offence / Conviction / Caution/Reprimand/Warning/Fixed Penalty Notice/Restorative Justice Sanction/Charge/Bail	Court/Other	Sentence/Sanction

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I make this solemn declaration conscientiously believing the same along with the answers given in the attached application form to be true and by virtue of the provisions of the Statutory Declarations Act 1835 and Section 5 of the Perjury Act 1911.

Signature of Applicant \_\_\_\_\_

Declared at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_



In the County of \_\_\_\_\_

before me \_\_\_\_\_  
(Solicitor/Commissioner for Oaths)

Office Address \_\_\_\_\_