



Derby City Council

LICENSING COMMITTEE **2 July 2015**

ITEM 7

Report of the Acting Strategic Director of
Neighbourhoods

Review of Derby City Council's Licensing Administration System Following Casey's Rotherham Metropolitan Borough Council Report Outcomes

SUMMARY

- 1.1 Following a number of recent high profile child sexual exploitation cases that have occurred around the country, reviews have been undertaken that have highlighted various shortfalls of local authority and other partner's services.
- 1.2 This report focusses on the outcomes of those reports in relation to the links between child sexual exploitation and taxi licensing and sets out the action that officers believe is necessary to address some of the concerns that have been raised.

RECOMMENDATIONS

- 2.1 Note the findings of the review of the Casey Report undertaken by officers, attached at Appendix 2 of the report.
- 2.2 Make proposals for further action, as appropriate, on any of the identified findings.
- 2.3 Approve the information sharing protocol set out at Appendix 3 of the report.
- 2.4 Approve the revised Taxi Licensing Sub Committee Guidelines set out at Appendix 4 of the report.
- 2.5 Recommend to Council an amendment to the Constitution to increase the number of Members who sit on Taxi Licensing Sub-Committee meetings from three to five.
- 2.6 Recommend to Council an amendment to the Constitution to delegate powers to officers to deal with applicants and existing licence holders who are subject to immigration controls.
- 2.7 Recommend to Council an amendment to the Constitution to restrict those Members that have previously held taxi licences from sitting on Licensing Committee.

- 2.8 Recommend to the Monitoring Officer, amendments to the Member code of conduct to restrict:
- contact from Members the purpose of which is to influence the processing of individual applications
 - Members making representations on behalf of the trade or individual drivers at sub-committee hearings
 - diluting regulatory standards after representations from the trade

REASONS FOR RECOMMENDATION

- 3.1 To satisfy the Council that its taxi licensing administration processes are sufficiently robust and adequately safeguard the wider public interest.
- 3.2 To demonstrate the Council's proactive response to the Casey Report recommendations.

SUPPORTING INFORMATION

- 4.1 Following the outcome of the Jay Report, the Secretary of State appointed Louise Casey CB in September 2014 to carry out an inspection of the compliance of Rotherham Metropolitan Borough Council in relation to the Council's exercise of its functions on governance, children and young people, and taxi and private hire licensing.
- 4.2 Professor Alexis Jay's Independent Inquiry into Child Sexual Exploitation in Rotherham was commissioned by Rotherham Metropolitan Borough Council in October 2013 and published on 26 August 2014. It looked at how Rotherham Metropolitan Borough Council's Children's Services dealt with child sexual exploitation cases.
- 4.3 The outcome of these reports and other cases undertaken recently into the actions of agencies involved in preventing child sexual exploitation has identified the prominent role of licensed drivers in child sexual exploitation issues as a 'common thread' across England.
- 4.4 Criticisms have been levied against local licensing authorities such as 'institutionalised political correctness, affecting decision-making on sensitive issues; [not] undertaking sufficient liaisons with other agencies, particularly the police, local health partners, and the safeguarding board and whether sufficient steps are taken to ensure only 'fit and proper persons' are permitted to hold a taxi licence'.
- 4.5 It is important therefore to ensure that the procedures and processes all local licensing authorities have in place to address this important area of concern are robust and ensure that as much as possible is done to try and eliminate or at least reduce the incidence of child sexual exploitation from occurring.

- 4.6 The link between the taxi trade and child sexual exploitation casts a shadow over the law abiding drivers who make their living from the taxi trade. Regulating the taxi licensing process more effectively in this regard is not only to protect potential victims from unscrupulous drivers but also to protect those drivers who can be damned by association; the need to protect the Council from negative scrutiny of its own licensing administration process also vindicates the need for the review undertaken to have been carried out.
- 4.7 It is understood that Casey has also made a recommendation to Central Government that all local authorities should be audited against the findings set out in the report. If this happens, the likelihood is that those authorities that have experienced recent cases of child sexual exploitation will be targeted first. This could include Derby because of the work undertaken as part of Operation Retriever. This was a high profile child sexual exploitation case that culminated in a number of convictions.
- 4.8 In order to understand the situation as it applies to Derby, officers have undertaken a review of the Casey Report and identified the specific recommendations that have been made in relation to taxi licensing. These have been considered and officers have assessed them against how they relate to the current situation in Derby. Officers have identified a number of actions and recommendations that they believe are necessary. This information is attached at Appendix 2.
- 4.9 As part of the review process, an Inter-Departmental Licensing (Safeguarding) Information Sharing Protocol has been produced and is attached at Appendix 3. Its aim is to legitimise and better facilitate the sharing of appropriate and relevant information, received from whatever source including those external of the Council, between services within the Council that include not just the licensing team but also housing, the Safeguarding Children Board/CYP and School Transport.
- 4.10 As part of the review process, the Taxi Licensing Sub Committee Guidelines have also been revised and delegated powers to officers have been increased to include dealing with applicants and existing licence holders who are subject to immigration controls, and are attached at Appendix 4.
- 4.11 As part of the review process, the make-up and size of Sub-Committees has been revised and members are asked to recommend to Council an amendment to the Constitution to increase the number of Members who sit on sub-committee meetings from three to five and also to restrict those Members that have previously held taxi licences from sitting on Licensing Committee. In addition to these, it is also proposed that rather than agreeing membership of each Sub-Committee at the start of the year, the previous practice of canvassing for names for each committee where there are vacancies will be re-introduced.

- 4.12 As part of the review process, members are also asked to recommend to the Monitoring Officer amendments to the Member code of conduct to incorporate the changes raised in Casey Report in relation to Members influencing individual cases and licensing policy and include restricting:
- contact from Members the purpose of which is to influence the processing of individual applications
 - Members making representations on behalf of the trade or individual drivers at sub-committee hearings
 - diluting regulatory standards after representations from the trade
- 4.13 As part of the review process, a new range of data sets will also now be held which will include Member interventions, detailed records of voting patterns at Sub-Committee hearings, Member attendance, the incidents of non-adherence to officer guidelines and a record of the reasons why departures occurred.

4.14 A number of changes and recommendations have been either undertaken or set out for consideration. For clarification, they are set out below:

- A Multi-agency Licensing (Safeguarding) Information Sharing Protocol has been drafted to be approved.
- Member training has been reviewed and delivered. A further presentation to Committee is being planned for the meeting in September 2015.
- Changes to the make-up and size of Sub-Committees have been proposed which seek approval to amend the Constitution to increase the number of Members who sit on sub-committee meetings from three to five and also to restrict those Members that have previously held taxi licences from sitting on Licensing Committee. Also, rather than agreeing membership of each Sub-Committee at the start of the year, the previous practice of canvassing for names for each committee where there are vacancies will be re-introduced. In addition, approval is sought to amend the Constitution to delegate powers to officers dealing with applicants and existing licence holders who are subject to immigration controls
- Officer recommendations to Sub-Committees have been re-introduced.
- The Taxi Licensing Sub-Committee Guidelines have been revised to be approved.
- Approval is sought to recommend to the Monitoring Officer amendments to the Member code of conduct to incorporate the changes raised in Casey Report in relation to Members influencing individual cases and licensing policy and include restricting:
 - contact from Members the purpose of which is to influence the processing of individual applications
 - Members making representations on behalf of the trade or individual drivers at sub-committee hearings
 - diluting regulatory standards after representations from the trade
- Taxi Licensing issues are now being included on agenda at the Responsible Authorities Meeting Group
- A new range of data sets will also now be held which will include Member interventions, detailed records of voting patterns at Sub-Committee hearings, Member attendance, the incidents of non-adherence to officer guidelines and a record of the reasons why departures occurred.

OTHER OPTIONS CONSIDERED

- 5.1 None. The recommendations set out in the report are necessary, in the overriding public interest.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Olu Idowu – 01332 643615 n/a n/a n/a John Tomlinson – 01332 n/a
For more information contact: Background papers: List of appendices:	Michael Kay 01332 641940 michael.kay@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Rotherham Report - Potential Implications for Derby Appendix 3 – Inter-Departmental Licensing (Safeguarding) Information Sharing Protocol Appendix 4 – Revised Taxi Licensing Sub Committee Guidelines

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IMPLICATIONS

Financial and Value for Money

- 1.1 None arising from this report.

Legal

- 2.1 The Council's statutory obligation as licensing administrator is to safeguard the overall public interest. The effect of the Jay and Casey reports, the latter in particular, in identifying a national common thread between taxi licensing and child sexual exploitation, oblige the comprehensive review of the Council's licensing administration system.

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 The proposals set out ensure that the Council's taxi licensing administration processes are sufficiently robust and adequately safeguard the wider public interest.

Environmental Sustainability

- 7.1 None arising from this report.

Property and Asset Management

- 8.1 None arising from this report.

Risk Management

- 9.1 The proposals set out ensure that any risks associated with the Council's taxi licensing administration processes are sufficiently managed to adequately safeguard the wider public interest. The Council will monitor the risks associated with the function and horizon scan to identify potential new risks.

- 9.2 The proposals take account of the Council's safeguarding responsibilities, particularly in relation to children, young people and vulnerable adults and strengthen this element to reflect best practice.
- 9.3 The proposals minimise the risk to the public by providing greater confidence in the system for assessing whether a person is a 'fit and proper individual' to drive a taxi.

Corporate objectives and priorities for change

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

Appendix 2

Rotherham Report - Potential Implications for Derby		
Issue Raised in Rotherham Report	Derby Situation	Recommendations
Refusal to accept a link with CSE is hampering its ability to take effective action, investigate complaints properly, share intelligence appropriately or contribute to building a composite picture enabling others to take action (includes institutionalised political correctness).	There is a comprehensive multi-agency strategy which sits under the children's safeguarding board and an operational working structure which works well to address risk for individuals. More work is needed to ensure the licensing service is integrated into the joined-up, strategic approach to CSE.	<p>Review the role of the licensing service in the strategic approach to CSE. This has been done and the licensing service will now be included in strategic meetings for CSE.</p> <p>A Multi-agency Licensing (Safeguarding) Information Sharing Protocol has been drafted and is currently being consulted on with partners. This will be considered by Licensing Committee on 2 July 2015.</p>
Inadequate Policy/Procedure/Guidance/Practice to ensure that only fit and proper individuals are licensed as taxi drivers.	We have a wide range of policies, etc. These are under review following the Rotherham Report.	Review and update where necessary Policy, Procedure, Guidance, Practice. This is currently underway and will be considered by Licensing Committee on 2 July 2015.
Poor Decisions by Licensing Boards (Sub-Committee) includes inconsistency between boards and individual members, avoiding	There is some evidence of similar problems in Derby.	Review training for members. This has been completed and has been delivered during June 2015.

difficult decisions, not putting public safety first, not considering non-conviction evidence or driver conduct.		<p>Review make-up and size of sub-committees. Proposals will be considered by Licensing Committee on 2 July 2015.</p> <p>Re-introduce officer recommendations. This has already been implemented.</p> <p>Update Member Guidelines. This is currently underway and will be considered by Licensing Committee on 2 July 2015.</p>
Inadequate complaint investigation. Lack of tenacity. Not obtaining all the evidence available. Balance of Probability vs. Beyond Reasonable Doubt. Not always accepting a complainant's version of events. A tendency to deal with matters informally.	Not seen as a particular problem in Derby. All complaints are investigated. Only cases of concern are referred to Members.	Review investigation process. This is currently being undertaken.
Inadequate consideration of complaints by Licensing Boards, including inconsistent cross-examination of drivers, reluctance to hear cases where a complainant won't attend, reluctance to believe complainants (giving drivers the benefit of the doubt), ignoring legal advice.	There is some evidence of similar problems in Derby.	<p>Review training for members. This has been completed and has been delivered during June 2015.</p> <p>Review make-up and size of sub-committees. Proposals will be considered by Licensing Committee on 2 July 2015.</p> <p>Re-introduce officer recommendations.</p>

		<p>This has already been implemented.</p> <p>Update Member Guidelines. This is currently underway and will be considered by Licensing Committee on 2 July 2015.</p>
<p>The need for mandatory Member Training including CSE and Committee Guidelines.</p>	<p>Already in place in Derby.</p>	<p>Develop enhanced CSE elements of Member Training. This has been completed and has been delivered during June 2015.</p> <p>Review information on Committee Guidelines. This is currently underway and will be considered by Licensing Committee on 2 July 2015.</p>
<p>Members influencing individual cases and licensing policy including:</p> <ul style="list-style-type: none"> • those who had previously held taxi licences sat on the Licensing Board • phone calls from Members over perceived delays in the processing of individual applications • Members making representations on 	<p>There is some evidence of similar problems in Derby. There have also been cases where Members have been lobbied by the driver before the case is heard. There is also evidence that drivers fail to attend specific panel meetings in order to ensure their case is heard by a particular panel.</p>	<p>Review make-up and size of sub-committees, including restricting those Members that have previously held taxi licences from sitting on Licensing Committee. Proposals will be considered by Licensing Committee on 2 July 2015.</p> <p>Reinforce Member code of conduct at Member Training. This has been completed and has been delivered during June 2015.</p>

<p>behalf of the trade or individual drivers.</p> <ul style="list-style-type: none"> • Incidence of diluting standards after representations from the trade and a Member intervention 		<p>Review Member code of conduct to address issues raised in Casey Report. Proposals will be considered by Licensing Committee on 2 July 2015.</p>
<p>Inadequate information sharing on CSE between partners.</p>	<p>There have been problems in Derby in the past with the sharing of information between some partners and the licensing service. The situation is improving. Still more work needed to ensure the licensing service is integrated into the joined-up, strategic approach to CSE.</p>	<p>Develop Information Sharing Protocol and associated procedures. A Multi-agency Licensing (Safeguarding) Information Sharing Protocol has been drafted and is currently being consulted on with partners. This will be considered by Licensing Committee on 2 July 2015.</p> <p>Taxi Licensing issues included on agenda at RAM Group. This is now being undertaken.</p>

Inter-Departmental Licensing (Safeguarding) Information Sharing Protocol

Document owner	Derby City Council Licensing Team
Document enquiry point	Michael Kay, Derby City Council
Document authoriser	John Tomlinson, Derby City Council
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This information sharing Protocol has been registered with
Derby City Council's Data Protection Manager

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1.	Context
1.1	No single agency has sole responsibility for ensuring that appropriate arrangements are in place to safeguard children and vulnerable adults. A number of agencies have statutory duties to protect these client groups and without clear agreement on the respective roles and responsibilities, there is the potential for ineffective information sharing and duplication of effort. This could place these client groups in vulnerable situations, arising from the conduct of licence holders and their known associates.
1.2	Within the Council, there are a number of Departments that play a key role in this process and the purpose of this information sharing protocol is to enable safe decisions to be made by licensing committee and associated services in the Council.
1.3	The outcome of a number of reports undertaken recently in Rotherham and Oxfordshire into the actions of agencies involved in preventing in particular child sexual exploitation has identified the prominent role of licensed drivers in child sexual exploitation issues as a 'common thread' across England. This has led to criticisms such as 'institutionalised political correctness, affecting decision-making on sensitive issues; undertaking sufficient liaisons with other agencies, particularly the police, local health partners, and the safeguarding board and whether sufficient steps are taken to ensure only 'fit and proper persons' are permitted to hold a taxi licence'.
1.4	This link between the taxi trade and child sexual exploitation casts a shadow over the vast majority of law abiding drivers who make their living from the taxi trade. So regulating taxis effectively is not only to protect potential victims from unscrupulous drivers but also for the drivers who can be damned by association.
2.	List of internal Departmental Partners
2.1	<p>This Protocol covers information that will be shared between the internal Departments of Derby City Council detailed below:</p> <ul style="list-style-type: none"> • Derby City Council Licensing Team • Derby City Council Children and Young Peoples Directorate • Derby City Council Adults Health and Housing Directorate • Derby City Safeguarding Children Board • Derby City and Neighbourhood Partnership • Derby City Council School Transport Team
3.	Information to be shared
	Partners to the Agreement agree to exchange relevant information which may include:-
3.1	<p>Non-personal data</p> <p>This is information that does not, nor has ever, referred to individuals. It will often be aggregated data derived from personal, non-personal and depersonalised data, for</p>

	<p>example, the total number of complaints received regarding inappropriate sexualised behaviour by licence holders in a given month.</p> <p>Signatories understand that non-personal data held may be subject to the provisions of the Freedom of Information Act 2000, and there may be a duty to disclose this data to a third party if a request is made under the Act.</p> <p>Signatories can use non-personal data for mapping purposes within the remit of the Crime and Disorder Act 1998.</p>
3.2	<p>Depersonalised data</p> <p>This is information that does not and cannot be used to establish the identity of a living person, having had all personal identifiers removed.</p> <p>Signatories accept that there are no legal restrictions on the exchange of depersonalised data. This can be freely exchanged within each Partner department's policies and procedures without concern¹.</p>
3.3	<p>Personal and sensitive data</p> <p>Personal data is that which relates to a living individual who can be identified from the information. Sensitive data is personal data which falls into any of the following categories:</p> <ul style="list-style-type: none"> • The racial or ethnic origin of the data subject • The data subject's political opinions • The data subject's religious beliefs or other beliefs of a similar nature • Whether the data subject is a member of a trade union • The data subject's physical or mental health or condition • The data subject's sexual life • Commission or alleged commission by the data subject of any offence • Any proceedings for any offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings <p>A key element of effective public protection is the sharing of accurate, relevant and up to date information between partners that can be used to effectively identify, assess and manage the risk of individual persons who are at risk of causing serious harm to others. There are also both preventative and proactive opportunities from partners working together.</p> <p>The Data Protection Act requires that personal data is obtained, held, processed and disclosed fairly and lawfully; data should therefore only be processed and disclosed for necessary and proportionate purposes; such data must be accurate, relevant, and held for no longer than is necessary; and must be kept securely.</p> <p>It is recognised that for the purposes of the Inter-Departmental Licensing (Safeguarding) Information Sharing Protocol, it is necessary for all Partners to share</p>

¹ A duty of confidence may apply in certain circumstances, or a copyright, contractual or other legal restriction may prevent the information being disclosed to partners. This is to be decided on a case by case basis by the disclosing agency.

	<p>information which constitutes ‘personal data’ and ‘sensitive personal data’ under the provisions of the Data Protection Act 1998.</p> <p>Partners will be expected to disclose to each other any information that has a direct bearing on the identification, assessment and management of individuals involved in or suspected of being involved in safeguarding issues, including details of their known associates.</p> <p>Only sufficient information will be disclosed to help Partners to carry out the relevant processing for which the data is required. This will be determined on a case by case basis, through negotiation between disclosing and receiving Partners where necessary.</p>
4.	Purpose of information sharing
4.1	<p>The information will only be exchanged where necessary for the purpose of identifying, assessing, investigating and managing safeguarding allegations by licence holders and their known associates, and other associated risks. It will be used to ensure effective mechanisms are in place to identify, prevent, deter or otherwise assist in the proper investigation of safeguarding allegations by licence holders or their known associates.</p>
5.	Basis for information sharing
	Information will be shared under the following provisions:
5.1	<p>Section 115 Crime and Disorder Act provides that any person can lawfully disclose information where necessary or expedient for the purposes of any provision of the Act, to a chief officer of police, a police authority, local authorities or health authority, even if they do not otherwise have this power.</p> <p>This power also covers disclosure to people acting on behalf of any of the above named bodies.</p> <p>Any disclosure whether under Section 115 or under previous common law or statutory powers, must have regard to common law (the duty of confidence etc.) and any statutory restrictions on disclosure including data protection legislation.</p> <p>This legislation includes the data protection principles, which require that personal data are obtained, processed and disclosed fairly and lawfully: are processed and disclosed only for certain purposes; are accurate, relevant, and held no longer than necessary; and are kept securely.</p>
5.2	<p><i>Common law Duty of Confidence</i></p> <p>Although Section 115 ensures that lawful powers are available to all Partners to share information, for the disclosure of information to relevant authorities for the purposes of the Act, all Partners must still have regard to the law of confidence. This means that anyone proposing to disclose information not publicly available and obtained in circumstances giving rise to a duty of confidence will need to establish</p>

	<p>whether there is an overriding justification for doing so. If not, it is still necessary to obtain the informed consent of the person who supplied the information. This will need to be assessed on a case by case basis and legal advice should be sought in case of any doubt.</p>
5.3	<p><u>The Council²</u></p> <p>The Council meets the requirements of Schedule 2 of the Data Protection Act 1998 for the processing of personal data by virtue of Paragraphs 4 and 5(d) as the processing is necessary:</p> <ul style="list-style-type: none"> • in order to protect the vital interests of the data subject • for the exercise of any other functions of a public nature exercised in the public interest by any person <p>The Council also meets the requirements of Schedule 3 of the Data Protection Act 1998 by virtue of Paragraph 10 where the personal data is processed in circumstances specified in an order made by the Secretary of State. These circumstances are set out in The Data Protection (Processing of Sensitive Personal Data) Order 2000, SI 417/2000, Paragraph 1 of which provides for sensitive personal data to be lawfully processed where the processing:</p> <ul style="list-style-type: none"> • is in the substantial public interest • is necessary for the prevention or detection of any unlawful act; and • must necessarily be carried out without the explicit consent of the Data Subject being sought so as not to prejudice those purposes.
5.4	<p><u>Derby City and Neighbourhood Partnership</u></p> <p>Derby City and Neighbourhood Partnership meet the requirements of Schedules 2 and 3 of the Data Protection Act 1998 for the processing of personal data as each of their respective paragraphs 1 state:</p> <ul style="list-style-type: none"> • the data subject has given his consent to the processing (Schedule 2) • the data subject has given his explicit consent to the processing of the personal data (Schedule 3). <p>These Schedules are incorporated at Appendix A.</p>
5.5	<p>The individual's consent should be absolutely clear. It should cover the specific processing details; the type of information; the purposes of the processing; and any special aspects that may affect the individual, such as any disclosures that may be made.</p>
5.6	<p>It may of course be justifiable not obtaining the Data Subject's consent in certain circumstances and where this applies, the Derby City and Neighbourhood Partnership may legitimately share information by virtue of Paragraph 4 of Schedule</p>

² This incorporates the Council's Licensing Team, School's Transportation Team, Children and Young People Directorate, Adults Health and Housing Directorate and Derby City Safeguarding Childrens Board

	2 (where the processing is necessary in order to protect the vital interests of the Data Subject) and by virtue of Paragraph 2(2) of Schedule 3 & Paragraph 1 of The Data Protection (Processing of Sensitive Personal Data) Order 2000, SI 417/2000 (the processing is in the substantial public interest, is necessary for the purposes of the prevention or detection of any unlawful act and must necessarily be carried out without the explicit consent of the Data Subject being sought so as not to prejudice those purposes).
5.7	Sharing information in order to safeguard children is covered by HM Government Guidance: "Information Sharing: Advice for practitioners providing safeguarding services to children, young people, parents & carers 2015", statutory guidance "Working Together to Safeguard Children 2015" and Children Act 2014 which requires organisations including the Local Authority to have arrangements in place to safeguard and promote the welfare of children. The guidance identifies that information sharing is critical to the safeguarding of children, and "whilst the DPA places duties on organisations and individuals to process personal information fairly and lawfully, it is not a barrier to sharing information where failure to do so would result in a child or vulnerable adult being placed at risk of harm."
6.	Terms of use of the information
6.1	<p>Information shared under this Protocol will be adequate to enable the effective identification, assessment, investigation and management of licence holders and their known associates involved or suspected of involvement in, or at significant risk of being involved in safeguarding issues. All information exchanged will be handled and processed fairly and lawfully and in accordance with the Data Protection Act. Consequently:</p> <ul style="list-style-type: none"> • Information shall only be obtained for the purposes detailed in Section 4 of this Protocol • Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed • Personal data shall be accurate and, where necessary, kept up to date • Personal data shall be kept for no longer than is necessary for that purpose • Personal data shall be processed in accordance with the rights of data subjects under the Act <p>Personal information must be kept secure, with appropriate measures taken against unauthorised or unlawful processing and against accidental loss, destruction or damage to the data.</p>
7.	Data quality assurance
7.1	Information shared must be fit for purpose, which means that it must be adequate, relevant and not contain excessive detail which is beyond that required for the agreed purpose.
7.2	Information discovered to be inaccurate, out-of-date or inadequate for the purposes detailed in section 4 of this Protocol should be notified to the original Partner who

	has provided the information, who will be responsible for correcting the data and notifying all other recipients of the information who in turn must make sure the correction is made.
7.3	Each Partner will keep appropriate records of the sources of information made available to them.
8.	Data retention, review and disposal
8.1	Document retention periods are covered in the Council's document retention policy and for allegations, are until the individual reaches retirement age or 10 yrs, whichever is the longer.
9.	Access and security
9.1	Each Partner will make sure that appropriate technical and organisational measures are taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
9.2	Access to information subject to this Protocol will only be granted to those professionals who 'need to know' in order to effectively discharge their duties. Information will only be communicated through the agreed, documented channels.
9.3	Personal data will be stored securely within a password protected case management database.
10.	General Operational Guidance/Process
10.1	All Partners acknowledge and agree that the Information held will be processed fairly and lawfully in accordance with the principles of the Data Protection Act.
10.2	All complaints or breaches relative to this Protocol will be notified to the designated Data Protection Manager of the relevant Partner organisation in accordance with their own policy and procedures.
11.	Management of the Protocol
11.1	Derby City Council's Licensing Team is responsible for making sure that this Protocol is kept up-to-date to take account of any changes to legislation, case law or government and professional guidance.
11.2	This Protocol will be reviewed in June 2017 and every 2 years thereafter. Any changes will be notified to all Partners in writing within 28 days of a relevant change having been made.
12.	Requests for information
12.1	Any Partner who receives a request for information under the subject access provisions of the Data Protection Act 1998 or Freedom of Information Act 2000, must

	progress it in accordance with its own internal procedures.			
12.2	However, it is expected that Data Protection and Freedom of Information Officers in originating agencies will liaise with other Partner Data Protection and Freedom of Information Officers as necessary to agree on relevant exemptions from disclosure.			
13.	Version History			
13.1		Date issued	Version	Status
		March 2015	1.0	Draft
		June 2015	1.1	Draft
				Amendments to remove reference to external partner. Clarification that policy intended to focus on inter - departmental sharing.

Appendix A - Data Protection Act 1998 Schedule 2 and 3

Schedule 2 Conditions relevant to processing any personal data

- a) The data subject has given consent to the processing
- b) The processing is necessary:
 - for the performance of a contract to which the data subject is a party or
 - taking steps at the request of the data subject with a view to entering into a contract.
- c) The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
- d) The processing is necessary in order to protect the vital interests of the data subject.
- e) The processing is necessary for the:
 - administration of justice.
 - exercise of any functions conferred on any person by or under any enactment.
 - exercise of any functions of the Crown, a Minister of the Crown or a government department or
 - exercise of any other functions of a public nature exercised in the public interest by any person.

Schedule 3 Conditions relevant to processing sensitive personal data

- a) The data subject has given explicit consent to the processing of the personal data.
- b) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
- c) The processing is necessary:
 - in order to protect the vital interests of the data subject or another person , in a case where consent cannot be given by or on behalf of the data subject, or the data controller cannot reasonably be expected to obtain the consent of the data subject; or
 - in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
- d) The processing is:
 - carried out in the course of its legitimate activities by anybody or association which is not established or conducted for profit, and exists for political, philosophical, religious or trade-union purposes.
 - carried out with appropriate safeguards for the rights and freedoms of data subjects
 - relates only to individuals who are either members of the body or association or have regular contact with it in connection with its purposes and
 - does not involve disclosure of the personal data to a third party without the consent of the data subject.

e) The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

f) The processing is:

- necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings)
- necessary for the purpose of obtaining legal advice, or
- is otherwise necessary for the purpose of establishing, exercising or defending legal rights.

g) The processing is necessary:

- for the administration of justice
- for the exercise of any functions conferred on any person by or under any enactment or for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

h) The processing is necessary for medical purposes and is undertaken by:

- a health professional
- a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

i) The processing:

- is of sensitive personal data consisting of information as to racial or ethnic origin,
- is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to such equality to be promoted or maintained and
- is carried out with appropriate safeguards for the rights and freedoms of data subjects.

Appendix B - Designated Contact Details

Derby City Council Licensing Team	<p>Head of Environmental Health and Licensing The Council House Corporation Street Derby DE1 2FS</p> <p>Tel. 01332 641940 Email. michael.kay@derby.gov.uk</p>
Derby City Council Children and Young People Directorate Derby Safeguarding Children Board	<p>Head of Service - Quality Assurance Children and Young Peoples Department Eastmead 107 Duffield Road Derby DE22 1AE</p> <p>Tel. 01332 717809 Email. nina.martin@derby.gov.uk</p>
Derby City Council Adult Health and Housing Directorate	<p>Head of Housing Management and Housing Options Derby Homes Limited 839 London Road Derby DE24 8UZ</p> <p>Tel. 01332 888596 Email. clare.mehrbani@derby.gov.uk</p>
Derby City Council City and Neighbourhood Partnership	<p>Head of Service - Partnerships and Communities The Council House Corporation Street Derby DE1 2FS</p> <p>Tel. 01332 643020 Email. andy.thomas@derby.gov.uk</p>
Derby City Council School Transport Team	<p>Head of Traffic and Transportation The Council House Corporation Street Derby DE1 2FS</p> <p>Tel. 01332 641821 Email. david.gartside@derby.gov.uk</p>

Appendix C - Inter-Departmental Licensing Information Sharing Guidance

1.	Introduction
1.1	The purpose of this guidance is to set out in more detail the operational aspects of sharing information between internal Council departments in relation to the determination of a licence issued by the Council.
2.	Information sharing – From Police
2.1	As part of a licensing application, the applicant must have an up to date DBS check.
2.2	The Police, through their local DBS team, will share information held on their system in relation to applicants or premises with the Licensing Team, in accordance with the regulations and on the decision of the Chief Constable. This is on the basis of its relevance to the workforce applied to. The Police DBS team are aware of relevant safeguarding issues and will ensure that necessary information is released in a form of words which also ensures compliance with regulations. Source documents will not be supplied.
2.3	Where the interpretation of this is unclear, the Licensing team may approach their contact in the Police DBS team for clarification, but only the wording on the DBS may be used in the material presented to panel.
2.4	The Police DBS team will also have safeguarding information on Police records, e.g. allegations, child protection conferences, etc. and will write to Safeguarding for confirmation and/or further details as necessary. This then becomes available to Licensing, and the applicant, on the DBS check.
2.5	The Police DBS team can supply more information where a post is specifically working with children, e.g. taxi drivers under a schools contract. This should be identified on the DBS form.
2.6	The outcome of the DBS check is sent to the applicant, with an opportunity to use the dispute process if they consider any of the information is inaccurate. Thus if the applicant supplies a DBS check to the Licensing team, it may be safely assumed that the applicant is satisfied it is correct. If an applicant refutes or challenges the content of the DBS or Safeguarding summary, they should be referred back to the original service to use the relevant appeal process. A Licensing Sub Committee is not the forum to dispute the content of a DBS. Furthermore, it is not for Sub Committee to look behind a conviction, intelligence and/or other safeguarding based information.
2.7	The Police will also pass on information to the Licensing team if a taxi driver or other licensee is arrested for an offence relevant to the work.
3.	Information sharing – From Social Care incl. Local Authority Designated Officer (LADO)
3.1	Significant safeguarding information will be identified through the DBS check, with no need for routine checking directly with Safeguarding.
3.2	In the event DBS raise a safeguarding issue, the Licensing team may contact

	Safeguarding to request clarification and interpretation. Safeguarding will put in writing a brief summary and an interpretation of the implications of this for the licensing application from a safeguarding perspective. The wording of this will allow sharing with the applicant and Committee. They will not supply copies of documents or details of any investigations or allegations, but will consider what information can & should be shared. The Licensing Team may approach their point of contact for discussion/clarification if necessary.
3.3	When the LADO is investigating an allegation against a taxi driver or other licensee, which may be relevant to their role, they will inform and consult with Licensing and if applicable invite them to any LADO strategy meeting. They will also supply information to Licensing about the outcome of an investigation, where relevant, if they later become aware an individual is a taxi driver.
3.4	Individuals, whether employed or self-employed will have been informed about the allegation. Where they refute the allegation there is opportunity for them to make representations and to appeal or complain about the outcome, either to the LADO or to their employer. The Licensing panel is not the forum for an applicant to dispute the outcome of a LADO investigation.
4.	Presenting information to Licensing Committee & Applicant
4.1	Information about applicants comes to Licensing Sub Committee in the form of reports from the Licensing Team. They will also have the DBS check and, where applicable, the safeguarding summary. These reports, and all other information to the Sub Committee, are also available to the applicant.
4.2	The Licensing team will include and evaluate this information in their report, and make a recommendation to Panel. They may consult with DBS and Safeguarding about their evaluation and recommendation, if necessary. The report should include whether the applicant has disputed or appealed either the process and/or the outcome, and how Sub Committee may then interpret this.
4.3	If the Licensing Team believe information may have been omitted by either DBS or Safeguarding, or they have conflicting information, they should clarify this with the respective service at the earliest opportunity and certainly before the application is submitted to Panel.

TAXI LICENSING SUB-COMMITTEE GUIDELINES

APPLICATIONS FOR HACKNEY CARRIAGE DRIVERS, PRIVATE HIRE DRIVERS AND PRIVATE HIRE OPERATORS (AND LICENCES FOR EXISTING HOLDERS)

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Revised: June 2015

**TAXI LICENSING SUB-COMMITTEE'S GUIDELINES IN CONSIDERING
APPLICATIONS FOR HACKNEY CARRIAGE DRIVERS, PRIVATE HIRE
DRIVERS AND PRIVATE HIRE OPERATOR LICENCES AND THE
LICENCES OF EXISTING DRIVERS**

1. Introduction

- 1.1 This document sets out the guidelines adopted by Derby City Council in respect of the consideration of whether an applicant is “fit and proper” to hold a hackney carriage or private hire driver’s licence or a private hire operator licence.
- 1.2 The aim of the updated guidelines is to provide guidance and assistance to Officers and the Members of the Taxi Licensing Sub-Committee on the way in which an applicant’s fitness to hold such a licence should be considered.
- 1.3 This document is an update to the member guidelines of April 2010. It is in part also in response to the recent national examples of licenced vehicle drivers and/ operators being involved in the sexual exploitation of children.

2. REFERRAL TO THE SUB-COMMITTEE

- 2.1 The Service Director for Environment & Regulatory Services has delegated powers to issue licences in respect of hackney carriage drivers, private hire drivers and private hire operators.
- 2.2 The Service Director for Environment & Regulatory Services only has power to refuse such licences where an applicant has failed his knowledge test or is currently disqualified from driving or is subject to immigration control. The Service Director for Environment & Regulatory Services has the power to revoke an existing driver's licence where the licence-holder is disqualified from driving and no longer holds a licence under Part III of the Road Traffic Act 1998, authorising him to drive a motor vehicle or is subject to immigration control.
- 2.3 Subject to 2.6 below, the Service Director for Environment and Regulatory Services **must** refer to an appropriate Sub-committee all applications or changes in the circumstances of an existing licence-holder which identify
- (i) Any offence of dishonesty, indecency, violence, drunkenness or involving the use of drugs, or the carriage of drugs in vehicles; or
 - (ii) Any traffic offences in the past three years, if the total number of penalty points exceeds nine; or
 - (iii) A traffic offence, in the past ten years, which resulted in disqualification from driving; or

- (iv) Any offence under the hackney carriage or private hire licensing legislation; or
- (v) That in any rolling 12 month period, a licensed vehicle has been stopped and/or inspected on two or more occasions to determine its condition to remain on the road, and has been suspended as a result of such inspections. Inspections for this purpose are not limited to those undertaken solely by the Council's Enforcement Officers but also those undertaken by the Police or VOSA or a combination of any of the three.

2.4 The Service Director for Environment & Regulatory Services **may** refer to an appropriate sub-committee any complaints, applications, or changes in the circumstances of licence-holders which identify:

- Allegations which reflect upon the person's conduct or behaviour
- Any breach of licensing conditions

2.5 "Urgent" meetings may be convened within a shorter timescale than usual where the circumstances warrant the matter to be dealt with on such a basis.

2.6 The Service Director for Environment & Regulatory Services is authorised to approve applications for new licences or renewals in cases where criminal and driving convictions are all more than ten years old, except in the following circumstances when the matter must be referred to a sub-committee:

- Where the applicant has a conviction for an indictable only offence;
- Where the applicant has a conviction for a serious sexual offence; or
- Where the convictions are all more than 10 years old and fall outside of the above but it is considered in the circumstances to justify refusal.

3. ROLE OF THE SUB-COMMITTEE

- 3.1 For the purposes of its licensing functions, the sub-committee acts as an impartial quasi-judicial Licensing Authority. Its role is to determine whether licences should be granted, renewed or in cases where a licence holder's conduct falls below the standards expected by the Authority to revoke, suspend and/ or refer for training, or warn such licence holder.
- 3.2 The General Licensing Committee is made up of 15 elected members, for sub-committee hearings members sit in a panel of five. The Casey Report on Rotherham identified the potential for previous licence holders to exert undue influence on their peers when sitting in committee or as a sub-committee, and how this creates the potential for perceived bias. In recognition of this and to demonstrate transparency and unbiased decision making, Derby City Council does not allow any previously licenced drivers or operators to sit on the General Licensing Committee. This is a new requirement which in due course will be reflected in a revised Member's Code of Conduct.
- 3.3 In hearing matters, sufficient opportunity should be given to the applicant/ licence holder, and to the Council's Licensing Team's representatives, to present their cases fully. Should the applicant not attend the sub-committee hearing without a valid reason given to the Licensing Authority then consideration will be given to hearing the matter in their absence.

- 3.4 Both the applicant/ licence holder and the Licensing Team's representatives may ask questions of each other, or may be asked questions by the members of the sub-committee.
- 3.5 Questioning should be non-adversarial. It must be remembered that the purpose of the hearing is to hear both sides' version of events about the circumstances giving rise to the matter or complaint. If a person is found to be wanting in the standards expected of them, the time to bring this to their attention is when the sub-committee's decision is made known, i.e. not before it has reached a determination on the facts and evidence.
- 3.6 The sub-committee should not discuss the merits/ detriments of the matter in front of either the applicant/ licence holder or the Licensing Team's representatives. Any such discussions should be in closed session.

4. GENERAL GUIDANCE AND POLICY

Must be “fit and proper”

- 4.1 Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 (“The Act”) states that:
- 4.2 “... Council shall not grant a licence to drive a (Private Hire/ Hackney Carriage Vehicle) unless they are satisfied that the person is a fit and proper person to hold a drivers licence. “
- 4.3 Section 61 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator’s licence; if the applicant/ licence holder has been convicted of any offence involving dishonesty, indecency, violence, failure to comply with Part II of the Act; or any other reasonable cause.
- 4.4 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator’s licence: if the applicant/ licence holder has been convicted of any offence under, or non-compliance with Part II of the Act; or any conduct on the part of the operator which appears to render him unfit to hold an operator’s licence; or any material change since the licence was granted, or any other reasonable cause.
- 4.5 The Act therefore clearly demonstrates that a Council may grant a licence only if it is satisfied that the person is “fit and proper” – the onus being on the applicant to prove this, and not for the Council to demonstrate that they are not.

Meaning of “Fit and Proper”

- 4.6 There is no definition of a “fit and proper” person. However in the case of *Leeds City Council v Hussain [2002] EWHC 1145 Admin* helpful guidance is provided to the effect that:
- 4.7 “...the purpose of the power of suspension is to protect the users of the licensed vehicles and those who are driven by them and members of the public. Its purpose[and], therefore[the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 4.8 The overriding consideration of the members of the sub-committee is therefore to protect members of the public. Having considered and applied the appropriate guidelines, the guidance invited the following test should be applied:
- 4.9 “*Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for, or any vulnerable person I know, to get in a vehicle with this person, alone?*”
- 4.10 If the answer is yes, then favourable consideration should be given towards allowing the application to proceed (subject to any other test being completed); or permitting the licence to continue if there is one in force.
- 4.11 If the sub-committee has reasonable doubt, then an application should be refused until that doubt can be allayed through further evidence being supplied or consideration be

given to revocation or suspension of the licence, if there is one in force. It is the applicant's responsibility to provide sufficient evidence to this effect.

Persons refused in the past

4.12 Persons, who have been refused licences in the past, on the grounds that they are not “fit and proper” persons, are not debarred from being granted licences. The sub-committee, however, must be able to justify why that person is now considered to be a “fit and proper” person to hold such a licence when previously they were not. To do this it will be necessary to look at the reasons why the applicant was initially refused, as detailed on the previous decision notice, and then consider what has occurred or changed since to indicate that the applicant may now be fit to hold a licence.

4.13 The time lapse between the applications and any measure that the applicant has put in place between the last appearance and the current appearance (e.g. undertaken training, or rehabilitation, or can demonstrate an increased awareness of the need for accountability) may be relevant considerations to take into account. This list is not exhaustive.

Persons granted in the past

4.14 Similarly, those persons who have been granted licenses in the past have been considered to be “fit and proper” persons to hold a licence. To refuse a renewal of such a licence, there must be a relevant and significant change in circumstances, or new material evidence presented to the sub-committee, to justify refusal.

Treat each application on its own merits

4.15 Each application for a licence should be considered on its own merits and the contents of these guidelines do not bind the Council, its officers or the Committee. Decisions may be made that depart from the guidance herein, if the circumstances of the application warrant doing so. Any decision should be accompanied by full reasons for that decision, and those making the decision should be aware that departing without sufficient reason, or failing to give consideration to such circumstances, may give rise to a judicial review of the decision.

Public Safety Paramount

4.16 The overriding consideration shall always be the safety and protection of passengers and the general public. All other considerations including unemployment, domestic or financial circumstances, must be secondary to the public safety factor. They may be mitigating factors, but must never be allowed to be a primary factor underlining the grant of the licence.

Driving experience

4.17 As required by law, no application for a drivers licence shall be granted unless the applicant has held a full driving licence for at least one year. In addition, applications should not be granted unless the applicant can demonstrate that they have adequate driving experience.

Conduct of the licence holder

4.18 Conduct of licence holders' is relevant in considering the imposition of sanctions on their licence. For this reason, complaints by passengers or the general public must be taken seriously where they show that a licence holder's conduct has fallen below the standard expected of him by the Council (e.g. unreasonable refusal to carry a passenger, or to assist wheel-chair bound passengers, overcharging, rudeness, etc.) This list is not exhaustive. The sub-committee should, when considering these types of complaints, be informed of any history of complaints made against the driver to assess any patterns of behaviour. On the basis of the evidence, the sub-committee should consider whether the driver is a "fit and proper" person to hold, or continue to hold, such a licence.

4.19 A serious view should be taken when a licence holder fails to comply with their driver conditions, especially when they have failed to declare a conviction, caution, fixed penalty notice, warning or having been made subject to a restorative justice disposal. If, during the renewal of a licence, a DBS check or driving licence check reveals an undeclared matter consideration should be given to refusing the application. A further application should not be considered for a period of at least 12 months at which point the new applicant guidelines for the relevant offence should be applied.

Current licence holders

4.20 Where a current licence holder is found to be no longer a "fit and proper" person to hold a licence, a licence must be revoked. If, however it is considered that a person is still a "fit and proper" person to hold such a licence but that his

conduct has fallen below the standard required by the Licensing Authority, the sub-committee may decide to suspend him for such a period of time as it considers fit, and/or refer him for BTEC training, or issue him with a warning.

- 4.21 Where referral for training is the sanction imposed, failure to undertake the training and successfully pass any examination within any stipulated time, without reasonable excuse, may result in the imposition of one of the more severe sanctions (i.e. suspension or revocation) by the sub-committee.
- 4.22 The sub-committee can impose a sanction of BTEC training on an applicant even if that training course has previously been completed and passed by an applicant, if the sub-committee feel that it is the appropriate sanction to impose.

Suspension, training and warnings

- 4.23 The aim of the suspension of a licence, or the referral for BTEC training, is to bring the licence holder who is falling/has fallen below the standard required back into line. It provides an opportunity for reflection by the licence holder and to assess their conduct against acceptable standards.
- 4.24 If, depending on the circumstances of the matter, the sub-committee considers that a warning would be sufficient to enable reflection and self-assessment of conduct then a warning should be preferred to suspension.
- 4.25 Where a licence holder has undergone a course of training relatively proximate to (i.e. with nine months of) the trigger event giving rise to the matter before the sub-committee, a warning may be regarded as an inappropriate and/ineffectual sanction.

4.26 Where on the strength of the facts and/ or evidence before it the sub-committee is of the view that the licence holder presents a threat to public safety, in deciding to suspend or revoke a licence, the sub-committee may also consider whether the suspension or revocation should be with immediate effect. This does not affect the licence holders right to lodge an appeal against the decision. Where this decision is invoked, it is important that the reasons for regarding the licence holder to be a threat are separately recorded, in addition to the substantive decision.

Complaints of the licence holders' standards, conduct or behaviour

4.27 Where evidence of complaints about the standards, conduct or behaviour or other allegations which reflect upon a licence holder are brought before the sub-committee, and the licence holder disputes the allegations, the sub-committee should first consider the extent to which the complaints or allegations are substantiated on the facts made known to it.

4.28 The sub-committee should consider if appropriate and/ or it is in the interest of justice to do so, separation of a complainant and the licence holder during the proceedings.

Reliance on evidence

4.29 In hearing evidence, the sub-committee is not bound by the strict rules of evidence. Care, however should be taken in determining the relevance and admissibility of any evidence put before it. The standard of proof is the "balance of probability", rather than "beyond reasonable doubt".

- 4.30 Where evidence has been presented which is later deemed to be irrelevant or inadmissible, the sub-committee should take care to exclude such from its mind when making its decision.
- 4.31 The sub-committee should be careful to attach the correct weight to evidence presented to it. An independent witness with nothing to gain is more likely to give an unbiased account rather than someone with a personal interest in the case. Corroborative evidence will add weight. If witness evidence (i.e. a statement) is presented without calling the maker then care should be taken in relying upon such evidence in isolation, without further supporting evidence being presented to them.

5. GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS, FIXED PENALTY NOTICES, CAUTIONS, WARNINGS AND BEING MADE SUBJECT TO RESTORATIVE JUSTICE DISPOSALS

5.1 Under the provisions of sections 51, 55 and 59 Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/ or private hire vehicle drivers' licence and/or private hire operator's licence is a "fit and proper" person to hold a licence. However if an applicant has any convictions, cautions, fixed penalty notices, warnings or has been made subject to a restorative justice disposal or has been charged awaiting trial, the Licensing Authority will look into:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) were
- The date of the conviction
- Sentence imposed by the court
- The applicant's age at the time of the conviction
- Whether they form any part of a pattern of offending
- Any other character check considered reasonable (e.g. personal references)

- Any other factors which might be relevant.
- 5.2 The disclosure of any convictions, cautions, fixed penalty notices, warnings or having been made subject to a restorative justice disposal will not necessarily prevent an applicant from being issued a licence. However all such matters will be assessed by the Licensing Authority.
- 5.3 Fixed penalty notices are issued for a wide range of offences including offences of an anti-social nature, including behaviour likely to cause harassment, alarm and distress to others, drunk and disorderly behaviour in a public place, destroying or damaging property up to the value of £500, retail theft under £200. This will be viewed in an appropriate light given the nature and circumstances of the matter.
- 5.4 Cautions and warnings will also be taken into consideration. Although these are generally not as serious as convictions, they can give some indication as to an applicant's character and whether they are a "fit and proper" person to hold, or be granted, a licence. It shall be borne in mind that a caution is given where there is sufficient evidence for a prosecution and guilt has been admitted.
- 5.5 A restorative justice disposal is used for low-level crime, to deal with offenders without bringing them into the Criminal Justice System and allow the victim to say what they would like to come out of the incident. This is often just an acceptance of wrongdoing and an apology being issued.

Matters disclosed which have previously been considered where there is no change in circumstance

- 5.6 Applications for renewal of hackney carriage driver's licences, private hire vehicle driver's licences and private hire operator's driver's licences shall not be refused on the grounds of previous convictions, cautions, fixed penalty notices, warnings or where they have been made subject to a restorative justice disposal, where they have been previously disclosed, with the applicant having been granted a licence, and no further convictions, cautions, fixed penalty notices, warnings or having been made subject to a restorative justice disposal have occurred since the last grant of the licence.

Correctness of conviction not to be questioned

- 5.7 Where evidence of previous convictions are presented to the sub-committee, the sub-committee must accept its validity (i.e. that the applicant was correctly convicted) (*Nottingham City Council v Mohammed Farooq(1998)*). Subject to this, the sub-committee may, however, consider the circumstances of the offence but only in order to determine the level of its severity as a guide to the appropriate sanction, if any which may be merited.
- 5.8 The sentence imposed by the court may be relevant in determining its seriousness. It is, however, important to note that in imposing a fine, the court will take account of the offender's financial ability to repay and therefore the mere fact that a fine was imposed should not be regarded as indicative of the lack of seriousness attached to the offence by the court.

Consideration of spent convictions

- 5.9 The sub-committee can consider convictions which are usually regarded as spent convictions for the purposes of the Rehabilitation of Offenders Act 1974. This only applies however to applicants for hackney carriage licences and private hire vehicle driver's licences i.e. not to operators.
- 5.10 A person with a conviction for a serious crime (i.e. an indictable offence) need not be permanently barred from obtaining a licence, but should be expected to remain free of conviction for between three and fifteen years, depending on the circumstances, before an application may be granted. Some discretion may be appropriate if the offence is isolated **and** there are mitigating circumstances.

6. SPECIFIC GUIDELINES

- 6.1 The following examples afford a general guide on the action to be taken where convictions, cautions, fixed penalty notices, warnings or having been made subject to a restorative justice disposal are admitted or disclosed. The following guidelines are not binding on the authority and it is free to depart from them where the particular circumstances of an individual case make it appropriate to do so.
- 6.2 The following guidelines are not an exhaustive list. There may be occasions when matters come before the Licensing Authority which do not have specific guidance on them. In these circumstances the factors in 5.1 should be considered when coming to a decision.

TAXI LICENSING SUB-COMMITTEE GUIDELINES, SPECIFIC GUIDELINES - APPENDIX 1

A. Traffic Offences

Offences		Committed whilst not licensed by Derby City Council		Committed whilst licensed by Derby City Council		
		Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during which the guideline will apply	Guideline for Applicant (first grant/re-grant)	Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during which the guideline will apply	Guideline for Applicant (Renewal/Re-grant)	Guideline for Licensee (Current licence holder)
A.1	<p>Minor speeding offences up to 3 points.</p> <p>Minor motorway offences.</p> <p>Pedestrian Crossings. Traffic direction and signs.</p> <p>Construction and use offences.</p> <p>Licence offences.</p>	3 years	<p>Grant with verbal warning.</p> <p><i>(Normally delegated to officers)</i></p>	4 years	<p>Grant with verbal warning.</p> <p><i>(Normally delegated to officers)</i></p>	<p>Verbal warning.</p> <p><i>(Normally delegated to officers)</i></p>

	Mobile phone offences. Leaving a vehicle in a dangerous position. Defective eyesight. Causing or likely to cause danger by reason of load or passengers					
A.2	Major speeding offences 4-6 points. Major motorway offences.	3 years	Grant with a written warning.	4 years	Grant with a written warning or grant and suspend for up to 3 months	Written warning or suspend for up to 3 months
A.3	Insurance offences. Disqualified driver offences. Aggravated taking of a vehicle.	3 years	Grant with written warning or grant and suspend for up to 3 months	4 years	Grant with written warning or grant and suspend for up to 4 months	Written warning or suspend for up to 4 months
A.4	Careless driving offence Fail to stop at an accident Failure to report an accident	3 years	Grant with written warning or grant and suspend for up to 3 months	4 years	Grant with written warning or grant and suspend for up to 6 months	Written warning or suspend for up to 6 months
A.5	Disqualification due to totting up	2 years from end of disqualification period	Refuse.	3 years from the end of disqualification period	Refuse	Revoke
A.6	Reckless/ Dangerous Driving	3 years.	Refuse.	4 years.	Refuse	Revoke

	offences					
A.7	Drink or Drugs driving offences	4 years.	Refuse.	5 years.	Refuse	Revoke.
A.8	Causing death by driving unlicensed, disqualified or uninsured drivers	7 years	Refuse	8 years	Refuse	Revoke

B. Drug offences

Offences		Committed whilst not licensed by Derby City Council		Committed whilst licensed by Derby City Council		
		Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during which the guideline will apply	Guideline for Applicant (first grant/ re-grant)	Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during which the guideline will apply	Guideline for Applicant (Renewal/ Re-grant)	Guideline for Licensee (Current licence holder)
B.1	Possession of a controlled drug	4 years	Grant and suspend for up to four months or	5 years	Grant and suspend for up to 6 months or refuse	Grant and suspend for up to 6 months or revoke.

			refuse			
B.2	Permitting premises to be used	7 years	Refuse	8 years	Refuse	Revoke
B.3	Cultivation of cannabis plant	7 years	Refuse	8 years	Refuse	Revoke
B.4	Production of a controlled drug	7 years	Refuse	8 years	Refuse	Revoke
B.5	Possession of a controlled drug with intent to supply it to another	7 years	Refuse	8 years	Refuse	Revoke
B.6	Supplying or offering to supply a controlled drug	7 years	Refuse	8 years	Refuse	Revoke
B.7	Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug	7 years	Refuse	8 years	Refuse	Revoke

C. Sexual Offences

Derby City Council will not normally grant a licence to any applicant who is currently on the Sex Offenders Register

Offences	Committed whilst not licenced by Derby City Council		Committed whilst licenced by Derby City Council		
	Period since conviction, caution or completion of custodial sentence, fixed penalty notice,	Guideline for Applicant (first grant/ re-grant)	Period since conviction, caution or completion of custodial sentence, fixed penalty notice,	Guideline for Applicant (Renewal/ Re-grant)	Guideline for Licensee (Current licence holder)

		warning or being made subject to a restorative justice disposal during which the guideline will apply		warning or being made subject to a restorative justice disposal during which the guideline will apply		
C.1	Any sexual offence	10 years	Refuse	15 years	Refuse	Revoke
C.2	Sexual offences involving a minor (including involvement in the exploitation of minors/ vulnerable adults	10 years	Refuse	15 years	Refuse	Revoke

D. Violent Offences

Offences	Committed whilst not licensed by Derby City Council		Committed whilst licensed by Derby City Council		
	Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during	Guideline for Applicant (first grant/ re-grant)	Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal	Guideline for Applicant (Renewal/ Re-grant)	Guideline for Licensee (Current licence holder)

		which the guideline will apply		during which the guideline will apply		
D.1	Assault/ battery	4 years.	Grant and suspend for up to four months or refuse	5 years	Grant and suspend for up to 6 months or refuse	Grant and suspend for up to 6 months or revoke.
D.2	Grievous Bodily Harm	5 years	Refuse	6 years	Refuse	Revoke
D.3	Wounding	5 years	Refuse	6 years	Refuse	Revoke
D.4	Threats to kill	7 years	Refuse	8 years	Refuse	Revoke
D.5	Manslaughter/ Murder	10 years	Refuse	15 years	Refuse	Revoke

E. Dishonesty Offences

Offences E.g. Theft, burglary, handling, fraud, benefit fraud, forgery, deception, making a false statement, using a conveyance without authority, etc.	Committed whilst not licensed by Derby City Council		Committed whilst licensed by Derby City Council		
	Period since conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a	Guideline for Applicant (first grant/ re-grant)	Period since conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to	Guideline for Applicant (Renewal/ Re-grant)	Guideline for Licensee (Current licence holder)

		restorative justice disposal during which the guideline will apply		a restorative justice disposal during which the guideline will apply		
E.1	Any dishonesty offence where a non-custodial sentence was imposed.	3 years.	Grant and suspend for up to 4 months or refuse	4 years	Grant and suspend for up to 6 months or refuse	Suspend for up to 6 months or revoke
E.2	Any dishonesty offence where a custodial sentence was imposed.	4 years	Refuse	5 years	Refuse	Revoke

F. Hackney Carriage/ Private Hire Offences

Offences, etc. Covered by the:-		Committed whilst not licenced by Derby City Council		Committed whilst licenced by Derby City Council		
Local Government (Miscellaneous Provisions) Act 1976 Town Police Causes Act 1847 Any relevant Derby City Council By-law or breach of licence condition		Period since non-custodial conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during which the guideline will apply	Guideline for Applicant (first grant/ re-grant)	Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during which the guideline will apply	Guideline for Applicant (Renewal/ Re-grant)	Guideline for Licensee (Current licence holder)
F.1	Any other contravention not mentioned below	3 years	Grant with written warning or grant and suspend for up to 3 years	3 years	Grant with written warning or grant and suspend for up to 3 months	Written warning or suspend for up to 3 months
F.2	Plying for hire when licenced as a Derby City Council private hire driver	N/A	N/A	3 years	Grant with a written warning or grant and suspend for up to 3 months	Written warning or suspend for up to 3 months
F.3	Not wearing I.D	3 years	Grant with written warning or grant and suspend for	3 years	Grant with written warning or grant and suspend for up	Written warning or suspend for up to 6

			up to 6 months		to 3 months	months.
F.4	Plying for hire whilst licensed in another district	3 years	Refuse.	N/A	N/A	N/A
F.5	Obstructing an officer	3 years	Refuse	3 years	Refuse	Revoke
F.6	False declaration	3 years	Grant and suspend for up to 6 months or refuse	3 years	Grant and suspend for up to 6 months or refuse	Suspend for up to 6 months or Revoke.
F.7	Driving without any private hire or hackney carriage driver's licence.	5 years	Refuse.	N/A	N/A	N/A

G. Other offences

Offences	Committed whilst not licenced by Derby City Council		Committed whilst licenced by Derby City Council		
	Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal during	Guideline for Applicant (first grant/ re-grant)	Period since (non-custodial) conviction, caution or completion of custodial sentence, fixed penalty notice, warning or being made subject to a restorative justice disposal	Guideline for Applicant (Renewal/ Re-grant)	Guideline for Licensee (Current licence holder)

		which the guideline will apply		during which the guideline will apply		
G.1	Perverting the course of justice	4 years	Refuse	5 years	Refuse	Revoke
G.2	Arson	4 years	Refuse	5 years	Refuse	Revoke
G.3	Possession of a weapon	4 years	Refuse	5 years	Refuse	Revoke
G.4	Public order offences including Riot, Violent Disorder, Affray, Harassment, Threatening abusive insulting words or behaviour etc, Drunk and disorderly, Breach of the Peace, Obstruct Police.	3 years	Grant and suspend for up to 3 months or Refuse	4 years	Grant and suspend for up to 6 months or Refuse	Suspend for up to 6 months or Revoke
G.5	Criminal Damage	2 years	Grant and suspend for up to 2 months	3 years	Grant and suspend for up to 4 months	Suspend for up to 4 months
G.6	Racially, religiously, homophobic, trans phobic or other discrimination related aggravated offences	4 years	Refuse	5 years	Refuse	Revoke
G.7	Offences under the Terrorism Act 2006	4 years	Refuse	5 years	Refuse	Revoke

