



DERBY CITY COUNCIL

## TAXI LICENSING AND APPEALS COMMITTEE 21 April 2010

Report of the Corporate Director of Environmental Services

### ISA VETTING AND BARRING SCHEME

#### RECOMMENDATIONS

- 1.1 To consider the information contained in this report regarding the new Independent Safeguarding Authority Vetting and Barring Scheme regarding the potential implications it has on licensed drivers;
- 1.2 To decide whether or not the Council's licensed drivers should be required to undertake the additional level of check;
- 1.3 To decide whether, and how, relevant Service Director's should be written to advising of the scope of Licensing Officers' authority and the onus placed on their respective services under the Vetting and Barring Scheme.

#### SUPPORTING INFORMATION

- 2.1 The Vetting and Barring Scheme is being established by Central Government to reduce the risk of harm to children and vulnerable adults. It will do this by identifying individuals who information suggests are unsuitable to work with children and vulnerable adults, and barring them from gaining access to such people by working with them in a paid or unpaid capacity. Guidance issued about the scheme can be accessed at <http://cmis.derby.gov.uk/CMISWebPublic/Binary.ashx?Document=15464>.
- 2.2 The Scheme recognises the need for a single process to assess all individuals who wish to do certain work or volunteer with children and vulnerable adults. The assessment involves an enhanced disclosure check with an additional check against a barred list. The Independent Safeguarding Authority (ISA) has been set up as part of this process across England, Wales and Northern Ireland. The ISA's role is to make decisions as to who should be barred from working with vulnerable groups. Decisions are legally binding, so a barred person cannot be hired for certain roles under any circumstances.
- 2.3 While the Scheme will provide significant safeguards, it is important to remember that it is part of a wider framework of safe recruitment practices. In particular, it does not replace Criminal Records Bureau (CRB) disclosures, which will still be necessary for some positions, and nor does it remove the need for employers and voluntary organisations to develop and apply robust recruitment procedures, including checking identity, qualifications and references, and enquiring into career history.

- 2.4 The Scheme began to operate from 12 October 2009, when the definitions of regulated and controlled activity came into operation. Requirements in relation to barred individuals were also introduced. ISA registration begins in July 2010 for new workers, becoming mandatory from November 2010. Staff already working in regulated activity will begin to register from April 2011.
- 2.5 Regulated activity covers anyone working closely with children or vulnerable adults, either paid or unpaid, on a frequent or intensive basis and sets out a number of activities where the new rules may apply. This includes driving a vehicle solely for the purpose of conveying children or vulnerable adults, but on first reading there appear to be conflicts in what it says.
- 2.6 Although the guidance acknowledges that this may well include taxi drivers used by schools and care homes to transport children or vulnerable adults, it appears to specifically exclude taxis hailed/hired independently by children or vulnerable adults. At paragraph 2.14, it states:
- “Driving a vehicle solely for the purpose of conveying children or vulnerable adults.** This includes taxi drivers used by schools and care homes to transport children or vulnerable adults, and minibus/bus drivers taking children to or from Scout or Guide camp, or taking vulnerable adults on day trips from care homes”.
- 2.7 On the other hand, at paragraph 2.15, it states:
- “It also does not include bus drivers who drive public vehicles, which may or may not pick up children or vulnerable adults on the road, or taxis hailed/hired independently by children or vulnerable adults”.
- 2.8 The current CRB enhanced disclosure check costs £36.00 and is paid for by the applicant. If Committee decides that the drivers licensed by the Council should be required to undertake the additional check as set out under the scheme, there will be an additional cost that would need to be met by the individual.

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<b>Background papers:</b>	None
<b>List of appendices:</b>	Appendix 1 – Implications

<b>IMPLICATIONS</b>
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**Financial**

1. None directly arising.

**Legal**

- 2.1 The emphasis of the guidance is on the potential for a relationship to be formed because of the regular proximity to the vulnerable groups in question which some taxi drivers may have. The main trigger for this level of proximity is the school transport contract. Some licensed drivers have this in place, which others do not. This is evident from paragraph 2.15 of the guidance.
- 2.2 That being the case, there would be no justifiable basis for requiring all licensed drivers to be subject to this additional level of check. Because licensing rules must apply uniformly, the legal advice is that the Vetting and Barring Scheme is outside of the scope of the Taxi Licensing Team's remit. That does not however mean that it is outside the scope of the Council's obligations altogether. The contrary is actually the case.
- 2.3 The Council's School Travel Team in Regeneration and Community issue stand-alone contracts to individual drivers to enable them to convey school children to schools around the city on a regular basis. It is believed that similar arrangements may be in place to convey vulnerable adults, administered by Adult Social Services. In either case, it is understood that both Regeneration and Community and Adult Social Services rely on the knowledge that the Licensing Team has issued licences to drivers, having already undertaken a CRB check, as a prerequisite to entering into the stand-alone contract with each driver. The effect of the new scheme means that either service can no longer continue to rely on that 'assurance', the onus now being firmly theirs to ensure that the driver is not identified as unsuitable under the scheme.
- 2.4 To the extent that either service may be unaware of the limitation of the Licensing Team's powers in this area, it would be prudent to write to the respective Service Directors to reiterate that they cannot rely solely on the Licensing Team's CRB checks but must now ensure that they carry out this additional level of checks under the Vetting and Barring Scheme.
- 2.5 Where there may be scope for cross-over could be because of the rare situation where information that comes to light under the Vetting and Barring Scheme has not been disclosed within the CRB disclosure. Such information may be relevant for taxi licensing purposes as relevant conduct to be taken into account in deciding whether a licence holder remains a 'fit and proper person'. Licensing Officers may therefore consider it worthwhile entering into a data sharing protocol with each of the services identified in paragraph 2.3 of this Appendix so that they can access

such information where relevant. They should also consider obtaining advice from the Council's Data Protection Team.

### **Personnel**

3. None directly arising.

### **Equalities Impact**

4. None directly arising.

### **Corporate objectives and priorities for change**

5. The recommendations contained in this report contribute to the corporate objectives of **creating a 21<sup>st</sup> Century City Centre** and **giving excellent services and value for money**.