

You are requested to attend a meeting of the Licensing Committee to be held in The John Meikle Room, The Deane House, Belvedere Road, Taunton on 22 February 2017 at 18:15.

Agenda

- 1 Appointment of Vice-Chairman following the resignation of Cllr James Hunt.
- 2 Apologies.
- 3 Minutes of the meeting of the Licensing Committee held on 16 November 2016 (attached).
- 4 Public Question Time.
- 5 Declaration of Interests
To receive declarations of personal or prejudicial interests, in accordance with the Code of Conduct.
- 6 Licensing Service Update Report. Report of the Licensing Manager (attached).
Reporting Officer: John Rendell
- 7 Review and update of policy for Street Trading particularly in respect of Itinerant Traders. Report of the Licensing Officer (attached).
Reporting Officer: Mark Banczyk-Gee
- 8 Proposal to introduce a requirement for Hackney Carriage and Private Hire Vehicle Drivers and Operators to evidence proper business accounting. Report of the Licensing Manager (attached).
Reporting Officer: John Rendell
- 9 Minutes of the meetings of the Licensing Sub-Committee held on 16 and 31 January 2017, for information (attached).

Bruce Lang
Assistant Chief Executive

22 February 2018

Members of the public are welcome to attend the meeting and listen to the discussions.

There is time set aside at the beginning of most meetings to allow the public to ask questions.

Speaking under “Public Question Time” is limited to 4 minutes per person in an overall period of 15 minutes. The Committee Administrator will keep a close watch on the time and the Chairman will be responsible for ensuring the time permitted does not overrun. The speaker will be allowed to address the Committee once only and will not be allowed to participate further in any debate.

Except at meetings of Full Council, where public participation will be restricted to Public Question Time only, if a member of the public wishes to address the Committee on any matter appearing on the agenda, the Chairman will normally permit this to occur when that item is reached and before the Councillors begin to debate the item.

This is more usual at meetings of the Council’s Planning Committee and details of the “rules” which apply at these meetings can be found in the leaflet “Having Your Say on Planning Applications”. A copy can be obtained free of charge from the Planning Reception Desk at The Deane House or by contacting the telephone number or e-mail address below.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

Full Council, Executive, Committees and Task and Finish Review agendas, reports and minutes are available on our website: www.tauntondeane.gov.uk



Lift access to the John Meikle Room and the other Committee Rooms on the first floor of The Deane House, is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are also available off the landing directly outside the Committee Rooms.



An induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter.

For further information about the meeting, please contact the Corporate Support Unit on 01823 356414 or email r.bryant@tauntondeane.gov.uk

If you would like an agenda, a report or the minutes of a meeting translated into another language or into Braille, large print, audio tape or CD, please telephone us on 01823 356356 or email: enquiries@tauntondeane.gov.uk

Licensing Committee Members:-

Councillor K Durdan (Chairman)
Councillor G James (Vice-Chairman)
Councillor J Blatchford
Councillor W Brown
Councillor T Davies
Councillor M Floyd
Councillor J Gage
Councillor A Gunner
Councillor M Hill
Councillor J Hunt
Councillor S Lees
Councillor I Morrell, BA LLB
Councillor S Nicholls
Councillor A Sully

Licensing Committee – 16 November 2016

Present: Councillor Miss Durdan (Chairman)
Councillors Mrs Blatchford, Brown, Davies, Mrs Floyd, Mrs Gunner, Mrs Hill, James, Mrs Lees, Morrell, Nicholls and Sully.

Officers: John Rendell (Licensing Manager), Alison Evens (Licensing Assistant) and Richard Bryant (Democratic Services Manager)

Other: Councillors Berry and R Lees

(The meeting commenced at 6.15 pm)

15. Apologies/Substitution

Apologies : Councillors Gage, Hunt and Ross.

Substitution : Councillor Morrell for Councillor Ross.

16. Minutes

The minutes of the meeting of the Licensing Committee held on 1 June 2016 were taken as read and were signed.

17. Licensing Update Report

Considered report previously circulated, which provided an update on the activities of the Council's Licensing Service, changes to legislation, current consultations and other general Licensing matters.

A summary of the activity and performance of the Licensing Service since the last meeting of the Committee was as follows:-

- The performance of the Licensing service was measured against the number of applications that were completed within 14 days of them being determined. The target was 95%.
- This target had been exceeded between 1 July and 30 September 2016 where 96% of applications had been completed.
- This was the first time the performance target had been achieved in 15 months.

Members were provided with a comparison of the number of applications received between July and September 2016 for the preceding two years and a summary of the numbers of licenses in force and notices given as at 2 November 2016.

Generally, application numbers during this period remained fairly similar in number to that period in the preceding two years. The exception had been a 59% increase in the number of charitable collection permits applied for during the second quarter.

This was mostly due to applications made by young people taking part in the National Citizen Service – a scheme which involved ‘team community projects’, some of which had involved the possibility of fund raising for charity. This had resulted in applications for street collecting permits being sought.

The numbers of service requests received by the service between April and June 2016, compared with the previous two years were also reported. There were significantly more service requests recorded in 2015 due to improved record keeping.

There had been a marked increase over the last quarter due in part to reports of hackney carriage/private hire vehicle drivers operating in Bristol. These had accounted for 8 of the 45 service requests recorded in the last quarter (18%). Complaints against licensed hackney carriage and private hire vehicles and drivers, in general, accounted for 30 of the 45 service requests (67%).

Reported that with regard to the previously approved hackney carriage unmet demand survey, certain elements of the survey including the videoing of the taxi ranks, had been completed. Consultations with licensed drivers, stakeholders and an ‘on the ground’ survey of members of the public, would shortly be undertaken.

At the last meeting of the Committee, it was reported that officers had revoked hackney carriage and private hire vehicle driver licences from four separate men, who were suspected to be working regularly in Bristol, which was against current policy.

In the case of one such driver, an appeal against the decision to revoke his licence had been submitted and the matter was recently heard at Taunton Magistrates’ Court on the 19 October 2016. The Magistrates had upheld the Council’s decision to revoke the licence and they awarded the Council £300 in costs. The case had been given prominent coverage in the local media.

Further reported that the Immigration Act 2016 would amend existing licensing regimes in the UK to seek to prevent illegal working in the private hire vehicle and taxi sector.

From the 1 December 2016, the provisions in the Act mandated all licensing authorities not to issue licences to people who were illegally present in the UK, who were not permitted to work, or who were permitted to work but were subject to a condition that prohibited them from holding such a licence.

Lastly, the Committee noted that Olivia Denis, one of the Licensing Officers, had left the Council’s employment in early October 2016 and Sally Attfield would shortly also be leaving. Action to recruit replacement staff was being taken.

During the discussion of this item, the following points were raised:-

- There was no statutory level of staffing in a Licensing Department. It was down to the Council itself to find the right balance of officers to deal with the throughput of work.
- It was noted how short the agenda for the meeting was. If such circumstances arose in future, it was suggested that appropriate ‘in house’ training could be provided to Members once the business of the meeting had been conducted. Members were asked to submit requests for subjects to be covered through these proposed training sessions.

- The promised review of the Street Trading Policy was long overdue. There was a clear imbalance in the cost of consents and the competition with established traders in Taunton was causing considerable annoyance.
- Concern about the Town Centre Entertainment Licences was raised approximately 18 months ago. However, although it was appreciated that there had been other issues within Licensing that had had to be addressed, the Entertainment Licences needed to be reviewed and revised.
- More information was sought as to what appeared to be the 'arbitrary cost of licences'. In most cases, the Council was only able to charge a fee which covered the reasonable costs incurred in dealing with the application for a licence. This would be covered in more detail within a future training session.
- Were the street traders at the recent Wellington Carnival licensed? With walking traders, the individuals concerned would probably have been in possession of a Peddler's Licence – issued by the Police – which entitled them to trade. Fixed stalls or vehicles would however have been obliged to be properly licensed.
- Peddlars, who were often not from the local area, made a lot of money from selling their products at events such as Carnivals. Taunton Carnival Committee had started recruiting its own peddlars which not only resulted in fewer visiting peddlars, but the fees charged were added to the collection for the various charities supported.
- Were cheques presented to the Council's bank before or after a decision on a licence application? The cheques were banked on receipt and although applicants could request a refund before a decision was made, the Council was able to deduct its costs in processing the application up to that stage. Only a proportion of the original fee was therefore ever refunded. This was made clear on the application form.
- Where a licence was issued to a partnership or a couple, what happened if the partnership dissolved or the couple split? All of the parties named on a licence would be legally liable until such time as the licence had been modified.
- No licences were currently needed in connection with businesses who sold e-cigarettes or vaping products.

Resolved that:-

- (1) The report be noted; and
- (2) In circumstances where the agenda for a Licensing Committee was relatively short, the suggestion that 'in house' training be provided to Members once the business of the meeting had been conducted, be accepted.

(The meeting ended at 6.44 pm)

Taunton Deane Borough Council

Licensing Committee – 22 February 2017

Licensing Update report

This matter is the responsibility of Executive Councillor Patrick Berry

Report Author : John Rendell, Licensing Manager

1 Executive Summary

- 1.1 This report provides an update on the activities of the council's licensing service, changes to legislation, current consultations and other general licensing matters.

2 Recommendations

- 2.1 That the report be noted.

3 Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
If the Licensing function were not carried out in an efficient manner, complaints or legal challenges may be brought that could undermine the work being done to support the Council's Corporate Strategy.	4	4	16
Demonstrating good governance of the licensing function through presentation of current arrangements and statistics relating to the licensing service.	3	4	12

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

Performance of the service

- 4.1 The performance of the licensing service is measured against the number of applications that are completed within 14 days of them having been determined e.g. a licence is issued after a decision as to whether to grant the licence or not, has been reached. The target for the service is that, for all applications that are completed within a set quarter, 95% must be completed within 14 days of them being determined.
- 4.2 95% of all applications completed between the 1st of October and 31st of December 2016 were completed within the 14 day timescale. This is the second consecutive quarter that the service has achieved its target, following five unsuccessful quarters.
- 4.3 The performance of the service over the last quarter is especially pleasing given a reduction in staffing levels during the period, as explained below.

Staffing

- 4.4 As reported in the last update report licensing committee, Licensing Officer Olivia Denis departed the team on the 5th of October. She was followed by Licensing Assistant Sally

Attfield on the 9th of December.

- 4.5 After a lengthy recruitment process, Fern Avis and Bradley Fear were appointed to the vacant Licensing Officer and Licensing Assistant posts respectively. Both joined in January and have made promising starts to their careers in Licensing.

Applications received and licences in force

- 4.6 The numbers of applications received for each of the regimes administered by the licensing service, between October and December 2016, are shown in comparison with those received for the period in the preceding two years at **Appendix A**. The numbers of licenses in force and notices given as of the 6 February 2016 are shown at **Appendix B**.

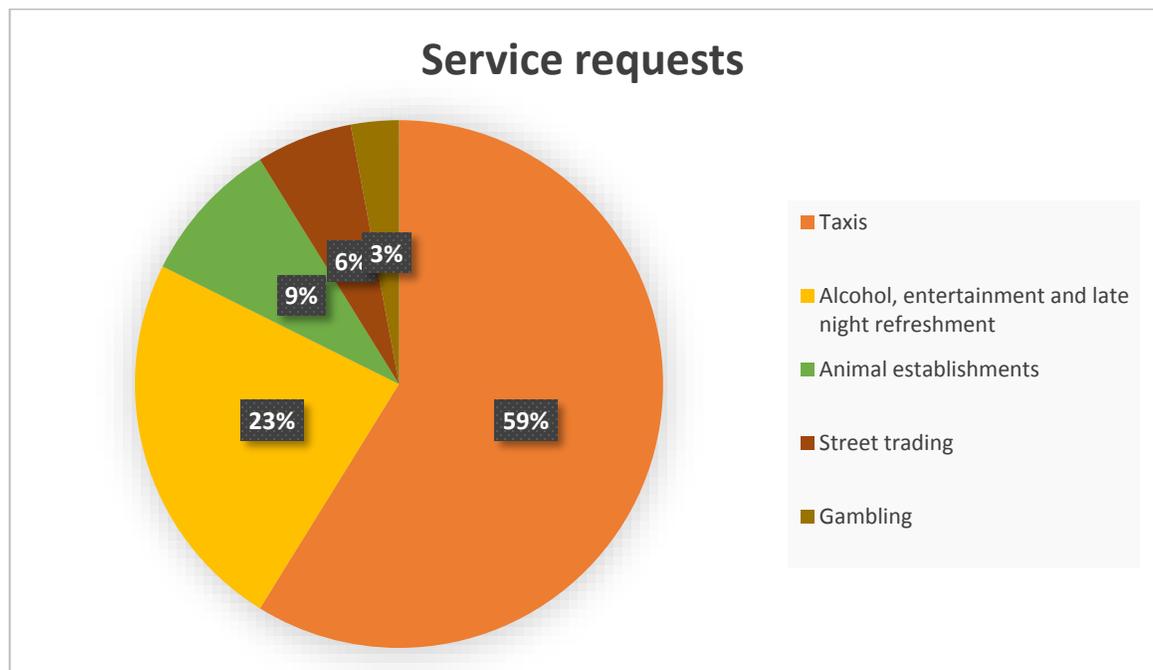
- 4.7 Across the board, application numbers in 2016 remain broadly similar when compared with 2014 and 2015. There has been a gentle increase in the number of Licensing Act 2003 applications and notices received over the three year period but, having looked more closely at the total number for each application and notice type, there are no clear trends that can be identified.

Service requests

- 4.8 Also shown at **Appendix A** are the numbers of service requests received between October and December 2016, compared with the previous two years.

- 4.9 Generally speaking, there are more service requests recorded in 2015 and 2016, due to improved record keeping.

- 4.10 34 service requests were received in total. A split, by category is represented below:



Out of area hackney carriage and private hire drivers

- 4.11 Members of the committee will be familiar with the problems the service has experienced with hackney carriage (taxi) and private hire vehicle drivers operating outside of the area

but in particular, in the city of Bristol.

- 4.12 There are currently 16 individuals registered to Bristol addresses that still hold driver licences, which is four less since the last report to the licensing committee. There are six ongoing service requests/investigations into complaints, which relate to four of the 16 aforementioned individuals.
- 4.13 Although the 'out of area driver' policy introduced in August 2015 played a massive part in addressing the problem, there are plans to expand the 'knowledge and suitability interview', which prospective drivers sit, to include a test on their geographical knowledge. It is hoped that this will well and truly prevent the problem from returning.

Changes to the licensing of dog breeders

- 4.14 The Department for Environment, Food & Rural Affairs (DEFRA) has announced plans to tighten up dog breeding licensing legislation.
- 4.15 Under current rules, any person that sells five or more litters of puppies in a year needs a licence, as do businesses. Under the plans, it is proposed to reduce the limit to three or more litters per year. In addition, it will be completely illegal to sell puppies younger than eight weeks.
- 4.16 The new rules will mean smaller establishments; sometimes called 'backstreet breeders', which supply thousands of dogs to families each year, as well as larger commercial breeders, must meet strict welfare criteria to get a licence. Irresponsible breeders can neglect the health and welfare of the puppies they raise and may not properly vaccinate them, leading to steep vets' bills and heartbreak for buyers.
- 4.17 The rules will also be updated and made fit for the modern age with anyone trading commercially in pets online needing to be properly licensed, to help make reputable sellers easily accessible to prospective buyers.
- 4.18 Those who do not adhere to the new rules face tougher penalties in the form of an unlimited fine and/or up to six months in prison. This is up from the current penalties of a fine of £2,500 and/or up to three months in prison.
- 4.19 It is anticipated that the above changes will coincide with the modernisation of the other animal licensing regimes, concerning riding establishments, pet shops, dangerous wild animals, zoos and animal boarders.

Policing and Crime Act 2017

- 4.20 The Policing and Crime Bill received Royal Assent on Monday 31st January 2017. Within the Act are a number of proposed changes to licensing legislation, specifically the Licensing Act 2003; the Act which regulates alcohol, entertainment and late night refreshment.
- 4.21 There are particular changes which will affect personal alcohol licences. Under current rules, licence holders are required to notify the courts when they are convicted of a 'relevant offence', with the purpose being that the courts can then decide if the licence should be suspended or forfeited. In practice, this rarely happens and licensing authorities have been, until now, powerless to take action of their own. The 2017 Act will allow licensing authorities to suspend or revoke a personal licence where they become aware that the holder has been convicted of a relevant offence or is required to pay an

immigration penalty.

4.22 In addition to the above, the list of relevant offences; which already includes offences involving alcohol, drugs, violence and psychoactive substances; has been expanded to include the following:

- Using someone to mind a weapon;
- Manufacture, import and sale of realistic imitation firearms;
- Offences listed under section 41 of the Counter Terrorism Act 2014, which includes encouragement of terrorism, preparation and training for terrorism;
- An offence listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences), which includes kidnapping, false imprisonment and threats to kill.

4.23 Full details can be read online at:

- <http://www.legislation.gov.uk/ukpga/2017/3/part/7/enacted>

5 Links to Corporate Aims / Priorities

5.1 The licensing service is committed to helping businesses and individuals to comply with all relevant legislation, in order to support new and existing businesses and enable cultural and leisure activities, thereby supporting the Council's growth agenda.

6 Finance / Resource Implications

6.1 No finance or resource implications identified.

7 Legal Implications (if any)

7.1 No legal implications identified.

8 Environmental Impact Implications (if any)

8.1 There are no specific environmental impact implications identified as a result of this report.

9 Safeguarding and/or Community Safety Implications (if any)

9.1 The four licensing objectives under the Licensing Act 2003 are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

With the addition of securing the welfare of animals, these are the main aims of the Licensing Service. The continued work of the service to achieve and promote these aims, further supports the role of the Council in ensuring community safety.

10 Equality and Diversity Implications (if any)

10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and

maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.2 No equality and diversity implications were identified.

11 Social Value Implications (if any)

11.1 No social value implications have been identified.

12 Partnership Implications (if any)

12.1 No partnership implications were identified.

13 Health and Wellbeing Implications (if any)

13.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

14 Asset Management Implications (if any)

14.1 No asset management implications were identified.

15 Consultation Implications (if any)

15.1 No consultation implications were identified.

16 Scrutiny Comments

16.1 There are no scrutiny comments or recommendations.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency : Once only Ad-hoc Quarterly

Twice-yearly Annually

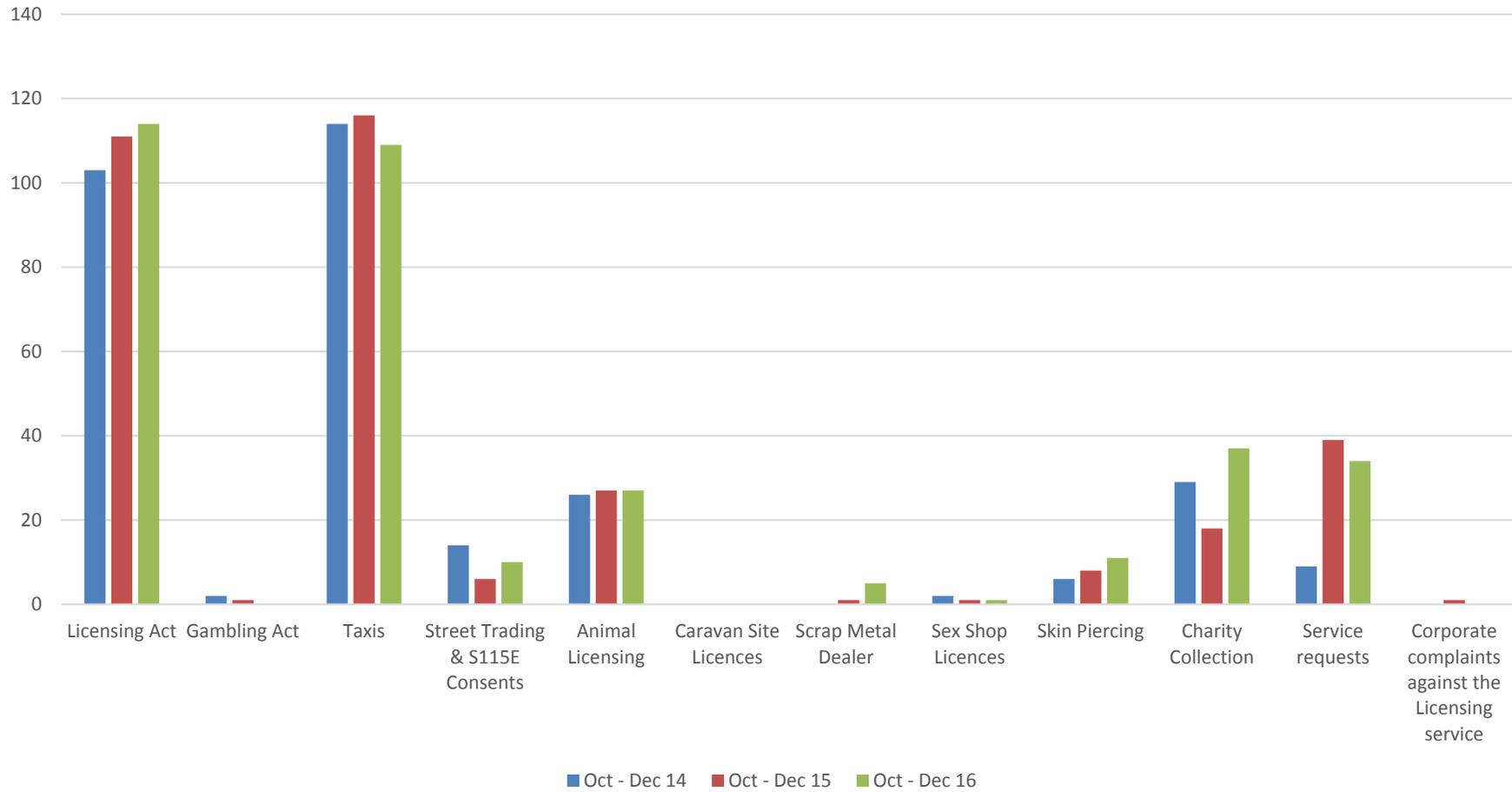
List of Appendices

Appendix A	Applications received, notices given, service requests and complaints
Appendix B	Licences issued and notices given

Contact Officers

Name	John Rendell
Direct Dial	01823 256343
Email	j.rendell@tauntondeane.gov.uk

Applications Received, Notices Given, Service Requests and Complaints



Licences Issued and Notices Given

These figures show the number of licences in force at the 6th February 2017 and the

Licensing Act 2003 Premises Licences	409
Licensing Act 2003 Club Premises Certificates	29
Licensing Act 2003 Personal Licences	1406
Licensing Act 2003 Temporary Event Notices	3571
Gambling Act 2005 Club Machine Permit	6
Gambling Act 2005 Licensed Premises Gaming Machine Permits	10
Gambling Act 2005 Occasional Use Notices	41
Gambling Act 2005 Premises Licences	16
Gambling Act 2005 Prize Gaming Permits	0
Gambling Act 2005 Society Lotteries	111 (since 01/09/2007)
Gambling Act 2005 Temporary Use Notices	0
Gambling Act 2005 Unlicensed Family Entertainment Centres	4
Gambling Act 2005 Notification of 2 or less Gaming Machines	62
Hackney Carriages	193
Private Hire Vehicles	38
Hackney Carriage & Private Hire Drivers	248
Private Hire Operators	20
Street Trading Consents	21
Section 115E (Pavement Café) Permits	5
Zoo Licences	0
Pet Shop Licences	3
Dog Breeding Licence	4
Animal Boarding Licence	22
Riding Establishment Licences	10
Dangerous Wild Animal Licences	0
Caravan Site Licences	42
Scrap Metal Dealer licence	4
Sex Shop Licences	1
Skin Piercing Registrations	257
Street Collection Permits	319
House to House Collection Permit	130

Taunton Deane Borough Council

Licensing Committee – 22nd February 2017

Review and update of policy for street trading in particular in respect of itinerant traders

This matter is the responsibility of Executive Councillor Patrick Berry

Report Author: Mark Banczyk-Gee, Licensing Officer

1 Executive Summary

- 1.1 Members are asked to consider the amendment of the street trading policy which addresses the operation of itinerant traders, removing the requirement for them to have a street trading consent whilst operating from street to street.

2 Recommendations

- 2.1 That members approve an amendment to the street trading policy whereby itinerant traders can go street to street and operate without a consent.

3 Risk Assessment

Risk Matrix

Description	Likelihood	Impact	Overall
Appeal of subcommittee decision by licence holder, which could result in Taunton Deane Borough Council being made liable for legal costs and compensation were the Magistrates' Court to overturn the decision	5	2	7

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

Background

- 4.1 Taunton Deane Borough Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 in order to control street trading. 'Street trading' is defined as the 'the selling or exposing or offering for sale of any article (including a living thing) in a street and a 'street' is further defined as being 'any road, footway, beach or other area to which the public have access without payment; and a service area as defined in section 329 of the Highways Act 1980'. The definition of 'street' is broad and would encompass public open spaces, the highway and private land such as industrial estates.
- 4.2 The Council adopted the Act in such a way that all 'streets' within the district were designated as 'consent streets'; meaning that street trading could only lawfully take place where the trader held consent from the Council.
- 4.3 There are a number of exemptions specified within the Act, where trading would not need consent, such as trading as a news vendor, trading by a person acting as a pedlar with a pedlars certificate granted under the Pedlars Act 1871 and 'selling things, or offering or exposing them for sale, as a roundsmen'. The latter is an interesting exemption, in that there is no further statutory definition or explanation of a roundsman, however there is legal precedent in case law, specifically the case of Kempin t/a British Bulldog Ice Cream V Brighton and Hove Council, where Lord Justice Latham ruled that a roundsman was someone who delivered pre-ordered goods within a locality.
- 4.4 Within the Kempin t/a British Bulldog Ice Cream V Brighton and Hove Council case, Lord Justice Latham also ruled that an ice cream salesman driving around an area was not a roundsman because he/she would not be delivering pre-ordered goods. It is due to this ruling that the Council has historically treated mobile ice cream salesmen as street traders and therefore consent is required to lawfully trade within any street in the Taunton Deane district.
- 4.5 An itinerant trader is defined as a trader who travels from place to place (itinerant) to sell (trade). We as an authority do not classify or verify what an itinerant street trader is however it has been done by the London Local Authorities Act 1990 which defines "Itinerant ice cream trading" as ice cream trading from a vehicle which goes from place to place remaining in any one location in the course of trading for periods of 15 minutes or less and not returning to the same location or any other location in the same street on the same day.

- 4.6 This description can be applied to any mobile street trader and in Taunton Deane we can identify mobile sandwich /coffee vendors as businesses as such (along with mobile ice cream vendors). More often than not these are operating from business car parks i.e. private land and have historically never been controlled. Albeit on private land often it is land the public can access without payment. Therefore by definition they should be controlled. Having never done this we are now in a position to address this area of licensing and decide whether we control them or exempt them. There is a clear anomaly as we control mobile ice cream vendors who fit the same criteria.
- 4.7 A complaint has been received from a licensed ice cream vendor in which several other ice cream vendors have been identified by the complainant as operating in the Taunton Deane borough council area. Research has shown they do not have consent's with Taunton Deane as they should be if operating in the Taunton Deane area as mobile ice cream vendors.
- 4.8 This has led to a review and the request held within this report.

5.0 Report

- 5.1 Currently mobile ice cream vendors in Taunton Deane borough council are treated as street traders, for which they can obtain a consent which lasts 1 day, 1 week, 1 month or 1 year. However should such vendors trade from a venue that requires payment to enter they will not need a consent.
- 5.2 On checking the computer system used by Taunton Deane Borough council, only three businesses have had a consent in the last year to sell ice cream and only two were mobile ice cream vendors.
- 5.3 So in effect last year there were only two mobile ice cream sales van operating in Taunton in the summer of 2016. A complaint by one of those vendors identified six other vans operating during this time, one of which had an out of date consent displayed.
- 5.4 The licensing department has recently undergone some change, which is still being implemented and it has been identified that enforcement of licensing legislation is an area that the department have not been able to carry out across all the areas they cover. In particular enforcement of any kind in respect of itinerant street traders is difficult as they may have a route they follow but this is open to change by the nature of their business and would clearly be time consuming and inefficient to wait to see if someone is operating with or without a consent.
- 5.6 As a result, research has been carried out looking at other licensing authorities and how they treat mobile ice cream vendors. It is clear that if they are at a venue in a fixed spot they will require a permission unless it is an event that requires payment to enter. However if they are mobile, there is no uniform approach. It is apparent that some have treated them as roundsmen, South Somerset District Council is a case in point. However *R v Bulldog*, which was an ice cream sales company who challenged Brighton Council, states from the court ruling that ice cream vendors could not be treated as roundsmen.
- 5.8 Hillingdon Council have been identified as a council who deal with them as itinerant vendors and therefore do not issue them with a licence or consent unless they are static. The same can be said of North Somerset Council and Sedgemoor District Council.

- 5.9 The only issue that would need to be clarified is how long a trader can stay in one place to be regarded as static. This is a common sense issue I believe and we would consider 15 minutes long enough in one road. As identified previously this is the time limit used by London local authorities.
- 5.10 In conclusion I believe that any sort of control by the licensing department of mobile street vendors which are not static or part of an event is not necessary, and the reasons for and against I hope will now be clear on reading this document for you to make a balanced decision.

6 Links to Corporate Aims / Priorities

- 6.1 The licensing department represents the borough council with a responsibility to the public of Taunton Deane to ensure their safety and welfare. By being licensed the public can be reassured that the business is safe and legal. Any food business has to register with environmental health who manage the food and safety aspects of the business. Licensing cover the legality of the act that the business is conducting.

7 Finance / Resource Implications

- 7.1 As stated we currently have income from one ice cream vendor whom we can identify as an itinerant tradesmen and this is limited to the summer months. Licensing is broadly speaking cost neutral as we are legally only able to recover reasonable costs associated with the administration of an application and carrying out compliant visits.
- 7.2 An argument can be made to say that as there are several vendors operating who do not have consents the council is losing money. However as a cost neutral operation this argument does not exist. However there is a clear workload issue should we chose to impose the street trading consents on itinerant vendors operating in Taunton Deane.
- 7.3 By deciding to not control our itinerant street traders we actually do not lose anything as we as a licensing department will not have to enforce legislation and in turn this will allow officers to concentrate on other licensing areas without being concerned that street trading vendors are operating illegally. By not issuing consents we are also supporting small businesses by reducing the amount of bureaucracy they need to complete for them to operate. Clearly when these vendors are operating, common sense prevails in respect of where they operate from, so there is a limited risk to the public which even if we issued consents would make no difference to the operation of the vendors. Therefore the value in controlling them is minimal.

8 Legal Implications

- 8.1 None

9 Environmental Impact Implications

- 9.1 None

10 Safeguarding and/or Community Safety Implications

- 10.1 None

11 Equality and Diversity Implications

11.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are;

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

12 Social Value Implications

12.1 None

13 Partnership Implications

13.1 None

14 Health and Wellbeing Implications

14.1 None

15 Asset Management Implications

15.1 None

16 Consultation Implications

16.1 None required.

17 Scrutiny Comments

17.1 The purpose of the Licensing Committee is to act for the Council in respect of licensing and registration functions. The Committee's powers include the power to discharge licensing functions on behalf of the licensing authority, outside of the usual democratic process

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

Reporting Frequency: Once only Ad-hoc quarterly
 Twice-yearly annually

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Taunton Deane Borough Council

Licensing Committee – 22 February 2016

Proposal to introduce a requirement for hackney carriage and private hire vehicle drivers and operators to evidence proper business accounting

This matter is the responsibility of Executive Councillor Patrick Berry

Report Author : John Rendell, Licensing Manager

1 Executive Summary

- 1.1 Members are asked to consider a proposal to change Council policy and the process for determining the fitness and propriety of those applying to renew their hackney carriage/private hire vehicle drivers licence, in order to clamp down on drivers and operators who evade tax.

2 Recommendations

- 2.1 That Members approve the adoption of a new policy whereby the Authority will require those applying to renew their hackney carriage/private hire vehicle drivers licence to provide a Unique Taxpayer Reference (UTR) number issued by HM Revenues and Customs (HMRC); and that this data will be shared with the HMRC periodically (normally annually) and upon their request.
- 2.2 That Members approve the adoption of a new policy whereby the Authority will refuse to renew a hackney carriage/private hire vehicle drivers licence where the applicant/licence holder fails to provide a UTR number.
- 2.3 That Members approve the adoption of a new policy whereby the Authority may revoke a hackney carriage/private hire vehicle drivers licence where it learns that the holder does not have a valid UTR.

3 Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
The Council licenses hackney carriage and private hire drivers who evade tax.	3	2	6
Failure to support external partners in preventing criminal activity from being carried out amongst the licensed hackney carriage and private hire driver community.	3	2	6

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

4.1 All hackney carriage and private hire vehicle drivers are self employed and generally fall into one of three categories:

- 1) Those that own their own vehicle and operate completely independently;
- 2) Those that hire a vehicle from a larger operator;
- 3) Those that own a fleet of vehicles, one of which they may drive but then hire the remaining vehicles to others.

4.2 Everyone who is self employed in the UK is required, by law, to be registered with HM Revenues and Customs (HMRC) to whom they must submit an annual self assessment in order to calculate how much income tax they must pay.

Outcomes from the Taxi and Private Hire Trade Forum

4.3 The 'Taxi and Private Hire Trade Forum' is a meeting held between members of the hackney carriage and private hire trade, Councillor representatives from the licensing committee and Council officers to discuss hackney carriage and private hire licensing matters.

- 4.4 Until recently, the forum has met irregularly since 2012 but there have been a number of key recurring issues raised, which includes drivers and operators evading tax. There have been reports within the trade, predominantly anecdotal, that there are hackney carriage and private hire drivers and operators licensed by the Council who fail to pay income tax and VAT (where a business' VAT taxable turnover is over £83,000) to HMRC.
- 4.5 The issue was discussed at a meeting of the forum on the 16th September 2015. The view taken by the service at the time was that, although the 'fit and proper' test applied to drivers could be expanded to include having to evidence proper business accounting, a change could unnecessarily increase the applications fees levied to the trade (which are calculated to ensure full cost recovery for the council), since there are already existing channels that allow members of the public to report tax evasion directly to HMRC, which includes the ability to make a report on the www.gov.uk website. As discussions developed, it was suggested that the licensing service could dictate that those applying to renew their driver licences provide a unique tax reference (UTR) number, issued by HMRC, to show they are properly registered to pay tax. As some members of the trade were concerned that making changes could cause fees to rise, no recommendation was reached and the matter was deferred to the following meeting of the forum.
- 4.6 The forum met again on 21 October 2015 and further discussion around the proposal took place. Firstly, it was recognised that it would only be reasonable to expect existing drivers who are applying to renew their licences to provide a UTR number, since many individuals applying for the grant of a licence have yet to find work and would therefore not necessarily be registered and have a UTR number. Officers also explained that the only practical and cost effective way of handling the UTR data would be to record the UTR numbers on the service database and share information on all drivers with the HMRC on a periodic basis (there is currently an annual share of information relating to drivers and other licensed persons and premises as part of the National Fraud Initiative). Under the proposal, it was suggested that if the licensing service were to receive information from the HMRC that a driver is not registered or has falsified information, that drivers licence could be revoked. Officers advised that this proposed arrangement would take up very little extra time and would therefore have a negligible effect on application costs. The alternative would be to verify each UTR number with the HMRC on an individual basis, which would be much more time consuming and therefore cause fees to increase. An overwhelming majority of representatives from the trade who were at this meeting voted in favour of this proposal being recommended as a change in policy to the licensing committee.
- 4.7 Since that meeting, there has been a lack of progress due to a focus on making significant changes within the service, which includes fundamental changes to the way work is dealt with by the team. As described in the update report which is to be presented at this very same committee meeting, the performance of the service has now improved and staff vacancies within the team have been filled, meaning there is now capacity within the service to progress this matter and implement the change, should members resolve to adopt the proposals at section 2 of this report.

Contact with HMRC

- 4.8 In March 2016 and separately from the forum, the Licensing Manager met with the HMRC's Transformation and Implementation Lead Officer for the 'hidden economy'.
- 4.9 At the meeting, the officer explained that compliance (with tax paying requirements) within the taxi sector was a real concern to their organisation. The HMRC officer agreed

that implementing the policy changes described at section 2 of this report would help them to act against those who do not operate legally and therefore ensure a level playing field.

5 Links to Corporate Aims / Priorities

- 5.1 The Licensing service can help to support the Council's corporate role; 'Promoting Taunton Deane as a great place in which to live and work as well as visit' by working with HMRC to achieve a level playing field for businesses through the licensing of tax paying hackney carriage and private drivers only.

6 Finance / Resource Implications

- 6.1 Whilst the placing of additional duties on the licensing service in respect of taxi and private hire licensing does affect the relevant application fees, which are levied to ensure full cost recovery, the additional workload generated through adopting the recommendations at section 2 of this report would be minimal, as explained below.
- 6.2 Currently, each individual application to renew a hackney carriage/private hire vehicle driver licence is scanned as an electronic file, then input onto the service database against a new application record. Current fees are based on this taking an average of three minutes. The additional time taken to input a UTR number against the driver's database record would be between approximately 20 and 30 seconds. This would equate to an additional cost of approximately £0.17 which would need to be included within future fee calculation.
- 6.3 This change will have no significant impact on the bottom line of the licensing budget as the very small additional staff time will be compensated for in the increase in fees.

7 Legal Implications

- 7.1 The Local Government (Miscellaneous Provisions) Act 1976 dictates that, before the Council can grant or renew a licence to a hackney carriage/private hire vehicle driver or private hire operator, it must be satisfied that the applicant is a 'fit and proper person'. Fitness and propriety is not legally defined and thus, the Council has the freedom to consider a wealth of criteria before reaching a decision. In reaching a decision, the Council also has the power to request from the applicant any information as is considered necessary to determine whether a licence can be granted and whether conditions should be attached to a licence. For these reasons, it seems reasonable that the Council can require an applicant to demonstrate proper business accounting as an element of the 'fit and proper' decision making process.

8 Environmental Impact Implications

- 8.1 No environmental implications have been identified.

9 Safeguarding and/or Community Safety Implications

- 9.1 It is not unreasonable to expect that hackney carriage and private hire vehicle operators who deliberately evade tax, are also likely ignore other rules or legislative requirements which may in turn put members of the travelling public at risk. By working with HMRC to eliminate rogue traders, confidence in a safe public transport regime can be maintained aiding its continued use by vulnerable members of the community to support independent living.

10 Equality and Diversity Implications

10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10.2 No equality and diversity implications have been identified within this report.

11 Social Value Implications

11.1 As the proposals do not involve the procurement of services, there are no social value implications.

12 Partnership Implications

12.1 The proposals within this report will support the efforts of HMRC in tackling the 'black economy'.

13 Health and Wellbeing Implications

13.1 Through effective regulation of hackney carriage and private hire vehicles and drivers, confidence in a safe public transport regime can be maintained aiding its continued use by residents to support independent living.

14 Asset Management Implications

14.1 No asset management implications have been identified within this report.

15 Consultation Implications

15.1 The content of this report has been driven by consultation with the hackney carriage and private hire trade through the meeting of the trade forum.

16 Scrutiny Comments

16.1 The purpose of the Licensing Committee is to act for the Council in respect of licensing and registration functions. The Committee's powers include the power to discharge the licensing functions on behalf of the licensing authority, outside of the usual democratic process.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**

- Cabinet/Executive – No

- Full Council – No

Reporting Frequency : Once only Ad-hoc Quarterly

Twice-yearly Annually

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Taunton Deane Borough Council

Minutes of the Licensing Sub-Committee Hearing for a review of the Premises Licence for Taunton Food and Wine, 60 Bridge Street, Taunton held on Wednesday, 4 January 2017 at 11.25am in Committee Room 2 at The Deane House, Belvedere Road, Taunton, TA1 1HE.

Following an adjournment, the Sub-Committee reconvened at 10.00am on Monday, 16 January 2017 in the John Meikle Room at The Deane House, Belvedere Road, Taunton TA1 1HE.

Attendance at both meetings:-

Present: Councillor James (Chairman)
Councillors Mrs Hill and Hunt.

Officers: Alison Evens (Licensing Officer), Lesley Dolan (SHAPE Legal Services), Andrew Randell (Democratic Services Officer) and Clare Rendell (Democratic Services Officer).

Premises Licence Holder: Mrs Yuseinova, Michael Parrott (Licence Holder's Solicitor), Vladimir Trentchev (Interpreter) and Hasaan (Employee).

Applicant: Inspector James Carey (Avon and Somerset Constabulary).

Interested Parties: Nicola Cooper (Area Licensing Practitioner, Avon and Somerset Constabulary), P C Gary Pethick (Avon and Somerset Constabulary) and Jay Capel (Trading Standards Officer).

The Chairman introduced himself and his fellow Sub-Committee Members and officers then explained their roles. As well as acknowledging the documents, he explained the procedure to be followed during this meeting of the Sub-Committee.

The Legal Officer gave a statement on behalf of the Sub-Committee seeking the adjournment of the hearing. The reasons given were the lack of formal translation of the papers, which were not available until the morning of the hearing; and the Premises Licence Holder (PLH) had not had time to appoint a solicitor to represent them. The Sub-Committee raised grave concern that the PLH did not have a good understanding of the English language and decided in the interest of justice and fairness to adjourn the hearing.

Both the Applicant and PLH were asked if the adjournment was acceptable and they both accepted that it would be appropriate to adjourn the hearing.

The Sub-Committee advised the date for re-convening the hearing would be Monday 16 January 2017 at 10.00am.

The meeting was adjourned at 11.40am.

The meeting re-convened at 10.05am in the John Meikle Room at The Deane House.

The Chairman again introduced himself and his fellow Sub-Committee Members and officers then explained their roles. As well as acknowledging the documents, he explained the procedure to be followed during this meeting of the Sub-Committee.

The Licensing Officer introduced her previously circulated report. An application had been received from **Inspector Carey of Avon and Somerset Constabulary** for a review of the Premises Licence of **Taunton Food and Wine, 60 Bridge Street, Taunton**.

The grounds for the review were based on incidents, meetings and intelligence received since April 2016 that demonstrated poor management and a lack of understanding of the Licensing Act 2003.

The Police were seeking full revocation of the Premises Licence on the grounds that the PLH and Designated Premises Supervisor (DPS) were not suitable to be in control of the premises and they had appeared to have a disregard for the law and an inability to interpret it.

There was an incident on 7 May 2016, whereby the PLH had purchased stolen alcohol. This had resulted in the PLH being charged with handling stolen goods.

The Police had received intelligence from Trading Standards that there had been accusations that alcohol had been sold to children between April and July 2016. Trading Standards had carried out test purchases on two separate occasions and neither volunteer had been asked for proof of age in line with the 'Challenge 25' Policy.

The Police reported concerns over the PLH's lack of ability to understand English and in turn their ability to ask customers the appropriate questions for age identification.

The Police also reported that the PLH had been unable to produce staff training records when requested and that a member of staff had informed the Police that they had not received any training.

The PLH had been offered training seminars with Trading Standards and had not made use of this offer.

The Licensing Officer had done her best to translate the paperwork for the PLH and had advised them to seek legal advice for the hearing.

The Applicant did not ask any questions following the Licensing Officer's report.

The PLH did not ask any questions following the Licensing Officer's report.

The Interested Parties did not ask any questions following the Licensing Officer's report.

The following questions and statements were asked by the Sub-Committee of the Licensing Officer (Responses are shown in italics):-

- For clarity please explain what were the legal requirements to be able to sell alcohol?
The legal requirements were to hold a Premises Licence, Personal Licence and have a registered DPS.
- To confirm a statement on Appendix 3, did the DPS have to be present on the premises at all times?
No, as long as there was a registered DPS on the licence, alcohol could be sold when they were not present, but if there was an incident when they were not present, it would still be their responsibility.

The Applicant (Avon and Somerset Constabulary) presented their case to the Sub-Committee. The following comments and points were presented in relation to their report:-

- The main concerns associated with the premises were prevention of crime and disorder and protection of children from harm which subsequently undermined public safety and public nuisance.
- Another concern raised was that the premises remained open later than others in the town. The operating hours were 8am to 1am Sunday to Thursday and 8am to 4am Friday and Saturday.
- The premises had come to the Police's attention when a known shoplifter had entered the premises suspected of selling stolen alcohol to the PLH. During the investigation, the Police had seized 62 bottles of alcohol with notable damage to the foil lid, with a value of approximately £1200. When interviewed, Mr Yuseinova admitted that the alcohol was probably stolen and he had instructed his wife, the PLH, to purchase it. The Police believed that this alcohol was intended for sale or had been sold from the premises, which encouraged criminal activity.
- The PLH and her husband, Mr Yuseinova, appeared in Court on 5 September 2016 and had been charged accordingly. They were found guilty under schedule 22 of the Theft Act 1968 for handling stolen goods. Both parties pleaded guilty and were fined £250 with £250 costs and a victim surcharge of £30. This was a relevant offence as determined under Schedule 4 of the Licensing Act 2003.
- The PLH failed to notify the Magistrates that she was a PLH, which she was legally obliged to do and she could face further prosecution because of this.
- Trading Standards had passed on intelligence to the Police that between April and July 2016 the premises had sold alcohol to children without checking identification (ID). The Premises Licence had a requirement for a 'Challenge 25' Policy to be in place, but mystery shoppers under the age of 25 had evidence this was not the case.
- The Police raised concerns that both the PLH and her husband were unable to converse with customers in English, so they were unable to ask the appropriate questions and ask for ID. They were very concerned therefore that the PLH was unable to fulfil her role and responsibilities with regard to the protection of children.
- The Police had used 'Language Line' (English into Bulgarian) to explain that they were submitting an application to review the Premises Licence. They explained that this was due to the following:-
 - The CCTV system that had been installed had the incorrect date and time and the staff did not know how to operate it.
 - The 'Challenge 25' Policy was not implemented and staff were not aware of the acceptable types of proof of ID.
 - The Refusals Register was not implemented or audited by the DPS.
 - The PLH had not ensured that staff were aware of the social and legal obligations and their responsibilities regarding the sale of alcohol. The Police were unable to locate any evidence of staff training.
- Despite continued efforts to engage with both the PLH and her husband, the language barrier had prevented any constructive dialogue and the Police felt that every effort had been made to assist compliance, but without success.
- In addition to the difficulties communicating with the PLH and her husband, the Police had sensed an attitude of complacency to the extent that further consultation might have only delivered an improvement to a limited degree. They appeared to have a blatant disregard for the law and did not appear to be concerned that their licence was under review.
- This was the first time in several years that the Police had called for a licence review. This outlined the seriousness of the case and sent out a clear message that they would take action against licence holders who breached the conditions of their licence and did not promote the licensing objectives.
- The Police asked for the revocation of the licence as the PLH and DPS were not suitable to be in control of the premises. Neither removal of the DPS nor the imposition of the conditions would allay their concerns.

The Licensing Authority did not ask any questions of the Applicant following the presentation of their case.

The PLH's Solicitor asked for clarity on the following points (Responses are shown in italics):-

- When intelligence was received relating to the alleged underage sale of alcohol, did an enquiry or investigation take place?
This was passed to the Trading Standards Officer to answer during their statement.
- During the Criminal Court case, there was a full admission of the offences and both the PLH and her husband pleaded guilty?
Yes
- Have the Police seen the refused sales book? The document was presented for the Sub-Committee and Interested Parties to view during the hearing.
No but they would view it during the recess.

The following questions and statements were asked by the Sub-Committee of the Applicant (Responses are shown in italics):-

- Concerns had been raised about the language barrier, but were any language checks carried out by Sedgemoor District Council, who had issued the Premises Licence, before it was issued?
There was no legislation that stated the Authority had to carry out language checks prior to issuing any licence.
- With regard to the prosecution for stolen goods, which seals on the bottles were damaged? Was it the security seals or the contents seals?
The security tags had been forcibly removed. The contents had not been damaged.
- In the report it was mentioned that staff training records had not been kept. Was this a legal requirement or a measure of good practice?
It was a condition on their licence and a measure of due diligence.
- When the case went to Court with regard to the alcohol, was the PLH convicted in respect of the 62 bottles found or were they convicted based on the CCTV footage of the suspected shoplifter visiting the premises?
Initial conviction was based on the CCTV footage and then further searches were carried out on the premises which led to the Police seizing the 62 bottles.
- Were the bottles from the same source?
The Police assumed they were based on Mr Yuseinova's response when he was questioned. He had admitted buying the alcohol from the same man caught on the CCTV footage prior to that date.

The Legal Representative of the Sub-Committee did not ask any questions of the Applicant following the presentation of their case.

The Technical Witness for Trading Standards had submitted their statement to the Sub-Committee.

The following questions and statements were asked by the PLH's Solicitor of the Technical Witness for Trading Standards (Responses are shown in italics):-

- How did Trading Standards hear about the underage sale of alcohol on the premises? Was it based on intelligence received?
On the first occasion it was a colleague's daughter that had been sold alcohol and on the second occasion it was a colleague from the Licensing Department.

- Were any direct enquiries carried out or was the investigation based on the intelligence received?
No, the investigation was carried out based on the intelligence received and then followed up with test purchases.
- Were the test purchasers over the age of 18 years old?
Yes. Mystery shoppers were used to test the policies adopted by the PLH to check for ID. The 'Challenge 25' was recommended by Trading Standards and was usually adopted by premises. The test purchase, which was carried out in September 2016, used a volunteer who was 16 years old.

The Licensing Authority did not ask any questions of the Technical Witness for Trading Standards following the presentation of their case.

The following question was asked by the Sub-Committee before proceeding on to the PLH's statement (Responses are shown in italics):-

- Were there any outstanding issues about the premises?
 - *The Police stated the Court had advised the Licensing Authority that the PLH had been convicted.*
 - *The Police had visited the premises to issue the review papers. Whilst at the premises they had discussed staff training with one of the employees, Saleen, who confirmed she had not received any training. When asked what age should she ask for ID, Saleen said 18. No age policy had been adopted and, as such, the PLH was in breach of her licence, as one of the conditions was to adopt the policy of 'Challenge 25'.*

The following comments and points were presented by the PLH's Solicitor:-

- The Solicitor agreed the process to obtain a licence was too straight forward.
- They were aware that the investigation into selling stolen alcohol had started the review and was followed up with information received by Trading Standards which related to the underage sale of alcohol.
- The PLH was aware that the 'Challenge 25' Policy should have been used but accepted that they were in breach.
- Unfortunately in licensing terms, when advised in detail of the review process and guidance issued, they would take into consideration the degree of warnings that had been issued and the training was offered and not taken heed of. The PLH thought this had only related to the staff who no longer worked for her.
- On a positive note, Hasaan and Saleen, intended going on the training course offered by Trading Standards as they spoke good English and this was in response to the review.
- Matters were now moving in the right direction, except for the conviction, which was a notifiable offence under the Licensing Act 2003. Mr Yuseinova was honest when admitting the offence, so they had learnt their lesson and there was no repeat action in respect of this.
- Training records and refused sales log had been found and were being recorded. The Police had been made aware of this.
- CCTV had been upgraded and was giving good coverage and had been inspected.

The following questions and statements were asked by the Licensing Officer of the PLH following presentation of their case (Responses are shown in italics):-

- Was the PLH aware she was responsible for every sale of alcohol?
Yes.
- When she was on holiday, she should have made staff aware of policies to adhere by?

Yes that was correct.

The following questions and statements were asked by the Applicant (Police) of the PLH following presentation of their case (Responses are shown in italics):-

- Concern was raised about the PLH's understanding of the fact she was responsible for the sale of alcohol.
- Free seminars were offered and had been declined. What were the reasons for this?
The member of staff who was due to attend had left before the seminar took place, so the PLH would not have understood the seminar. She was planning on her staff to translate for her.
- Would the PLH go on further training to understand the licensing laws?
Yes she would.
- Did the PLH understand the licensing laws? Could she give a brief outline of what was expected of her?
Alcohol should not be sold to underage or intoxicated people.
- What were her responsibilities when it came to her employees?
Employees should follow the same procedures as her.
- Did the PLH know what the four licensing objectives were?
No.
- What training had been given?
Instruction had been given about serving underage and intoxicated people, not to allow customers to drink on the premises and to ask for ID.
- Did the PLH have written training notes? (These should be kept and audited)
No.
- When the Police visited the premises they asked Saleen, an employee, what training had been given and she had confirmed no training had been received.
- The Police had given the PLH a chance to change the DPS and she had not done so.
- What would happen if staff left?

At this point the Chairman stopped this line of questioning, as they were dealing with the current situation and these questions were looking into the future.

The following questions were asked by the Technical Witness for Trading Standards of the PLH following presentation of their report: (Responses are shown in italics):-

- Free training had been offered, why had they not responded to the offer?
At the time the package was offered, the staff translator had left.
- The training package was an online computer package so could be used at any time.
The PLH had not understood the seriousness of the matter and believed this was a misunderstanding.

The following questions were asked by the Legal Representative for the Sub-Committee of the PLH following presentation of their report: (Responses are shown in italics):

- Before the PLH moved to Taunton, what experience in the licensing industry did they have?
None.
- What else did she sell other than alcohol?
Cigarettes and energy drinks.
- The premises was called Taunton Food and Wine, what food did she sell?
None, they had inherited the name from the previous owners.

The following questions were asked by the Sub-Committee of the PLH following presentation of their report: (Responses are shown in italics):-

- Concern was raised about children in harm and the training given in challenging underage customers. This was thought to be one of the most important conditions on the licence.
- Although staff were due to attend the training, when would the PLH go on the training course?
The PLH would be attending the course in February along with their staff.
- Had they received any training on being able to tell the difference between an intoxicated person and a person who might be suffering with a condition that would make them appear intoxicated?
No but she could tell the difference.
- Had they received any training on dementia or Alzheimer's?
No and she would not be able to tell if a customer had one of the conditions, but she knew all of her customers as they were regulars.
- Would there be an English speaking member of staff on the premises at all times?
Yes.
- Where was Mr Yuseinova today?
He was in the shop working.
- Would there be any occasions when there would not be an English speaking member of staff working?
Possibly due to staff sickness.
- How would the PLH ask for ID? Please could she demonstrate to the Sub-Committee?
'Give me ID please'.
- What type of ID was required?
The PLH could not answer.
- Did both the PLH and her husband take the test for a Personal Licence?
Yes they did.
- What happened to Mr Yuseinova's exam papers?
He passed the exam but Sedgemoor did not issue him with the certificate.

The following questions were asked by the Legal Representative for the Sub-Committee of the PLH following presentation of their report: (Responses are shown in italics):-

- Had you considered taking an English language course?
Yes I had planned on doing so.
- When and where?
At the end of January in Taunton.
- Would it have been beneficial to undertake the course sooner?
Yes.

The following questions were asked by the Applicant of the PLH following presentation of their report: (Responses are shown in italics):-

- How many English speaking staff did you employ?
Two.
- What shifts did they work?
Both day and evening.
- The premises were open from 9am to 1am. Did they work all day? Did they have days off? What coverage was there?
Yes they had days off and worked shifts not all day.
- This would mean there was not someone there during all of the opening hours?
They could not hire more staff due to their financial situation.

- For example, what hours was Saleen due to work today?
9am to 1pm.
- What hours was Hasaan due to work today?
1pm to 5pm.
- So today the premises were due to be open from 9am to 1am and there were 8 hours when there would be no English speaking member of staff working?
Yes that was correct.

The Chairman suspended the hearing for a comfort break at 11.50am and returned at 12.00pm.

Closing Statements

The PLH's Solicitor made a brief closing statement to the Members of the Sub-Committee:-

- Revocation of the licence was the final stage and would have serious repercussions as the licence holder would lose their business and livelihood.
- They had hoped that the Sub-Committee would suspend the licence to allow time for them to change the DPS and undertake the relevant training with the understanding that things were moving in the right direction.
- After a recent visit to the premises, the PLH had adopted the 'Challenge 25' Policy and the volunteer used to carry out a test purchase was asked for ID.

The Licensing Authority made a brief closing statement to the Members of Sub-Committee:-

- Concern was raised that the PLH still had no clear understanding of the licensing objectives.
- After several attempts to assist the PLH, they were still not proactive in gaining knowledge, they queried whether they were going on the training because they had been told to or because it would better their situation.

The Technical Witness for Trading Standards made a brief closing statement to the Members of Sub-Committee:-

- She felt that all the training could have been dealt with prior to this review being requested.
- Concern was raised about their trading hours and that they still did not have an English speaking member of staff on the premises for the majority of their opening hours.

The Applicant made a brief closing statement to the Members of Sub-Committee:-

- They had made several attempts to communicate with the PLH to assist in meeting the conditions of their licence.
- Following on from the prosecution of the notifiable offence, Mr Yuseinova had been declined his personal licence.
- With regard to Sections 11.18 and 11.19 of the licence, it stated the role of the Licensing Authority when determining a review and made it clear it was not their role to determine guilt or innocence of the PLH, but to ensure the promotion of the crime objectives and that all Responsible Parties were using the review process effectively to deter such activities of crime.
- When the crime objectives were being undermined through the premises being used to further crime, it was expected that revocation of the licence should be seriously considered.
- Submission of matters discussed in the review had highlighted their concerns around crime and disorder attributed to the premises.
- Safeguarding aspects had been raised and was a serious concern.

- Free training had been offered on several occasions and still not been undertaken.
- There was continued concern over the lack of understanding of the licensing laws by the PLH and the ability to understand what was expected of her and her staff.
- They had constantly tried to assist the PLH with little cooperation.

The Sub-Committee Members retired at 12.10pm

The Sub-Committee Members returned at 12.50pm

The Sub-Committee Decision

The Legal Representative for the Sub-Committee read out the following decision:-

“The Sub-Committee had listened very carefully to everything that had been said to them today by the Police, Trading Standards and the PLH.

Their main concern was the lack of understanding of the English language and the fact there was no understanding of the licensing objectives or their responsibilities.

The Sub-Committee had taken into account the convictions in respect of receiving stolen goods, which were relevant convictions under the Licensing Act 2003.

They had also taken into account that there was a failure to operate the ‘Challenge 25’ Policy and failure to understand their responsibility for underage sales.

They were concerned about safeguarding aspects which in turn lead into the objective of protecting children from harm.

They were also concerned that when questioned closely about the operation of the premises, staff and staff shifts, there was clearly a different position revealed to that which had been stated to the Sub-Committee.

There was a concern that if there were any changes to the legislation, that there would be no understanding or implementation of them.

And so in regard to all of those matters and taking into account all that had been said, it was the Sub-Committee’s view that the licence should be revoked with immediate effect.

The Sub-Committee said they had considered whether a suspension of the licence would have been appropriate and the view was that the three months available to suspend would not have been sufficient to allow the PLH to undertake all the relevant training.

However, there was nothing to prevent the PLH coming back in suitable time to demonstrate to all the authorities that she had grasped a suitable level of understanding of the English language to operate a licensed premises and trained staff accordingly.

There was a right of appeal against this decision. Any appeal must be lodged with the Magistrates’ Court within 21 days following notification of the decision.

The Chairman declared the meeting closed.

(The meeting closed at 12:55pm)

Taunton Deane Borough Council

Minutes of the Licensing Sub-Committee Hearing to consider the fitness and propriety of Taxi Driver A to hold a Private Hire/Hackney Carriage Drivers Licence, held on 31 January 2017 at 11.40am in Committee Room Two at The Deane House, Belvedere Road, Taunton, TA1 1HE.

Present: Councillor Miss K Durdan (Chairman)
Councillors G James and Mrs A Gunner

Officers: Mark Banczyk-Gee (Licensing Officer), Robert Mackay (SHAPE Legal Services) and Clare Rendell (Democratic Service Officer).

Applicant: Taxi Driver A and Colleague

Other: None

(The meeting commenced at 11.40am)

The Chairman introduced herself and her fellow Sub-Committee Members and officers then explained their roles. As well as acknowledging the documents she explained the procedure to be followed during this meeting of the Sub-Committee.

The Licensing Officer introduced his previously circulated report. The hearing was to consider the fitness and propriety of Taxi Driver A to hold a Private Hire/Hackney Carriage Drivers Licence, authorised by Taunton Deane Borough Council, in light of his behaviour during a road traffic incident on 20 September 2016. This was in respect of his driving but also his attitude and demeanour, which officers believed had brought his fitness and propriety into question.

The Legal Representative for the Sub-Committee informed the Applicant that he had advised the Members not to watch the footage that had been recorded of the incident until the Applicant was present in the room.

The Licensing Officer presented the footage from the dash cam located on the lorry involved in the incident.

A summary of events and interviews were given during the Licensing Officer's report.

The Applicant presented his case to the Sub-Committee.

During the proceedings various questions were asked of Driver A by Members of the Sub-Committee, the Council's Legal Representative and the Licensing Officer. Driver A was also given the opportunity to ask questions.

Closing Statements

The Applicant made a brief closing statement to the Members of the Sub-Committee.

The Sub-Committee Members retired at 12.50pm.

The Sub-Committee Members returned at 1.45pm.

The Sub-Committee Decision

The Chairman of the Sub-Committee read out the following decision:-

“This was a really hard decision to make and, purely based on the Applicant’s behaviour, the Sub-Committee had decided to revoke the licence.

The Council’s Legal Representative read out the following:-

“There was a right of appeal against this decision. Any appeal must be lodged with the Magistrates’ Court within 21 days following notification of the decision.

The decision notice would be issued on the same day or the following day and would give more detail on the explanation for the revocation.”

The Chairman declared the meeting closed.

(The meeting closed at 1.55pm)

Licensing Committee – 22 February 2017

Present: Councillors Mrs Blatchford, Brown, Gage, Mrs Gunner, Mrs Hill, Hunt, James, R Lees, Morrell, Nicholls and Sully.

Officers: John Rendell (Licensing Manager), Mark Banczyk-Gee (Licensing Officer), Alison Evens (Licensing Officer), Fern Avis (Licensing Officer) and Clare Rendell (Democratic Services Officer)

Other: Councillor Berry

(The meeting commenced at 6.15 pm)

1. Appointment of Vice-Chairman

Resolved that Councillor James be appointed Vice-Chairman of the Licensing Committee for the remainder of the Municipal Year.

In the absence of the Chairman, Councillor James took the Chair.

2. Apologies/Substitution

Apologies: Councillors Davies, Mrs Lees and Ross.

Substitution: Councillor R Lees for Mrs S Lees.

3. Minutes

The minutes of the meeting of the Licensing Committee held on 16 November 2016 were taken as read and were signed.

4. Licensing Service Update Report

Considered report previously circulated, which provided an update on the activities of the Council's Licensing Service, changes to legislation, current consultations and other general Licensing matters.

A summary of the activity and performance of the Licensing Service since the last meeting of the Committee was as follows:-

- The performance of the Licensing Service was measured against the number of applications that were completed within 14 days of them being determined. The target was 95%.
- This target had been reached between 1 October and 31 December 2016.
- This was the second consecutive quarter that the service had achieved its target.
- The performance of the service over the last quarter was especially pleasing given the reduction in staffing levels during the period. Since the last Committee meeting, two members of staff had been appointed to the vacant posts.

Members were provided with a comparison of the number of applications received between October and December 2016 for the preceding two years and a summary of the numbers of licenses in force and notices given as at 6 February 2017.

Generally, application numbers during this period remained fairly similar in number to that period in the preceding two years. There had been a gentle increase in the number of Licensing Act 2003 applications and notices received over the three year period but, having looked more closely at the total number for each application and notice type, there were no clear trends that could be identified.

The numbers of service requests received by the service between October and December 2016, compared with the previous two years were also reported. There were more service requests recorded in 2015 and 2016 due to improved record keeping.

Members were familiar with the problems the service had experienced with Hackney Carriage and private hire vehicle drivers operating outside of the area, in particular the City of Bristol.

There were currently 16 individuals registered to Bristol addresses that still held diver licences, which was four less since the last report to the Licensing Committee. There were six continuing service requests/investigations into complaints, which related to four of the aforementioned individuals.

Although the 'out of area driver' policy had played a massive part in addressing the problem, there were plans to expand the 'knowledge and suitability' interview, to include a test on their geographical knowledge.

The Department for Environment, Food and Rural Affairs (DEFRA) had announced plans to tighten up dog breeding licensing legislation.

The new rules would mean that smaller establishments and commercial breeders must meet strict welfare criteria to get a licence. The rules would also be updated and made fit for the modern age with anyone trading commercially in pets online needing to be properly licensed too.

It was anticipated that the above changes would coincide with the modernisation of the other animal licensing regimes, concerning riding establishments, pet shops, dangerous wild animals, zoos and animal boarders.

The Policing and Crime Bill had received Royal Assent on 31 January 2017. Within the Act were a number of proposed changes to licensing legislation, specifically the Licensing Act 2003, which regulated alcohol, entertainment and late night refreshment.

There were particular changes which would affect personal alcohol licences. The 2017 Act would allow licensing authorities to suspend or revoke a personal licence where they became aware that the licence holder had been convicted of a relevant offence or was required to pay an immigration penalty.

The list of relevant offences, which already included offences involving alcohol, drugs, violence and psychoactive substances, had been expanded to include the following:-

- Using someone to mind a weapon;
- The manufacture, import and sale of realistic imitation firearms;
- Offences listed under Section 41 of the Counter Terrorism Act 2014, which included encouragement of terrorism and the preparation and training for terrorism;
- An offence listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences), which included kidnapping, false imprisonment and threats to kill.

During the discussion of this item, the following points were raised:-

- Concern was raised about taxi drivers who had a Bristol address and were registered with the Licensing Department. How would this issue be tackled in the future?
Taxi drivers who did not live in the District would need to satisfy the new 'out of area' criteria on the taxi test. This would be administered when they applied to renew their licence.
- Would compliance tests be carried out now that Licensing Department were back to full capacity?
Licensing had maintained its checks on taxi drivers but had not yet discussed within the team the next stage for checks on premises and other licence holders.
- Concern was raised about public drinking and rough sleepers in the town and questioned how many fines had been issued under the new Public Space Protection Order since May 2015?
Unfortunately these figures were not available due to the fines being administered by the Police. The Environmental Health and Licensing Departments were in the process of being authorised to issue fixed penalty notices.
- How was the Licensing Department notified of convictions or relevant offences held by a licence holder?
The Department relied upon the licence holders and the Magistrates Court to notify them.
- Were taxi drivers obliged to notify the Department when they had been awarded any points on their licence?
Taxi drivers were advised that they should notify the Authority of any convictions, but they were not required to disclose information on points applied to their licence. However, when drivers applied to renew their taxi licence, the number of points on their licence were checked. If the points were above a certain level, the taxi driver would be invited to attend an interview with the Licensing Manager or a Sub-Committee hearing before the decision to renew the licence was taken.

Resolved that the report be noted.

5. Review and update of Policy for Street Trading – Itinerant Traders

Considered report previously circulated, concerning a proposal to amend the Street Trading Policy to address the operation of itinerant traders. The amendment would remove the requirement for such traders to hold a Street Trading Consent whilst they operated from street to street.

Taunton Deane Borough Council had adopted Schedule 4 for the Local Government (Miscellaneous Provisions) Act 1982 in order to control street trading. The Council had adopted the Act in such a way that all 'streets' within the District were designated as 'consent streets', meaning that street trading could only lawfully take place where the trader held consent from the Council.

An itinerant trader was defined as a trader who travelled from place to place (itinerant) to sell (trade). Although Taunton Deane did not currently classify or verify what an itinerant street trader was, the London Local Authorities Act 1990, had defined 'itinerant ice cream trading' – details of which were submitted for the information of the Committee.

Currently mobile ice cream vendors in Taunton Deane were treated as street traders and last year three consents had been granted. However, the Licensing Department had received a complaint from one of the licensed vendors, who had identified six other vans operating during the summer of 2016 without consent.

Due to recent changes in the department, Licensing had acknowledged that they had not been able to carry out the enforcement of licensing legislation across all the areas they covered. In particular, enforcement of itinerant street traders was difficult due to their rounds being changeable.

Research undertaken with other licensing authorities had shown that if a mobile ice cream vendor required permission to trade at a venue in a fixed spot they would require permission unless it was an event that required payment to enter. However, if they were mobile, there was no fixed approach.

Both North Somerset and Sedgemoor Councils currently dealt with ice cream vans as itinerant vendors and therefore did not issue them with a licence or consent unless they were static.

During the discussion of this item, the following points were raised:-

- Concern was raised about what limits there were on how many itinerant traders could operate in an area. Traders could park next to one another, which could cause congestion or conflict. How would this be controlled?
There was no control at present. The policy stated that they were not allowed to trade in the town centre. It was confirmed that there was no limit to how many street trading consents could be issued by the Council.
- Concern was raised that licenced traders would be disenfranchised by those who had not registered and who had travelled in from outside the District. It was also disputed that if Licensing were to register all itinerant traders, this would waste officer time. It was suggested that the market would regulate itself, so there was unlikely to be any 'ice cream wars'.
- A request was made for the Licensing Manager to present a full review on the Street Trading Policy at the next meeting. The last time the policy was reviewed was back in 2008.

Resolved that an amendment to the Street Trading Policy, whereby itinerant traders could go street to street and operate without a consent, be approved.

6. Proposal to introduce Proper Business Accounting for Hackney Carriage/Private Hire Drivers and Operators

Considered report previously circulated, concerning a proposed change to the policy and process which was used to determine the fitness and propriety of those that applied to renew their Hackney Carriage/private hire drivers' licence. This was to try and prevent tax evasion.

All Hackney Carriage and private hire drivers were self-employed and generally fell into one of three categories:-

- Those that owned their own vehicle and operated completely independently;
- Those that hired a vehicle from a larger operator; or
- Those that owned a fleet of vehicles, one of which they might drive but then hired the remaining vehicles to others.

Everyone who was self-employed in the UK was required, by law, to be registered with HM Revenues and Customs (HMRC) to whom they had to submit an annual self-assessment in order to have their income tax calculated.

The issue of tax evasion had been raised a number of times at the 'Taxi and Private Hire Forum', the last time being at the meeting held on 16 September 2015.

At the time, the view was taken that although the 'fit and proper' test applied to drivers could be expanded to include evidence of proper business accounting, a change could unnecessarily increase the application fee levied to the trade, particularly as there were already channels that allowed members of the public to report tax evasion direct to HMRC.

As the discussions developed, it was suggested that the Licensing Service could dictate that when drivers applied to renew their licence, they could provide a Unique Tax Reference (UTR) number, which was issued by HMRC, to show that they were properly registered to pay tax.

The Forum met again on 21 October 2015 and discussed the issue further. It was recognised that it would only be reasonable to expect existing drivers who applied to renew their licence to provide their UTR number, since many individuals who had applied for the grant of a licence had yet to find work, so would not necessarily be registered.

It had also been explained that the only practical and cost effective way of handling the UTR data would be to record the UTR numbers on the service database and share information on all drivers with the HMRC on a periodic basis.

Under the proposal, it was suggested that if the Licensing Service was to receive information from HMRC that a driver was not registered or had falsified their information, that drivers licence could be revoked. This proposed arrangement would take up very little extra time and would therefore have a negligible effect on application costs. An overwhelming majority of trade representatives voted in favour of this proposal to be recommended as a change in policy to the Licensing Committee.

In March 2016, the Licensing Manager met with the HMRC's Transformation and Implementation Lead Officer for the 'hidden economy'. At this meeting the HMRC Officer explained that compliance within the taxi sector was a real concern. The HMRC Officer agreed that the policy changes should be implemented and this would help them to act against those who did not operate legally.

During the discussion of this item, the following points were raised:-

- The majority of the Committee were in support of the recommendations.

- A concern was raised that the policy could victimise taxi drivers and be ultra-vires.
The report detailed the power the Council had when it set the criteria to be fulfilled for the fitness and propriety element of the licence application and it seemed reasonable to request an applicant to demonstrate proper business accounting.
- The Committee requested that the Council's solicitors checked the policy before it was implemented.
- It was suggested that to avoid officer's time being wasted, taxi drivers should be advised that they would need to bring in all the relevant information when they submitted their application. If they did not, they would need to obtain any missing details and resubmit.

Resolved that:-

- 1) The adoption of a new policy whereby the Council would require those who applied to renew their Hackney Carriage/private hire vehicle drivers licence to provide a Unique Tax Reference number issued by HM Revenues and Customs and that this data would be shared with the HM Revenues and Customs periodically (normally annually) and upon their request, be approved;
- 2) The adoption of a new policy whereby the Council would refuse to renew a Hackney Carriage/private hire vehicle driver's licence where the applicant/licence holder failed to provide a Unique Tax Reference number be approved; and
- 3) The adoption of a new policy whereby the Council would revoke a Hackney Carriage/private hire vehicle driver's licence where it had learnt that the holder did not have a valid Unique Tax Reference number be also approved.

7. Minutes of the Licensing Sub-Committees

Considered minutes previously circulated. Members requested they received updates on the Sub-Committees and be informed if the decision was appealed and the outcome of the appeal.

Resolved that the minutes be noted for information.

8. Forward Plan

Members discussed items that they would like to be brought before the Committee at the next meeting. These were identified as:-

- A review of the Street Trading Policy; and
- An overview of the Council's position on vaping in public areas.

Resolved that these items would be added to the Licensing Committee's Forward Plan.

(The meeting ended at 7.25 pm)