



## Notice of a meeting of Licensing Committee

**Wednesday, 4 September 2019**

**6.00 pm**

**Pittville Room - Municipal Offices, Promenade**

<b>Membership</b>	
<b>Councillors:</b>	David Willingham (Chair), Paul McCloskey (Vice-Chair), Tim Harman, Diggory Seacome, Angie Boyes, Mike Collins, Roger Whyborn, Dennis Parsons, Jo Stafford and Simon Wheeler

The Council has a substitution process and any substitutions will be announced at the meeting

## Agenda

<b>1.</b>	<b>APOLOGIES</b>	
<b>2.</b>	<b>DECLARATIONS OF INTEREST</b>	
<b>3.</b>	<b>PUBLIC QUESTIONS</b> These must be received no later than 12 noon on the fourth working day before the date of the meeting	
<b>4.</b>	<b>MINUTES OF THE LAST MEETING</b> To approve the minutes of the last meeting held on 5 <sup>th</sup> June 2019.	(Pages 3 - 8)
<b>5.</b>	<b>MINUTES OF SUB COMMITTEE MEETINGS</b> To approve the minutes of the Miscellaneous Licensing Sub Committee held on 3 <sup>rd</sup> July 2019.	(Pages 9 - 20)
<b>6.</b>	<b>SAFEGUARDING - TAXIS AND PRIVATE HIRE</b> Report of the Licensing Team Leader	(Pages 21 - 50)
<b>7.</b>	<b>REVIEW OF PREVIOUS DECISIONS</b>	
<b>8.</b>	<b>ANY OTHER BUSINESS</b> Update on: <ul style="list-style-type: none"> <li>• Outcome of the street trading policy consultation and changes to the policy as a consequence (verbal)</li> <li>• The draft evening and night-time economy strategy (verbal)</li> </ul>	

		<ul style="list-style-type: none"> <li>Progress on the Aboard policy review (verbal)</li> </ul>	
9.		<b>ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND REQUIRES A DECISION</b>	
10.		<b>DATE OF NEXT MEETING</b> 4 <sup>th</sup> December 2019.	

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## Licensing Committee

Wednesday, 5th June, 2019

6.00 - 7.20 pm

Attendees	
<b>Councillors:</b>	David Willingham (Chair), Paul McCloskey (Vice-Chair), Tim Harman, Diggory Seacome, Angie Boyes, Mike Collins, Dennis Parsons and Simon Wheeler
<b>Also in attendance:</b>	Vikki Fennell, Louis Krog and Sophie McGough

## Minutes

### 1. APOLOGIES

Apologies were received from Councillor Whyborn.

### 2. DECLARATIONS OF INTEREST

There were none.

### 3. PUBLIC QUESTIONS

There were none.

### 4. MINUTES OF LAST MEETING

A conversation was had about the exempt minutes from the previous meeting. Subject to a vote, the committee unanimously resolved to remove the exemption and put the minutes in to the public domain.

The minutes of the last meeting on 6<sup>th</sup> March were approved and signed as a correct record.

### 5. MINUTES OF SUB COMMITTEE MEETING

One Member requested that the full name of officers be listed in the minutes.

Subject to the above amendments the minutes of the Miscellaneous Licensing Sub Committee held on 8<sup>th</sup> May 2019 were approved and signed as a correct record.

### 6. APPLICATION FOR A STREET TRADING CONSENT

The Licensing Team Leader introduced the report, he explained that an application had been received from Mr Edward Danter for a street trading consent to sell hot food and hot and cold drinks from a hot food unit on the High Street. He highlighted that the application submitted in relation to Mr Danter's proposed 2019 trading had been altered from previous years in that the location was slightly different and the trading unit had been scaled down in size.

He highlighted that a number of objections had been received in relation to the application and advised the committee that they should be mindful of these

when determining the application. These were outlined at **Appendix 3** of the officer report.

He reminded the committee that each application should be determined on its individual merits and with a view of promoting the principles and objectives contained in the council's adopted policy. If Members were minded to deviate from the policy they should have clear reasons for doing so.

He noted that the next phase of the High Street East Masterplan work was due to commence in September and that this could affect the suitability of the location Mr Danter had applied to trade from. He advised that there was currently no definitive timescale for the works.

Following questions from Members, the Licensing Team Leader confirmed that:

- If an alternative location is identified for the stall, it would be subject to the usual consultation;
- He confirmed that 3 potential alternative sites had been identified, one was on the High Street near to Rodney Road, the other was outside Cavendish house as the Christmas market was moving this year and the final location, which had been suggested by Mr Danter, was on the High Street situated slightly up from John Lewis.
- Following a concern from Members that they had not had the opportunity to visit the alternative locations, the Licensing Team Leader confirmed that the committee had to determine the application before them. If they were minded to permit the application and the site became unavailable due to the works on the High Street then further consultation on an alternative site would need to be completed and the application may have to come back before the committee.
- Following a question from a Member, he confirmed that the alternative location for the Christmas market was not yet in the public domain as it was subject to procurement.
- Following a comment from Mr Danter that the proposed location for the stall had already been repaved last year, the Licensing Team Leader confirmed that whilst the stall wouldn't be situated directly within the area being repaved there would be a lot of traffic, noise and disruption to this area and so it had been deemed unsuitable for a food unit. He highlighted that this was dependent on the programme of works and may not affect Mr Danter at all.

Mr Danter explained that:

- He had experienced a number refurbishments to business units and the High Street in the times that he had traded at this location and these had not caused disruption to his business.
- He confirmed that his family had been trading on Cheltenham High Street during the festive period since 1986.

- He also had a funfair business that ran up until the 2<sup>nd</sup> November and then the food unit supported him and his family through the festive period.
- He highlighted that he had made a number of changes to the stall and location subject to consultation with the council and in response to complaints from other retailers. He explained that they had also enhanced the appearance of the unit at a cost of nearly £10,000 in 2015 and this year they had almost half the size of it in order to comply with the policy and to ensure that it did not obstruct New look or other retail units. They had also applied for a trading pitch that was slightly lower down the High Street so as to not conflict with other businesses.
- He highlighted that during the festive period in 2017 they had not received any complaints about the unit.

Mr Danter offered the following responses to Member questions:

- In response to a complaint about the smell of onions, they had sourced crispy dry onions that they now used;
- He was satisfied that the litter provisions were adequate. The Licensing Team Leader confirmed that there was not a specific condition on the licence regarding litter.

Members made the following comments during the debate:

- Members agreed that Mr Danter's stall was integral to Cheltenham during the festive period and extremely popular with both residents and visitors to the area. They acknowledged that Mr Danter managed the stall well and had worked with the council to resolve any issues.
- Several Members were concerned that the unit may need to be moved as a result of the works on the High Street and alternative locations would be subject to further consultation so wouldn't be able to be done at short notice.
- Members suggested that there needed to be closer dialogue with the townscape and licensing team regarding planned works and this would hopefully enable the licensing team to work with applicants to resolve issues outside of committee.
- Members acknowledged that it was not for the licensing committee to identify alternative locations, however, several Members felt that they would be happy to grant the application but not in the current location applied for.
- One Member reasoned that a number of the objections were not material considerations, they also felt that the majority of food outlets in the immediate vicinity had a different offer to Mr Danter's stall. One Member disagreed and felt that competition was still a factor as consumers would simply substitute.

In his final right of reply Mr Danter made the following comments:

- This unit was mobile and could easily be moved and relocated within 24 hours should it interfere with the works on the High Street.
- He reiterated that last year all the works taking place on the High Street had been completed on time and did not interfere with his unit.
- He read out several letters of reference, one from a local businessman who felt that the stall added something special to the High Street during Christmas time and stressed the importance of supporting a well-run family business. The other was from a sausage company supplier who explained that they relied on Mr Danter's unit in the run up to Christmas.

The committee proceeded to vote on section 1.5.1 of the report to approve the application because Members were satisfied that the location was suitable for the trading proposed.

4 in favour

4 against

The Chair had the casting vote and opted to grant the application.

The Licensing Team Leader and committee agreed that a plan b should be devised in consultation with Mr Danter in case problems arise as a result of the works on the High Street.

### **7. POLICY ON LICENSING OBJECTS ON THE HIGHWAY**

The Licensing Team Leader introduced the report, he explained that the Licensing Committee had requested that a review of the street scene policy be brought to the next full licensing committee meeting and a briefing note had been prepared to assist Members in their discussions. This outlined the current policy, recommendations for any future policy direction and examples from other councils.

He advised the committee that they could make recommendations to Cabinet on the proposed revised policy options with regards to the council's policy on the licensing of objects on the highway.

Members agreed that there was inevitably an issue with enforcement and the fact it took several months for a case to be listed with the Magistrate's Court was a poor use of officer's time.

The Licencing Team Leader advised that they had met with the planning enforcement team who can deal with the advertisement side of A boards and through the Town and Country Planning Act the council had the ability to remove unauthorised A boards. Planners could, therefore, delegate such powers to licensing to deal with themselves and this would save them having to go through the Magistrate's Court. He did, however, acknowledge that there were practical issues that needed to be considered such as the storage and procedure for destroying of such boards.

Some Members noted that other councils had adopted an automatic entitlement approach where subject to compliance with restrictions advertising boards can be used without the need for an application and thought this would be an appropriate approach to adopt.

Members felt it imperative that councils had the power to act more quickly to resolve issues and not have to prepare case files for court. The Licensing Team Leader explained that if they had delegated powers from the planning officers then the legislation states that they must give 14 days notice and if applicants haven't complied within this time frame they can remove the A board themselves.

A Member also noted that there were issues with businesses leaving their tables and chairs out overnight which was not permitted by the licence.

Members had concerns as to whether the council had adequate enforcement resources and discussed whether the matter should be referred to O&S to look at. The Licensing Team Leader acknowledged that enforcement was an issue, however, if they had delegated powers to deal with A boards then the cases could be resolved within 2 weeks which would help alleviate some of the resourcing issues.

Following a discussion, the committee agreed that the Chair and Vice Chair should in the first instance meet with the Built Environment Enforcement Manager to identify the extent of the problem.

### **8. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**

#### **(A) Tewkesbury Borough Council Licensing Review**

The Chair informed the committee that Tewkesbury Borough Council were currently reviewing their Hackney Carriage & Private Hire Taxi licencing policy with a deadline of the 26<sup>th</sup> August. It was suggested that the item be brought back to the next miscellaneous licensing committee meeting and any concerns could be fed back to Tewkesbury following that.

#### **(B) Safeguarding concerns**

The Licensing Team Leader informed the committee that they were having ongoing discussions with the police and County Council following concerns they had about the lack of information being disclosed on DBS checks. He advised that as per the national guidance's "relevancy criteria" police would not routinely log the following information:

- Violence considered less serious than GBH not involving a child or vulnerable adult unless there is a pattern of behaviour
- Domestic incidents
- Drug possession/use
- Drug dealing not involving children

- Drunkenness

He explained that there was a national consultation on the DBS criteria that they would be feeding in to and they were also dealing with it locally through the Gloucestershire Licensing Officers Group.

He confirmed that there was a national database of taxi drivers where refusals and revocations were logged, however, safeguarding information was not disclosed on there.

**9. REVIEW OF PREVIOUS DECISIONS**

**10. DATE OF NEXT MEETING**

4<sup>th</sup> September 2019.

**11. APPROVAL OF EXEMPT MINUTES**

The committee had resolved to release the exempt minutes from the previous meeting in to the public domain.

David Willingham  
**Chairman**



## Licensing Sub-Committee - Miscellaneous

**Wednesday, 3rd July, 2019**  
**6.00 - 8.30 pm**

<b>Attendees</b>	
<b>Councillors:</b>	David Willingham (Chair), Dennis Parsons (Vice-Chair), Mike Collins, Diggory Seacome and Jo Stafford (Reserve)
<b>Also in attendance:</b>	Louis Krog and Vikki Fennell

## Minutes

### 1. **APOLOGIES**

Apologies received from Councillor Wheeler. Councillor Stafford was in attendance as substitute.

### 2. **DECLARATIONS OF INTEREST**

There were none.

### 3. **UPDATE FROM THE CHAIR AND LICENSING TEAM LEADER**

Before the substantive items, The Chair and the Licensing Team Leader gave the following updates:

- CBC has won a Purple Flag award for its management of the night-time economy. Thanks to officers and the BID for all their hard work to get this. A press release has gone out;
- Members due to sit on the SEV scrutiny group on 17<sup>th</sup> July are requested to submit any questions for the invitee in advance of the meeting;
- Any more comments in relation to Tewkesbury's taxi licensing policy consultation should be sent in;
- In January, Members dealt with a confidential item, revoking the license of a taxi driver due to ongoing criminal proceedings. The driver was subsequently convicted and sentenced to 16 weeks in prison. This demonstrates that CBC takes licensing and safeguarding very seriously and won't hesitate to revoke a licence where there are issues of safety to the travelling public.

### 4. **APPLICATION FOR RENEWAL OF A HACKNEY CARRIAGE DRIVER'S LICENCE**

#### **Officer introduction**

The Licensing Team Leader introduced the application as set out in the report, for renewal of a Hackney Carriage driver's licence, due to expire 25<sup>th</sup> July. The applicant did not inform the Council or declare penalty points on his renewal form.

Details of the offences are outlined in the background papers, including the interview outlining the licence holder's reasons why he did not report them to Council.

### **Members' questions to officer**

None.

### **Applicant's address**

Mr Layton felt sure he had informed the Council of the penalty points (for speeding), though couldn't recall if this was verbally or by phone. He said he is not very good at filling out forms, and that subsequent to the interview with Council officers, he has details of where and when the speeding offences took place.

### **Members' questions to applicant**

In response to questions from Members, Mr Layton stated that:

- He wasn't eligible to go on a speed awareness course as he had done one just under three years previously, and drivers are only to undertake one course every three years;
- He couldn't remember whether he came to the Municipal Offices or telephoned to declare his penalty points. He was informed that if he had come into the office, he would have been given a form to fill in;
- He now understands the process, and the need to inform the Council of any penalty points in writing, witnessed by an officer.

### **Member debate**

A member felt that a written warning should make it clear that the breach of policy – not letting the Council know – is the main issue here. In response to a question from another member, the Licensing Team Leader confirmed that the enhanced driving test is similar to a standard practical driving test, but with a higher pass threshold, and at a cost of £40-50, undertaken through the Council's supplier.

A member felt that the question is whether the applicant is a fit and proper person to drive the people of Cheltenham. He found it difficult to give credence to the applicant's story, said that taxi drivers should be reliable, and questioned whether the licence should be renewed.

Another member agreed that failing to report the offences was the main issue, and felt that a written warning would be the best option – it is not a soft option, will stay on record, and be taken into account if the applicant ever comes back to Committee. The Committee is not here to punish the applicant; if he continues to incur penalty points, he will be banned from driving.

Two members were concerned about the applicant's vagueness concerning the speed at which he was travelling. Another member asked the applicant if he had had any other speeding tickets in the 18 years he has been a taxi driver; the applicant confirmed that he had, and had been on a speed awareness course on one occasion. He also confirmed, in response to a question from a member, that he has been looking into getting cruise control fitted to his car, and will definitely have it in his next vehicle.

### **Applicant's response**

Mr Layton agreed with all that had been said. He stated again that it was the first time he had filled out the form, and that the omission of the penalty points was a genuine mistake which he wants to rectify.

**Vote:**

To revoke Mr Layton's Hackney Carriage driver's licence: 1 in support, 4 in objection

To issue a written warning: 3 in support, 2 in objection

To require Mr Layton to complete and pass a driving assessment: 2 in support, 3 in objection

The Chair confirmed that the Committee won't revoke Mr Layton's licence, but issue a written warning which will stay on record. The Committee will expect Mr Layton to declare any future points, and advise his colleagues to do the same. He confirmed that Mr Layton can carry on driving, and that Officers will be in touch.

### **5. APPLICATION FOR RENEWAL OF PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - A-BOARD**

**Officer introduction**

The Licensing Team Leader introduced the application for the renewal of an A-board licence at Lakeland on the Promenade, issued in October 2018 by an officer, without referring the application to Committee, which is normal procedure. An A-board at this location does not comply with policy with regard to the Council's Revised Outdoor Advertising Protocol, so officers felt it appropriate to refer the renewal application to Committee. Paragraph 3.1 of the report sets out CBC's advertising protocol, and this is the test to take into consideration.

**Members' questions to officer**

In response to Members' questions, the officer confirmed:

- That the A-board is within the Council's permitted dimensions;
- That another shop on the row – Slaters – has an A-board because it has no street-level frontage, and Costa Coffee opposite is allowed an A-board, although this is supposed to remain in the tables and chairs area;
- That the current licence will expire on 17<sup>th</sup> July 2019.

**Applicant's address**

The applicant stated that she always ensures the board is discreet and pulled in, and that it always looks professional and well done. At a time when retail is struggling, it is a helpful tool to bring customers into the store, interesting them in demonstrations and special offers. She cares passionately about her business but until she applied for the renewal, she wasn't aware that the correct procedure had not been followed.

**Members' questions to applicant**

In response to Members' questions, the applicant confirmed:

- That the board is currently promoting Lakeland's three-year guarantee, which is a big selling point. Promotions and demonstrations are advertised on it, but it is not changed daily;
- That it makes a big difference to displaying similar promotions in the window, as people can see it clearly from a distance.

## **Member debate**

A member felt that the dilemma here is that Council policy does not allow A-boards to shops with street frontage, and if this licence is granted, everyone on the High Street could apply for them. Another member agreed that all businesses would say the same as the applicant, but the Council does not want the town's pavements cluttered with A-boards. He is a Lakeland customer and sympathises with the applicant, but felt that with a 14-foot frontage and no extenuating circumstances, there is no need for this renewal to be granted.

A member said that, as this A-board was permitted originally be mistake, there is no reason to deviate from licensing policy. A-boards create clutter and are trip hazards; Lakeland can promote its offers and wares in its street-level shop front window. Another member agreed that it was unfortunate that the error was made in the first place, but the Council must keep pavements safe for the visually impaired, and therefore A-boards have to be limited.

## **Applicant's response**

Ms White understood Members' comments but, for future reference, questioned why she was sent a renewal letter when the licence had been granted in error. She has paid £125 renewal, as there was nothing in the letter to indicate the error.

The Licensing Team Leader stated that CBC was under a duty to determine the application, and to give the applicant the right to reply and option to defend the application. He confirmed that the payment would be refunded.

## **Vote**

To grant renewal: 0 in support, 5 in objection

The Chair said that CBC will be reviewing the policy for objects on the pavement in the future, and advised the applicant that this would allow the opportunity to possibly influence policy. He apologised on behalf of the Council for the original mistake. The Licensing Team Leader confirmed that he would be in touch with the applicant to discuss what will happen next.

## **6. APPLICATION FOR STREET-TRADING LICENCE**

### **Officer introduction**

The Licensing Team Leader said the application is for a new street-trading consent to sell hot drinks and cakes from a coffee bike (image provided) outside 117 High Street (John Lewis plc), initially for three months, with trading hours as set out in the officer report. The assessment criteria are listed at Paragraph 3.2 of the report, with a number of objections from local traders included in the background papers. The Committee can approve if Members feel it is acceptable, or refuse if they feel it does not comply with Council policy. They should determine the application with a view to promote Council policy, and need to aware that the proposed site is not an approved location.

### **Members' questions to officer**

None.

### **Applicant's address**

Mr Nigel-Jones said he had done a lot of research before choosing this particular location, and opted for it because it is a much improved area, with a wide pavement, and at a good distance from another coffee street vendor who trades outside Cavendish House.

### **Members' questions to applicant**

In response to Members' questions, Mr Nigel-Jones confirmed that:

- He would sell organic coffee and orange juice, and organic crisps from local farmers using biodegradable packets; the coffee cups will also be biodegradable;
- There is a litter bin approximately 5 yards from the proposed pitch; he will be responsible for his own rubbish;
- The bicycle is electric and can be cycled, but he will bring it in a van, at 7.30am;
- He considered the Council's street-trading policy and other local coffee shops when doing his research, and concluded that the nearest coffee shop – Costa – would not be too worried about competition from him. He considers this location to be a good one, as John Lewis has made it an up-and-coming area, the footfall is good, there are benches and litter bins;
- The power for making coffee etc will come from a lithium battery in a sealed unit underneath the counter; other equipment is operated by gas, from a small container inside the bike;
- He applied for a three-month licence initially as he is a little worried about the winter months, and would want to discuss with the Council the possibility of a canopy or awning over the bike to protect customers from the rain. He would want to extend the licence if possible.

### **Member debate**

A member said that, as with the previous application, the Council has endorsed a policy and it is for the Committee to enforce it. The policy does not support a bike here. Moreover, the Council has worked hard to attract John Lewis and other major retailers to the town, and spent a lot of money on public realm work in this area – it now looks good, and it would be a shame to clutter the pavement with pop-ups. He believes strongly in fair competition and attaches serious weight to the effect of this business on established businesses paying rent and rates. He will not support the application in principle.

A member commended the environmental considerations made by the applicant, but felt there are two main issues: firstly, this is not an approved area for street trading, and secondly, the Council has a duty to businesses paying rates – it must consider the needs of the area and the impact this additional business would have.

A member also liked the bike, the organic wares, and the environmentally responsible attitude of the applicant, but felt he was taking advantage of the fact that major improvements have been made in this area. It is not an approved location, and the business would be in direct competition with a number of other traders. He commended Mr Nigel-Jones for his application, but did not feel it would be supported.

A member agreed that the bike looks wonderful, complements the Council's cycling agenda, and the environmental credentials are good. He was not concerned about public safety or nuisance, but felt the application failed on two tests: first, the needs of the area – the pitch is close to several coffee shops

which complement each other well – and second, it is not an approved site. He would like to see the coffee bike somewhere in town but not here.

### **Applicant's response**

Mr Nigel-Jones took Members' points, but wondered whether this is not a designated site because it was previously untidy with poor footfall. Now that money has been spent, it could become a designated location and would complement the area.

Vote

To approve the application

0 in support

5 in objection

REFUSE

The Chair confirmed that the Committee likes the appearance and environmental credentials of the business, and have refused because it is not compatible with the policy needs of the area. He thanked the applicant, and suggested he speak with the licensing team outside the meeting to consider other locations.

## **7. APPLICATION FOR A VARIATION OF A SEXUAL ENTERTAINMENT VENUE LICENCE**

### **Officer introduction**

The Licensing Team Leader told Members that the current SEV at the Two Pigs will expire early in 2020, and that the scope of this application relates only to a variation – additional dates to coincide with race meetings in October, November and December. There have been two objections, as set out in the report, but no comment from the Chief of Police. Mandatory and discretionary grounds for refusal are detailed in the report at Paragraphs 4.4 and 4.5, and Members should also be mindful of their public sector equality duty and the effect of granting this application on the protected group as set out in 2010.

### **Questions to officer**

In response to Members' questions, the Licensing Team Leader confirmed that:

- The application is in line with previous applications from this applicant for sexual entertainment at this venue. It is used as a SEV at most major race events.
- Police and Council licensing officers inspect the venue once or twice a night during race events and, apart from some minor issues, no comments or concerns have been raised;
- The venue is inspected every six months or so, outside the SEV dates when operating as a normal pub
- No sexual assaults or incidents attributable to Two Pigs customers have been recorded by the police.

The applicant had no questions for the Licensing Team Leader at this point.

The representative of GRASAC asked what the link is between sporting events and sexual entertainment in Cheltenham; this doesn't occur in other cities. The Licensing Team Leader stated that it dates back to when the Blue Rooms operated as a permanent SEV in Cheltenham. In 2011, a statutory exemption allowed premises to put on sexual entertainment once a month without a licence. There is nothing the Council can do about it, but if premises want more

than one night a month, as in the case of the Two Pigs, they need to apply for a licence.

### **Applicant's address**

The applicant's solicitor confirmed the additional dates and times requested: Friday 25<sup>th</sup> and Saturday 26<sup>th</sup> October; Friday 15<sup>th</sup>, Saturday 16<sup>th</sup> and Sunday 17<sup>th</sup> November; and Friday 13<sup>th</sup> and Saturday 14<sup>th</sup> December, all 8.00pm to 5.00am. The Licensing Team Leader confirmed that these are the dates on the application form.

The solicitor said the licence has been held since January 2017; when it was originally applied for, a number of objections were raised but none have been raised since then. As stated by the Licensing Team Leader, there have been no issues or objections from the police, and only very minor incidents have occurred which have been fully resolved to the satisfaction of the police and local authority. The applicant respects the local area and actively participates in the Cheltenham NightSafe scheme, which is linked with the police and aims to reduce crime and anti-social behaviour.

The application has been properly advertised, and copies of the public notice are available.

Regarding the objections raised, Members will be fully aware of the mandatory and discretionary grounds for refusal; objections on moral grounds or values are not relevant and should not be taken into consideration. The objection from GRASAC concerning a serious sexual assault during race week cannot be attributed to the applicant and should be disregarded.

The Two Pigs is a professionally-run establishment, which strives to comply with its licensing commitment, and work with police to ensure that individuals abide by the rules and do not cause a nuisance in the local area. Welfare of performers is paramount, and they are transported to and from the venue, provided with meals and refreshment, and secure changing rooms. There are no webcams or chat services.

Concerning the objection from a local resident, the police and local authority work to safeguard the streets, and have raised no objection to the licence at the Two Pigs. If there were any anti-social behaviour or disorder issues, the police would have been present at the meeting or made a comment; this contradicts and outweighs the resident's objection. The comments about the 24-hour exemption are a matter for judicial review at the High Court.

This is a straightforward application: the applicant has had an excellent record for 2.5 years; the police have no objections; public objections have no merit in law; all licensing regulations are observed.

### **Questions to applicant**

In response to Members' questions, the applicant's solicitor confirmed that:

- Employees are not coerced or trafficked; they apply online, and once approved, need to confirm their status, address, and right to work in the country;
- There is racing on Sunday 17<sup>th</sup> November;

- Regarding the barriers placed on the highway, conditions are attached to the original licence and the local authority has not raised any objections to suggest that these have been breached;
- Fliers handed out during raceweek offer a free courtesy bus; the local authority has not raised the issue, so the assumption is that they do not breach the conditions;
- Additional bar staff are provided through Griffin Promotions; individuals who are contracted to work at the venue are fully briefed as to what the event will be and what they will be expected to do;
- Performers come from all across the country, and usually stay in hotels in Cheltenham or Gloucester; they are dropped off at their hotels or their vehicles.

Regarding the barriers, the Licensing Team Leader said that Condition 4 relates to the display of banners in the immediate vicinity, and the issue is that venues use barriers during busy raceweek events to manage crowd control. Officers have had conversations with the police and the operators, who state the barriers are necessary to manage queues, crime, disorder, flashpoints. The barriers used here display the Eroticats logo - nothing to suggest lap dancing, but to some extent the imagery could be interpreted as a breach. This could be tightened up under a policy review.

Regarding the fliers, Condition 6 concerns advertising the premises and also needs tightening up; the fliers advertise the courtesy bus, so technically are not in breach. With the imagery and barriers, the applicant is circumnavigating the rules; this will be picked up. He confirmed that, if acting under the 24-hour exemption, barriers are permitted but leafleting requires a separate permit.

The Licensing Team Leader reminded the Committee that the application is a variation of an existing licence and the Committee's decision making remit is limited to the variation applied for and cannot extend to a full review of the SEV already issued.

The representative from GRASAC asked what the Council is doing generally about the safety and safeguarding of residents in the area. The courtesy bus has been seen near schools, and Two Pigs workers and ex-workers have told GRASAC that they have been dismissed during raceweek. The applicant said this is not the case, and suggested it is not relevant to the application.

### **Objector's address**

Ms Steward said GRASAC works in tandem with Council members and staff and the police, to protect the safety of women – posters were produced this year – yet this seems to contradict the work which other Council departments are doing. She questioned again the link between sporting entertainment and the sex industry, and while recognising that the law has been in place since the 1980s, and that the Committee is not here to discuss morals, she felt that additional dates on the licence, in this sensitive area near St Mary's, St Matthew's and St Gregory's, could be refused as unsuitable, based on the clientele.

### **Questions to objector**

Members agreed that GRASAC does very good and valuable work, but reminded the objector that tonight they are considering only the amendment to an existing consent; they can only apply the law and policy as it stands, and



while they can change policy in future, they cannot change the law. It was also pointed out that any link between sport and sexual entertainments has nothing to do with the application, and that, as stated earlier, Cheltenham has just won a Purple Flag for its management of the night-time economy.

In response to questions from Members, Ms Steward stated that:

- Although the serious sexual assault during raceweek cannot be directly linked to the Two Pigs, women's safety during raceweek in general is a concern. The police say nothing was reported to them, but GRASAC has clients who say they tried to report incidents to the police and were told they should expect it in raceweek. GRASAC holds a lot of client information about safety or lack of it during raceweek;
- The courtesy bus has been seen near Cheltenham Ladies College during the evening – not near any primary schools – but many local residents find it offensive;
- By increasing the dates or not, Councillors can influence the ongoing link between race events and the sex industry, which is not prevalent elsewhere;
- She recognises that, if the licence variation is refused tonight, sexual entertainment will continue elsewhere in the town, without the protection for performers provided by the large number of conditions on the Two Pigs licence. However, she is interested in the safety of all women in the town

The applicant had no questions for Ms Steward.

### **Member debate**

A member asked for clarification as to whether this is an amendment or a new application. There are no more race meetings left on the original application, but three between now and January. The Licensing Team Leader confirmed that the Two Pigs has a licence to January 2020, with certain dates permitted; tonight's application is just about adding three more sets of dates. Matters relevant to the discretionary grounds for refusal of the venue can be raised when the licence is renewed later this year.

A member said there may or may not be a link between sex and sport, but this is not peculiar to Cheltenham and cannot be blamed on the Two Pigs. There are problems in town and in society which need to be dealt with, but this amendment to an existing consent won't make a difference. The issue of SEVs won't go away, and in granting a SEV licence, the venue can be better controlled by licensing officers and the police, making it better for performers and for audiences. If it goes underground, there would be no control.

A member suggested the link between racing and sexual entertainment arose from the link between racing and gambling, and a lot of people with money to burn. She agrees that, as a woman, it can be very unpleasant walking through town during raceweek, but this cannot be blamed on one SEV. She was shocked to hear that women have had trouble reporting incidents to the police, but that is not relevant to this licence. The Committee has very limited ability to refuse: the licence is already granted; this is an amendment; the locality was considered acceptable when the licence was granted, and this is not the place to object to that. It is up to people to choose whether they go to SEVs; doing so does not make them guilty of assault, and at least with a licence, conditions are in place to protect workers and audience.

A member suggested that the correlation between sport and SEVs could just be that a lot more people need entertaining and part of this is drinking and attending lap-dancing clubs. Under the 24-hour exemption, any pub or club can put on unregulated sexual entertainment, and it is better to contain the dates by licence. He agreed with other Members that any attacks or anti-social behaviour from drunken people cannot be attributed to a single establishment.

A member also admires the work done by GRASAC, and appreciates their concerns, but repeated that the Council is limited by national legislation – lap-dancing is legal, and people who do not like it should talk to their MP about changing the law; otherwise the Council will always be constrained in the way it can act. He agreed with other Members that it is better to have some control over premises, and felt that the Two Pigs is a good-quality venue.

He was concerned, however, about the barriers and fliers, and felt that the will of the Committee has been legally and cleverly circumvented. Fliers cause a lot of litter and barriers block the highway. He recalled that the main issue when the original licence was granted was preventing any advertisements being posted on the wall outside, and feels uncomfortable doing nothing about the barriers and leaflets.

A member said racing brings in a lot more people than it used to, and this is reflected in the venues. He said that barriers are normal for crowd control, but questioned why those used at the Two Pigs need to be branded. To keep things in perspective, however, he reminded Members that there are more issues and complaints about taxi drivers than SEVs during raceweek.

A member said that the police would have raised concerns if they had any, and that the Two Pigs is inspected every night during race events. He agreed that sexual entertainment is not linked so much to sport as to large numbers of people with lots of money to spend, and pointed out that many large cities have permanent SEVs so do not need additional venues during sporting events. He reminded Members that the important thing is that the performers and clients are safe, and the fact that people are offended by it is not grounds for refusal – discretionary grounds were considered when the application was originally considered. Moral objections are not a reason to refuse, and the Council itself has allowed the Dream Boys to perform at the Town Hall using the 24-hour exemption.

He said that concerns about the safety of the town are more about the number of people in raceweek. There are objectionable people in any large town on a Friday night, but at least the licensed venue will have more door staff, regulation and inspections because of its high profile; the general consent is that the Two Pigs operates within its licence, and if performers were coerced, it would be evident. The objections raised are not material, and issues regarding the 24-hour exemption need to be raised with Parliament. He wants Cheltenham to be safe for everyone and the Council has done all it can. The Two Pigs cannot be held responsible for anti-social behaviour, only for its immediate vicinity. There is no rational reason to refuse.

A member noted that the application is being determined under CBC's existing licence policy, and asked when the reviewed policy would come into force. The Licensing Team Leader said this will involve scrutiny work, a 2-3 month consultation, cabinet approval and then implementation – it will not happen

before Christmas. He added that leafleting is subject to separate licensing permission, and needed a permit under the Environmental Protection Act, with a separate set of conditions (leafleters are not allowed to force their leaflets on people and are required to clear up any mess). The Two Pigs is no worse than any other night club in this respect. He also said that obstruction of the highway is also covered by separate legislation.

The applicant had no further comment.

**Vote**

Grant the application as applied for: 5 in support - unanimous

8. **ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**  
None.

David Willingham  
**Chairman**

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## CHELTENHAM BOROUGH COUNCIL

### Cheltenham Borough Council

#### Licensing Committee – 4<sup>th</sup> September 2019

#### Safeguarding – Taxis and Private Hire

#### Report of the Licensing Team Leader

#### 1. EXECUTIVE SUMMARY AND RECOMMENDATION

The council regulates the activities of the hackney and private hire trades through the licensing of hackney carriage vehicles and driver and private hire vehicle, drivers and operators. It does not licence those operators that only provide hackney carriage vehicles.

It is considered that the standards adopted by Cheltenham Borough Council (CBC) are robust and promote good practice in many respects.

However, the licensing of hackney carriage drivers, private hire drivers and private hire operators has been under critical scrutiny nationally, since a number of high profile criminal cases of child sexual exploitation (CSE) were uncovered. In these cases, serious criminal activity was found clustered in certain areas, such as Rotherham, Rochdale and Oxfordshire. There have been many examples of members of the taxi and private hire trades being involved in or helping to facilitate these terrible crimes.

In part due to these concerns, the licensing of taxi and private hire trades has received more attention in recent years through the work of the Law Commission (where they made recommendations to improve regulation back in 2012 - 2014) and the All Party Parliamentary Group on Taxis which first reported in 2018, and the Government set up a Working Party to look at this area more recently.

Most recently, the Department for Transport (DfT) has produced the draft of the Statutory Guidance entitled 'Taxi and Private Hire Vehicle Licensing: Protecting Users' (the Guidance) aimed at protecting users of taxis and private hire vehicles in response to these concerns.

This report discusses the Guidance and recommends a number of actions to more effectively promote public safety and better protect the public. Members are asked to consider the recommendations and approve them as they see fit.

Members will note there is no certainty at this point from DfT in implementing the Guidance. However, it is felt necessary to act now. It is unlikely that the Government will expand the scope of the Guidance from the draft, and so Members may consider the issues raised and act proactively.

## 2. INTRODUCTION

The council's current Licensing Policy on regulating the activities of the taxi and private hire trades was approved on 13<sup>th</sup> March 2018. It can be viewed at [https://www.cheltenham.gov.uk/downloads/file/1980/licensing\\_policy\\_guidance\\_and\\_conditions\\_for\\_private\\_hire\\_and\\_taxis](https://www.cheltenham.gov.uk/downloads/file/1980/licensing_policy_guidance_and_conditions_for_private_hire_and_taxis)

The policy seeks to promote the following objectives:-

- The protection of the public and public safety;
- Cheltenham Borough Council's priorities;
- The establishment of a professional and respected licensed trade;
- Access to an efficient and effective public transport service;
- The protection of the environment.

On 6<sup>th</sup> March 2019 Licensing Committee was advised of the consultation running on the Guidance. However, since that process ended there has been no indication of when and how exactly the Guidance will be implemented.

This report discusses the Guidance and recommends a number of positive responses to the issues raised.

Of overarching importance, it is clear that CBC must work closely and collaboratively with other Licensing Authorities, particularly where many of those they licence are engaged in the private hire trade in Cheltenham. It is clear that a large number of vehicles and drivers work in Cheltenham, licensed by others. In particular, the private hire trade regularly chose to licence their vehicles and drivers with Tewkesbury Borough Council (TBC) and not CBC. Therefore, CBC must also seek to reduce the incentives for private hire businesses to licence with other Licensing Authorities. It should be noted that TBC is consulting on a new Taxi Policy, which will raise standards.

It is important that CBC works with partner authorities consistently and sustainably to raise standards across Gloucestershire, and so reduce the attraction for business/ individuals to licence their operations elsewhere, whilst continuing to work in Cheltenham. To set higher standards in isolation may well have a detrimental effect on promoting public safety, as some may simply circumvent our controls – and do so quite legally.

The Licensing Authority must appreciate the reasons why private hire businesses obtain licences from other areas to work in Cheltenham. Firstly, they are at liberty to do so and can work quite legally in our area due to the Deregulation Act 2015. Secondly, there are some variations in requirements on application, and so the costs to the business may vary significantly across different authorities. These differences may contribute to operators or part of their operations being licensed by other Licensing Authorities.

## 3. BACKGROUND

This report details the actions required to implement improvements discussed in the Guidance. These actions may require review once the Government publish the final version of the Guidance.

It acknowledges that nationally there have been failings by local authorities (schools/ care establishments/ licensing teams) and Police forces, particularly in respect of protecting children and vulnerable people from harm. In some of the worst cases, various departments of councils (including licensing teams) and the Police have failed to respond effectively and in a joined up manner to serious allegations and have allowed criminal activity to take place. Those failings have allowed persons involved in those trades to play a significant and/ or active role in criminality in relation to Child Sexual Exploitation.

*An independent enquiry was convened to investigate a significant number of such cases in the Rotherham Borough Council area and how the authorities responded to them over a protracted period of time. The report produced by Alexis Jay OBE is comprehensive and leaves no doubt of the nature of the terrible crimes perpetrated, highlights failings by the council and Police, details how members of the taxi trade facilitated and actively engaged in the criminality and offers recommendations going forward. The report covers the period of 1997 – 2013 and can be found at*

[https://www.rotherham.gov.uk/downloads/file/1407/independent\\_inquiry\\_cse\\_in\\_rotherham](https://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham)

**The Guidance highlights a number of key areas, where improvement is required to address widespread concerns stemming from those cases:-**

- **On application or on renewal robust measures to ensure that drivers are fit and proper.**
- **Comprehensive policies and procedures to act quickly and effectively regarding concerns about drivers involved in abuse or exploitation of children.**
- **A requirement to ensure the continued good behaviour of drivers once licensed.**

**The DfT then go further by stressing the need for:-**

- **High common standards,**
- **Increased sharing of information and effective use of enforcement powers.**

These are important points and must be considered to ensure CBC provides an effective response to the Guidance and protects children and vulnerable adults (often known as adults at risk) effectively.

There is little point in an authority setting driver entry requirements to obtain a licence in isolation, as prospective taxi drivers in their area are likely to apply elsewhere and may then be subject to potentially less effective assessment of whether they should be considered as fit and proper, and yet continue to work in their communities.

#### **4. CURRENT PRACTICE AND RECOMMENDATIONS FOR IMPROVEMENT**

CBC takes very seriously obligations in connection with Safeguarding and currently the following policies and procedures are followed:-

## Application Process

### Drivers

New applicants and those renewing are subject to the following:-

- They must produce an Enhanced DBS required on application and every 3 years. This highlights certain conviction and caution data. We also check the 'barred lists' that are relevant where people work with children.
- They are *asked* to subscribe to the Update Service of the DBS (it is not mandatory). This allows regular checking for any changes to that person's conviction and barring record.
- We check the NR3 register for that driver. This highlights any previous searches for that person and any refusals/ revocations by other Licensing Authorities. *N.B. This is reliant on other local authorities using NR3 and uploading such data.*
- Drivers are required to attend a 3 hour training session on Safeguarding – covering CSE, domestic violence, abuse, neglect, sexual assault and whistle blowing. **[N.B not required on renewal]**
- Drivers must provide their DVLA driving licence and confirm any endorsements and prove their right to work in the UK.

### Decision Making

Officers and Councillors must have regard to CBC's Taxi Policy in making grant/ renewal decisions for drivers. Inter alia, the Policy refers to the period of time that should elapse when considering convictions and cautions of an applicant.

Councillors considering driver applications are given initial training before hearing any such cases. They are then given refresher training on an occasional basis.

### Complaints

Where a complaint is received against a taxi driver, this will be recorded him/her on the Environmental Health Database – IDOX Uniform.

Use of that database will highlight any previous complaints against that driver, and will record investigation of further complaints.

Allegation Management meetings are convened where sufficient concerns exist about a driver.

Where a driver is suspended or revoked on Safeguarding grounds that information should be shared with the Police locally. N.B. This process has been adopted across Gloucestershire but is not being utilised fully by all partners.

### Private Hire Operators and Vehicle Proprietors

If an Operator does not hold a driver's licence, they must obtain a basic DBS; and for a limited company, one of the directors must obtain one.

No 'fit and proper' checks are carried out on vehicle owners, when they apply for a plate. They will often hold a driver's licence, so may have been assessed as fit and proper by CBC. However, legally they can simply licence the vehicle for someone else to drive, but it would be illegal for them to drive it.



Neither application type has previously involved consideration of the suitability of individuals in respect of Safeguarding.

The processes for the investigation of complaints regarding vehicle owners or Operators are similar to the driver's process. However, the data sharing arrangement does not include reference to either type of licence holder.

## 5. OPTIONS FOR IMPROVEMENT

Changes that could be implemented without change to Taxi Policy

### **ACTION 1**

CBC to adopt the procedure attached at APPENDIX 1 in respect of allegations involving children and adults at risk. This process is followed by many Safeguarding Children Boards and has been amended to make it more specific to the needs of CBC Licensing. It needs discussion with the Local Authority Designated Officer (LADO) with GCC and the Police locally to ensure it is fit for purpose in our area, but the fundamentals of it should remain. In any event, it will provide a detailed and comprehensive framework to approach such complaints when they arise.

Positives – If CBC's process is not sufficiently robust or comprehensive once the Guidance is in force, there is a corporate risk to the council in terms of legal challenge and its reputation, aside from any harms being potentially exacerbated for victims or those wrongly accused.

It clearly shows the responsibilities of all stakeholders and so could be important in ensuring consistency in dealing with such allegations.

It should enhance and improve investigation of such complaints, by providing a comprehensive framework. That should improve the outcomes from such processes for those that may have been or continue to be harmed and the subject of any allegations, where they are innocent.

Negatives – There may be an increase in demands of officer time, but it is considered necessary to adopt the process for the reasons laid out.

### **ACTION 2**

Licensing Team to investigate the viability of creating a 'flexible warranting' scheme in order to carry out more effective monitoring and enforcement of 'out of town' drivers and vehicles.

In simple terms, this means CBC would have the authority from other councils to deal with their licence holders whilst working in Cheltenham. It would mean that other councils would need to authorise our staff to act on their behalf in dealing with their licence holders.

Aside from giving CBC power to monitor and engage with those 'out of town' licence holders, it could also open up opportunities for joint enforcement exercises across Gloucestershire, if the authorisations are approved through reciprocal arrangements. It could also open up opportunities for neighbouring authorities to assist CBC on exercises around large racecourse events, particularly the Festival.

Options

Taking a simple approach could allow compliance checks with licence holders, evidence gathering and initial contact with the licence holder only on complaints/ proactive work.

Taking a more involved approach could allow CBC officers to more fully investigate a complaint from start to finish (potentially including prosecution) and carry out monitoring of licence holders.

It is considered that keeping the idea as simple as possible should make it easier to implement and to sustain. Where full agreement of a number of partner agencies is needed, it seems sensible to limit the areas for disagreement.

### **ACTION 3**

Improve the Safeguarding training. Due to the importance of driver training and its potential breadth, this work has already started and Members will see the new version of the training in due course. However, the intention is to implement it as soon as possible.

Members may consider whether they require this training for all driver renewals, in addition to new applications, or whether they would be satisfied with simply requiring that all drivers have carried out the earlier training or the new version at some point.

CBC could require drivers to complete this training, in any event, where it sees fit. For example, where a driver has been subject to a relevant complaint it may be appropriate to do so.

Positives – Effective training should better protect vulnerable people and children.

It should better equip drivers for dealing with difficult situations they may face in this context.

It should better promote public protection in the widest sense i.e drivers may notice certain behaviours in their own families or communities.

The current standard of training is accepted by some other councils. The intention would be to develop the package further and build on that position.

Negatives – There could be an additional financial burden on applicants and/ or their prospective employers in paying for this training and a time commitment for existing drivers to take it (if mandated on renewal).

Officers delivering with these sessions should be supported to ensure their competence to deliver such important training. However, with CBC's commercial approach in mind, any small investment should lead to enhanced delivery of training across Licensing and help build a reputation in the market place.

### **ACTION 4**

Training for councillors could be enhanced to better support them carrying out their responsibilities. There should also be regular opportunities to refresh knowledge, share experiences and develop Councillor's skills.

Consideration should be given to arranging an external trainer to facilitate training post election of the council and officer provided training yearly or on a 6 monthly basis. Councillors could be invited from other Licensing Authorities to provide networking opportunities and assist in paying for the training.

Positives – Committee's decisions may be less likely to be overturned on appeal.

Applicants should continue to receive a fair and objective hearing of their case.

Councillors should feel more confident in their assessment of those before them and in their decision making.

Negatives – None

## **ACTION 5**

In the case of the most serious complaints about the behaviour of licence holders, a senior manager may be requested to carry out a review of the handling of the complaint. This decision to be made by the Team Leader Licensing and Chair of Licensing Committee. The review would look at actions by CBC staff and any other public bodies concerned.

This could provide oversight of the handling of such investigations and allow a comprehensive review to be carried out. The emphasis of such reviews will be to improve the response to such issues and learn from cases.

## **ACTION 6**

If not done already, CBC should ensure a clear separation of responsibility in respect of complaints about a licence holder's alleged behaviour and any subsequent decision making about their fitness to hold a licence.

## **ACTION 7**

Officers to produce a written policy/ procedure for immediate suspensions or revocations by officers/ managers at CBC, where relevant issues arise. The procedure would build on the existing framework and ensure a consistent approach. This may need to dovetail with or become part of the scheme of delegation.

## **ACTION 8**

CBC to produce guidance for officers explaining the policy and procedure for referring an individual to the DBS for possible inclusion on barring lists. This procedure would only be used where the circumstances of a complaint or case justified the council doing so. The barring lists are an important tool to stop people working with children or adults at risk, where circumstances dictate.

## **ACTION 9**

Officers to carry out quarterly reviews of all enforcement work carried out. The purpose of doing so would be to improve ways of working and the Licensing service:-

1. Looking for emerging trends in non – compliance or patterns of adverse behaviour in licence holders.

2. Learning from the handling of those cases.
3. Seeking ways to be more proactive in engaging with the trade and in monitoring/enforcement exercises.
4. Sharing best practice and learning from legal cases elsewhere.

### **ACTION 10**

Social media is a strong tool and should be used to communicate with licence holders and the public more effectively. There could be more extensive use of the Licensing twitter feed in a targeted manner to propagate best practice, share relevant information, publicise the team's response to complaints and decision making at committee and improve the working relationship with the trade.

### **ACTION 11**

To refresh and re – establish the liaison arrangements with the trade through the Liaison Group that already exists. The intention being to:-

1. Develop effective arrangements to consult with the trade when needed.
2. Provide a means for the trade to flag up their own concerns that affect their workplace.
3. Propagate best practice.

### **ACTION 12**

The Council to publish enhanced information on its website providing safety advice to prospective customers regarding the taxi and private hire trades. This information should help the public make more informed choices when using licensed vehicles, and would include:-

1. Reminding the public to only wait for a vehicle in a safe place, ideally well lit in the hours of darkness.
2. Reminding the public to pre – book vehicles at peak times to avoid unnecessary queuing and/ or long wait times.
3. A reminder to always check the driver/ vehicle details if pre – booking.
4. Highlight the checks carried out when licensing vehicles and drivers, and stress the benefits of using licensed vehicle/ drivers as averse to using those without a licence.
5. Highlight the information contained on vehicle licence plates, and explain the differences across different Licensing Authorities.
6. A reminder to always look for the driver's badge to identify their driver.

### **ACTION 13**

Ensure that all Licensing staff are specifically briefed about 'Whistleblowing' i.e. they are briefed on the route they can take to flag up concerns with management about decision making in respect of driver's licences (not on council Policy but in respect of concerns about

officers individual decisions where concerns ~~have arisen~~ and that they are provided with a named manager who would be responsible for investigating any concerns.

It should be stressed that there has been no evidence of such problems at CBC. However, there have been genuine concerns about the granting of licences in some other council areas. Approving this provision should mitigate any possible risk still further.

#### **ACTION 14**

Officers to consider the need for Operators to maintain a recruitment policy for employing ex – offenders or at least signpost them to appropriate advice. This could help employers to recruit more effectively and avoid wasting time with potential recruits that might be unsuitable.

#### **ACTION 15**

To liaise with Gloucestershire Constabulary and other Gloucestershire Licensing Authorities to seek the establishment of a Single Point of Contact (SPOC) within the Police force locally. This officer could act as a champion for issues related to taxi and private hire licensing and act as the key liaison officer for Licensing Authorities.

#### **ACTION 16**

Improve liaison with other Gloucestershire Licensing Authorities:-

Share policy and procedure to enable use of NR3 by all,

Improve sharing arrangements by Licensing Authorities of all suspension decisions across Gloucestershire Licensing Officers Group (GLOG). There is an existing protocol including revocations and refusals, but this needs review and has been superseded by the NR3 to a large extent.

Formalise sharing of appropriate data in relation to County Council investigations in relation to persons transporting children or adults at risk.

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#### Changes where Taxi Policy requires amending prior to implementing

#### **ACTION 1**

CBC to consider **mandating** the use of the Update Service from the DBS on application, renewal maintained during the licence period.

Positives – At any time a ‘status check’ could be carried out by CBC to ascertain any changes to that individual’s conviction history or local intelligence file. CBC could use the Multiple Status Check facility that can be accessed via a web service to check unlimited numbers of checks simultaneously. This would provide consistency in accessing relevant data throughout the currency of a licence.

It would reduce the administration time for renewals, as a person would need to confirm their use of the Update Service and provide their original DBS certificate, and not carry out a full DBS check.

For information – An update of a person's record is made from the Police National Computer on a weekly basis, but a similar upload from *local police force records* is made every 6 or 9 months.

CBC as a registered body must countersign a minimum number of DBS checks to maintain its status each year and to continue carrying out checks. The number of checks for CBC drivers and Tewkesbury applicants may be insufficient to continue as a registered body.

Licensing may need to extend the service to countersign checks for other departments and other local authorities to maintain its use of the DBS service. Alternatively, CBC could use a third party provider to obtain DBS applications through online means.

Payment for the Update Service is £13 each year directly to the DBS.

## **ACTION 2**

Consider the recommendations from IoL on conviction policy/ the DFT final conviction policy. This should be done with some reference to the LAs in the vicinity of CBC. The primary aim should be to agree a consistent standard and approach to decision making using it across the area. This could mean agreeing the best consensus or agreeing either policy in its entirety.

Positives – A consistent approach to licensing drivers across neighbouring councils and those nearby geographically is a strong tool to ensure that those persons that have committed crimes before do not reoffend in Cheltenham.

*For information - Consistency in decision making will only come about through common policy and shared approaches to training of Councillors on implementing it, a locally agreed approach with regard to the national guidance may be more relevant and acceptable to all stakeholders.*

*It could be argued that the IoL guidance lacks objectivity. It seems to create a very high bar, in terms of entry standards to the trade. There are many occupations with unfettered access to children and the vulnerable, and yet recruitment standards are often far lower in this respect.*

*The IoL guidance also seems intent on removing the discretion of Licensing committees in hearing a case. It should be considered that most cases are more likely to involve one or two isolated lesser offences, where an individual has an otherwise clear record. Committees seem well placed to fully consider such cases and any mitigation due to the comprehensive nature of the application process and subsequent hearing. Furthermore, a common approach locally could be better targeted and so mitigate the need for departure from it. Shared approaches to implementing this policy and possible peer review could lessen inconsistency in this respect.*

Negatives – Departing from the IoL guidance on convictions could be open to criticism. However, the key issue is consistency and agreeing a common standard across all local councils with reasons explained for any departure from it.

## **ACTION 3**

Require all licensed vehicles to display 'complaint information' i.e. a notice informing the public how to complain about their journey. Furthermore, to review information on the CBC website to ensure it is clear and easy to understand how to make a complaint to Licensing Team about concerns.

In addition, to explain on the website the difference when using 'out of town vehicles' and how to complain.

#### **ACTION 4**

Councillors are asked for their views on the provision of CCTV cameras in vehicles. Currently, there is no mandatory requirement to maintain such systems in any licensed vehicle in Cheltenham.

Other local authority areas have mandated its use, although there is still a debate about privacy issues, particularly where audio recording is permitted.

The use of CCTV in licensed vehicles must certainly promote the prevention of crime and disorder (i.e. deterring violence against drivers and assisting in catching perpetrators) and does provide a significant protection for customers, other road users and the drivers themselves, particularly where audio is used, in the investigation of complaints and allegations of improper behaviour by drivers.

However, the security of people's data and their privacy are also very important and should be protected, so a balanced approach is required.

The options available are:-

1. To continue to have no requirement for CCTV, but provide more guidance and signposting for licence holders on their legal responsibilities in respect of the Information Commissioner's Office (ICO).
2. To mandate the use of CCTV in vehicles:-
  - a) Taxis only or taxi and PH vehicles.
  - b) In either instance as above, to require the ability to record audio or not to require such a facility.
  - c) To set a minimum specification for CCTV equipment to be fitted.
  - d) To set policies and procedures in respect of the use of any footage recorded.

If the council mandates the use of CCTV it is likely to take on certain legal responsibilities in respect of the data obtained through those CCTV systems across the taxi and PH fleets.

Put simply there is likely to be a financial burden for the individuals and/ or businesses licensed and a burden for the council in respect of officer time, and of course with the legal responsibilities comes risk and potential liabilities.

Additionally, the town centre is well provided for in terms of council operated CCTV cameras. The number of reported incidents involving violence against drivers seems relatively small by comparison to similar sized night time economies.

The best approach may be to provide considerably more advice and signposting to licence holders, and set specification criteria for CCTV equipment and give clear direction on the use of systems. This may provide a balanced and effective approach to the issue in the local context for Cheltenham.

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In conclusion, there are a significant number of actions above, but in many cases they build on or formalise existing arrangements. However, as is happening across Local Government in many areas of work, councils must work more and more collaboratively with each other, other authorities, the Police and often with the businesses that they regulate. In doing so, it is possible to balance the demands on a council to protect the public with the need to support business and help the local economy flourish, whilst ensuring the public have reasonable access to this mode of transport which to many is a lifeline.

## 6. NEXT STEPS

Licensing Committee is asked to feedback on the actions laid out above. If agreed, the intention is to implement those actions promptly where no further approval is required. In all other instances, permission will be sought from the lead Cabinet Member to move forward the remaining actions.

Where necessary, consultation will be carried out, and Licensing Committee would play a full role in that process.

Following the consultation exercise and subject to any responses received, Cabinet will receive a further report with a recommendation to amend the existing policy to implement those improvements.

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### Background Papers

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## Glossary and abbreviations

**Safeguarding** is a term we use to describe how we protect adults and children from abuse or neglect. It is an important shared priority of many public services, and a key responsibility of local authorities.

Safeguarding is about protecting certain people who may be in vulnerable circumstances. These people may be at risk of abuse or neglect due to the actions (or lack of action) of another person. In these cases, it is vital that public services work together to identify people at risk, and put steps in place to help prevent abuse or neglect.

*A definition of Safeguarding taken from a Department of Education guidance document - Guidance - Child Sexual Exploitation: definition and guide for practitioners.*

**Child sexual exploitation (CSE)** is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator.

The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology. Like all forms of child sexual abuse, child sexual exploitation:

- can affect any child or young person (male or female) under the age of 18 years, including 16 and 17 year olds who can legally consent to have sex;
- can still be abuse even if the sexual activity appears consensual;
- can include both contact (penetrative and non-penetrative acts) and non-contact sexual activity;
- can take place in person or via technology, or a combination of both;
- can involve force and/or enticement-based methods of compliance and may, or may not, be accompanied by violence or threats of violence;
- may occur without the child or young person's immediate knowledge (through others copying videos or images they have created and posting on social media, for example);
- can be perpetrated by individuals or groups, males or females, and children or adults. The abuse can be a one-off occurrence or a series of incidents over time, and range from opportunistic to complex organised abuse; and
- is typified by some form of power imbalance in favour of those perpetrating the abuse. Whilst age may be the most obvious, this power imbalance can also be due to a range of other factors including gender, sexual identity, cognitive ability, physical strength, status, and access to economic or other resources.

Abbreviations

CBC means Cheltenham Borough Council.

GCC means Gloucestershire County Council throughout.

Police means Gloucestershire Constabulary.

LADO means Local Authority Designated Officer.

All references to 'taxi' driver include hackney carriage and/ or private hire vehicle drivers. All references to 'taxi' or 'taxi trade' include hackney carriages and/ or private hire vehicles or businesses. All references to operator are limited to Private Hire Operators, unless specified otherwise.

Licence holder means any and all of the following: taxi driver, taxi proprietor (owner) and/ or PH Operator.



## **Guidance for Responding to Allegations of Abuse of Children or Adults at Risk Against Licence Holders**

N.B: All references below to children include adults at risk, often referred to as vulnerable adults.

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*Licence holder means any and all of the following: taxi driver, taxi proprietor (owner) and/ or PH Operator.*

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### **Foreward**

This document sets down the procedures that must be followed in the Licensing Team in respect of the types of allegations set out below. The process draws heavily from the Bristol Safeguarding Children Board Procedures Manual, but has been amended to make it relevant to the area of Taxi Licensing and responding to relevant allegations against taxi drivers, taxi owners or PH Operators. Complainants must channel any similar allegations regarding support staff or other employees of taxi companies to the relevant authorities. Please refer to ANNEX 1 for relevant contacts.

The Licensing Team relies heavily on support and co - operation from Gloucestershire County Council, Gloucestershire Constabulary and many other partner agencies to implement these procedures consistently, competently and fairly. We may rely on the co – operation of employers of drivers subject to such allegations and they should consider their own policies and procedures for dealing with such allegations.

## 1. Introduction and Criteria

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All allegations of abuse of children by any taxi driver who works with children or proprietor of a taxi vehicle used to carry children or PH Operator that controls or manages school transport or any transport provision for children must be taken seriously.

This procedure should be applied when there is such an allegation or concern that a Licence Holder who works with children, has:-

- Behaved in a way that has harmed a child, or may have harmed a child;
- Possibly committed a criminal offence against or related to a child;
- Behaved towards a child or children in a way that indicates he or she may pose a risk of harm to children.

These behaviours should be considered within the context of the four categories of abuse (i.e. physical, sexual and emotional abuse and neglect). These include concerns relating to inappropriate relationships between members of staff and children or young people, for example:-

- Having a sexual relationship with a child under 18 if in a position of trust in respect of that child, even if consensual (see ss16-19 [Sexual Offences Act 2003](#));
- 'Grooming', i.e. meeting a child under 16 with intent to commit a relevant offence (see s15 [Sexual Offences Act 2003](#));
- Other 'grooming' behaviour giving rise to concerns of a broader child protection nature (e.g. inappropriate text / e-mail messages or images, gifts, socialising etc);
- Possession of indecent photographs / pseudo-photographs of children.

If concerns arise about the Licence Holder's behaviour to her/his own children, the Police and/or children's social care must consider informing the Licensing Team and any other relevant bodies in order to assess whether there may be implications for children with whom the person has contact at work, in which case this procedure will apply.

Allegations of historical abuse should be responded to in the same way as contemporary concerns. In such cases, it is important to find out whether the Licence Holder against whom the allegation is made is still working with children and if so, to inform the Police, GCC and the Licensing Team.

This section also applies to any person, who manages or controls transport for children i.e. a licensed operator.

## 2. Roles and Responsibilities

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### Working Together to Safeguard Children

All local authorities must ensure that allegations against people who work with children are not dealt with in isolation. Any action necessary to address corresponding welfare concerns in relation to the child or children involved should be taken without delay and in a coordinated manner.

Gloucestershire County Council have a designated officer, or team of officers (either as part of multi-agency arrangements or otherwise), involved in the management and oversight of allegations against people that work with children.

Licensing will ensure that any allegations about those it licences in the taxi and PH trade who work with children are passed to the designated officer, or team of officers, without delay.

CBC Licensing has produced advice and guidance to employers on how to deal with allegations against people who work with children.

Advice is provided in ANNEX 2 on the issues employers should consider both in respect of their employees working with children generally, and/ or where they suspect their employees may be acting inappropriately with children.

Where the Licensing Team is made aware of a relevant complaint they will liaise with the police and other agencies to refer it to the most appropriate agencies, monitor the progress of cases and ensure that they are dealt with as quickly as possible, consistently in a thorough and fair process.

CBC has identified the Team Leader with overall responsibility for:-

- Ensuring that Licensing deals with allegations in accordance with this procedure;
- Resolving any inter-agency issues;
- Liaising with the Gloucestershire Safeguarding Children Board (GSCB) on the subject.

The LADO with GCC will:-

- Receive reports about allegations and be involved in the management and oversight of individual cases;
- Provide advice and guidance to employers and voluntary organisations and agencies;
- Liaise with the police and other agencies;
- Monitor the progress of cases to ensure that they are dealt with as quickly as possible, consistently in a thorough and fair process;
- Provide advice and guidance to employers in relation to making referrals to the Disclosure and Barring Service (DBS) and regulatory bodies such as Ofsted, the GMC etc.

Employers should appoint:-

- A designated senior manager or responsible person to whom allegations or concerns should be reported;
- A deputy to whom reports should be made in the absence of the designated senior manager or responsible person or where that person is the subject of the allegation or concern.

### 3. General Considerations Relating to Allegations Against Staff

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#### Persons to be notified

**Licensing Team** Leader or nominated deputy must inform the LADO within **one working day** when an allegation is made and prior to any further investigation taking place.

The LADO will advise **Licensing** whether or not informing the parents of the child/ren involved will impede the disciplinary or investigative processes. Acting on this advice, if it is agreed that the information can be fully or partially shared, the LADO should inform the parent/s. In some circumstances, however, the parent/s may need to be told straight away (e.g. if a child is injured and requires medical treatment).

The parent/s and the child, if sufficiently mature, should be helped to understand the processes involved and be kept informed about the progress of the case and of the outcome where there is no criminal prosecution by the LADO. This will include the outcome of any hearing/ appeal/ disciplinary process, but not the deliberations of, or the information used in, a hearing.

**Licensing/ the employer** should seek advice from the LADO, the police and/or children's social care about how much information should be disclosed to the accused person.

Subject to restrictions on the information that can be shared, the LADO/ **Licensing/ the employer** should, as soon as possible, inform the accused person about the nature of the allegation, how enquiries will be conducted and the possible outcome (e.g. temporary suspension pending hearing/ disciplinary action, and dismissal or referral to the DBS or regulatory body).

The accused driver or operator will be:-

- Be treated fairly and honestly and helped to understand the concerns expressed and processes involved;
- Be kept informed of the progress and outcome of any investigation and the implications for any disciplinary or related process;
- If suspended, be kept up to date about progress of the case.

## Confidentiality

Every effort should be made to maintain confidentiality and guard against publicity while an allegation is being investigated or considered. Apart from keeping the child, parents and accused person (where this would not place the child at further risk) up to date with progress of the case, information should be restricted to those who have a need to know in order to protect children, facilitate enquiries, manage related hearings/ disciplinary or suitability processes.

The police should not provide identifying information to the press or media, unless and until a person is charged, except in exceptional circumstances (e.g. an appeal to trace a suspect). In such cases, the reasons should be documented and partner agencies consulted beforehand.

## Support

The LADO with Children's social care and / or police, where they are involved, should consider the impact on the child concerned and provide support as appropriate. Liaison between the agencies should take place in order to ensure that the child's needs are addressed.

As soon as possible after an allegation has been received, the accused driver or operator should be advised to contact their union or professional association. Human resources should be consulted at the earliest opportunity in order that appropriate support can be provided via the employer's occupational health or employee welfare arrangements.

## Suspension

Suspension should not be automatic, but it will be considered in any case where:-

- There is cause to suspect a child was harmed or others are at risk of harm; or

- The allegation warrants investigation by the police; or
- The allegation is so serious that it might be grounds for revocation.

The possible risk of harm to children should be evaluated and managed in respect of the child/ren involved and any other children in the accused driver or operator's home, work or community life.

If a strategy meeting / discussion is to be held or if children's social care or the police are to make enquiries, the LADO should canvass their views on suspension and inform Licensing and the employer. Licensing can suspend a driver where sufficient grounds exist on a temporary basis until a hearing is convened to consider revocation. The employer has the power to suspend an accused employee, but they cannot be required to do so by a local authority or police.

*If a suspended person is to return to work, the employer should consider what help and support might be appropriate (e.g. a phased return to work and/or provision of a mentor), and also how best to manage the member of staff's contact with the child concerned, if still in the workplace.*

### **Resignations and 'compromise agreements'**

Every effort should be made to reach a conclusion in all cases even if:-

- The individual refuses to cooperate, having been given a full opportunity to answer the allegation and make representations;
- It may not be possible to apply any disciplinary sanctions or hear the case if a person leaves their employment before the process is complete or they surrender their badge.

Compromise agreements' must **not** be used by employers (i.e. where a member of staff agrees to resign provided that disciplinary action is not taken and that a future reference is agreed). A settlement/compromise agreement which prevents partner agencies from making a DBS referral when the criteria are met for so doing would likely result in a criminal offence being committed for failure to comply with the duty to refer. The employer must make a referral to the Disclosure and Barring Service to consider whether to add the individual to the barred list. This applies irrespective of whether a referral has been made to local authority children's social care and/or the designated officer or team of officers. It is an offence to fail to make a referral without good reason.

### **Organised abuse**

Investigators should be alert to signs of organised or widespread abuse and/or the involvement of other perpetrators or institutions. They should consider whether the matter should be dealt with in accordance with complex abuse procedures which, if applicable, will take priority. Advice should be sought from the LADO where there is any concern of Organised and Complex Abuse taking place.

### **Whistle-blowing**

The Council's website contains contact information and explains the complaint process. All taxi and private hire companies will be regularly contacted to highlight this information through email and social media. The Council will investigate any allegations against drivers or operators and will signpost other complainants to the LADO.

All drivers and other staff should be made aware of their employer's whistle-blowing policy and feel confident to voice concerns about the attitude or actions of colleagues.

If a member of staff believes that a reported allegation or concern is not being dealt with appropriately by their organisation, they should report the matter to the LADO and/or Licensing.

### **Timescales**

It is in everyone's interest for cases to be dealt with expeditiously, fairly and thoroughly and for unnecessary delays to be avoided.

## **4. Initial Response to an Allegation or Concern**

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An allegation against a driver or operator may arise from a number of sources (e.g. a report from a child, a concern raised by another adult in the organisation, or a complaint by a parent). It may also arise in the context of the driver or operator and their life outside work or at home.

### **Initial action by person receiving or identifying an allegation or concern**

The officer to whom an allegation or concern is first reported should treat the matter seriously and keep an open mind.

They should not:-

- Investigate or ask leading questions if seeking clarification;
- Make assumptions or offer alternative explanations;
- Promise confidentiality, but give assurance that the information will only be shared on a 'need to know' basis.

They should:-

- Make a written record of the information (where possible in the child / adult's own words), including the time, date and place of incident/s, persons present and what was said – ideally a pro forma should be used;
- Sign and date the written record;
- Immediately report the matter to the designated senior manager, or the deputy in their absence.

### **Initial action by the designated senior manager**

When informed of a concern or allegation, the designated senior manager should not investigate the matter or interview the driver or operator, child concerned or potential witnesses.

They should:-

- Obtain written details of the concern / allegation, signed and dated by the person receiving (not the child / adult making the allegation);
- Approve and date the written details;
- Record any information about times, dates and location of incident/s and names of any potential witnesses.



Record discussions about the child and/or licensed driver or operator, any decisions made, and the reasons for those decisions.

The designated senior manager should report the allegation to the LADO and discuss the decision in relation to the agreed threshold criteria in Section 1 above within one working day. Referrals should not be delayed in order to gather information and a failure to report an allegation or concern in accordance with procedures is a serious matter.

The designated senior manager should consult the children's social care emergency duty team or local police and inform the LADO as soon as possible after being made aware of such an allegation.

*If a police officer receives an allegation, they should, without delay, report it to the designated detective sergeant on the child abuse investigation team (CAIT). The detective sergeant should then immediately inform the LADO.*

*Similarly an allegation made to children's social care should be immediately reported to the LADO.*

### **Initial consideration by the designated senior manager and the LADO**

There are up to four strands in the consideration of an allegation:-

- A police investigation of a possible criminal offence;
- Children's social care enquiries and/or assessment about whether a child is in need of protection or services;
- Consideration by Licensing of disciplinary action – temporary suspension and hearing and
- Consideration by an employer of disciplinary action (if appropriate to inform them – Licensing will be guided by the LADO).

The LADO and the designated senior manager should consider first whether further details are needed and whether there is evidence or information that establishes that the allegation is false. Care should be taken to ensure that the child is not confused as to dates, times, locations or identity of the member of staff.

If the allegation is not demonstrably false and there is cause to suspect that a child is suffering or is likely to suffer significant harm, the LADO should refer to Children's social care and ask them to convene an immediate strategy meeting / discussion:-

- If a child is not believed to have suffered, or to be likely to suffer significant harm but a police investigation will continue, the Local Authority Designated Officer (LADO) should conduct this discussion with the police, the designated senior manager and any other agencies involved to evaluate the allegation and decide how it should be dealt with;
- This evaluation discussion should take place within one working day and must consider how to take matters forward in a criminal process parallel with a disciplinary process or whether any disciplinary action will need to await the completion of the police enquiries and/or prosecution. The progress should be reviewed by the police no later than four weeks after the initial evaluation meeting and thereafter at fortnightly or monthly intervals.

**Strategy meeting / discussion**

Wherever possible, a strategy meeting / discussion should take place face to face, such as an Allegations Management Meeting (AMM) However, on occasions a telephone discussion may be justified. The following is a list of possible participants:-

- The LADO;
- Social care manager to chair (if a strategy meeting);
- Relevant social worker and their manager;
- Detective sergeant;
- The Designated and/or named Safeguarding Children Health Professional (CCG);
- Consultant paediatrician;
- Designated senior manager Licensing
- Manager for the employer concerned;
- Human resources representative;
- Legal adviser where appropriate;
- *Senior representative of the employment agency or voluntary organisation if applicable;*
- *Where a child is placed or resident in the area of another authority, representative/s of relevant agencies in that area;*
- Complaints officer if the concern has arisen from a complaint.

The strategy meeting / discussion should:-

- Decide whether there should be a Section 47 Enquiry and / or police investigation and consider the implications;
- Consider whether any parallel disciplinary process can take place and agree protocols for sharing information, namely consideration of whether a driver remains fit and proper;
- Consider the current allegation in the context of any previous allegations or concerns;
- Consider whether a complex abuse investigation is applicable;;
- Plan enquiries if needed, allocate tasks and set timescales;
- Decide what information can be shared, with whom and when.

The strategy meeting / discussion should also:-

- Ensure that arrangements are made to protect the child/ren involved and any other child/ren affected, including taking emergency action where needed;
- Consider what support should be provided to all children who may be affected;
- Consider what support should be provided to the member of staff and others who may be affected and how they will be kept up to date with the progress of the investigation;
- Ensure that investigations are sufficiently independent;

- Make recommendations where appropriate regarding suspension, or alternatives to suspension of driver's licence and/ or employment;
- Identify a lead contact manager within each agency;
- Agree protocols for reviewing investigations and monitoring progress by the LADO, having regard to the target timescales;
- Consider issues for the attention of senior management (e.g. media interest, resource implications);
- Consider reports for consideration of barring;
- Consider risk assessments to inform the employer's safeguarding arrangements;
- Agree dates for future strategy meetings / discussions.

A final strategy meeting / discussion should be held to ensure that all tasks have been completed, including any referrals to the DBS if appropriate, and, where appropriate, agree an action plan for future practice based on lessons learnt.

The strategy meeting / discussion should take in to account the following definitions when determining the outcome of allegation investigations:

1. **Substantiated:** there is sufficient identifiable evidence to prove the allegation;
2. **False:** there is sufficient evidence to disprove the allegation;
3. **Malicious:** there is sufficient evidence to disprove the allegation and there has been a deliberate act to deceive;
4. **Unsubstantiated:** this is not the same as a false allegation. It means that there is insufficient evidence to either prove or disprove the allegation; the term therefore does not imply guilt or innocence.

### **Allegations against staff in their personal lives**

If an allegation or concern arises about a driver or operator, outside of their work with children, and this may present a risk of harm to child/ren for whom the member of staff is responsible, the general principles outlined in these procedures will still apply.

The strategy meeting / discussion should decide whether the concern justifies:-

- Approaching the member of staff's employer for further information, in order to assess the level of risk of harm; and / or
- Inviting the employer to a further strategy meeting / discussion about dealing with the possible risk of harm.

If the driver or operator lives in a different authority area to that which covers their workplace, liaison should take place between the relevant agencies in both areas and a joint strategy meeting / discussion convened.

In some cases, an allegation of abuse against someone closely associated with a driver or operator (e.g. partner, member of the family or other household member) may present a risk of harm to child/ren for whom the driver or operator is responsible. In these circumstances, a strategy meeting / discussion should be convened to consider:-

- The ability and/or willingness of the driver or operator to adequately protect the child/ren;
- Whether measures need to be put in place to ensure their protection;
- Whether the role of the driver or operator is compromised.

## 5. Disciplinary Process

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### Disciplinary or suitability process and investigations

The LADO and the designated senior manager should discuss whether disciplinary action is appropriate in all cases where:-

- It is clear at the outset or decided by a strategy meeting / discussion that a police investigation or LA children's social care enquiry is not necessary; or
- The employer or LADO is informed by the police or the Crown Prosecution Service that a criminal investigation and any subsequent trial is complete, or that an investigation is to be closed without charge, or a prosecution discontinued.

The discussion should consider any potential misconduct or gross misconduct on the part of the driver or operator, and take into account:

- Information provided by the police and / or children's social care;
- The result of any investigation or trial;
- The different standard of proof in disciplinary and criminal proceedings.

*In the case of supply, contract and volunteer workers, normal disciplinary procedures may not apply. In these circumstances, the LADO and employer should act jointly with the providing agency, if any, in deciding whether to continue to use the person's services, or provide future work with children, and if not, whether to make a report for consideration of barring or other action.*

If a licence is not suspended or revoked, the employer should institute appropriate action within three working days. If a Licensing hearing is required, and further investigation is not required, it should be held within 15 working days.

*If further investigation is needed to decide upon disciplinary action, the employer and the LADO should discuss whether the employer has appropriate resources or whether the employer should commission an independent investigation because of the nature and/or complexity of the case and in order to ensure objectivity. The investigation should not be conducted by a relative or friend of the member of staff.*

*The aim of an investigation is to obtain, as far as possible, a fair, balanced and accurate record in order to consider the appropriateness of disciplinary action and / or the individual's suitability to work with children. Its purpose is not to prove or disprove the allegation.*

If, at any stage, new information emerges that requires a child protection referral, the investigation should be held in abeyance and only resumed if agreed with LA children's social care and the police. Consideration should again be given as to whether suspension is appropriate in light of the new information.

The investigating officer should aim to provide a report within ten working days.

On receipt of the report the employer should decide, within two working days, whether a disciplinary hearing is needed. If a hearing is required, it should be held within 15 working days.

### **Sharing information for disciplinary purposes**

Wherever possible, police and children's social care should, during the course of their investigations and enquiries, obtain consent to provide the employer and/or Licensing with statements and evidence for disciplinary purposes.

If the police or CPS decide not to charge, or decide to administer a caution, or the person is acquitted, the police should pass all relevant information to Licensing and the employer without delay.

If the person is convicted, the police should inform Licensing, the employer and the LADO straight away so that appropriate action can be taken.

## **6. Record Keeping and Monitoring Progress**

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### **Record keeping**

Licensing should keep a secure record in line with their retention periods, and employers should keep a clear and comprehensive summary of the case record on a person's confidential personnel file and give a copy to the individual. The record should include details of how the allegation was followed up and resolved, the decisions reached and the action taken. It should be kept at least until the person reaches normal retirement age or for ten years if longer.

*The purpose of the record is to enable accurate information to be given in response to any future request for a reference if the person has moved on. It will provide clarification where a future DBS request reveals non convicted information, and will help to prevent unnecessary reinvestigation if an allegation re-surfaces after a period of time. In this sense it may serve as a protector to the individual themselves, as well as in cases where substantiated allegations need to be known about to safeguard future children.*

Details of allegations that are found to be malicious should be removed from personnel records.

### **Monitoring progress**

The LADO should monitor and record the progress of each case, either fortnightly or monthly depending on its complexity. This could be by way of review strategy meetings / discussions / initial evaluations or direct liaison with the police, children's social care, or employer, as appropriate. Where the target timescales cannot be met, the LADO should record the reasons.

The LADO should keep comprehensive records in order to ensure that each case is being dealt with expeditiously and that there are no undue delays. The records will also assist the GSCB to monitor and evaluate the effectiveness of the procedures for managing allegations and provide statistical information to the Department for Education as required.

If a police investigation is to be conducted, the police should set a date for reviewing its progress and consulting the CPS about continuing or closing the investigation or charging the individual. Wherever possible, this should be no later than four weeks after the strategy meeting / discussion / initial evaluation. Dates for further reviews should also be agreed, either fortnightly or monthly depending on the complexity of the investigation.

Where it is concluded that there is insufficient evidence to substantiate an allegation, the Chair of the strategy meeting / discussion or initial evaluation should prepare a separate report of the enquiry and forward this to the designated senior manager of the council and the employer to enable them to consider what further action, if any, should be taken.

False allegations are rare and may be a strong indicator of abuse elsewhere which requires further exploration. If an allegation is demonstrably false, the employer, in consultation with the LADO, should refer the matter to Children's social care to determine whether the child is in need of services, or might have been abused by someone else.

If it is established that an allegation has been deliberately invented, the police should be asked to consider what action may be appropriate.

## 8. Substantiated Allegations and Referral to the DBS

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### Substantiated allegations

The Disclosure and Barring Service (DBS) was established under the Protection of Freedoms Act 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA). The relevant legislation is set out in the Protection of Freedoms Act 2012.

If an allegation is substantiated and the person is dismissed or the employer ceases to use the person's service or the person resigns or otherwise ceases to provide his/her services, the LADO should discuss with the employer whether a referral should be made to the Disclosure and Barring Service (DBS).

If a referral is to be made; it should be submitted within one month of the allegation being substantiated.

### Bodies with a legal duty to refer

The following groups have a **legal duty to refer** information to the DBS:-

- Regulated Activity suppliers (employers and volunteer managers);
- Personnel suppliers;
- Groups with a power to refer.

### Bodies with the power to refer

The following groups have a **power to refer** information to the DBS:-

- Local authorities (safeguarding role);
- Health and Social care (HSC) trusts (NI);
- Education and Library Boards;
- Keepers of registers e.g. General Medical Council, Nursing and Midwifery Council;
- Supervisory authorities e.g. Care Quality Commission, Ofsted.

## 9. Learning Lessons

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Licensing, the employer and the LADO should review the circumstances of the case to determine whether there are any improvements to be made to procedures or practice.

## 10. Procedures in Specific Organisations

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It is recognised that many organisations will have their own procedures in place, some of which may need to take into account particular regulations and guidance (e.g. schools and registered child care providers). Where organisations do have specific procedures, they should be compatible with these procedures and additionally provide the contact details for:

- The designated senior manager to whom all allegations should be reported;
- The person to whom all allegations should be reported in the absence of the designated senior manager or where that person is the subject of the allegation;
- The LADO.

**ANNEX 1**

**Relevant Contacts**

CBC

Licensing Team

Email: [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)

Phone: 01242 262626

GCC

LADO

Email:

Phone:

LADO

Police

Complaints against non – licensed persons employed by taxi companies should be referred to the Police in the first instance on 101.



**Guidance employers should consider both in respect of their employees working with children generally, and/ or where they suspect their employees may be acting inappropriately with children**

To be produced in line with similar guidance in related businesses/ services.

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