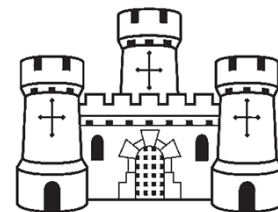


# Public Document Pack

**Date of meeting** Tuesday, 13th December, 2016  
**Time** 6.30 pm  
**Venue** Civic Offices, Merrial Street, Newcastle Under Lyme, Staffordshire  
ST5 2AG  
**Contact** Geoff Durham



**NEWCASTLE  
UNDER LYME**  
**BOROUGH COUNCIL**

Civic Offices  
Merrial Street  
Newcastle-under-Lyme  
Staffordshire  
ST5 2AG

**PLEASE NOTE EARLIER START TIME**

## **Public Protection Committee**

### **AGENDA**

#### **PART 1 – CLOSED AGENDA**

- 1 GUIDANCE NOTES (FOR INFORMATION)** **(Pages 5 - 22)**
  - Procedure to be followed by Public Protection Committee.
  - Natural Justice and Fairness.
  - Human Rights Act.
  - Guidelines Relating to the Relevance of Convictions.
- 2 DECLARATIONS OF INTEREST**  
To receive declarations of interest from Members on items included in this agenda.
- 3 Apologies**
- 4 MINUTES OF PREVIOUS MEETING** **(Pages 23 - 26)**  
To consider the minutes of the previous meeting(s).
- 5 DISCLOSURE OF EXEMPT INFORMATION**  
To resolve that the public be excluded from the meeting during consideration of the attached report, because it is likely that there will be disclosure of exempt information as defined in paragraphs 1, 2 and 7 in Part 1 of Schedule 12A of the Local Government Act 1972.
- 6 Prosecution proceedings for Failing to Comply with an Improvement Notice under The Housing Act 2004** **(Pages 27 - 30)**



Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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# Agenda Item 1

## **PROCEDURE TO BE FOLLOWED BY PUBLIC PROTECTION COMMITTEE IN DETERMINING HACKNEY CARRIAGE AND PRIVATE HIRE LICENCES**

- The Chairman will open the proceedings by stating the nature of the matter which is to be considered (first application/renewal/suspension/revocation), whether the proceedings concern a vehicle, drivers' or operators' licence (in the case of Private Hire Cars) or a driver's or vehicle licence (in the case of Hackney Carriages) and the name of the applicant or licence holder.
- The Chairman will introduce him/herself and the members of the committee, the Clerk to the committee and any other officer present.
- The Chairman will ask the officers to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with. In the case of a proposed suspension or revocation of a licence, refusal to renew or a new licence application, the Chairman will ask the Licensing Officer to confirm whether or not the requisite 14 days' prior notice has been served on the licence holder.
- If satisfied as to the formal requirements, the matter under consideration will then be outlined by the Licensing Officer.
- The committee will consider the merits of the application or proposed suspension/revocation and the report of the officers. The committee may ask the officers for clarification of any points in issue.
- The Chairman will then invite the applicant or licence holder to make any representations. The applicant or licence holder may make his/her representations personally or through a representative, who shall first identify him/herself.
- The Chairman and other members of the committee may ask the applicant or license holder questions and points of clarification.
- The applicant or licence holder, his/her representative (if any) and any officer present (with the exception of the Lawyer and the Clerk to the committee) shall withdraw.
- The members of the committee consider their decision. If any further clarification or information is required from the applicant or licence holder or any officer, all parties will be recalled.
- All parties will be recalled for the announcement by the Chairman of the committee's decision.
- The committee's decision will be confirmed in writing by the Proper Officer.
- At any point in this procedure, the committee may pass a resolution excluding the press and public from the meeting on the basis that, if they were to remain, there may be disclosure of exempt information (information relating to the private or business affairs of a particular person).

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## GUIDANCE NOTES

### NATURAL JUSTICE AND FAIRNESS

These are the principles used in the determination of just or fair processes and stem from the common law legal system.

According to Roman law, certain basic legal principles were so obvious that they should be applied universally without the need to be enacted into the law.

The rules of natural justice are now regularly applied by courts in both common law and civil law jurisdictions.

Natural justice operates on the principles that man is basically good, that a person of good intent should not be harmed and one should treat others as they would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:-

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges);
- A person making a decision should declare any personal interest they may have in the proceedings;
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the Latin maxim, *nemo iudex in causa sua*: “no man is permitted to be judge in his own cause”;
- Proceedings should be conducted so they are fair to all the parties – expressed in the Latin maxim, *audi alteram* : “let the other side be heard”;
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party;
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations;
- Justice should be seen to be done. If the community is satisfied that justice has been done they will continue to place their faith in the courts.

Where a person’s legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law.

### THE RULE AGAINST BIAS

It is elementary to the rules of natural justice that the deciding body is to be free from bias.

The rule is that the body must be and be seen to be impartial, independent and disinterested.

There are two broad categories of bias:

- (a) Actual Bias: when the decision-maker has an economic interest in the outcome of the case (also known as a material or pecuniary interest) subject to the De Minimum doctrine;
- (b) Reasonable Apprehension: unbiased appearance is an essential part of procedural fairness. The test is whether, having regard to the circumstances, a well informed person ("reasonably informed bystander") would consider that the interest might have an influence on the exercise of the decision-maker's duties.



## **GUIDANCE NOTES**

### **HUMAN RIGHTS ACT 1998**

In addition to the Rules of Natural Justice, you must also have regard to the provisions of the Human Rights Act 1998.

#### **Rights and Freedoms to be considered when determining matters**

##### ARTICLE 6: RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

##### ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

##### ARTICLE 10: FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

#### ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NOTE Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence, the goodwill of a business and liquor licences.



## **GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR APPLICANTS FOR THE GRANT AND RENEWAL OF LICENCES TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES**

### **GENERAL POLICY**

1. Each case will be decided on its own merits
2. The Council will, as far as is possible, ensure that all persons holding a licence to drive Hackney Carriages or private hire vehicles are fit and proper persons. In doing so, the Council will take into account previous convictions including, where relevant, 'spent' convictions.
3. The Council will always put the protection of the public first when considering the relevance of convictions recorded against an applicant for a licence.
4. A person with a conviction for serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for an appropriate period, before an application is considered. However, remaining free of conviction for a specified period may not be sufficient to show that a person is fit and proper and additional evidence may be required.
5. There may be occasions where it is appropriate to depart from the guidelines when making a decision on an application. For example, where the offence is a one-off and there are mitigating circumstances or alternately, where there are many or continuous offences which may show a pattern of offending and unfitness.
6. The following examples give a general guide as to the action that might be taken where convictions are recorded against an applicant.

#### **(a) Dishonesty**

Members of the public using Hackney Carriages and private hire vehicles expect the driver to be honest and trustworthy. It would be easy for a dishonest driver to take advantage of the public.

For these reasons, a serious view will be taken of any conviction involving dishonesty. In general, if an application is made within the first 3 to 5 years from the date of a conviction or from the date of release from jail where a custodial sentence has been imposed, it is likely that it will be refused.

Where an application is made within the first three years since the conviction or the date of release from jail, where a custodial sentence has been

imposed, for any of the following offences, the application will normally be refused:-

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss11A and 112 of the Social Security Administration Act 1992)
- Blackmail
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Or similar offences to those above which may replace any of the above offences

When a period of three years from conviction or the date of release from jail, where a custodial sentence has been imposed has passed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

**(b) Violence**

As Hackney Carriage and private hire vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violence. Where the commission of an offence involves loss of life, a licence will normally be refused. In other cases, a period of three to ten years free of conviction from the date of conviction or the date of release from jail, where a custodial sentence has been imposed will generally be required before an application is likely to be considered favourably. The nature and seriousness of the offence(s) will be taken into consideration.

In particular:-

- (i) An application will normally be refused where the applicant has a conviction for an offence of:-
  - Murder
  - Manslaughter
  - Manslaughter or culpable homicide while driving
  - Or similar offence or offences which replace the above offences
  
- (ii) An application will normally be refused for a period of five years from the date of the conviction or the date of release from jail, where a custodial sentence has been imposed if the applicant has a conviction for:-
  - Arson
  - Malicious wounding or grievous bodily harm which is racially aggravated
  - Assault occasioning actual bodily harm which is racially aggravated

- Assault with intent to cause grievous bodily harm
- Assaulting a police officer in the execution of his duties
- Malicious wounding
- Robbery
- Racially aggravated criminal damage
- Racially aggravated fear or provocation of violence
- Racially aggravated intentional harassment, alarm or distress
- Racially aggravated harassment
- Racially aggravated putting people in fear of violence
- Riot
- Possession of an offensive weapon
- Possession of a firearm
- Violent disorder
- Or any arrestable offence involving violence (an arrestable offence is defined as an offence committed by a person of age 21 years or over and on conviction for the first offence may be sentenced to a term of imprisonment of five years or where the penalty is fixed by law)

(iii) An application will normally be refused for a period of three years from the date of conviction or the date of release from jail, where a custodial sentence has been imposed, where the applicant has a conviction for:-

- Common assault
- Racially aggravated common assault
- Assault occasioning actual bodily harm
- Affray
- Racially aggravated harassment, alarm or distress
- Resisting arrest
- Obstructing a police officer in the execution of his duty
- Criminal damage
- Any similar offence or offences which replace the above offences

**(c) Drugs**

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five to ten years before the date of the application. However, after five years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, the circumstances of the offence and any evidence which shows that a person is now a fit and proper person to hold a licence will be taken into consideration.

An application will normally be refused where the application is made within three to five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed for an offence relating to the possession of drugs. However, after a period of three years from the date of such a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances

of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than five years before the date of the application.

Where evidence is available that an applicant who has convictions for drug related offences has been addicted to drugs, they will have to produce evidence that shows that they have been free of drug taking for at least five years after successfully completing a drug treatment programme.

**(d) Sexual and Indecency Offences**

As the driver of Hackney Carriages and private hire vehicles often carry passengers who are alone, or may be vulnerable, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a licence.

Where an applicant has a conviction for a sexual offence such as indecent exposure, they will normally be refused a licence until they can show a substantial period usually between five and ten years free of any such convictions from the date of conviction or the date of release from jail where a custodial sentence has been imposed before an application is made.

After a period of five years from the date of a conviction or the date of release from jail, where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

When considering applications, the Council may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

**(e) Motoring Convictions**

**(i) Disqualification**

Where an applicant had been disqualified from driving by the Courts for a serious traffic offence under Category 'A' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence.

Where an applicant has been disqualified from driving by the Courts for a serious traffic offence under Category 'B' of Annex (i), an application will generally be refused unless a period of five years free of conviction has passed since the return of the DVLA licence unless the offence was an isolated one, in which case, a period of not less than 2 years shall have passed.

Where a disqualification is imposed by a court in a 'totting-up' case, i.e. where an applicant has been disqualified because of several

driving offences, an application will generally be refused unless a period of one year free of conviction has elapsed since the return of the DVLA driver licence.

In 'totting-up' cases where a court does not impose a disqualification because of exceptional circumstances, then because the Council apply different criteria to the courts, an application will generally be refused unless an applicant can show a period of 1 year free of conviction from the date of the last court appearance.

(ii) Serious Traffic Offences

Where an applicant has a conviction for a serious traffic offence in Category 'A' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction.

Where an applicant has a conviction for a serious traffic offence in Category 'B' Annex (i) and a period of disqualification has not been imposed by the courts, an application will normally be refused where an application is made in the last five years following the date of the last conviction unless the offence was an isolated one.

Where an applicant has had more than one conviction for a serious traffic offence in either Category 'A' or 'B' of Annex (i) and the courts have not imposed a period of disqualification, an application will normally be refused where an application is made in five years following the date of the last conviction.

(iii) Other Traffic Offences

Normally, isolated convictions for other traffic offences should not prevent someone obtaining a licence. However, the number, type and the frequency of these types of offence will be taken into account. If there are several convictions for these types of offence, an applicant will normally be expected not to have been convicted of an offence in the six months before an application is made.

A list of relevant offences is shown at Annex (ii). However, this is not an exhaustive list and there may be other offences which may be relevant.

(f) **Offences Under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and any Hackney Carriage Byelaws (The Acts)**

One of the main purposes of the licensing regime set out in 'The Acts' is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire, when deciding if a person is a fit and proper person to hold a licence.

In particular, an application will normally be refused where an applicant has more than one conviction for an offence under 'The Acts' in the two years preceding the date of the application.

**(g) Drunkenness**

(i) In a Motor Vehicle

The manner in which drunkenness in a motor vehicle will be dealt with is outlined in Motoring Offences at paragraph 'e' of these guidelines.

(ii) Not in a Motor Vehicle

Where an applicant has an isolated conviction for drunkenness, this need not stop an applicant from getting a licence. In some cases, a warning may be appropriate. However, where an applicant has a number of convictions for drunkenness, it could indicate a medical problem, which would require further investigation including a medical examination and the possible refusal of a licence.

**(h) Spent Convictions**

The Council will only take 'Spent Convictions' into consideration if it is considered they are relevant to the application.

**(i) Formal Cautions and Fixed Penalty Notices**

For the purposes of these guidelines, the Council will treat Formal Cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.



## SERIOUS TRAFFIC OFFENCES

CATEGORY 'A'	
Offence Code	Offence
<b>Careless Driving</b>	
<b>CD40</b>	Causing death through careless driving when unfit through drink
<b>CD50</b>	Causing death through careless driving when unfit through drugs
<b>CD60</b>	Causing death through careless driving with alcohol level above the limit
<b>CD70</b>	Causing death through careless driving then failing to supply a specimen for analysis
<b>Reckless/Dangerous Driving</b>	
<b>DD40</b>	Dangerous driving
<b>DD60</b>	Manslaughter or culpable homicide while driving a vehicle
<b>DD80</b>	Causing death by dangerous driving
<b>Miscellaneous Offences</b>	
<b>MS50</b>	Motor racing on a highway
<b>Theft and Unauthorised Taking</b>	
<b>UT50</b>	Aggravated taking of a vehicle

**PLEASE NOTE:**

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

<b>CATEGORY 'B'</b>	
<b>Offence Code</b>	<b>Offence</b>
<b>Accident Offences</b>	
<b>AC10</b>	Failing to stop after an accident
<b>AC20</b>	Failing to give particulars or report an accident within 24 hours
<b>BA10</b>	Driving whilst disqualified by order of the court
<b>BA30</b>	Attempting to drive whilst disqualified by order of the court
<b>Careless Driving</b>	
<b>CD10</b>	Driving without due care and attention
<b>CD20</b>	Driving without reasonable consideration for other road users
<b>CD30</b>	Driving without due care and attention or without reasonable consideration for other road users
<b>Construction and Use Offences</b>	
<b>CU10</b>	Using a vehicle with defective brakes
<b>CU20</b>	Causing or likely to cause danger by use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
<b>CU30</b>	Using a vehicle with defective tyre(s)
<b>CU40</b>	Using a vehicle with defective steering
<b>CU50</b>	Causing or likely to cause danger by reason of load or passengers
<b>Drink or Drugs</b>	
<b>DR10</b>	Driving or attempting to drive with alcohol level above limit
<b>DR20</b>	Driving or attempting to drive while unfit through drink
<b>DR30</b>	Driving or attempting to drive then failing to supply a specimen for analysis
<b>DR40</b>	In charge of a vehicle while alcohol above limit
<b>DR50</b>	In charge of a vehicle while unfit through drink
<b>DR60</b>	Failure to provide specimen for analysis in circumstances other than driving or attempting to drive when unfit through drugs
<b>DR70</b>	Failing to provide a specimen for breath test
<b>DR80</b>	Driving or attempting to drive when unfit through drugs
<b>DR90</b>	In charge of a vehicle while unfit through drugs
<b>Insurance Offences</b>	
<b>IN10</b>	Using a vehicle uninsured against third party risks
<b>Licence Offences</b>	
<b>LC30</b>	Driving after making a false declaration about fitness when applying for a licence
<b>LC40</b>	Driving a vehicle after having failed to notify a disability
<b>Miscellaneous Offences</b>	
<b>MS70</b>	Driving with uncorrected defective eyesight

**PLEASE NOTE:**

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'A'** offence.

## OTHER TRAFFIC OFFENCES

Offence Code	Offence
<b>LC20</b>	Driving otherwise than in accordance with a licence
<b>LC50</b>	Driving after a licence has been revoked or refused on medical grounds
<b>MS10</b>	Leaving a vehicle in a dangerous position
<b>MS20</b>	Unlawful pillion riding
<b>MS30</b>	Play street offences
<b>MS60</b>	Offences not covered by other codes
<b>MS80</b>	Refusing to submit to an eyesight test
<b>MS90</b>	Failure to give information as to identity of driver etc
<b>MW10</b>	Contravention of Special Road Regulations (excluding speed limits)
<b>PC10</b>	Undefined contravention of Pedestrian Crossing Regulations
<b>PC20</b>	Contravention of Pedestrian Crossing Regulations with a moving vehicle
<b>PC30</b>	Contravention of Pedestrian Crossing Regulations with a stationery vehicle
<b>SP10</b>	Exceeding goods vehicle speed limits
<b>SP20</b>	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
<b>SP30</b>	Exceeding statutory speed limit on a public road
<b>SP40</b>	Exceeding passenger vehicle speed limit
<b>SP50</b>	Exceeding speed limit on a motorway
<b>SP60</b>	Undefined speed limit offence
<b>TS10</b>	Failing to comply with traffic light signals
<b>TS20</b>	Failing to comply with double white lines
<b>TS30</b>	Failing to comply with 'stop' sign
<b>TS40</b>	Failing to comply with direction of a constable/warden
<b>TS50</b>	Failing to comply with traffic sign (excluding stop signs, traffic lights or double white lines)
<b>TS60</b>	Failing to comply with a school crossing patrol sign
<b>TS70</b>	Undefined failure to comply with a traffic direction sign

**PLEASE NOTE:**

Any offence of aiding, abetting or procuring the above offences, the offence code will have the **0** replaced by a **2**.

Any offence of causing or permitting the above the offences, the offence code will have the **0** replaced by a **4**.

Inciting any of the above offences, the offence code will have the **0** replaced by a **6**.

If any of the offences in **Category 'B'** involve a licensed Hackney Carriage or private hire vehicle, they will be treated as though they are a **Category 'B'** offence under Annex (ii).

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**PUBLIC PROTECTION COMMITTEE**

Tuesday, 1st November, 2016

Time of Commencement: 7.00 pm

**Present:-** Councillor Sandra Hambleton – in the Chair

Councillors Allport, Bloor, Burch, L Hailstones, P Hailstones, T Hambleton, Olszewski, Robinson, J Tagg and Walklate

Officers Nesta Barker, Geoff Durham, Gareth Harvey and Paul Washington

Apologies Councillor(s) Matthews

**1. DECLARATIONS OF INTEREST**

There were no declarations of interest stated.

**2. MINUTES OF PREVIOUS MEETING**

**Resolved:** That the minutes of the meeting held on 20 September be agreed as a correct record.

**3. DISCLOSURE OF EXEMPT INFORMATION**

**Resolved:-** That the public be excluded from the meeting during consideration if the following matter because it is likely that there will be disclosure of exempt information as defined in paragraphs 1,2, and 7 in Part 1 of Schedule 12A of the Local Government Act, 1972.

**4. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR MMH**

The Committee considered a report regarding the revocation of Mr MMH's Dual Badge Driver's Licence which had been carried out by the Council's Chief Executive.

Mr MMH was given the opportunity to address the Committee.

**Resolved:** That the Chief Executive's decision to revoke Mr MMH's licence with immediate effect, for the reasons already given in a letter dated 4 October, 2016, be endorsed.

**5. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR MMH**

The Committee considered a report regarding a driver's conduct and his failure to return his vehicle plates to the authority.

Mr MMH was given the opportunity to address the Committee.

**Resolved:** That, having regard to the delay in returning his vehicle plates, Mr MMH be given a verbal warning in connection with his future conduct.

**6. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR AHM**

The Committee considered a report regarding an application for a licence renewal for a Dual Driver's Licence.

Mr AHM was given the opportunity to address the Committee.

**Resolved:** That, in view of the nature, number and severity of the offences and their non-disclosure in accordance with his licence conditions, the Committee saw no reason to depart from its policy and, having concluded that Mr AHM was not a fit and proper person to hold a Dual Drivers' Licence, refused the application.

**7. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR SK**

The Committee considered a report regarding a renewal driver application for a Dual Drivers' Licence by Mr SUK.

Mr SK was given the opportunity to address the Committee.

**Resolved:** That the application submitted by Mr SUK be approved but that a written warning be issued in connection with his failure to disclose driving convictions in accordance with his licence conditions.

**8. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR KH**

The Committee considered a report regarding a renewal driver application for a Dual Drivers' Licence by Mr KH.

Mr KH was given the opportunity to address the Committee.

**Resolved:** That the application submitted by Mr KH be approved but that a written warning be issued in connection with his failure to disclose driving convictions in accordance with his licence conditions.

**9. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR IB**

The Committee considered a report regarding a new driver application for a Dual Drivers' Licence by Mr IB.

Mr IB was given the opportunity to address the Committee.

**Resolved:** That the application submitted by Mr IB be approved but that a written warning be issued in connection with his failure to disclose relevant driving convictions in accordance with his licence conditions.

**10. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT - 1976 - MR IL**

The Committee considered a report regarding Mr IL's conduct and his failure disclose information during the application process. .



Mr IL was given the opportunity to address the Committee.

**Resolved:** That the application submitted by Mr IL be approved but that a written warning be issued in connection with his failure to disclose relevant matters during the application process.

**11. FLY TIPPING OFFENCE**

A report was submitted advising the Committee of action taken in respect of a fly tipping offence within the Borough and seeking authorisation to institute legal proceedings.

**Resolved:** That, subject to review by the legal section, legal proceeding be instituted.

**12. BREACH OF COMMUNITY PROTECTION NOTICE**

A report was submitted seeking the Committee's support to commence enforcement proceedings for a breach of a Community Protection Notice in relation to persistent dog straying..

**Resolved:** That proceedings in the Magistrates court be commenced against Ms SJS in respect of a breach of a Community Protection Notice.

**13. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES**

A report was submitted to advise the Committee of action taken in respect of littering offences within the borough and to seek authorisation to institute legal proceedings against the Fixed Penalty Notice holders listed in the Appendix.

**Resolved:** That legal proceedings be instituted in the relation to the cases detailed.

**14. CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 - FIXED PENALTY NOTICES**

A report was submitted to advise the Committee of the action taken in respect of littering offences within the Borough.

**Resolved:** That the report be received.

**15. REVIEW OF LICENSING STANDARDS FOR KENNELS & HOME BOARDERS**

A report was submitted seeking the Committees support to adopt updated licensing standards for kennels and home boarders.

**Resolved:** That the Committee supports the adoption of the CIEH 2016 Standard in full for all new businesses, requires existing business to comply with practice and procedural elements, but accepts compliance with the 1999 standard for existing structures where refurbishment is not viable. Refurbishment of accommodation in line with the CIEH 2016 standard to be required if the ownership of the business changes.

**16. URGENT BUSINESS**

By reason of the nature of the following item and the fact that consideration was necessary prior to consideration of the Council's budget, the Chair was of the opinion that the following item should be considered as a matter of urgency.

**17. PRIVATE HIRE AND HACKNEY CARRIAGE FEES AND CHARGES 2017/18**

Consideration was given to a report requesting that the Committee consider proposed taxi and private hire fees prior to consultation.

- Resolved:
- (i) That the proposed fees be accepted.
  - (ii) That the proposed fees be sent out for consultation.

**COUNCILLOR SANDRA HAMBLETON**  
**Chair**

Meeting concluded at 10.02 pm

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of the Local Government Act 1972.

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**REPORT TITLE** Anti- Social Behaviour, Crime and Policing Act 2014 & Environmental Protection Act 1990 – Noise Nuisance Mr Dennis John YARDLEY

**Submitted by:** Head of Environmental Health Services

**Portfolio:** Operational

**Ward(s) affected:** Thistleberry

## **Purpose of the Report**

To advise members of the enforcement and legal action taken to date in relation to a noise complaint of banging throughout the night time period.

## **Recommendations**

**Members receive the report.**

## **Reasons**

This report provides an update on action previously approved by this committee. It is hoped that the matter has been resolved and that legal proceedings can now be concluded.

## **1. Background**

A report was presented to the 30<sup>th</sup> June 2015 Public Protection Committee, which resulted in members authorising the following action in respect of continued noise from banging

That subject to approval from legal services, that a graduated approach be undertaken to instituting legal proceedings against Mr Y, should the noise nuisance continue, this graduated approach to include:

- i. Officers (under existing delegated powers) continue to serve FPNs for breaches of the CPN.
- ii. Legal proceedings be instituted arising from any non-payment of fixed penalty notices in respect of noise nuisance arising from breach of CPN (Anti-Social Behaviour, Crime and Policing Act 2014).
- iii. That in respect of breaches of the noise abatement notice (Environmental Protection Act 1990) that Mr Y is offered a formal caution, if this is not accepted then legal proceedings be instituted.
- iv. That following a or b, should further breaches of either the CPN and NAN occur that civil injunction proceedings are instituted against Mr Y under part 1 of the of the Anti-Social Behaviour, Crime and Policing Act 2014

## **2. Update**

Since the report, your officers have taken the following action

- a. Issued a total of 5 Fixed Penalty Notices in arising from breach of a Community Protection Notice which sought to prevent banging (Anti-Social Behaviour, Crime and Policing Act 2014). Each of the notices has been paid resulting in total fixed penalty fines of £375.00

- b. Offered a formal caution for breaches of the noise abatement notice issued under the Environmental Protection Act 1990 which was subsequently accepted by Mr Yardley on the understanding that it could be taken into account in any further breaches of the noise abatement notice
- c. Taken County Court Injunction proceedings against Mr Yardley under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014.

In November 2015, the Council obtained an interim injunction from Stoke on Trent County Court, against Mr Yardley prohibiting him from causing noise nuisance from banging. The interim injunction order was subsequently extended by the Court in January 2016 following further incidents of banging having been evidenced and was confirmed in full at a hearing in May 2016.

At the May 2016 hearing, the Circuit Judge was satisfied that the noise which had been evidenced and played to the court originated from human activity which resulted in banging noise being experienced in the neighbouring property during the late evening and night time hours. The trial judge awarded costs of circa £10,000 against Mr Yardley to cover the council's costs in bringing the case. It was also explained to Mr Yardley that he risked imprisonment and an unlimited fine for breach of the injunction.

Further complaints were made alleging a breach of the full injunction and these were subsequently evidenced and accordingly an application for committal was made for breaches of both the interim injunction obtained in November 2015 and the full injunction issued in May 2016. Twenty seven separate incidents were put before the court out of over 200 individual incidents.

The committal hearing took place in late June 2016, however as Mr Yardley was not represented, the hearing was adjourned until the 12<sup>th</sup> September 2016 to provide time for legal representation

At the final hearing on the 12<sup>th</sup> September 2016, which was some twenty three months after the complaint being brought to the attention of the Council, Mr Yardley gave an undertaking to the court, which was accepted by the Council and Court, in the following terms

*The defendant gave an undertaking to the Court that he would vacate his property by no later than 4pm on 23.09.16 (though he may leave his fixtures, fittings and chattels there) and he would not return (a) either to reside there without permission from the Court, or (b) to attend there for any other reason without either the permission of the Court or the prior written agreement of the Claimant on such terms as the Claimant may specify.*

Mr Yardley was advised by the trial judge that the proceedings for breaches of the injunction for which the Council had sought committal would "stay on file" and would be taken into account by the Court together with any subsequent incidents were he to be found to be not adhering to the terms of the undertaking.

There have been no further incidents of banging reported since the conclusion of legal proceedings and to date, Mr Yardley is complying with the undertaking and injunction. Mr Yardley has since advised that he is in the process of selling his house and will be moving to an alternative property within the Newcastle area as an owner occupier. He has been informed by your officers, that although the noise abatement notice issued under the Environmental Protection Act 1990 Part III and the Injunction obtained under the Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 will effectively lapse, that any future issues of a similar nature will result in the past history been taken into account by the Council in connection with any further proceedings under either Act.

4. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

The action taken achieves the following priorities detailed within the Council Plan

- Priority 1 – A clean, safe and sustainable borough
- Priority 3 – A healthy and active community
- Council Plan Outcome 1.3 The negative impact that the Council, residents and local businesses have on the environment will have reduced

5. **Legal and Statutory Implications**

Injunction action under Part I of the Anti-Social Behaviour Crime and Policing Act 2014 is a discretionary power. Any legal action taken by the Council where there is an element of discretion is fully considered in line with the Council's Enforcement Policy and relevant legal advice.

6. **Financial and Resource Implications**

Legal costs of circa £10k have been awarded to the Council by the court and this must be met in full by Mr Yardley. Investigation costs including officer time and case preparation and attendance at court have been met from the Environmental Health Division's staffing budget and not accounted for in the costs award. Any decision to award costs is at the Courts discretion and costs involved in taking legal action will always feature in the "public interest test" which must be considered by your officers before embarking on such action.

Cases such as this are somewhat unique and pose a number of challenges in seeking an appropriate resolution. It has taken some 23 months from the complaint being originally notified to the Council to secure an appropriate outcome for the Council and the resident subjected to the unwanted banging. Your officers have sought engagement from Mr Yardley throughout and have secured assistance from a number of professionals outside of the Authority in an attempt to bring about a long term and sustained resolution.

Your officers consider that they have made full and effective use of the legal tools available to the Council in an attempt to secure a timely and sustained resolution. However, where the Council is reliant on the Courts to test evidence and determine the appropriate outcome in line with the legislation there may be occasions where the decision of the final outcome will be inherently delayed for example due to for example the legal process which must be followed, capacity of the individual, the court needing to be satisfied that an individual has had an adequate opportunity to seek legal advice and the complexity of the evidence before the court.

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<b><u>REPORT TITLE</u></b>	Environmental Protection Act 1990 – Mr Scott Houghton Case ref APPu/003901 - Outcome of prosecution proceeding's on 3 <sup>rd</sup> October 2016
<b><u>Submitted by:</u></b>	Head of Environmental Health Services
<b><u>Portfolio:</u></b>	Operational
<b><u>Ward(s) affected:</u></b>	Wolstanton

## **Purpose of the Report**

To inform committee of the outcome of prosecution proceedings against Mr Scott Houghton under the Environmental Protection Act 1990 for failing to comply with a noise abatement notice ref U/003901 on seven occasions between 31<sup>st</sup> May 2016 and 23<sup>rd</sup> July 2016.

## **Recommendations**

### **To receive the report**

## **Reasons**

The Council has a statutory duty to investigate noise complaints under the Environmental Protection Act 1990. A formal statutory noise abatement notice has been served and prosecution proceedings have been taken in the magistrates' following a failure to comply with the legal notice without reasonable excuse.

## **1. Background**

- 1.1 The Committee last received a report on the 20<sup>th</sup> September 2016 concerning the circumstances behind a prosecution proceedings to be brought against Mr Scott Houghton, a resident of Hartington Street Wolstanton for failing to comply with a noise abatement notice ref U/003901 between 31<sup>st</sup> May 2016 and 23<sup>rd</sup> July 2016 contrary to section 80(4) of the Environmental Protection Act 1990 by playing excessively loud amplified music
- 1.2 The case was heard in Newcastle under Lyme Magistrates' court on the 3<sup>rd</sup> October 2016. Mr Houghton pleaded guilty to seven offences of failing to comply with a noise abatement notice, contrary to section 80(4) of the Environmental Protection Act 1990
- 1.3 The Magistrates' took the guilty plea into account and imposed a fine of £200 for the first offence, with no fine for the remaining six offences, imposed a Victim Surcharge of £30 and ordered payment of the Councils costs in bringing the action of £1403.02 which also included £366.86 costs incurred in seizing noise making equipment from Mr Houghton's address. In total Mr Houghton has been required to pay £1633.02 and this is to be paid at a rate of £12.50 per week.
- 1.4 The Court also ordered that the noise making articles seized by the Council in August 2016, namely: 1 x flat screen TV and sound bar, 1 x CRT TV and 1 x hi-fi unit and speakers be returned into his possession. These items were subsequently returned following payment of the £366.86 cost incurred by the Council in seizing the items.

1.5 Details of this case are to feature in an article in the Reporter. In the meantime the noise abatement notice remains in force and any future breaches will be investigated and action taken in line with established policies and procedures.

## **2. Issues**

2.1 The current council scheme of delegation requires that prosecution proceedings brought under Part III of the Environmental Protection Act 1990 are approved by the Public Protection Committee.

## **3. Options Considered**

3.1 The action taken is in line with the council's adopted procedures.

## **4. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

4.1 The report relates to the adoption of a consistent and effective enforcement which contribute to the following:

1. A clean, safe and sustainable borough
2. The negative impacts that the Council, residents and local businesses have on the environment will have reduced.
3. A healthy and active community
4. Fair, proportionate and consistent enforcement creates an environment for prevention, maintenance or improvement in health and wellbeing.

## **5. Legal and Statutory Implications**

5.1 The Council has legal powers to undertake the action subject of this report and the authority to proceed is in line with the Council's constitution.

5.2 The Council's Enforcement Policy 2014-17, details that a graduated and proportionate approach to enforcement will be undertaken.

5.3 It also required that due regard to the public interest test is made in relation to enforcement action undertaken. It is considered that in this case the public interest test is satisfied for the proposed course of action given the ongoing situation.

## **6. Financial and Resource Implications**

6.1 The legal costs in taking this action have been recognised by the Court and a full costs award has been made.

## **7. Major Risks**

7.1 None identified.