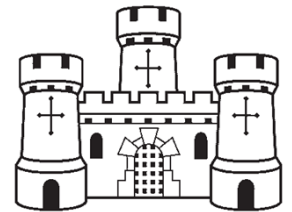


Public Document Pack

Date of meeting Tuesday, 31st July, 2018
Time 7.00 pm
Venue Astley Room - Castle House
Contact Geoff Durham. 742222



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Castle House
Barracks Road
Newcastle-under-Lyme
Staffordshire
ST5 1BL

Licensing & Public Protection Committee

AGENDA

PART 1 – OPEN AGENDA

- | | | |
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| 2 | APOLOGIES | FIELD_PAGE_RANGE |
| 3 | DECLARATIONS OF INTEREST | FIELD_PAGE_RANGE |
| | To receive declarations of interest from Members on items contained within the agenda | |
| 4 | MINUTES OF PREVIOUS MEETING | FIELD_PAGE_RANGE |
| 5 | GAMBLING ACT 2005 - REVIEW OF STATEMENT OF LICENSING PRINCIPLES (GAMBLING POLICY) | FIELD_PAGE_RANGE |
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| 7 | PART 2 - PUBLIC PROTECTION (OPEN) | FIELD_PAGE_RANGE |
| 8 | DECLARATIONS OF INTEREST | FIELD_PAGE_RANGE |

To receive declarations of interest from Members on items contained within the agenda

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www.newcastle-staffs.gov.uk

9	PUBLIC SPACE PROTECTION ORDERS VARIATION	FIELD_PAGE_RANGE
10	INSTITUTE OF LICENSING - CREATION OF GUIDELINES ON HOW TO TREAT TAXI APPLICANTS WITH CONVICTIONS	FIELD_PAGE_RANGE
11	PART 3 - PUBLIC PROTECTION (CLOSED)	FIELD_PAGE_RANGE
12	DISCLOSURE OF EXEMPT INFORMATION	FIELD_PAGE_RANGE

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.

13	MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS	FIELD_PAGE_RANGE
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To consider the minutes of the Public Protection Sub-Committees which have met since the previous Licensing and Public Protection Committee.

14	APPEAL OUTCOME -MR TK	FIELD_PAGE_RANGE
15	APPEAL OUTCOME - MR SK	FIELD_PAGE_RANGE
16	APPEAL OUTCOME - MR MA	FIELD_PAGE_RANGE
17	APPEAL OUTCOME - MR TH	FIELD_PAGE_RANGE
18	APPEAL OUTCOME - MR RA	FIELD_PAGE_RANGE
19	URGENT BUSINESS	FIELD_PAGE_RANGE

To consider any business which is urgent within the meaning of Section 100B (4) of the Local Government Act 1972

Members: Councillors John Cooper, Dymond, Johnson, Kearon, Olszewski (Chair), Parker, Robinson, Sweeney, J Tagg, Walklate, J Waring, S White (Vice-Chair), G Williams, J Williams and Wright

PLEASE NOTE: The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all other rooms. Should you require this service, please contact Member Services during the afternoon prior to the meeting.

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

FIELD_TITLE

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

NOTE: THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY THROUGH THE FIRE EXIT DOORS.

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LICENSING & PUBLIC PROTECTION COMMITTEE

Wednesday, 27th June, 2018
Time of Commencement: 7.00 pm

- Present:-** Councillor Mark Olszewski – in the Chair
- Councillors** Miss J Cooper, John Cooper, Dymond, Kearon, Parker, Robinson, Sweeney, J Tagg, Walklate, J Waring, S White, G Williams and J Williams
- Officers** Nesta Barker - Head of Environmental Health Services, Matthew Burton - Licensing Administration Team Manager, Geoff Durham - Mayor's Secretary / Member Support Officer and Anne-Marie Pollard - Solicitor
- Also in Attendance** Sergeant David Barrow – Staffordshire Police

1. **PART 1 - LICENSING**

2. **APOLOGIES**

Apologies were received from Councillor T Johnson.

3. **DECLARATIONS OF INTEREST**

There were no declarations of interest stated.

4. **MINUTES OF PREVIOUS MEETING**

Resolved: That the Minutes of the Licensing Committee held on 14 February, 2018 be agreed as a correct record.

5. **LICENSING ANNUAL PERFORMANCE REPORT**

Consideration was given to a report advising Members of the key issues and activities undertaken by the Licensing Service in 2017-18.

Members attention was brought to section 2 of the report outlining work of the Licensing Administration Team and Licensing Enforcement activities.

Section three outlined the priorities for 2018-19. Section 3.2 listed additional projects/priorities to be undertaken.

Councillor Kearon queried a review of enforcement that had been mentioned at a previous Council meeting. The Council's Head of Environmental Health Services stated that the Enforcement Policy had been approved at the meeting of the Council held in February this year and would be reviewed in three years' time.

Resolved: That the report be received and the priorities for the 2018/19 work plan be supported.

6. CUMULATIVE IMPACT POLICY

Sergeant David Barrow of Staffordshire Police gave a presentation to Members on the Cumulative Impact Review. All Members received a hard copy of the presentation.

The presentation was given to help Members consider whether the Cumulative Impact Policy was still required and when the policy should be reviewed with a view to transition into a Cumulative Impact Assessment.

Members were advised that Police Officers went into the town in the early morning looking for rough sleepers and working with them, referred them to the Council's Housing team. In addition, the Police were working with the Council to have charity boxes placed around the town which would be used to assist the homeless to help reduce the number of people asking shoppers if they had any spare change.

Police feedback had shown that there had been an improvement in the number of people arrested.

A plan, included within the presentation showed the Cumulative Impact Zone. Councillor Kearon stated that the plan did not map exactly on that of the Public Space Protection Order (PSPO) and asked if the Police were picking up issues within the PSPO and whether the Cumulative Impact Zone was giving a complete picture?

Members were advised that it was – in terms of stand-up venues. PSPO's were more to do with Anti-Social Behaviour Orders than violence.

Councillor Kearon had done a walk-around in the town some years ago with Sergeant Speedman and had noted 'feeder' pubs just outside of the town centre. Councillor Kearon asked if that was still an issue.

Sergeant Barrow stated that the resources were no longer available to do those visits. In addition, people were coming into town later than they did before – between 11pm and 12am.

Councillor Cooper made reference to drug dealers operating within the town centre and was advised that any suspicious activities should be reported by calling 101. There will be Officers around the town and CCTV may capture the activities as they happen.

Councillor Robinson told the committee of a random attack he was aware of where an individual had been punched. The same group of people who had carried out that attack had done other things. Councillor Robinson asked about prevention.

Sergeant Barrow stated that a lot of work had been done in respect of drug awareness, stranger danger and knives by visits to schools by PCSO's.

Members were advised that, although a lot of incidents were reported to the police but when statements etc were asked for they were not forthcoming.

The presentation gave an indication of the violent crimes reported in 2015, 2016 and 2017 including the worse affected streets and Anti-Social Behaviour statistics.

The Chair thanked Sergeant Barrow for the presentation.

Members were asked to consider the options shown at paragraph 3.1 of the committee report. Members were asked to consider when the Council should transition from the Cumulative Impact Policy to the Cumulative Impact Assessment.

Resolved: That the current Policy be reviewed in twelve months with a view to transitioning to the new legislation.

7. MINUTES OF LICENSING SUB COMMITTEE MEETINGS

Resolved: That the Minutes of the Licensing Sub-Committee held on 28 March, 2018 be agreed as a correct record.

8. FIVE MINUTES BREAK

9. PART 2 - PUBLIC PROTECTION (OPEN)

10. DECLARATIONS OF INTEREST

There were no Declarations of Interest stated.

11. MINUTES OF PREVIOUS MEETING

Resolved: That the Minutes of the Public Protection Committee held on 23 April, 2018 be agreed as a correct record.

12. AIR QUALITY ACTION PLAN (2018-2023) CONSULTATION DRAFT JULY 2018

Consideration was given to a report informing Members of the contents of the consultation draft Air Quality Action Plan.

Members attention was drawn to the maps and the Appendices to the report showing the Air Quality Action Areas and the Air Quality Action Plan.

Councillor Robinson felt that not enough was being done by the Highways Authority with regard to emissions.

The Council's Head of Environmental Health Services advised Members that Air quality was a material consideration for all new planning applications.

Resolved: (i) That the report be received.
(ii) That the draft Air Quality Action Plan be approved.
(iii) That the commencement of the consultation be approved.

13. AIR QUALITY ANNUAL STATUS REPORT 2018

Consideration was given to a report advising Members of the statutory Annual Status Report for 2018 which covered the 2017 calendar year in respect of local air quality management within the Borough.

A hard copy of the report was available at the meeting.

Members were advised that the weather had a direct impact on this and that some new 'hotspots' had been identified within the Borough that would continue to be monitored.

Resolved: (i) That the report be received.

14. FOOD SAFETY SERVICE PLAN

Consideration was given to a report advising Members of the work planned by the Food and Safety Team in 2018/19 along with a review of last year's performance.

A copy of the document was attached at page 51 of the agenda.

Resolved: That the Food Safety Service Plan for 2018/19 be received and endorsed.

15. ENVIRONMENTAL HEALTH ANNUAL PERFORMANCE AND ENFORCEMENT REPORT

Consideration was given to a report informing Members of the key issues and activities undertaken by the Environmental Health Service in 2017-18.

Resolved: That the report be received and the priorities for the 2018-19 work plan be supported.

16. PUBLIC PROTECTION SUB COMMITTEE PROGRAMME

Consideration was given to a report advising Members of the dates, times and membership of the forthcoming Public Protection Sub-Committee meetings.

Members were asked to note the dates and to advise Democratic Services if there were any dates on which they could not attend.

A review of the new committee arrangements would be carried out in twelve months.

Resolved: (i) That the report be received and dates and times for Members' attendance be noted.

(ii) That, in the event of being unable to attend a particular meeting, Democratic Services be notified and an appropriate substitute named.

17. PART 3 - PUBLIC PROTECTION (CLOSED)

18. 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 contained within Part 1 of Schedule 12A of the Local Government Act, 1972

19. MINUTES OF PUBLIC PROTECTION SUB-COMMITTEE MEETINGS

Resolved: That the Minutes of the Public Protection Sub-Committee, held on 11 June, 2018, be agreed.

20. **URGENT BUSINESS**

There was no urgent business.

COUNCILLOR MARK OLSZEWSKI
Chair

Meeting concluded at 8.35 pm

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Gambling Act 2005 – Review of Statement of Licensing Principles (Gambling Policy)

Submitted by: Head of Environmental Health/Licensing Administration Team Manager

Portfolio: Finance & Resources

Wards Affected: All

Purpose of the Report

To discuss and agree upon the consultation process for the Council's Gambling Policy.

Recommendations

1. To receive the report
2. To approve the draft Gambling Policy for Newcastle-under-Lyme
3. To approve the commencement of the 10 week consultation.
4. That any responses received to the consultation be considered by the Committee at the meeting to be held on 30th October 2018 and that recommendations of this Committee to be included in the final report to Full Council.
5. That the updated Policy be presented for approval to Full Council at its meeting on 21st November 2018.

Reasons

Under section 349 of the Gambling Act 2005 the Council has a statutory duty to review its Gambling statement set out in the Gambling Policy every 3 years

1. Background

- 1.1 Section 2 of the Gambling Act provides that the following are licensing authorities in England:
 - (i) a District Council,
 - (ii) a County Council for a County in which there are no District Councils,
 - (iii) a London Borough Council,
 - (iv) the Common Council of the City of London,
 - (v) the Council of the Isles of Scilly.
- 1.2 Under section 349 of the Gambling Act 2005 the Council has a statutory duty to review its Gambling statement set out in the Gambling Policy every 3 years. It must be published by the 3rd January and in force by 31st January to ensure there is a 28 day period between publication and implementation. A copy of the proposed Policy for consultation is attached as **Appendix A**.
- 1.3 The Council last published its Gambling Policy in January 2016 and it remains in place until January 2019.
- 1.4 Section 154 of the Act provides that certain decisions are delegated to the licensing committee of the authority that has been established under section 6 of the Licensing Act 2003, except:

- A resolution not to issue casino licences, which must be taken by the whole authority. The Council have made a resolution that there will be no casinos in the authority area;
- Functions in relation to the Licensing Authority Statement of Policy, which must be taken by the whole authority. Once this policy is approved by the Licensing Committee it must be agreed by Full Council;
- Setting fees (to the extent that a licensing authority has delegated power in relation to fees) is the responsibility of the full council – the full council can delegate decisions to the licensing committee, but there is no automatic delegation, so each authority must decide its approach to setting fees.

1.5 Decisions that are delegated to a licensing committee may be further delegated to a subcommittee of the licensing committee, which may arrange for them to be taken by an officer of the authority.

However, the following decisions may not be made by an officer (ie they must be made by either the sub-committee or the licensing committee):

- Determination of an application for a premises licence where representations have been made and not withdrawn
- Determination of an application for variation of a premises licence where representations have been made and not withdrawn
- Determination of an application for transfer, following representations by the Commission
- Determination of an application for a provisional statement where representations have been made and not withdrawn
- Review of a premises licence.

1.6 Licensing authorities in England and Wales also have responsibilities under the Licensing Act 2003. There are some inter dependencies between the Licensing Act 2003 and the Gambling Act 2005 in terms of the framework for decision making and the procedures that must be followed. But licensing authorities must take care to ensure that in dealing with applications under the Gambling Act they follow the procedures that this Act requires and only take into account issues that are relevant to this Act. Particular care should be taken to distinguish Gambling Act considerations from those relevant to alcohol licensing, public entertainment or late night refreshment.

2. **Issues**

2.1 It is suggested that the updated draft policy be sent out for Consultation following the timetable detailed in section 3.2.

2.2 A number of amendments have been made to the Policy implemented in 2016. The main amendments are summarised below:

- The appendix relating to Gaming Machines, their stakes and prizes and location has been removed. This is under advice from the Gambling Commission as the information is subject to change and if it did so then a review of the Council Policy would be required;
- The local area profile section of the Policy (section 5) has been reduced. The Gambling Commission have advised that if a Council wishes to create a Local Area Profile it is best doing so as a separate 'live' document so it can be updated without the need to review the Policy and can readily address a change in circumstances of a particular area;

- The local risk assessments section of the Policy (section 4) has been improved to set down specific considerations that premises licence holders/applicants must include in their premises risk assessments. These risk assessments must be readily available at each premises for officers to inspect;
 - A section on data protection (section 10) has been included to set out the Council position in respect of how we will process the data that we hold.
- 2.3 The legislation specifies certain groups and organisations that must be consulted regarding the revised policy under Section 349 (3) of the Gambling Act 2005:
- The Chief Officer of Police for the authority's area
 - One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area
 - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act
- 2.4 The legislation is however deliberately wide to enable Licensing Authorities to undertake a comprehensive consultation exercise with anyone who may be affected by or otherwise have an interest in the Licensing Authority Statement of Gambling Policy.
- 2.5 Licensing Authorities may wish to consider the following:
- Consultation with a range of organisations including faith groups, voluntary and community organisations working with children and young people, organisations working with people who are problem gamblers, medical practices or primary care trust and advocacy agencies such as the Citizen's Advice Bureau and trade unions.
 - Consultation with other tiers of local government where they exist.
 - Consultation with businesses that are, or will be, holders of a premises licence
 - Consultation with the organisations named as responsible authorities in the Act.
- 2.6 It is intended to advertise the consultation on the Council's website, on the Council's notice board, by writing to all elected members, Parish and Town Councils, and to the Consultees detailed in the list at page 2 of Appendix A. All current premises licence holders will also be sent a copy of the correspondence.
- 2.7 A list of groups and individuals can be consulted. Any further suggestions for potential Consultees are welcomed.

3. Options Considered

3.1 The Council have a statutory duty to consult on, publish and implement a Gambling Policy every 3 years as required by the Gambling Act 2005. It is requested that Members agree that the Policy detailed in Appendix A may be sent for consultation and brought back for consideration in line with the table below:

3.2 Timetable

31 st July 2018	Initial discussions at Licensing Committee. Approval is given to send the draft policy for consultation
6 th August 2016	Gambling Policy sent out for 10 week consultation (ends 12 th October 2018)
30 th October 2018	Meeting of Licensing Committee to discuss responses to the

	consultation and amend Policy as required. Approval is given to send to Full Council for agreement
21 st November 2018	Proposed Policy to be considered by Full Council
December 2018 (or in any case before 3 rd January 2019)	Publish the Policy
January 2019 (before 31 st)	Implement the new Policy

4. Recommendation

- 4.1 To receive the report
- 4.2 To approve the draft Gambling Policy for Newcastle-under-Lyme.
- 4.3 To approve the commencement of the 10 week consultation.
- 4.4 That any responses received to the consultation be considered by the Committee at the meeting to be held on 30th October 2018 and that recommendations of this Committee to be included in the final report to Full Council.
- 4.5 That the updated Policy be presented for approval to Full Council at its meeting on 21st November 2018 in order that the Policy is published prior to 3rd January 2019.

5. Decision Required

- 5.1. The Council have a statutory duty consult on, publish and implement a Gambling Policy every 3 years as required by the Gambling Act 2005.

6. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- 6.1 The contents of this report relate to the following corporate priorities:
 - Creating a cleaner, safer and sustainable Borough
 - Creating a healthy and active community

7. Legal and Statutory Implications

- 7.1 The Council have a statutory duty consult on, publish and implement a Gambling Policy every 3 years as required by the Gambling Act 2005.

8. Earlier Cabinet/Committee Resolutions

- 8.1. No Casino Resolution in 2007.
- 8.2. To implement a Gambling Policy in 2016, 2013, 2010, 2007

9. Background Papers

- 11.1 The Council Gambling Policy 2016-2018

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PART A – THE GAMBLING ACT 2005

1. Introduction

1.1 Under the Gambling Act 2005 (the Act), the Borough Council of Newcastle-under-Lyme is the licensing authority for Newcastle-under-Lyme and licences premises for gambling activities as well as granting various other gambling permits. In this document unless otherwise stated any references to the Council are to the Borough Council of Newcastle-under-Lyme Licensing Authority

1.2 Licensing authorities are required by the Gambling Act 2005 to publish a statement of the principles which they propose to apply when exercising their functions under the Act. This document fulfils this requirement. Such statement must be published every three years. The statement can also be reviewed from time to time and any amendments must be consulted upon. The statement must then be re-published

1.3 The Council consulted widely upon this Policy Statement before finalising and publishing it. A list of the consultees is given below:

- Staffordshire Police
- Staffordshire County Council
- Neighbouring Local Authorities
- Representatives of local businesses
- Local residents and their representatives
- Town and Parish Councils in the Borough
- Local Members of Parliament
- National bodies representing the gambling trade
- National charities concerned with the social impact of gambling
- Representatives of existing licence holders
- Newcastle Partnership
- Department of Regeneration and Planning Services, Newcastle Borough Council
- Staffordshire County Council Trading Standards
- Aspire Housing
- Members of the Public (via the website)

Should you have any comments as regards this policy please send them via e-mail or letter to the following contact:

Licensing Department
Environmental Health
Castle House
Barracks Road
Newcastle-under-Lyme
ST5 1BL
or via email: licensing@newcastle-staffs.gov.uk
tel: 01782 717717

1.4 The consultation took place between XXXXXXXX and XXXXXX 2018 and followed the Government's Consultation Principles updated in March 2018. This document is available from the [www.gov.uk](https://www.gov.uk/government/publications/consultation-principles-guidance) website at <https://www.gov.uk/government/publications/consultation-principles-guidance>www.cabinetoffice.gov.uk

1.5 A copy of the consultation report containing a summary of the comments received and the consideration by the Council of those comments is available on request

1.6 The original Policy was approved at a meeting of the Full Council on 20th December 2006 (resolution 563/06) and the most recent Policy was approved by Full Council in XXXXXX 2018.

2. The Licensing Objectives

2.1 The Council will carry out its functions under the Act with a regard to the three licensing objectives set out at Section 1 of the Act. The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way;
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

2.2 More information can be found about how the Council will promote the licensing objectives in Parts B and C of this document

2.3 The Council will also follow any regulations and statutory guidance issued in accordance with the Act and have regard to any Codes of Practice issued by the national gambling regulator, the Gambling Commission

2.4 The Council is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling insofar as it thinks it is:

- In accordance with any relevant Code of Practice issued by the Gambling Commission;
- In accordance with any relevant guidance issued by the Gambling Commission;
- Reasonably consistent with the licensing objectives; and
- In accordance with the Council's Statement of Gambling Policy.

3. The Licensing Framework

3.1 The Gambling Act 2005 brought about changes to the way that gambling is administered in the United Kingdom. The Gambling Commission is the national gambling regulator and has a lead role in working with Central Government and local authorities to regulate gambling activity

3.2 The Gambling Commission issues operators' licences and personal licences. Any operator wishing to provide gambling at certain premises must have applied for the requisite personal licence and operator's licence before they can approach the Council for a premises licence. In this way, the Gambling Commission is able to screen applicants and organisations to ensure they have the correct credentials to operate gambling premises. The Council's role is to ensure premises are suitable for providing gambling in line with the three licensing objectives and any Codes of Practice issued by the Gambling Commission. The Council also issues various permits and notices to regulate smaller scale and/or ad hoc gambling in other locations such as pubs, clubs and hotels

3.3 The Council does not licence large society lotteries, remote gambling through websites or the National Lottery. These areas fall to the Gambling Commission.

4. Local Risk Assessments

4.1 The Gambling Commission's Licence Conditions and Code of Practice (LCCP) which were revised and published in February 2015 formalised the need for Operators to consider local risks. The LCCP was most recently revised in April 2018

4.2 The Social Responsibility (SR) code requires licensees to assess the local risk to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in this policy statement.

4.3 Licensees are required to undertake a local risk assessment when applying for a new premises licence. Their risk assessment must also be updated:

- When applying for a variation of a premises licence
- To take account of significant changes in local circumstances, including those identified in this policy statement
- Where there are significant changes at a licensee's premises that may affect their mitigation of local risks.

4.4 The Council requires licensees to share their risk assessment with the licensing authority when applying for a premises licence or applying for a variation to existing licensed premises, or otherwise. It must also be kept at each premises that holds a licence with the authority and produced to officers upon request.

4.5 The risk assessment should set out the measures the licensee has in place to address specific concerns. This practice should reduce the occasions on which a premises review and the imposition of license conditions are required.

4.6 Where this policy statement sets out its approach to regulation with clear reference to local risks, the licensing authority will facilitate operators being able to better understand the local environment and therefore proactively mitigate risks to the licensing objectives. In some circumstances, it might be appropriate to offer the licensee the opportunity to volunteer specific conditions that could be attached to the premises licence.

4.7 An example of a risk assessment is attached at Appendix 1.

4.8 The Council will expect the local risk assessment to include the below considerations as a minimum:

- The location of services for children such as schools, playgrounds, leisure/community centres and other areas where children will gather;
- The demographics of the area in relation to vulnerable groups;
- Whether the premises is in an area subject to high levels of crime and/or disorder;
- How vulnerable people, including those with gambling dependencies are protected;
- Any information held regarding self-exclusions and incidences of underage gambling;
- Gaming trends that reflect pay day or benefit payments;
- Known problems in the area such as problems arising from street drinkers, individuals involved in areas such as ASB, drug dealing etc
- Areas or premises where children are known to congregate including bus stops, cafes etc;

- Areas or premises that may be frequented by vulnerable adults such as hospitals, residential care homes, medical facilities, addiction clinics, places where alcohol or drug dependant individuals may congregate.

5. Local area profile

5.1 The Licensing Authority will complete an assessment of the local environment as a means of 'mapping out' local areas of concern, which can be reviewed and updated to reflect changes to the local landscape. Such an assessment is known as the local area profile. There is no statutory duty on the Licensing Authority to complete an area profile; however benefits for both the Licensing Authority and Operators would be in having a better awareness of the local area and risks. Importantly, risk in this context includes potential and actual risk, thereby taking into account possible future emerging risks, rather than reflecting current risks only. The Local Area Profile document will be available on the Council's website alongside this Statement of Principles.

5.2 The Borough is the second largest district in Staffordshire and has a population of 126,000. The majority of the population live in the urban centres of Newcastle-under-Lyme and Kidsgrove which are located in close proximity to the City of Stoke-on-Trent and form part of the North Staffordshire Conurbation. The areas around the urban centre to the north, south and west are mainly rural comprising mostly Green Belt and Areas of Special Landscape where new development is restricted and population density is low. A map of the Borough can be found at Appendix 2.

6. Declaration

6.1 This Policy Statement will not override the right of any person to make an application, make representations about an application or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005

6.2 In producing the final Statement of Gambling Policy, the Council declares that it has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission and any responses from those consulted on the Policy Statement.

7. Responsible Authorities

7.1 The Act empowers certain agencies to act as responsible authorities so that they can employ their particular area of expertise to help promote the licensing objectives. Responsible authorities are able to make representations about licence applications or apply for a review of an existing licence. Responsible authorities will also offer advice and guidance to applicants

7.2 The Council is required by regulations to state the principles it will apply to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- The need for the body to be responsible for an area covering the whole of the licensing authority's area;
- The need for the body to be answerable to democratically elected persons, rather than any particular vested interest group etc.

7.3 In accordance with the regulations, the Council designates the Staffordshire Safeguarding Children Board for this purpose

7.4 The contact details of all the responsible authorities under the Gambling Act 2005 can be found on the Council's website at www.newcastle-staffs.gov.uk and are listed below:

- The Licensing Authority itself
- The Gambling Commission;
- The chief officer of police/chief constable for the area in which the premises is wholly or partially situated
- The fire and rescue authority for the same area
- The local planning authority;
- An authority with functions in relation to pollution of the environment or harm to human health
- A body designated in writing by the Licensing Authority as competent to advise about the protection of children from harm (see paragraphs 11.3 and 11.4 set out below)
- HM Revenue & Customs; and
- Any other person prescribed in regulations by the Secretary of State.

The Act also provides that in relation to a vessel, but no other premises, responsible authorities also include navigation authorities within the meaning of section 221(1) of the Water Resources Act 1991 that have statutory functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is proposed to be navigated at a time when it is to be used for licensable activities.

8. Interested Parties

8.1 Interested parties are certain types of people or organisations that have the right to make representations about licence applications or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as set out below.

8.2 For the purposes of this part, a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person:

- (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- (b) has business interests that might be affected by the authorised activities, or
- (c) represents persons who satisfy paragraphs (a) or (b).

8.3 The Council is required by regulations to state the principles it will apply to determine whether a person is an interested party. The principles are:

- Each case will be decided upon its merits. The Council will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission's Guidance to Local Authorities. Within this framework, the Council will accept representations made on behalf of residents and tenants' associations
- In order to determine if an interested party lives or has business interests sufficiently close to the premises to be likely to be affected by the gambling activities, the Council will consider factors such as the size of the premises and the nature of the activities taking place.

9. Exchange of Information

9.1 Licensing authorities are required to include in their Policy Statement the principles to be applied by the Authority with regard to the exchange of information between it and the Gambling Commission, as well as other persons listed in Schedule 6 to the Act

9.2 The principle that the Council applies is that it will act in accordance with the Gambling Act 2005 in its exchange of information, which includes the provision that the Data Protection legislation will not be contravened. The Council will also have regard to any guidance issued by the Gambling Commission to local authorities on this matter when it is published, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

10. Data Protection

10.1 When an individual or an organisation provides information to the Council, it is held in accordance with the Data Protection legislation. Data provided to the Council is used for processing applications, recording licence holders and for regulatory and enforcement purposes.

10.2 The Council may share data with other departments and partners of the Council and other agencies where required by the licensing/registration procedure and for regulation /enforcement but data will not otherwise be passed on to any other party.

10.3 While certain information may be disclosed under the Freedom of Information Act, some information will be held on a publicly available register, and may be posted onto the Council website; personal data will be protected unless it is also official business data (eg. a trader whose registered business address is also his home).

10.4 The Council has a duty to protect the public funds it administers and to this end, may use the information provided for the prevention and detection of fraud. It may also share information with other bodies responsible for auditing or administering public funds for these purposes, eg. National Fraud Initiative.

10.5 The Council holds and uses data in accordance with Data Protection legislation. Stakeholders should be aware that information provided may be used and shared with other departments and agencies in order to assist in the prevention and detection of crime and to protect public funds.

11. Licensing Authority Functions

11.1 Licensing authorities are responsible under the Act for:

- Licensing premises where gambling activities are to take place by issuing premises licences
- Issuing provisional statements
- Regulating members' clubs and miners' welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issuing Club Machine Permits to commercial clubs
- Granting permits for the use of certain lower stake gaming machines at unlicensed Family Entertainment Centres
- Receiving notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or less gaming machines

- Granting Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises under the Licensing Act 2003, where more than two machines are required
- Registering small society lotteries below prescribed thresholds
- Issuing Prize Gaming Permits
- Receiving and endorsing Temporary Use Notices
- Receiving Occasional Use Notices (for tracks)
- Providing information to the Gambling Commission regarding details of licences issued (see section above on information exchange)
- Maintaining registers of the permits and licences that are issued under these functions

11.2 The Council will not be involved in licensing remote gambling at all. This will fall to the Gambling Commission via operators' licences.

12. Definition of Children and Young Persons

12.1 In this policy "child" means an individual who is less than 16 years old. In this policy "young person" means an individual who is not a child but who is less than 18 years old.

PART B –THE LICENSING OBJECTIVES

13. Preventing Gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

13.1 The Gambling Commission will take a lead role in keeping gambling crime-free by vetting all applicants for personal and operators' licences. The Council's main role is to try and promote this area with regard to actual premises. So, where an area has known high levels of organised crime the Council will consider carefully whether gambling premises are suitable to be located there and whether conditions may be required such as the provision of door supervision

13.2 There is a distinction between disorder and nuisance. In order to make the distinction when incidents of this nature occur, the Council will consider factors such as whether Police assistance was required and how threatening the behaviour was to those who could see it

13.3 Issues of nuisance cannot be addressed by the Gambling Act provisions. However, problems of this nature can be addressed through other legislation as appropriate.

13.4 Examples of the specific steps the Council may take to address this area can be found in the various sections covering specific premises types in Part C of this document and also in Part D which covers permits and notices.

14. Ensuring that Gambling is conducted in a fair and open way

14.1 The Council is aware that the Gambling Commission does not generally expect licensing authorities to become concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences.

14.2 The Council will however familiarise itself with operator licence conditions and will communicate any concerns to the Gambling Commission about misleading advertising or any absence of required game rules or other information.

14.3 Examples of the specific steps the Council may take to address this area can be found in the various sections covering specific premises types in Part C of this document, and also in Part D which covers permits and notices.

15. Protecting children and other vulnerable persons from being harmed or exploited by gambling.

15.1 This licensing objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are particularly attractive to children). The Council will therefore consider whether specific measures are required at particular premises with regard to this licensing objective. Appropriate measures may include supervision of entrances/machines, segregation of areas etc.

15.2 Regarding the term 'vulnerable persons', the Council is not seeking to offer a definition but will, for regulatory purposes, assume that this group includes people who gamble more than they want to; people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to mental health needs, learning disability or substance misuse relating to alcohol or drugs. The Council will consider this licensing objective on a case by case basis having regard to any guidance issued by the Gambling Commission. Should a practical definition prove possible in future then this policy statement will be updated with it, by way of a revision.

15.3 The Council will pay particular attention to any Codes of Practice which the Gambling Commission issues regarding this licensing objective in relation to specific premises

15.4 The Council will promote this objective by publishing information on the Council website about the symptoms of problem gambling and the various support organisations which are available to help problem gamblers. These web pages will be prepared in conjunction with these support agencies

15.5 The Council will also familiarise itself with operator licence conditions related to this objective which may include a requirement for operators to provide information to their customers on how to gamble responsibly and how to access information about problem gambling. The Council will communicate any concerns to the Gambling Commission about any absence of this required information

15.6 Examples of the specific steps the Council may take to address this area can be found in the various sections covering specific premises types in Part C of this document and also in Part D which covers permits and notices.

PART C – PREMISES LICENCES

16. Introduction to Premises Licensing

16.1 The Council will issue premises licences to allow those premises to be used for certain types of gambling. For example, premises licences will be issued to amusement arcades, bingo halls, bookmakers and casinos

16.2 Premises licences will be subject to the provisions set out in the Gambling Act 2005 and regulations as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default

conditions and also attach other conditions, where it is believed to be necessary and proportionate.

Definition of 'Premises'

16.3 Premises is defined in the Act as 'any place'. Different premises licences cannot apply in respect of a single premises at different times. However, it is possible for a single building to be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. Whether different parts of a building can properly be regarded as being separate premises will always be a question of fact in the circumstances

16.4 The Council will take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other non-gambling purposes. In particular, the Council will assess entrances and exits from parts of a building covered by one or more licences to satisfy itself that they are separate and identifiable so that the separation of different premises is not compromised and that people do not 'drift' into a gambling area

16.5 The Council will pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed). Issues that the Council will consider before granting such applications include whether children can gain access; compatibility of the two establishments and the ability to comply with the requirements of the Act. In addition, an overriding consideration will be whether, taken as a whole, the co-location of the licensed premises with other facilities has the effect of creating an arrangement that otherwise would, or should, be prohibited under the Act

16.6 An applicant cannot obtain a full premises licence until the premises in which it is proposed to offer the gambling are constructed. The Gambling Commission has advised that references to 'the premises' are to the premises in which gambling may now take place. Thus a licence to use premises for gambling will only be issued by the Council in relation to premises that are ready to be used for gambling. Whether a premises is finished to a degree that it can be considered for a premises licence will always be a question of fact in the circumstances. Requiring a building to be complete ensures that the Council can, if necessary, inspect it fully, as can other responsible authorities with inspection rights

16.7 Where a premises is not yet built or is about to be altered for the purpose of providing gambling and ultimately a premises licence will be required, the applicant should in the first instance consider making an application for a provisional statement

Location

16.8 The Council is aware that demand issues (e.g. the likely demand or need for gambling facilities in the area) cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. The Council will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder

16.9 With regard to these objectives, it is the Council's policy, upon receipt of any relevant representations, to look at specific location issues including:

- The proximity of the premises to schools and vulnerable adult centres
- The proximity of the premises to residential areas where there may be a high concentration of families with children
- The size of the premises and the nature of the activities taking place

- Any levels of organised crime in the area.

Such information may be used to inform the decision the Council makes about whether to grant the licence, to grant the licence with special conditions or to refuse the application

16.10 This policy does not preclude any application being made and each application will be decided on its merits, with the onus being upon the applicant to show how the concerns can be overcome.

Duplication with other regulatory regimes

16.11 The Council will seek to avoid any duplication with other statutory/regulatory systems where possible, including planning. The Council will not consider whether a licence application is likely to be awarded planning permission or building regulations approval in its consideration of it. It will listen to and consider carefully any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

Conditions

16.12 Any conditions attached to licences will be proportionate and will be:

- Relevant to the need to make the proposed building suitable as a gambling facility
- Directly related to the premises and the type of licence applied for, and/or related to the area where the premises is based
- Fairly and reasonably related to the scale and type of premises and
- Reasonable in all other respects

16.13 Decisions about individual conditions will be made on a case by case basis, although there will be a number of control measures the Council will consider using, such as the use of door supervisors, supervision of adult gaming machines, appropriate signage for adult only areas etc. There are specific comments made in this regard under each of the licence types below. The Council will also expect the applicant to offer his/her own suggestions as to the way in which the licensing objectives can be met effectively

16.14 There are conditions which the Council cannot attach to premises licences which are:

- Any condition on the premises licence which makes it impossible for the applicant to comply with an operating licence condition
- Conditions relating to gaming machine categories, numbers or method of operation
- Conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated) and
- Conditions in relation to stakes, fees, winnings or prizes.

Door supervision

16.15 The Council will consider whether there is a need for door supervision in terms of the licensing objectives of protection of children and vulnerable persons from being harmed or exploited by gambling, and also in terms of preventing premises becoming a source of crime. It should be noted that the Gambling Act 2005 has amended the Private Security Industry Act 2001 and that door supervisors at casinos or bingo premises are not required to be licensed by the Security Industry Authority. Where door supervisors are required at these premises, it is the operator's responsibility to ensure that any persons employed in this capacity are fit and proper to carry out such duties. Normally door supervisors will only be

required in betting offices if there is clear evidence from the history of trading that it is necessary and proportionate. Possible ways to achieve this could be to carry out a criminal records (DBS) check on potential staff and also to ensure that staff members have attended Security Industry recognised training

17. Adult Gaming Centres (AGCs) and Licensed Family Entertainment Centres (LFECs)

17.1 Adult Gaming Centres (AGCs) are a category of premises introduced by the Act that are most closely related to what are commonly known as adult only amusement arcades, seen in many city centres. Licensed Family Entertainment Centres (LFECs) are those premises which usually provide a range of amusements such as computer games and penny pushers and may have a separate section set aside for adult only gaming machines with higher stakes and prizes.

17.2 Under the Act a premises holding an adult gaming centre licence will be able to make certain numbers of category B, C and D gaming machines available and no-one under 18 will be permitted to enter such premises. LFECs will be able to make available a certain number of category C and D machines where there is clear segregation in place so children do not access the areas where the category C machines are located.

17.3 The Council will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling in the above premises. The Council will expect applicants to satisfy the Authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the premises or in the case of LFECs to the adult only gaming machine areas

17.4 The Council will expect applicants to offer their own measures to meet the licensing objectives. However, appropriate measures/licence conditions may cover issues such as:

- Proof of age schemes (e.g. PASS schemes)
- The use of Challenge 25 policy
- The use of 'No ID No Entry' policy
- To train staff in the law and challenge people as to their age
- CCTV
- Door supervision
- Supervision of machine areas
- Physical separation of areas
- Location of entry
- Notices/signage
- Specific opening hours
- The appointment of a single senior named point of contact to assist in compliance.

This list is not mandatory nor exhaustive and is merely indicative of examples

17.5 The Council will refer to the Gambling Commission's website to familiarise itself with any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. The Council will also make itself aware of any mandatory or default conditions on these premises licences when they have been published.

18. Casinos

18.1 The Gambling Act states that a casino is an arrangement whereby people are given the opportunity to participate in one or more casino games whereby casino games are defined as a game of chance which is not equal chance gaming. This means that casino games offer the chance for multiple participants to take part in a game competing against the house or bank at different odds to their fellow players

Casino Resolution

18.2 Each local authority is required to publish information in its Statement of Gambling Policy about how the Authority has taken or will take a decision to pass (or not to pass) a casino resolution. A casino resolution is a judgment made by a local authority about whether it will allow any small, large or the regional casino to be located in its authority area. The Council has passed a resolution that there will be no casinos in the Newcastle-under-Lyme town centre.

19. Bingo Premises

19.1 There is no official definition for bingo in the Gambling Act 2005. However, from a licensing point of view there will be a new category of premises licence specifically for bingo premises which will be used by traditional commercial bingo halls for both cash and prize bingo. In addition, they will also be able to provide a limited number of gaming machines in line with the provisions of the Act.

19.2 The Council is aware that it is important that if children are allowed to enter premises licensed for bingo that they do not participate in gambling, other than on category D machines. Where category C or above machines are available in premises to which children are admitted then the Council will ensure that:

- All such machines are located in an area of the premises separate from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance
- Only adults are admitted to the area where the machines are located
- Access to the area where the machines are located is supervised
- The area where the machines are located is arranged so that it can be observed by staff of the operator or the licence holder, and
- At the entrance to, and inside any such area there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

19.3 The Council is also aware that the Gambling Commission is to issue further guidance regarding the particular issues that licensing authorities should take into account in relation to the suitability and layout of bingo premises. This guidance will be considered by the Council once it is made available.

20. Betting Premises

20.1 Betting premises are premises such as bookmakers where various types of gambling are authorised to take place. The Act contains a single class of licence for betting premises. However, within this single class there are different types of premises which require licensing such as normal high street bookmakers, bookmakers located in self-contained facilities at racecourses as well as the general betting premises licences that track operators will require

20.2 Betting machines – the Council is aware that Section 181 of the Act contains an express power for licensing authorities to restrict the number of betting machines and the nature and circumstances in which they are made available by attaching a licence condition to a betting premises licence. When considering whether to impose a condition to restrict the number of betting machines in particular premises the Council, amongst other things, will take into account the size of the premises, the number of counter positions available for person to person transactions and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people.

20.3 Tracks

20.4 Tracks are sites where races or other sporting events take place. Betting is a major gambling activity on tracks, both in the form of pool betting (often known as the ‘totaliser’ or ‘tote’), and also general betting, often known as ‘fixed odds’ betting. Multiple betting outlets are usually located on tracks such as ‘on course’ betting operators who come on to the track just on race days to provide betting for the races taking place on that track. There can also be ‘off course’ betting operators who may operate self-contained facilities at the tracks which offer customers the chance to bet on other events, not just those taking place on the track. All tracks will require an overriding ‘general betting premises licence’ that the track operator will hold

20.5 The Council is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. The Council is also aware that the track operator may not be required to hold an operator licence as there may be several premises licence holders at the track who will need to hold their own operator licences. The Council will consider the impact upon the protection of children licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter

20.6 Children and young persons will be permitted to enter track areas where facilities for betting are provided on days when racing takes place, although they are still prevented from entering areas where gaming machines (other than Category D machines) are provided

20.7 The Council will expect applicants to offer their own measures to meet the licensing objectives. However, appropriate measures/licence conditions may cover issues such as:

- Proof of age schemes (e.g. PASS schemes)
- The use of Challenge 25 policy
- The use of ‘No ID No Entry’ policy
- To train staff in the law and challenge people as to their age
- CCTV
- Door supervision
- Supervision of machine areas
- Physical separation of areas
- Location of entry
- Notices/signage
- Specific opening hours
- The appointment of a single senior named point of contact to assist in compliance.

This list is not mandatory nor exhaustive and is merely indicative of examples.

20.8 Betting machines – the Council is aware that Section 181 of the Act contains an express power for licensing authorities to restrict the number of betting machines, their

nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence. When considering whether to impose a condition to restrict the number of betting machines in particular premises, the Council, amongst other things, will take into account the size of the premises, the number of counter positions available for person to person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people. The Council will also consider the special implications that may arise at a track due to the size of the premises and the possibility that machines may be scattered around the site making it more difficult for the track operator to comply with the law and prevent children from betting on the machines

20.9 The Council agrees with the Commission's view that it is preferable for all self-contained premises operated by off-course betting operators on track to be the subject of separate premises licences. This ensures that there is clarity between the respective responsibilities of the track operator and the off-course betting operator running a self-contained unit on the premises

20.10 **Condition on rules being displayed** – the Council will consider any Gambling Commission guidance about the application of conditions regarding rules being displayed. The Council may require the track operator to ensure that the rules are prominently displayed in or near the betting areas, or that the rules are displayed in the race card or made available in leaflet form from the track office.

21. Travelling Fairs

21.1 Travelling fairs have traditionally been able to provide various types of low stake gambling without the need for a licence or permit provided that certain conditions are met and this provision continues in similar fashion under the new Act

21.2 Travelling fairs have the right to provide an unlimited number of category D gaming machines and/or equal chance prize gaming (without the need for a permit) as long as the gambling amounts to no more than an ancillary amusement at the fair (see Appendix 1)

21.3 The Council will consider whether any fairs which take up the above entitlement fall within the statutory definition of a travelling fair

21.4 The Council is aware that the 27 day statutory maximum for the land being used as a fair is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. The Council will work with its neighbouring authorities to ensure that land which crosses its boundaries is monitored so that the statutory limits are not exceeded.

22. Provisional Statements

22.1 A provisional statement application is a process which allows a developer to examine the likelihood of whether a building which has yet to be constructed or is about to be altered for the purpose of gambling would be granted a premises licence when the building work is complete. A provisional statement is not a licence and merely gives the holder some form of guarantee that a premises licence would be granted so the project can be started. Once works are complete a full premises licence would still be required

22.2 In terms of representations about premises licence applications, following the grant of a provisional statement, no further representations from relevant authorities or interested

parties can be taken into account unless they concern matters which could not have been addressed at the provisional statement stage or they reflect a change in the applicant's circumstances. In addition, the Council may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- a) which could not have been raised by objectors at the provisional licence stage; or
- b) which in the Authority's opinion reflect a change in the operator's circumstances

22.3 When determining a provisional statement application the Council will operate in accordance with the Act and will not have regard to any issues related to planning consent or building regulations, e.g. the likelihood that planning consent will be granted.

PART D – PERMITS, TEMPORARY/OCCASIONAL USE NOTICES AND SMALL SOCIETY LOTTERY REGISTRATIONS

23. Unlicensed Family Entertainment Centre Gaming Machine Permits (Statement of Principles on Permits)

23.1 The term 'Unlicensed Family Entertainment Centre' (uFEC) is one defined in the Act and refers to premises which provides category D gaming machines along with various other amusements such as computer games and penny pushers. The premises are 'unlicensed' in that they do not require a premises licence but do require a permit to be able to provide category D machines. It should not be confused with a 'Licensed Family Entertainment Centre' which does require a premises licence because it contains both category C and D gaming machines

23.2 The Gambling Act 2005 contains a provision for local authorities to prepare a statement of principles that they propose to consider in determining the suitability of an applicant for a permit. Schedule 10, paragraph 7 of the Act states: "In preparing this Statement and/or considering applications, it [the Council] need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under Section 25"

23.3 In accordance with Gambling Commission guidance, the Council will give weight to child protection issues when considering applications for permits

23.4 The Council will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The Council will assess these policies and procedures on their merits. However, they may include appropriate measures/training for staff regarding suspected truant schoolchildren on the premises, measures/training covering how staff would deal with unsupervised children being on the premises, or children causing problems on or around the premises. The Council will also expect applicants to demonstrate a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs, that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act), and that staff are trained to have a full understanding of the maximum stakes and prizes

23.5 The Council is aware that an application for a permit may only be granted if the Chief Officer of Police has been consulted on the application

23.6 In line with the Act the Council cannot attach conditions to this type of permit and the statement of principles only applies to initial applications and not to renewals.

24. Gaming Machine Permits in premises licensed for the sale of alcohol

24.1 There is provision in the Act for premises licensed to sell alcohol for consumption on the premises, to automatically have two gaming machines of categories C and/or D. The premises merely need to notify the Council. The Council can remove the automatic authorisation in respect of any particular premises if:

- Provision of the machines is not reasonably consistent with the pursuit of the licensing objectives
- Gaming has taken place on the premises that breaches a condition of Section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant Code of Practice issued by the Gambling Commission about the location and operation of the machine has been complied with)
- The premises are mainly used for gaming; or
- An offence under the Gambling Act has been committed on the premises.

24.2 If a premises wishes to have more than two machines, then it needs to apply for a permit and the Council must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission under Section 25 of the Gambling Act 2005, and 'such matters as it thinks relevant'. The Council considers that 'such matters' will be decided on a case by case basis, but generally regard will be had to the need to protect children and vulnerable persons from harm or being exploited by gambling. The Council will also expect the applicant to satisfy the Authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines

24.3 Measures which may satisfy the Council that there will be no access could include the adult machines being situated in close proximity to the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18 years of age. Notices and signage may also help. Regarding the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets/helpline numbers for organisations such as GamCare.

24.4 It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would need to be dealt with under the relevant provisions of the Act

24.5 The Council can decide to grant the application with a smaller number of machines and/or a different category of machines from that applied for. Conditions (other than these) cannot be attached

24.6 The holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine

25. Prize Gaming Permits – Statement of Principles on Permits

25.1 The Council will expect the applicant to set out the types of gaming that he or she is intending to offer and be able to demonstrate:

- That they understand the limits to stakes and prizes that are set out in regulations;
- That the gaming offered is within the law.

25.2 In making its decision on an application for prize gaming permits, the Council does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance

25.3 There are conditions in the Gambling Act 2005 with which the permit holder must comply, but the Council cannot attach conditions. The conditions in the Act are:

- The limits on participation fees, as set out in regulations, must be complied with
- All chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated, and the result of the game must be made public in the premises on the day that it is played
- The prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- Participation in the gaming must not entitle the player to take part in any other gambling.

26. Club Gaming and Club Machines Permits

26.1 Members' clubs and miners' welfare institutes (but not commercial clubs) may apply for a club gaming permit or a club gaming machines permit. The club gaming permit will enable the premises to provide gaming machines (three machines of categories B, C or D), equal chance gaming and games of chance as set out in forthcoming regulations. A club gaming machine permit will enable the premises to provide gaming machines (three machines of categories B, C or D)

26.2 To qualify for these special club permits, a members' club must have at least 25 members and be established and conducted wholly or mainly for purposes other than gaming, unless the gaming is permitted by separate regulations. It is anticipated that this will cover bridge and whist clubs, which will replicate the position under the Gaming Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include workingmen's clubs, branches of the Royal British Legion and clubs with political affiliations

26.3 Before granting the permit, the Council will need to satisfy itself that the premises meet the requirements of a members' club and that the majority of members are over 18 years of age

26.4 The Council may only refuse an application on the grounds that:

- a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which they have applied
- b) the applicant's premises are used wholly or mainly by children and/or young persons
- c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities
- d) a permit held by the applicant has been cancelled in the previous ten years; or
- e) an objection has been lodged by the Gambling Commission or the Police.

27. Temporary Use Notices

27.1 Temporary use notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be useful for a temporary use notice would include hotels, conference centres and sporting venues

27.2 The Act makes a special reference, in the context of temporary use notices, to a 'set of premises' to try and ensure that large premises which cannot reasonably be reviewed as separate are not used for more temporary use notices than permitted under the Act. The Council considers that the determination of what constitutes a 'set of premises' will be a question of fact in the particular circumstances of each notice that is given. In considering whether a place falls within the definition of a 'set of premises', the Council will look at, amongst other things, the ownership/occupation and control of the premises. The Council will be ready to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises.

28. Occasional Use Notices (for Tracks)

28.1 There is a special provision in the Act which provides that where there is betting on a track on eight days or less in a calendar year, betting may be permitted by an occasional use notice without the need for a full premises licence. Track operators and occupiers need to be aware that the procedure for applying for an occasional use notice is different to that for a temporary use notice

28.2 The Council has very little discretion regarding these notices apart from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. The Council will however consider the definition of a 'track' and whether the applicant is entitled to benefit from such notice.

29. Small Society Lottery Registrations

29.1 The Act creates two principal classes of lotteries - licensed lotteries and exempt lotteries. Licensed lotteries are large society lotteries and lotteries run for the benefit of local authorities. These will be regulated by the Gambling Commission. Within the class of exempt lotteries, there are four sub classes, one of which is small society lotteries

29.2 A small society lottery is a lottery promoted on behalf of a non-commercial society as defined in the Act which also meets specific financial requirements set out in the Act. These may be administered by the Council for small societies who have a principal office in the area and wish to run such a lottery

29.3 A lottery is small if the total value of tickets put on sale in a single lottery is £20,000 or less and the aggregate value of the tickets put on sale in a calendar year is £250,000 or less

29.4 To be 'non-commercial', a society must be established and conducted:

- For charitable purposes
- For the purpose of enabling participation in, or supporting, sport, athletics or a cultural activity; or
- For any other non-commercial purpose other than that of private gain.

29.5 The other types of exempt lotteries are 'incidental non-commercial lotteries', 'private lotteries' and 'customer lotteries'

PART E – ENFORCEMENT

30. Enforcement Principles

30.1 The Council will work closely with the responsible authorities in accordance with a locally established joint enforcement protocol and will aim to promote the licensing objectives by targeting known high risk premises following Government guidance around better regulation

30.2 In carrying out its enforcement duties with regard to the inspection of premises and the powers to institute criminal proceedings in respect of certain offences under the Act, the Council will try to be:

Proportionate:

Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised

Accountable:

Regulators must be able to justify decisions, and be subject to public scrutiny

Consistent:

Rules and standards must be joined up and implemented fairly

Transparent:

Regulators should be open and keep regulations simple and user friendly

Targeted:

Regulation should be focused on the problem and minimise side effects

30.3 The Council will endeavour to avoid duplication with other regulatory regimes as far as possible

30.4 The Council has adopted a risk-based inspection programme for Gambling premises

30.5 The main enforcement and compliance role for the Council in terms of the Gambling Act 2005 will be to ensure compliance with the premises licences and other permissions which it authorises. The Gambling Commission will be the enforcement body for the operator and personal licences. Concerns about the manufacture, supply or repair of gaming machines will not be dealt with by the Council but will be notified to the Gambling Commission. In circumstances where the Council believes a premises requires a premises licence for gambling activities and no such licence is in force, the Council will notify the Gambling Commission

30.6 The Council's enforcement policy is available at: <https://www.newcastle-staffs.gov.uk/all-services/your-council/policies-and-strategies-z/corporate-enforcement-policy>

31. Reviews

31.1 A review is a process defined in the legislation which ultimately leads to a licence being reassessed by the Licensing Committee with the possibility that the licence may be revoked or suspended or that conditions may be amended or new conditions added

31.2 Requests for a review of a premises licence can be made by interested parties or responsible authorities. However, it is for the Council to decide whether the review is to be carried out. This will be on the basis of whether the request for the review is:

- In accordance with any relevant Code of Practice issued by the Gambling Commission
- In accordance with any relevant guidance issued by the Gambling Commission
- Reasonably consistent with the licensing objectives; and
- In accordance with this Authority's Statement of Gambling Policy.

In addition the Council may also reject the application on the grounds that the request is frivolous, vexatious, will not cause the Authority to wish to alter, revoke or suspend the licence, or is substantially the same as previous representations or requests for review

31.3 The Council can also initiate a review of a licence on the basis of any reason which it thinks appropriate.

APPENDIX 1 - Licensing Authority’s Guidance to Operators with Regards to Local Area Risk Assessments - SAMPLE

Premises Name:	Premises Licence Number (If Applicable):
Premises Address:	
Post Code:	
Category of gambling premises licence:	
Name of person completing the assessment:	
Date original assessment carried out:	

This risk assessment must be completed for all new premises or when the premises licence is varied. The assessment must also be reviewed when there are any significant changes to either the local circumstances and/or the premises.

Complete **a) - c)** with areas that may pose a risk to the licensing objectives by virtue of the provision of gambling facilities at the premises having regard to Local Area, Gambling Operation and premises design.

a) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime

b) Ensuring that gambling is conducted in a fair and open way

c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

d) Control measures (based on the information above for a) – c), state the control measures you will put in place, e.g. systems, design and physical)

Describe the steps you intend to take to promote the three licensing objectives:

ACTIONS FOLLOWING ASSESSMENT

AREA e.g local area, gambling operation, premises design	PERSON/DEPT TASKED	DATE TASKED	DATE TASK COMPLETED

Signed:	Date:
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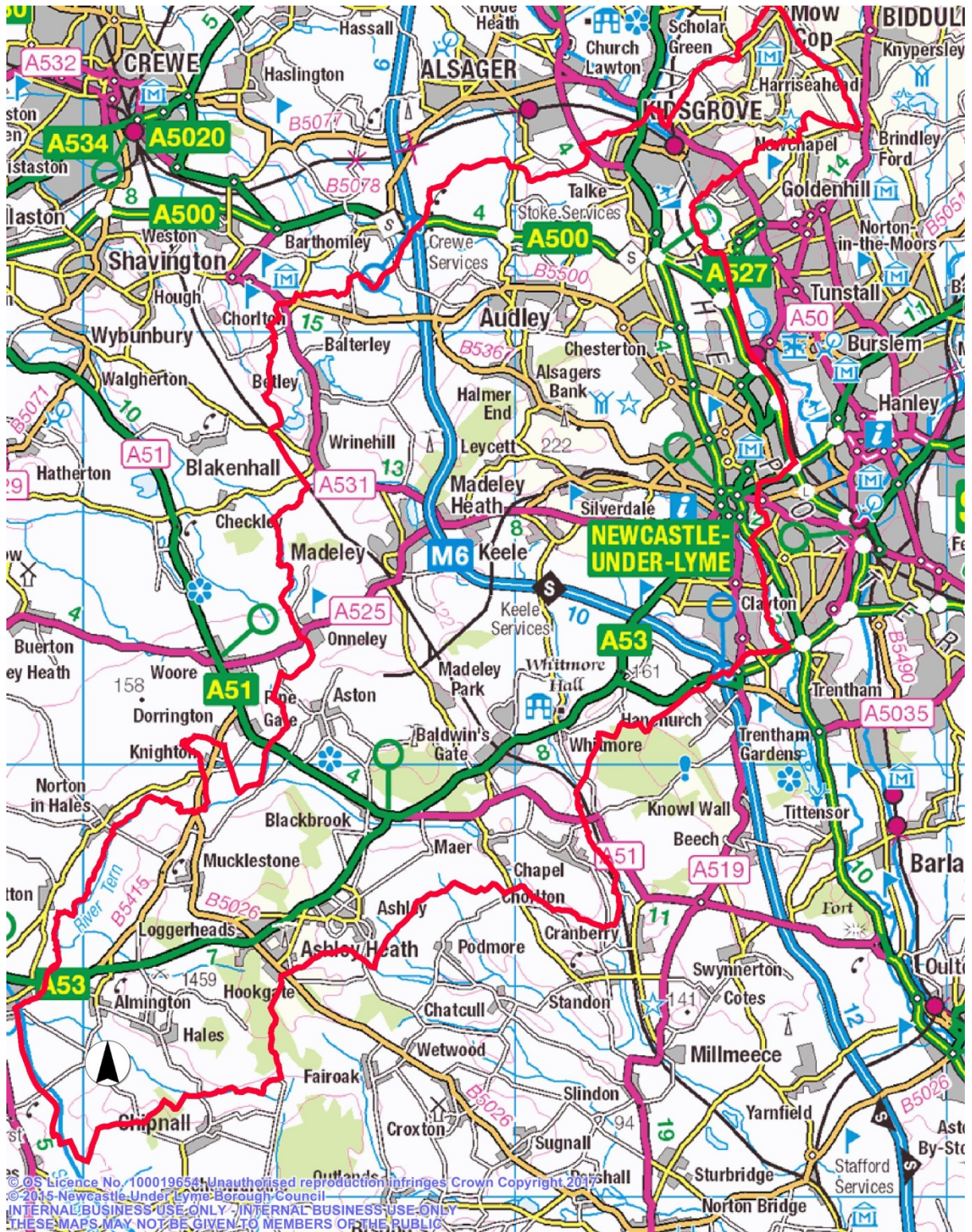
PRINT NAME:

For further guidance on completing this assessment or when this assessment must be reviewed please refer to Gambling Commission Guidance on Undertaking Gambling Local Area Risk Assessments para 6.41-6.46:

<http://www.gamblingcommission.gov.uk/for-licensing-authorities/GLA/Guidance-to-licensing-authorities.aspx>

APPENDIX 2

MAP OF NEWCASTLE-UNDER-LYME BOROUGH



NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

Report for Public Protection Committee – July 2018

<u>Title:</u>	Public Space Protection Orders variation
<u>Submitted by:</u>	Trevor Smith, Partnerships Interventions Officer
<u>Portfolios:</u>	Community Safety and Wellbeing
<u>Ward(s) affected:</u>	All

Purpose of the Report

This report is to;

- Provide an update regarding a review undertaken on the Public Space Protection Order (PSPO) for Newcastle Town Centre.
- Provide recommendations to vary the conditions of the existing PSPO for Newcastle Town Centre and seek approval for the proposals.

Recommendations

That Cabinet notes the content of this report and approves the two proposed variations to the PSPO in Newcastle Town Centre.

Reasons

Following a Review of the existing PSPO it is recognised that the enforcement process could be more proactive in dealing with incidents of anti-social behaviour on Newcastle Town Centre.

1. Background

- 1.1 The Criminal Justice and Police Act 2001, which encompasses Designated Public Place Orders (DPPO's) also known as Alcohol Prohibition Zones (APZ's), has been replaced by the Anti-Social Crime and Policing Act 2014. The Act governs PSPO's and other powers such as Response to Complaints, issuing Fixed Penalty Notices and Closure of Premises.
- 1.2 The Anti-Social, Crime and Policing Act came into force on 20th October 2014. This Act contains the provisions for the Public Space Protection Orders (PSPO's), which were enacted by the Secretary of State. Under the Act there is provision for all Local Authorities to introduce measures to address anti-social behaviour in public spaces. The Act supersedes all previous powers, e.g. gating orders, dog control order, with one overarching power, the PSPO.
- 1.3 A PSPO is an order that identifies a particular space or area to which it will be applied; and can make requirements, or prohibitions, or both within that space or area. This means that the Local Authority can, by virtue of the order, require people to do, or not to do specific things in that space or area. The Local Authority has the powers to grant the prohibitions/requirements where it believes that they are reasonable in order

to reduce or prevent the unwanted issues. The order can be applied to specific people or everyone within an area and can apply at all times or within specific times. The order can apply for a maximum of 3 years upon which the process of reviews and consultation must be repeated to check whether the issues are still occurring and the order is having the required effect. After the initial 3 years, the order can be extended for a further 3 years, and upon further reviews and consultation, can be extended more than once for further periods of 3 years.

- 1.4 Failure to comply with either a prohibition, or requirement stated within the order is an offence. Upon summary conviction (offences heard within the Magistrates Court) defendants can face a fine up to £1,000. The defendant cannot be found guilty of an offence under a prohibition/requirement where the Local Authority did not have the power to include it in the order. Subsequent breaches of the order can also be discharged by use of a Fixed Penalty Notice (FPN). The authority has the option to either prosecute or issue an FPN to discharge liability to convict (s67 & 68 of the ASB, Crime and Policing act).
- 1.5 From October 2017 PSPO's fully replaced existing provisions such as Alcohol Prohibition Zones (APZ's), which are designed to stop the consumption of alcohol in public spaces and Dog Control Orders.
- 1.6 PSPO's offer more flexibility and can be applied to a broader array of issues, granting Local Authorities the autonomy to create their own prohibitions and requirements dependent on whether particular conditions are met. These conditions centre on the degree of impact caused by those issues in the community.
- 1.7 The issues in Newcastle-under-Lyme Town Centre are, but not limited to, street drinking, drug taking, begging, general anti-social behaviour, car cruising (specifically on the Midway car park) and rough sleeping.
- 1.8 The existing conditions for the Town Centre PSPO are:
 - Not to be in possession or utilise an aerosol and/or any item intended to cause defacement within the location.
 - Not to undertake repairs of vehicles within all local authority car parks other than for urgent breakdown repairs.
 - Not to use any local authority owned car parks as a place to congregate, cook or sleep and to only use the car park for parking.
 - Not to engage in behaviour likely to cause harassment, alarm or distress within designated areas.
 - Not to consume or be in possession of an open container of alcohol in the designated area excluding licensed premises or licensed events.
 - Not to ingest, inhale, inject, smoke or otherwise use intoxicating substances including Novel Psychoactive Substances (NPS) within the designated area.

1.8 The PSPO is in force in the Town Centre as highlighted on the map below:



2. PSPO process

2.1 Currently, if an individual breaches one of more of the aforementioned PSPO conditions he/she will receive a PSPO warning notice prior to receiving an FPN should a further breach occur, as detailed below.

2.2 **Stage 1:** Police identify & evidences a breach via body-cam and CCTV. 1st warning notice issued. Details recorded on Police and NBC databases



Stage 2: Should a further breach occur an FPN is issued, co-ordinated through the Partnership Team via the Councils Enforcement Policy.

2.3 The PSPO enables an authorised person (as outlined in the Councils Scheme of Delegation) to issue a warning to any persons which if ignored could result in that person being issued with a FPN. The original intention that the use of FPNs would only be used in cases where offences persistently occur and where other preventative measures have failed to address the problems. However, the use of warning notices has not been as successful as originally anticipated leading to the proposed change in process.

2.4 Subject to the FPN being paid in full within 14 days, the recipient is not liable to prosecution by the Council for the relevant offence. If the FPN remains unpaid after the 14 days, the offender will normally be prosecuted by the Council in line with the council's adopted Enforcement Policy.

2.5 The maximum penalty that can be imposed is £100 and this must be paid within 14 days of service of the FPN. However, it is possible to impose a lesser penalty for early payment and it for each authority to decide their penalty in the absence of statutory guidance.

2.6 The Fixed Penalty amounts are as follows:

- Payment of FPN within 10 days of issue £75
- Payment of FPN between 10 and 14 days of issue £100

3.0 **Anti-Social Behaviour (ASB)**

3.1 Over the last 12 months the issue of begging has become more frequent and persistent in Newcastle Town Centre. The reasons for this increase are believed to be;

- There is a displacement of beggars from the City of Stoke-on-Trent due to a sustained period of enforcement from the Police and Safer City Partnership. Beggars have crossed the border into Newcastle-under-Lyme as we have not employed such enforcement tactics.
- Beggars understand that it is difficult for the Police and other enforcement agencies to detect their activity. There is a misconception that all beggars are rough sleepers but often this is not the case. A number of those who beg portray themselves as being homeless but there is evidence that very few of the persistent beggars in the Town Centre are actually homeless. These individuals are often referred to as 'professional beggars' and are often already in receipt of benefits and have stable accommodation either in Newcastle-under-Lyme or in other areas.
- Residents of Newcastle-under-Lyme are considered to be extremely generous and will often put their hands in their pockets and give money directly to beggars whether they are asked to or not. Whilst their generosity is admirable, it may be misguided as they are unaware of how their money is spent and what on.
- Begging is an extremely emotive subject and how to deal with the issue of begging polarises opinion. Prior to the launch of the PSPO Newcastle Borough Council's stance was one of caution given that beggars are often classed as vulnerable individuals. There are a proportion of individuals whom beg who are not in receipt of benefits and do not have accommodation but these are believed to be in the minority. It could also be argued that those individuals who beg are vulnerable due to substance misuse and mental health issues. However, given the frequency of beggars on Newcastle Town Centre (the majority of which are known to services) it could be argued that effective enforcement is the key to tackle this issue. Varying the PSPO to include a condition not to beg in Newcastle Town Centre would be one such way of tackling this issue.

3.2 As previously stated support will be continue to be offered in the first instance with enforcement activity being employed as a last resort to those persistently and aggressively begging and causing ASB in the Town Centre.

4.0 **Options considered**

4.1 The options are as follows;

- a. To support the Partnerships Team in streamlining the enforcement process by removing the warning notice stage and proceeding directly to Fixed Penalty Notices (recommended).

- b. To support the Partnerships Team in the variation of the PSPO conditions to include begging and ASB (recommended).
- c. To look at other ways to address the issues of begging and ASB without looking at enforcement (not recommended).
- d. To continue with the existing process by issuing warning notices followed by Fixed Penalty Notices should further breaches occur (not recommended).

5.0 **Recommendations and reasons**

5.1 The recommendation is to give the Partnerships Team a mandate to streamline the PSPO enforcement process to remove the warning notice stage and to include begging as a PSPO condition.

5.2 The reasons for our recommendation are as follows:-

- a. Over the past 12 months warning notices have not been as effective as first anticipated with a number of individuals repeat offending. NBCs Legal Team has recommended a zero tolerance approach, dispensing with warning notices and issuing FPNs as soon as a breach occurs.
- b. Over the last 12 months Newcastle Town Centre has seen an increase in persistent begging and associated ASB, which has caused complaints from both residents and businesses.

5.3 The proposed enforcement process is as follows;

- Issue an FPN as soon as a breach of any of the PSPO conditions, including begging are witnessed.

6. **Outcomes Linked to Corporate Priorities**

6.1. The Council has a commitment to provide its residents with a clean, safe and sustainable Borough and so the introduction of these variations to the PSPO will contribute to ensuring positive outcomes.

6.2. Another key priority for the Council is to foster a healthy and active community. The appropriate use of the PSPO will lessen or prevent issues around anti-social behaviour.

7. **Legal and Statutory Implications**

7.1 There may be legal implications for NBC in its discharge of legal duty under the ASB and Crime Act of 2014 and resource implications in the event of legal challenge.

7.2 The anticipated number of FPNs and prosecutions is unknown as this is still a relatively new area of work for the Council and will depend on the number of offences committed under the PSPO.

8. **Equality Impact Assessment**

8.1 An Equality Risk Assessment has been completed detailing how PSPO's will affect disadvantaged and vulnerable individuals such as dependent street drinkers, rough sleepers and beggars.

9. **Financial and Resource Implications**

- 9.1 The administered PSPO will be managed under existing Council resources with assistance from partners such as the Police who will be identifying breaches of the PSPO, issuing FPNs and liaising with partners including the Council.
- 9.2 There may additional staffing resource required to support the management of FPN's, including income recording and links to the Legal team when non-payment occurs. This depends on how many FPNs are issued and how many occurrences there are of non-payments. Also, the level of resulting income cannot be accurately predicted but is not expected to be significant.

10. Key Decision Information

- 10.1 This report can be considered key because it requires the Borough Council to commit existing and additional resources for the function to which the decision relates.

11. Earlier Cabinet/Committee Resolutions

- 11.1 In September 2014 the report 'Update on the Anti-Social Behaviour, Crime and Disorder Act 2014' and 'Scheme of Delegation' were submitted to EMT.
- 11.2 In January 2016 the report 'Public Space Protection Orders' was submitted to EMT and Officers were given permission to undertake a formal public consultation
- 11.3 In November 2016 the report 'Public Space Protection Orders' was submitted to Cabinet and Officers were given permission to make a PSPO for Newcastle Town Centre.
- 11.4 In June 2018 the Anti-Social Behaviour Policy report was approved by Cabinet.
- 11.5 In July 2018 the report 'Public Space Protection Orders review' was approved by Cabinet.

12. List of Appendices

- 12.1 Appendix 1: PSPO implementation plan
- 12.2 Appendix 2: Scheme of delegation
- 12.3 Appendix 3: Newcastle Town Centre PSPO Review Report (2018)

13. Background Papers

- 13.1 None

Task	Timescales (TBC)	Partners/Dep involved	Owner	RAG Rating
Submit PSPO report to EMT detailing proposals for variation and enforcement process	May-18	NBC Partnerships Team	Trevor Smith	Green
Submit PSPO report to Public Protection Committee detailing proposals for variation and enforcement process	Jun-18	NBC Partnerships Team	Trevor Smith	Amber
Attend Public Protection Committee to discuss proposals and to present information & evidence	Jun-18	NBC Partnerships Team	Trevor Smith, Sarah Moore	Amber
Brief front line Police staff on PSPO enforcement changes and legal implications	Jun-18	NBC Partnerships Team	Trevor Smith	Amber
Formally consult partners, the public and businesses regarding the proposed changes	Jul-18	NBC Partnerships Team	Trevor Smith/Comms Team	Amber
Meet with relevant partners for a pre-launch briefing including Comms Team	Aug/Sep-18	NBC Partnerships Team	Trevor Smith	Amber
Create new PSPO signs	Aug/Sep-18	NBC Partnerships Team	Trevor Smith	Amber
Arrange publicity for the PSPO	Aug/Sep-18	NBC Partnerships Team	Trevor Smith/Comms Team	Amber
Launch revised PSPO	Sep-18	NBC Partnerships Team	Trevor Smith/Comms Team	Amber

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Scheme of delegation

	FUNCTION	EXERCISED BY
	Anti-Social Behaviour, Crime and Policing Act 2014 Functions	
	Part 1 Injunctions	
	<p>Injunctions Application for Injunction / Interim injunction / Variation of Injunction / Discharge if injunction (Part 1 sections 5, 6, 7, 8)</p> <p>Arrest warrant and prosecution of injunction Application for arrest warrant and authority to prosecute (Part 1, section 10)</p> <p>Consultation on injunction Requirements to consult etc. (Part 1, section 14)</p>	<p>Head of Business Improvement, Central Services and Partnerships</p>
	Part 2 Criminal Behaviour Orders	
	<p>Application for CBO, Interim order, variation, discharge Application for criminal behaviour order / interim order / Variation of order / Discharge of criminal behaviour order (Part 2 sections 23, 26, 27)</p> <p>Consultation with YOT prior to application for CBO on under 18's Requirement to consult with YOT if offender is under 18 (Part 2 section 29)</p> <p>Review of CBOs imposed on under 18's Duty to cooperate with chief officer of police in review of orders imposed on under 18's (Part 2 sections 28/29)</p>	<p>Head of Business Improvement, Central Services and Partnerships</p>
	PART 4 CHAPTER 1 - COMMUNITY PROTECTION NOTICES	
	<p>Issuing and consulting on CPN's prior to service Power to issue community protection notices to persons over 16 or a body (Part 4 Chapter 1 section 53)</p> <p>Obligation to inform anybody or individual that the serving officer sees fit prior to issuing a community protection notice (Part 4 Chapter 1 section)</p>	<p>Head of Business Improvement, Central Services and Partnerships</p> <p>Head of Environmental Health</p> <p>Head of Operations</p> <p>All Environmental Health Officers and appropriately qualified Technical Staff</p> <p>(officer initiating CPN)</p>
	<p>Authority to take remedial action to comply with CPN</p> <p>Authority to undertake remedial action for failure to comply with a community protection notice section (Part 4 Chapter 1 section 47)</p>	<p>Head of Environmental Health</p> <p>Head of Business Improvement, Central Services and Partnerships</p> <p>Head of Operations</p>

Appendix 2.

Power of entry in respect of CPN Power of entry to undertake remedial action work under (Part 4 Chapter 1 section 47)	All Environmental Health Officers and appropriately qualified Technical Staff. And agents acting on behalf of the authority expressly authorised by the relevant Head of Service
Cost recovery for remedial action in default of CPN Issue of notice of costs to defaulter for remedial action (Part 4 Chapter 1 section 47)	Head of Service whose officers initiated remedial action
Prosecution proceedings in respect of CPN Authorisation of proceedings for failing to comply with a community protection notice (Part 4 Chapter 1 section 48)	Public Protection Committee
Remedial order Application to court for a remedial order (Part 4 Chapter 1 section 49)	Head of Business Improvement, Central Services and Partnerships
Seizing items involved in breach of CPN Seizure of items used in the commission of suspected offence under section 48 (Part 4 Chapter 1 section 51)	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
Fixed penalty notice for non-compliance with CPN Service of fixed penalty notice for offence of failing to comply with a Community Protection Notice which is an offence under section 48 (Part 4 Chapter 1 section 52)	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
PART 4 CHAPTER 2 PUBLIC SPACES PROTECTION ORDERS	
Making a PSPO Power to make Public Spaces Protection Orders (Part 4 Chapter 2 section 59)	Public Protection Committee
Publishing PSPO Publishing of Public Spaces Protection Order in accordance with regulations made by Secretary of State (Part 4 Chapter 2 section 59(8))	Head of Business Improvement, Central Services and Partnerships
Extension to PSPO Extension of Public Spaces Protection Orders beyond 3 years (Part 4 Chapter 2 section 60)	Public Protection Committee
Publishing extension to PSPO Publishing of extension to Public Spaces Protection Order in accordance with regulations made by Secretary of State (section 60(3))	Head of Business Improvement, Central Services and Partnerships
Variation and discharge of PSPO Variation and discharge of current Public Spaces Protection Orders (Part 4 Chapter 2 section 61)	Public Protection Committee
Publishing of variation or discharge of PSPO Publishing of variation to or discharge of Public Spaces Protection Order in accordance with regulations made by Secretary of State (Part 4 Chapter 2 section 61(5) /section 61(6))	Head of Business Improvement, Central Services and Partnerships
Power in relation to consumption of alcohol Power to require a person not to consume alcohol or to require surrender of alcohol or containers for alcohol contrary to requirements of public spaces protection order (Part 4 Chapter 2 section 63(2))	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
Authorisation of prosecution proceedings relating to PSPO for alcohol Authorisation of prosecution proceedings for failure to comply with a requirement to not to consume alcohol or to require	Public Protection Committee

Appendix 2.

	surrender of alcohol or containers for alcohol Part 4 Chapter 2 section 63(6))	
	Authorisation of prosecution proceedings for failure to comply with PSPO Authorisation of prosecution proceedings for failure to comply with anything either prohibited or required by a public spaces protection order (Part 4 Chapter 2 section 67)	Public Protection Committee
	Fixed penalty notices for failing to comply with PSPO Power to issue a fixed penalty notice for offences of not complying with a public spaces protection order under section 63 (Consumption of alcohol in breach of an order) or section 67 (failing to comply with an order) (Part 4 Chapter 2 section 68)	Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing
	Convention rights, consultation, publicity and notification Duty to have regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the European Convention on Human Rights before making, extending, varying or discharging a public spaces protection order Duty to carry out consultation, publicity and notification before making, extending, varying or discharging a public spaces protection order	Head of Business Improvement, Central Services and Partnerships
Part 4 Chapter 3 – CLOSURE OF PREMISES ASSOCIATED WITH NUISANCE OR DISORDER		
	Power to issue closure notices for up to 24 hours Power to issue closure notices for up to 24 hours where use of particular premises has resulted , or is likely to soon result in nuisance to members of the public or there has been or is likely soon to be disorder associated with the use of premises (Part 4 Chapter 3 section 76)	Chief Executive or person designated by him or her Head of Business Improvement, Central Services and Partnerships Head of Environmental Health
	Duty to consult prior to service of closure notice Duty to consult anybody or individual prior to service of closure notice (Part 4 Chapter 2 section 76(7))	Chief Executive or person designated by him or her Head of Business Improvement, Central Services and Partnerships Head of Environmental Health
	Power to extend closure notice beyond 24 hours to 48 hours (Part 4 Chapter 2 section 76/77)	Chief Executive or person designated by him or her
	Cancellation or variation of closure notice Power to vary or cancel a closure notice (Part 4 Chapter 3 section 78)	Officer who originally signed notice or in their absence the Chief Executive or person designated by him or her
	Power of court to make closure orders Application to a magistrates' court for a closure order within 48 hours of service of closure notice (unless closure notice has been cancelled (Part 4 Chapter 3 section 80)	Head of Business Improvement, Central Services and Partnerships

Appendix 2.

	<p>Entry to premises to fix closure orders Fixing closure orders in at least one prominent place on premises, to each normal means of access and outbuildings which appear to be associated with premises. (Part 4 Chapter 3 section 79(2))</p>	<p>All Environmental Health Officers and appropriately qualified Technical Staff. And agents acting on behalf of the authority expressly authorised by the relevant Head of Service</p>
	<p>Extension of closure orders Application to the court for an extension of period of a closure order or further extension (Part 4 Chapter 3 section 82)</p>	<p>Head of Business Improvement, Central Services and Partnerships</p>
	<p>Discharge of closure orders Application to the court to discharge a closure order. (Part 4 Chapter3 section 83)</p>	<p>Head of Business Improvement, Central Services and Partnerships</p>
	<p>Enforcement of closure orders Access to a premises etc. to enforce closure order, to secure premises against entry and carrying out essential maintenance or repairs. (Part 4 Chapter 3 section 85)</p>	<p>Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing</p>
	<p>Proceedings for breach of closure notice / order Application to court for prosecution for breach of closure order (Part 4 Chapter 3 section 86)</p>	<p>Public protection committee</p>

	FUNCTION	EXERCISED BY
	The Dangerous Dogs Act 1991	
	Section 5 Seizure / entry to premises and evidence	
	<p>Seizure of dangerous dogs in any place power of entry onto premises to seize a dangerous dog</p>	<p>Environmental Health Officers, Technical Assistants and Enforcement Officers authorised in writing</p>

Newcastle Town Centre Public Space Protection Order (PSPO) June 2018

Introduction

The Criminal Justice and Police Act 2001, which encompassed Designated Public Place Orders (DPPO's) also known as Alcohol Prohibition Zones (APZ's), has been replaced by the Anti-Social Behaviour Crime and Policing Act. The Anti-Social Behaviour, Crime and Policing Act (2014) contains the provisions for the Public Space Protection Orders (PSPO's), which were enacted by the Secretary of State and other ASB powers.

Under the Act there is provision for all Local Authorities to introduce measures to address anti-social behaviour in public spaces. The Act supersedes all previous powers, e.g. gating orders, dog control orders, with one overarching power, the PSPO.

A PSPO is an order that identifies a particular space or area to which it will be applied; and can make requirements, or prohibitions, or both within that space or area. This means that the Local Authority can, by virtue of the order, require people to do, or not to do specific things in that space or area. The Local Authority has the powers to grant the prohibitions/requirements where it believes that they are reasonable in order to reduce or prevent the unwanted issues. The order can be applied to specific people or everyone within an area and can apply at all times or within specific times. The order can apply for a maximum of 3 years upon which the process of reviews and consultation must be repeated to check whether the issues are still occurring and the order is having the required effect. After the initial 3 years, the order can be extended for a further 3 years, and upon further reviews and consultation, can be extended more than once for further periods of 3 years.

In April 2016, Newcastle Borough Council undertook a public consultation on the installation of a PSPO in Newcastle Town Centre. The responses received unanimously supported the introduction of the PSPO.

PSPO content

The current PSPO conditions installed in Newcastle Town Centre are as follows:-

- Not to be in possession or utilise an aerosol and/or any item intended to cause defacement within the location.
- Not to undertake repairs of vehicles within all local authority car parks other than for urgent breakdown repairs.
- Not to use any local authority owned car parks as a place to congregate, cook or sleep and to only use the car park for parking.
- Not to engage in behaviour likely to cause harassment, alarm or distress within designated areas.
- Not to consume or be in possession of an open container of alcohol in the designated area excluding licensed premises or licensed events.

- Not to ingest, inhale, inject, smoke or otherwise use intoxicating substances including Novel Psychoactive Substances (NPS) within the designated area.

There was a conscious decision, prior to April 2016, by the Borough Council not to include a condition to address rough sleeping and begging given that rough sleepers and beggars were considered by many to be vulnerable and in need of considerable support.

PSPO area and boundary

The PSPO was put into force in Newcastle Town Centre as detailed on the map below.



PSPO enforcement

It was agreed with colleagues from the Newcastle Policing Team at Staffordshire Police that front line Police Officers and Police Community Support Officers (PCSO's) should issue warning letters and Fixed Penalty Notices due to the fact that the Police have a greater presence on the Town Centre.

In April 2016, the Borough Council and the Police established the following enforcement process.

Stage 1: Police identify & evidences a breach via body-cam and CCTV. 1st warning notice issued. Details recorded on Police and NBC databases



Stage 2: Warning notice issued to the Police Partnerships Manager to be included on Partnership HUB.



Stage 3: If individual is issued with 2nd warning notice then multi-agency partnership approach instigated and meeting with individuals arranged to advise of consequences of further breaches.



Stage 4: individual breaches a 3rd time an FPN will be issued, co-ordinated through the Partnership Team via the Councils Enforcement Policy.



Stage 5: If in event of non-payment of fines possible legal intervention will be taken which could instigate other statutory legal powers. Case may be referred to Legal Team for further consideration/action.

After this process was established it quickly became apparent that it was practically far too lengthy and onerous on the Borough Council and Newcastle Policing Team. There were several individuals given a PSPO warning notice which was extremely resource intensive. It was decided that streamlining the process was the best solution to this issue. Research also supported a single warning to be issued if any of the PSPO conditions are breached because after which it is deemed to be relatively ineffective, particularly with persistent offenders. As a result the current PSPO enforcement process is therefore illustrated below;

Stage 1: Police identify & evidences a breach via body-cam and CCTV. 1st warning notice issued. Details recorded on Police and NBC databases



Stage 2: Warning notice issued to the Police Partnerships Manager to be included on Partnership HUB.



Stage 3: Should a further breach occur an FPN is issued, co-ordinated through the Partnership Team via the Councils Enforcement Policy.

PSPO statistics

Since 24th February 2017 64 warning notices have been issued with 8 withdrawn. The 8 withdrawn notices are due to the Police issuing notices which do not fall within the boundaries of the PSPO conditions for example individuals being ejected from licensed

premises for begging, possession of drugs in a licensed premise and pushing & arguing within a licensed premise.

4 Fixed Penalty Notices have been issued but the fines were unpaid.

The 4 breaches were for the persistent consumption of alcohol on Newcastle Town Centre.

Due to a number of factors including resistance from the Legal Team, internal monitoring processes within the Council and collation of legal evidence (within a defined timescale) to support escalation to court, these cases were not pursued.

Review of current arrangements

- **Enforcement process issues**

Currently, if one or more of the PSPO conditions are breached a warning letter is issued and if any further breaches occur the individual receives an FPN. This process has not been as successful in addressing ASB as first anticipated as the current arrangements give individuals the opportunity to commit further breaches which may not always be detected by Enforcement Officers.

- **Legal feedback**

Stoke-on-Trent City Council's Legal Team has advised that warning letters need not be issued and NBC could simply implement the sanction procedure when a breach takes place.

This action would avoid previous complications around consistency, ensuring that all perpetrators have been given the same amount of warnings and warning period. Failure to do so could be viewed as some being treated more favourably than others.

We are awaiting feedback from our Legal Team in relation to how a PSPO could be applied to a persistent or aggressive beggar.

- **Feedback from partners**

Newcastle Police would like to dispense with the initial warning notice and proceed directly to issuing Fixed Penalty Warnings (FPNs). They would like to take a 'hard-line, direct approach' with known, problematic individuals who persistently cause nuisance on Newcastle Town Centre.

Newcastle Police also have expressed a desire to take a more direct enforcement approach against those individuals who are persistent and aggressive known beggars. Whilst the Police are more than happy with FPN's issued to beggars they would also like to employ other enforcement powers also such as Community Protection Notice Warnings (CPNWs) and Community Behaviour Orders (CBOs).

The Police whilst pro-enforcement do understand and appreciate the need for balance regarding vulnerable beggars and will endeavour to signpost them into appropriate services such as One Recovery and Newcastle Housing Advice. They would prefer utilising CPNWs rather than a PSPO for known, problematic beggars as specific conditions can be attached to a CPNW. If the CPNW is subsequently breached a CBO can be applied for through the Courts.

- **Research/Best Practice undertaken**

Derby City Councils approach is promoting a balance between support and effective enforcement.

Derby has included the following condition in all of their PSPO's.

'No person shall beg (using either active or passive methods of obtaining alms) or ask members of the public for money in a public place'.

Derby City Council have also used other tactics to disrupt the routine of beggars such as removing unattended belongings from the street/shop doorways and storing them away from the City in storage units, tackle the issues of NPS use and target beggars through Police night time operations. They use their PSPO's as vehicles to deliver messages and to set the tone in order to manage expectations from the public and businesses. The use of PSPO's, although effective, is not the be all and end all. They are used in tandem with other enforcement tools such as CPNWs and CBO's where specific conditions can be applied.

Sheffield City Council also employs enforcement tactics regarding individuals who are persistently refusing to engage and continuing to commit ASB including begging. Combined with enforcement methods, support is also offered and by doing this they are able to demonstrate (when going to court) what interventions have been offered.

Their enforcement pathway consists of:

Stage 1: Verbal warning – encouraged to engage

Stage 2: CPN 1 – with information / encourage to engage

Stage 3: CPN 2 - with information / encourage to engage

Stage 4: Breach – result in arrest for vagrancy

Stage 5: Application for a CBO with conditions to stay away from a particular area and engage with services.

- **Feedback from the public**

The Partnerships Team and other partners are increasingly receiving complaints regarding individuals drinking alcohol, begging, rough sleeping and taking illegal substances on Newcastle Town Centre. There has been sporadic feedback from the

public expressing dissatisfaction that people are begging and rough sleeping in the Town centre. One particular member of the public has been vociferous with complaints about beggars and rough sleepers, demanding the Borough Council and the Police take immediate enforcement action. Other feedback received suggests that the Town Centre users are intimidated by street drinkers and beggars in the Town Centre because of their often chaotic behaviour.

- **Other factors**

Magistrates Courts

In early 2013 the Magistrates Court in Fenton, Stoke-on-Trent closed and all cases were re-directed to the Newcastle Magistrates Court, renamed the North Staffordshire Justice Centre. This has seen a significant influx of offenders come into Newcastle Town Centre which in turn has caused an increase in shoplifting, street drinking, littering, substance misuse and general anti-social behaviour such as shouting, swearing and littering.

Section 34/35 notices

The use of s34 and s35 notices are purely a short term enforcement tactic designed to disrupt the activities of individuals who persistently cause Anti-Social Behaviour. They have been used sparingly by the Police in Newcastle Town centre over the past 12 months however several notices have been issued in the last 2 weeks which has seen several known beggars dispersed from the Town centre for up to 48 hours. Since 1st January 2018 10 retail exclusions and 10 35 letters have been served.

Migration from Stoke-on-Trent

Police colleagues in Stoke-on-Trent are currently using enforcement tactics in order to manage their anti-social behaviour issues. These enforcement tactics involve the use of Community Protection Notice Warning (CPNWs) and continued usage of section 35 dispersals. The use of such enforcement powers is causing a degree of displacement of individuals from Stoke-on-Trent into Newcastle-under-Lyme. Some of these individuals are coming into Newcastle on a regular basis to beg for money.

Police Resources/Findings

The Neighbourhood Policing Team's structure has changed in terms of the wards policed and the number of front line Officers. There are now 4 Police Officers, 4 PCSO's and 3 Sergeants covering the Town Centre, Clayton, Thistleberry, Poolfields and Cross Heath areas.

The Police have placed a number of section 34 dispersal orders into force on Newcastle Town Centre over the last month. This is to combat ASB which spikes over the warmer summer months. Following the introduction of the s34's, the Police have arrested 15 individuals who have caused trouble in Newcastle Town Centre in the daytime.

3 Community Protection Notices have also been issued by the Police, prohibiting individuals from certain activities such as street drinking.

Recommendations

It is recommended that the Partnerships Team work with partners to streamline the enforcement process and vary the wording of the existing PSPO conditions to include those who are persistently begging.

The wording we would like to introduce is:-

No person shall beg (using either active or passive methods of obtaining alms) or ask members of the public for money in a public place.

(Alms are money or goods given to those as an act of charity).

The reasons for our recommendation are as follows:-

1. Over the last 12 months Newcastle Town Centre has seen an increase in begging which has caused complaints from both residents and businesses and we have been unable to use the existing PSPO to take enforcement action with this cohort
2. Over the past 12 months warning notices have not been as effective as first anticipated with a number of individuals repeat offending. NBCs Legal Team has recommended a zero tolerance approach, dispensing with warning notices and issuing FPNs as soon as a breach occurs.

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Institute of Licensing – Creation of Guidelines on how to treat taxi applicants with convictions

Submitted by: Head of Environmental Health/Licensing Administration Team Manager

Portfolio: Finance & Resources

Wards Affected: All

Purpose of the Report

To notify the Committee of the model Convictions Guidelines created by the Institute of Licensing alongside the Local Government Association, Lawyers in Local Government and National Association of Licensing Enforcement Officers.

Recommendations

That the Committee note the document.

1. Background

- 1.1. The Institute of Licensing (IoL) is an organisation whose members are made up of professional licensing practitioners and organisations that have an interest or responsibility in relation to any aspect of Licensing. The IoL holds various training courses throughout the year and provides assistance and guidance to officers and authorities in respect of licensing matters.

2. Issues

- 2.1. There is no statutory guidance on how local authorities should approach the licensing of taxi drivers, vehicles or operators. Local authorities have the powers to set policies, conditions and guidance documents in relation to taxi licensing but each Council does so separately which has led to a range of standards being implemented across the Country.
- 2.2. The IoL have identified a particular area of concern around the variance between the nature, number and frequency of convictions that different local authorities are prepared to allow drivers to have when considering whether to grant/renew licences. It was also highlighted that very few authorities make any kind of criminal record check on vehicle proprietors or private hire operators.
- 2.3. In 2016 the IoL sought to create a model set of conviction guidelines that local authorities could choose to adopt with the aim of improving the consistency of decisions across the Country. For a long time it has been a concern amongst local authorities that a driver could be refused a licence by one Council but then apply to a neighbouring authority, be granted a licence and then come back to work in the area in which they were refused.
- 2.4. In April 2018 the IoL published their “*Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades*” which had been produced in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and National Association of Licensing Enforcement Officers (NALEO). A copy of the guidance is attached as **Appendix A**.
- 2.5. The Guidance is made up of an introduction of how the IoL came to produce the document and what considerations they made in doing so, an overview of offenders and

offending, an overview of the taxi licensing regime as it stands, and a section on how applications where the individual has convictions should be determined.

3. Recommendation

3.1 That Members note the IoL Guidance document.

4. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

4.1 Creating a cleaner, safer and sustainable Borough
A Borough of Opportunity
Creating a healthy and active community, and
Becoming a Co-operative Council delivering high quality, community driven services

5. Legal and Statutory Implications

5.1. N/A

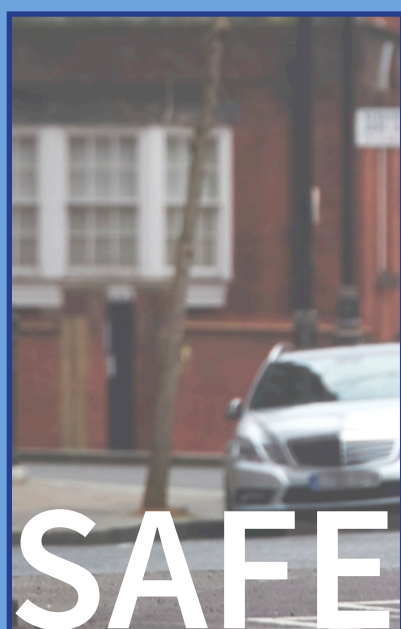
6. Sustainability and Climate Change Implications

6.1. N/A

7. Background Papers

1.1 N/A

Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:



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Foreword

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

Everybody working in this field should acquaint themselves with the facts of the Rotherham case, which stands as a stark testament to what can happen when licensing performs its safeguarding role inadequately. But the extremity of that appalling story should not distract us from the job of protecting the public from more mundane incompetence, carelessness or dishonesty. The standards of safety and suitability do not have to be set as a base minimum. To the contrary, they may be set high, to give the public the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.

Crucially, this is not a field in which the licensing authority has to strike a fair balance between the driver's right to work and the public's right to protection. The public are entitled to be protected, full stop. That means that the licensing authority is entitled and bound to treat the safety of the public as the paramount consideration. It is, after all, the point of the exercise.

Therefore, this guidance is to be welcomed. It rightly emphasises that any circumstance relating to the licensee is potentially relevant, provided of course that it is relevant to their safety and suitability to hold a licence. It provides useful and authoritative guidelines to licensing authorities as to how they ought to approach their important task of making determinations about the safety and suitability of drivers and operators.

While, of course, licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing. Adherence to the guidance may also provide protection to licensing authorities on appeal.

The guidance is therefore commended to licensing authorities. It is hoped that, in due course, it will sit at the elbow of every councillor and officer working in taxi licensing.

Philip Kolvin QC
Cornerstone Barristers

April 2018

Chapter 1: Introduction

- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications¹. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

¹ Except vehicle proprietors. In those cases there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*².

- 1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards.
- 1.11 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.³ With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm⁴. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

³ DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

⁴ Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

- 2.6 Flaud⁵ noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place⁶.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future⁷. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%⁸. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population¹¹. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

⁵ Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁶ Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁷ Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

⁸ Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

⁹ Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

¹⁰ McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

¹¹ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”¹².
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”¹³.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁴. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships¹⁵. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males¹⁶.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist¹⁷. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance¹⁸. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

¹² National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

¹³ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

¹⁴ Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

¹⁵ Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

¹⁶ Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

¹⁷ Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

¹⁸ Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.

ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past”¹⁹.

- 2.16 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual’s previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when making a decision as to whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person’s ability to sustain such change. This can be a long process that can only be achieved over time.

¹⁹ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

Chapter 3: 'Taxi' Licensing Overview

- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in the DfT *"Taxi and Private Hire Licensing – Best Practice Guide"* para 8 which states:
- "The aim of local authority licensing of the taxi and PHV trades is to protect the public."
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage driver; private hire driver and private hire operator.
- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.
- 3.8 In each case, the authority has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

Taxi Drivers

- 3.10 The term "taxi driver" encompasses two different occupations: hackney carriage drivers and private hire drivers. "Taxi driver" is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory

criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*²³. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁴
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

²⁰ Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

²¹ Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

²² “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1st December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

²³ [2002] EWHC 1145 (Admin), [2003] RTR 199

²⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 10.21

- 3.18 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers' licence?
- 3.19 The local authority has the power to require an applicant to provide:
- “such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”²⁵
- This “information” can include any pre-conditions or tests that they consider necessary
- 3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:
- Enhanced DBS certificates and sign-up to the update service;
 - Knowledge tests;
 - Driving tests;
 - Disability Awareness;
 - Signed Declarations;
 - Spoken English tests.
- 3.21 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.
- 3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared²⁷) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker²⁸.
- 3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks²⁹ and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

²⁵ Local Government (Miscellaneous Provisions) Act 1976 s57(1)

²⁶ See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

²⁷ “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.

²⁸ See *Adamson v Waveney District Council* [1997] 2 All ER 898

²⁹ “For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children’s Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2” DBS email 31st August 2017.

- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability³⁰.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account³¹. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been)

³⁰ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³¹ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

to assault another sexually has demonstrated completely unacceptable standards of behaviour.

- 3.31 Applicants may claim that they have sought employment in other fields and been precluded as a result of their antecedent history particularly if that contains convictions. They therefore seek to become a licensed driver as an occupation of last resort. This is unacceptable as the granting of a licence would place such a person in a unique position of trust. The paramount responsibility of a licensing authority is to protect the public, not provide employment opportunities.
- 3.32 Licensees are expected to demonstrate appropriate professional conduct at all time, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. In no circumstances should Licensees take the law into their own hands. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.
- 3.33 There are those who seek to take advantage of vulnerable people by providing services that they are not entitled to provide; for example, by plying for hire in an area where they are not entitled to do so. Licensees are expected to be vigilant of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers should feel confident to check that the person offering a service is entitled to do so. Licensees should willingly demonstrate that they are entitled to provide the offered service by, for example, showing their badge.
- 3.34 As a society, we need to ask the question “who is driving my taxi?” and be secure in the knowledge that the answer is “a safe and suitable person”. The vast majority of drivers are decent, law abiding people who work very hard to provide a good service to their customers and the community at large. However poor decisions by local authorities and courts serve to undermine the travelling public’s confidence in the trade as a whole. Unless local authorities and the courts are prepared to take robust (and difficult) decisions to maintain the standards the local authority lays down, and in some cases tighten up their own policies, the public cannot have complete confidence in taxi drivers. This is detrimental to all involved.

Private Hire Operators

- 3.35 A private hire operator (“PHO”) is the person who takes a booking for a private hire vehicle (“PHV”), and then dispatches a PHV driven by a licensed private hire driver (“PHD”) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same

authority³². A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person³³.

- 3.36 As with taxi drivers the role of the PHO goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
- 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.39 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.
- 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:
- “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”³⁴
- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they

³² See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³³ Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

³⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 12.35

obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the PHO.

- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation³⁵. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence³⁶ and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.47 A suitable test would be:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be

³⁵ See s57(1)(c) of the 1976 Act.

³⁶ S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?”³⁷

³⁷ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98

Chapter 4: Guidance on Determination

- 4.1 As is clear from the overview of Offenders and Offending above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk reduces over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.2 Many members of our society use, and even rely on, hackney carriages and private hire vehicles to provide transportation services. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.3 Ideally, all those involved in the hackney carriage and private hire trades (hackney carriage and private hire drivers, hackney carriage and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 4.4 The purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

Pre-application requirements

- 4.5 Licensing authorities are entitled to set their own pre-application requirements. These will vary depending upon the type of licence in question but can include some or all of the following (these are not exhaustive lists):

Vehicles:

- Basic DBS checks;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space etc;
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.

Drivers:

- Enhanced DBS checks with update service;
- Checks made to the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);
- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

Operators:

- Basic DBS checks;
- Details of their vetting procedures for their staff;
- Knowledge of the licensing area.

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership³⁸) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.

³⁸ Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction³⁹. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴⁰.
- 4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

³⁹ This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

⁴⁰ This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.

- 4.19 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.
- 4.20 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 4.21 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 4.22 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 4.23 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.
- 4.24 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.

Drivers

- 4.25 As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.26 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

- 4.27 As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.28 In relation to single convictions, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.

Crimes resulting in death

- 4.29 Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

Exploitation

- 4.30 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

Offences involving violence

- 4.31 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Possession of a weapon

- 4.32 Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Sex and indecency offences

- 4.33 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.
- 4.34 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

Dishonesty

- 4.35 Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Drugs

- 4.36 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 4.37 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

- 4.38 Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Motoring convictions

- 4.39 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving

- 4.40 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 4.41 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

Other motoring offences

- 4.42 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.43 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Hackney carriage and private hire offences

- 4.44 Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Vehicle use offences

- 4.45 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Private Hire Operators

- 4.46 A private hire operator (“an operator”) does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or other unacceptable purposes.
- 4.47 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.48 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be effected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority’s overall criteria, that will lead to the operator’s licence being revoked.

- 4.49 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, which are outlined above.

Vehicle proprietors

- 4.50 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 4.51 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.52 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.53 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.
- 4.54 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

Acknowledgements

In December 2015, the Institute of Licensing established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

The core project group comprised:

- Stephen Turner, Solicitor at Hull City Council, Licensing Lead for Lawyers in Local Government and Vice Chair of the North East Region IoL (Project Group Chair)
- Jim Button, Solicitor at James Button & Co and President of IoL
- Philip Kolvin QC, Cornerstone Barristers and Patron of IoL
- John Miley, Licensing Manager for Broxtowe Borough Council, National Chair for NALEO and Vice Chair of the East Midlands Region IoL
- Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the South East Region IoL
- Phil Bates, Licensing Manager for Southampton City Council
- Sue Nelson, Executive Officer of IoL

This Guidance is the result of the work of the project team and includes consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

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Lawyers in Local Government (LLG). www.lawyersinlocalgovernment.org



National Association of Licensing and Enforcement Officers (NALEO). www.naleo.org.uk

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