

# Agenda



**HYNDBURN**

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## Cabinet

**Wednesday, 10 October 2018 at 3.00 pm,**  
QE Room, Scaitcliffe House, Ormerod Street, Accrington

### Membership

Chair: Councillor Miles Parkinson (in the Chair)

Councillors Clare Cleary, Paul Cox, Munsif Dad, Gareth Molineux and Joyce Plummer

This Agenda gives notice of three items to be considered in private, as required by Regulation 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

## AGENDA

### PART A: PROCEDURAL AND INFORMATION ITEMS

1. **Apologies for Absence**
  
2. **Declarations of Interest and Dispensations**
  
3. **Minutes of Cabinet** (*Pages 5 - 14*)  
  
To approve the Minutes of the last meeting of Cabinet held on the 29<sup>th</sup> August 2018.
  
4. **Minutes of Boards, Panels and Working Groups** (*Pages 15 - 18*)



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Published on Tuesday, 2 October 2018

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To receive the Minutes of the meeting of the Regeneration and Housing Panel held on the 17<sup>th</sup> July 2018.

## **PART B: PORTFOLIO ITEMS**

### **5. Reports of Cabinet Members**

#### **Leader of the Council (Councillor Miles Parkinson)**

### **6. Planning Enforcement Management Plan (Pages 19 - 36)**

Report attached.

#### **Portfolio Holder for Housing and Regeneration (Councillor Clare Cleary)**

### **7. The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (Pages 37 - 42)**

Report attached.

#### **Portfolio Holder for Resources (Councillor Joyce Plummer)**

### **8. Council Tax and National Non Domestic Rates Collection and Recovery Policies (Pages 43 - 88)**

Report attached.

### **9. National Non Domestic Rates Mandatory, Discretionary and Hardship Relief Scheme (Pages 89 - 114)**

Report attached.

### **10. Adoption of the Institute of Licensing Guidance - Determining the suitability of applicants and licensees in the hackney carriage and private hire trade (Pages 115 - 182)**

Report attached.

## **PART C: EXEMPT ITEMS**

### **11. Exclusion of the Public**

<b>Recommended</b>	<b>That, in accordance with Section 100A(4) Local Government Act 1972, the public be excluded from the meeting during the following items, when it is likely, in view of the nature of the</b>
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proceedings that there will otherwise be disclosure of exempt information within the Paragraphs of Schedule 12A of the Act specified at the items.

Details of any representations received by the Executive about why the following report should be considered in public – none received.

Statement in response to any representations – not required.

**Leader of the Council (Councillor Miles Parkinson)**

**12. Report of Urgent Cabinet Decision- Business Rate 75% Retention Lancashire Pilot Bid (Pages 183 - 230)**

*(The report will contain exempt information under the Local Government Act 1972, Schedule 12A, Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information))*

Report attached.

**13. Report of Urgent Cabinet Decision- Waive contract procedure rules for procurement of new Christmas Lighting to Accrington Town Centre (Pages 231 - 236)**

*(The report will contain exempt information under the Local Government Act 1972, Schedule 12A, Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information))*

Report attached.

**Portfolio Holder for Resources (Councillor Joyce Plummer)**

**14. Sale of Former Council Offices, 20 Cannon Street, Accrington (Pages 237 - 242)**

*(The report will contain exempt information under the Local Government Act 1972, Schedule 12A, Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information))*

Report attached.

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## CABINET

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**Wednesday, 29th August, 2018**

**Present:** Councillor Miles Parkinson (in the Chair), Councillors Clare Cleary, Paul Cox, Munsif Dad and Joyce Plummer

**In Attendance:** Councillors Tony Dobson and Lisa Allen

**Apologies:** Gareth Molineux

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**98 Apologies for Absence**

An apology for absence was submitted on behalf of Councillor Gareth Molineux.

**99 Declarations of Interest and Dispensations**

There were no interests or dispensations declared at the meeting.

**100 Minutes of Cabinet**

The Minutes of the meeting of Cabinet held on 18<sup>th</sup> July 2018 were submitted for approval as a correct record.

**Resolved** - **That the Minutes be received and approved as a correct record.**

**101 Minutes of Boards, Panels and Working Groups**

The Minutes of the Local Plan Member Working Group held on 2<sup>nd</sup> July 2018 were submitted for noting.

**Resolved** - **That the Minutes be received and noted.**

**102 Reports of Cabinet Members**

There were no reports.

**103 Black Abbey Street Urgent Variation of Christ Church Conservation Area**

The report was withdrawn.

**104 The Development of a Policy Framework for Pavement Cafés and the Display of Goods on Pavements**

The Leader of the Council (Councillor Miles Parkinson) submitted a report seeking approval to develop a policy framework for the management of pavement cafes/outdoor eating (in association with existing cafes and restaurants) and the use of pavements for other activities in Hyndburn.

Approval of the report was deemed a key decision.

### *Reasons for Decision*

There has been a steady reduction in the number of national retailers, banks and building societies in Accrington town centre and an increase in the number of vacant stores, charity shops and discount stores.

There have been a number of significant developments that have helped to increase the number of people in Accrington Town Centre and make it more attractive for business and there is a continuing need to explore and develop ways of attracting people and businesses into Accrington. Possessing a diversity of uses is also recognised as a means of attracting people into town centres and recent reports suggest that improved performance in some high streets is being driven by the presence of an inventive food and drink sector, such as street food and markets. A positive policy framework would encourage, and reduce barriers, for those seeking to develop their food and drink establishments in the town centre – pavement Cafes.

### *Alternative Options Considered and Reasons for Rejection*

No action. At present the Council does not have a policy in relation to pavement cafes/display of goods on pavements. It is therefore unclear what someone seeking to develop a pavement café would need to consider or submit to the Council (if anything).

#### **Resolved**

- (1) That a policy framework be developed for the operation of Pavement cafes and the use of pavements for other activities (such as the display of goods) on pavements in Hyndburn, and in particular Accrington Town Centre;**
- (2) That the policy framework be developed in consultation with relevant stakeholders including town centre businesses, Lancashire County Council and the Town Team before being presented to Cabinet for approval;**
- (3) That the policy framework be accompanied by guidance for applicants on how to apply for a licence to operate a pavement café and what information they need to submit and details of model conditions that might be considered necessary on any licence granted; and**
- (4) That the policy framework be accompanied by a schedule of fees that will set out the initial cost of managing an application and the annual cost associated with renewal of licence.**

#### **105 The Waste (England and Wales) Regulations 2011 (Amended 2012) Review of Waste Collection Arrangements**

The Deputy Leader of the Council (Councillor Paul Cox) submitted a report to advise Members on the implications of the Waste (England and Wales) Regulations 2011, (amended 2012) and the outcome of the Technically Environmentally, and Economically Practicable, (TEEP) test on the Council's new collection arrangements for certain recyclable materials (paper and card, glass, metals and plastics).

Approval of the report was not deemed a key decision.

### *Reasons for Decision*

The Waste (England and Wales) Regulations 2011 (Amended 2012) are designed to implement the requirements of the EU Waste Framework Directive, Article 4, which relates to the handling and processing of certain recyclable materials. The aim is to ensure that materials collected as recyclables are recycled and not disposed of in another way. The Directive is therefore concerned with the quality of materials collected and the ability of material reprocessors to sort materials and provide high quality materials for subsequent closed loop recycling.

Waste Collection Authorities will need to consider their collection arrangements against these requirements. The regulations do not prohibit commingled collections, rather they establish separate collections as the default position and it is for the WCAs to demonstrate that separate collections are not necessary or practicable.

The regulations are about improving the quantity and quality of the material collected and the ability of reprocessors to sort materials and provide high quality materials for closed loop recycling.

If separate collection of a material fails any one of the technically, environmentally and economically practicable tests then it will be deemed to not have met the Practicability (TEEP) Test. The Council has substantially changed its method of collecting domestic recycling and undertaken a new TEEP assessment. A review of the Council's waste collection arrangements has therefore been undertaken by the Head of Environmental Services applying the Route Map.

#### *Alternative Options Considered and Reasons for Rejection*

Around 10 different collection methods were proposed and evaluated. All were rejected due to issues around vehicle sizes, cost of providing additional containers and the number of vehicles/crew members required for each option. However, the two stream recycling collection model utilising wheeled bins; maintains the existing alternate weekly collections calendar, (i.e. recycling week 1, residual week 2, recycling week 3 residual week 4 and so on), allows for a reduced standardised Refuse Compaction Vehicle fleet and simplifies recycling for residents. Overall, this option was considered the best and widely supported by Cabinet members and Officers.

Due to the Council's financial pressures, it was not economically practical to maintain the 'status quo' of utilising bags and boxes. Moving to a two stream recycling collection method provided substantial financial savings on vehicles, the requirement for a third recycling wheeled bin and staff costs.

Whilst not part of the Necessity and Technically, Environmentally and Economically Practicable, (TEEP) assessments, evidence from other WCAs which moved from bags and boxes to wheeled bins, suggests an increase in capture rates which would also suggest an increase in the recycling rate. The removal of bags and boxes will also lead to a significantly improvement in the cleanliness of the environment as there will be very little wind-blown litter.

#### **Resolved**

- (1) That the outcome of the Necessity and Technically, Environmentally and Economically Practicable, (TEEP) assessments, carried out on the Council's revised recycling collection arrangements that were implemented in July 2018 be endorsed; and**
- (2) That the Head of Environmental Services in consultation with the Cabinet Portfolio Holder for Environmental**

**Services and the Head of Legal Services be authorised to sign off the new assessment document, in line with best practice guidance as per item 3.5 (WRAP's Route Map).**

## **106 Garage Plot Rental Charge 1st April 2019**

The Cabinet Portfolio Holder for Housing and Regeneration (Councillor Clare Cleary) submitted a report seeking approval for increased garage plot rents from 1<sup>st</sup> April 2019.

Approval of the report was deemed a key decision.

### *Reasons for Decision*

The Council last increased the annual garage plot rent on the 1<sup>st</sup> April 2016. Allowing for an annual rate of inflation of 2.2% since 2016, and rent comparisons charged by neighbouring authorities, it is recommended that the annual rent be increased to £96.00.

The Council completes a garage rent review every 3 years, with the aim of ensuring that the garage plot rents keep pace with inflation. It is reasonable for the Council to increase the garage plot rents having taken into consideration annual inflation since the last rent increase and rents charged by neighbouring local authorities.

The recommended rent of £96.00 is the average of the four neighbouring Lancashire authorities. In reaching the recommended rent, consideration has been given to the annual rate of inflation since 2016.

### *Alternative Options Considered and Reasons for Rejection*

No change. Continue to charge rents at the existing amount. This option has been rejected on the grounds that a larger rent increase will be required at a future date. It is reasonable for the Council to review the rents charged every 3 years.

Set a lower rent increase. This option has been rejected on the grounds that the annual rate of national inflation since 2016 is 2.44%. The Council has set the rent increase marginally lower than the national rate of inflation, and to a rate comparable with other neighbouring local authorities.

Set a higher rent increase. This option has been rejected on the grounds that the increase would be greater than the national rate of inflation.

**Resolved** - **That an increase in garage plot rents from £90.00 to £96.00 per annum (excluding VAT) be approved with effect from 1<sup>st</sup> April 2019.**

## **107 Financial Position 2018/19 Update**

*The following item was submitted as urgent business with the Chair's agreement in accordance with Section 100B(4) of the Local Government Act 1972, the reason being to ensure the latest up to date information was included in the report.*

The Cabinet Portfolio Holder for Resources (Councillor Joyce Plummer) submitted a report to inform Cabinet of the financial spending of the Council up to the end of July 2018 and the financial forecast outturn position for the Accounting Year 2018/19.

Approval of the report was not deemed a key decision.

*Reasons for Decision*

To inform Cabinet of the financial spending of the Council at the end of July 2018 and the prediction of the outturn position to the end of the financial year in March 2019.

*Alternative Options Considered and Reasons for Rejection*

There were no alternative options for consideration or reasons for rejection.

**Resolved** - **That the report be noted and Corporate Management Team continue to look to reduce costs and increase income over the remainder of the year to help improve the overall financial position of the Council.**

## **108 Accrington Markets - Review of Charges**

*The following item was submitted as urgent business with the Chair's agreement in accordance with Section 100B(4) of the Local Government Act 1972, the reason being to ensure the latest up to date information was included in the report.*

The Cabinet Portfolio Holder for Housing and Regeneration (Councillor Clare Cleary) submitted a report to seek approval to implement a new charging structure for Accrington Market with effect from 1<sup>st</sup> October 2018. The report also provided an overview of current charges, occupancy levels and steps being taken to ensure the long term viability and sustainability of Accrington Markets.

Approval of the report was not deemed a key decision.

*Reasons for Decision*

This is the first major review of Market Hall charges since 2010. The proposed reduction and freezing of charges reflects difficult high street trading conditions generally, including those affecting the markets sector.

The proposed revised charges reflect a review of the open market rental values at Accrington Markets using comparable rents and rateable values and a review of service costs. The charging review has also been mindful to keep a fair balance between the financial pressures faced by some of our traders and the long term sustainability of Accrington Markets.

The Cabinet Working Group with the support of officers, will be ensuring the good financial stewardship of the Markets' budget with a priority to increase occupancy of the outside markets and to eradicate longer term subsidised occupancies of the indoor Market Hall unless there are exceptional circumstances that add value to the overall offer at Accrington Markets especially for other traders by increasing footfall significantly.

A Valuation Report was commissioned to establish the open market rental values of the accommodation for the inside and outside markets. The valuation report considered town centre comparable rents, other market charging comparisons across Lancashire and wider North West and the Valuation Office Agency's rateable values for the Market Hall which is considered a fairly good barometer of rental values.

Despite the freeze the Cabinet Working Group were well aware of a decrease in retail rental values in and around Accrington town centre and trading difficulties experienced by some market traders.

In addition to reviewing Market charges, the Cabinet Working Group has started to look at wider issues that are having a negative impact on the Markets' budget including occupancy levels, incentive rates and a vision and business plan for the future with a view to sustaining Accrington Markets for the long term future.

Like the rent charges, the Markets Service Charge has not been reviewed since 2010. This has now been reviewed to reflect actual costs, with a small increase in costs, and therefore there is a need to increase the service charge element of charges.

#### *Alternative Options Considered and Reasons for Rejection*

The proposed charges are based on an assessment of open market rents by a qualified and experienced Chartered Surveyor registered with The Royal Institute of Chartered Surveyors. Other options were considered by the Cabinet Working Group but have been rejected due to the need to achieve a fair balance between open market values and financial pressures faced by some traders.

#### **Resolved**

- (1) That the proposed charges for Accrington Market, as set out in the report, be approved with effect from 1<sup>st</sup> October 2018 (10.5% reduction) and 1<sup>st</sup> October 2019 (a further 2.9% reduction);**
- (2) That it be noted that the proposed charges apply to all tenancies and occupancies except those that were subject to agreed incentive rates and discounts within the indoor Market Hall or Kiosks;**
- (3) That it be noted of the intention to phase out all current indoor Market Hall incentive arrangements by no later than the 30<sup>th</sup> June 2019;**
- (4) That all indoor Market Hall and Kiosk tenants benefit each year from a one month, 50% rent discount (but not service charge) subject to the account not going into arrears for a 12 month term ending the 31<sup>st</sup> March of each financial year and the rent and service charge being continually paid by direct debit be approved;**
- (5) That it be noted that the maximum incentive term for the indoor market will be 6 months and will not exceed 50% of the combined rent and service charge rate except in exceptional circumstances where the incoming tenant will provide significant added value to all stall holders. Any extended incentive rates under exceptional circumstances will have to be approved by the Chief Officer responsible for the Markets in consultation with the Portfolio Holder and Leader of the Council; and**
- (6) That authority be delegated to the Head of Regeneration and Housing to determine the occupancy charges for the two outside catering units and seating areas in**

consultation with the Leader of the Council and the Portfolio Holder responsible for Accrington Markets;

- (7) That the work of the Accrington Markets Cabinet Working Group be noted and acknowledged in reviewing the financial position and charging regime of Accrington Markets and authority be given for the Working Group to continue to closely monitor Accrington Markets' budget and to examine ways in which financial performance could improve to ensure the long term sustainability of the indoor and outdoor markets.

**109 Exclusion of the Public**

**Resolved**

- That, in accordance with Section 100A(4) Local Government Act 1972, the public be excluded from the meeting during the following item, when it was likely, in view of the nature of the proceedings that there would otherwise be disclosure of exempt information within the Paragraph at Schedule 12A of the Act specified at the item.

**110 Leasing of Whiteash Playing Fields and Associated Changing Pavilion to Hyndburn Youth FC**

*Exempt Information under the Local Government Act 1972, Schedule 12A, Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information)*

The Deputy Leader of the Council (Councillor Paul Cox) submitted a report seeking approval in principle from Cabinet to grant a lease for Whiteash Playing Fields in Oswaldtwistle and associated changing pavilion to Hyndburn Youth Football Club (Hyndburn Youth FC) or its trustees and to agree arrangements for the grant of the proposed lease.

Approval of the report was not deemed a key decision.

*Reasons for Decision*

The reasons for decision were set out in the exempt report.

*Alternative Options Considered and Reasons for Rejection*

The alternative options considered and reasons for rejection were set out in the exempt report.

**Resolved**

- (1) That approval be given in principle to lease Whiteash Playing Fields and associated changing pavilion to Hyndburn Youth Football Club or its trustees on the terms set out in the report;
- (2) That authority be delegated to the Head of Housing and Regeneration to advertise the intention to dispose of the land by way of a lease pursuant to Section 123(2A) of

the Local Government Act 1972 and following consultation with the Portfolio Holder, to determine whether to grant the proposed lease having regard to any objections received;

- (3) That authority be delegated to the Deputy Head of Environmental Services to apply for consent from Fields in Trust to enter into a lease with Hyndburn Youth FC or its trustees for Whiteash Playing Fields; and
- (4) That subject to paragraphs 2.2 and 2.3 of the report, authority be delegated to the Head of Housing and Regeneration to agree the detailed terms of the lease and to complete the lease with Hyndburn Youth FC or its trustees.

#### 111 Sale of 302 Burnley Road, Accrington. BB5 6HG

*Exempt Information under the Local Government Act 1972, Schedule 12A, Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information)*

The Cabinet Portfolio Holder for Housing and Regeneration submitted a report seeking instructions for the sale of 302 Burnley Road, Accrington, as shown in the report.

Approval of the report was not deemed a key decision.

##### *Reasons for Decision*

The reasons for decision were set out in the exempt report.

##### *Alternative Options Considered and Reasons for Rejection*

The alternative options considered and reasons for rejection were set out in the exempt report.

**Resolved** - That bids 2 and 3 be rejected for the reasons provided at the meeting and bid 1 accepted which reflects a truer reflection of the market value and would see the property brought back into use as a family home.

#### 112 Disposal of Properties on China Street, Accrington

*Exempt Information under the Local Government Act 1972, Schedule 12A, Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information)*

The Cabinet Portfolio Holder of Regeneration and Housing (Councillor Clare Cleary) submitted a report on the disposal of properties on China Street, Accrington.

Approval of the report was not deemed a key decision.

##### *Reasons for Decision*

The reasons for decision were set out in the exempt report.

*Alternative Options Considered and Reasons for Rejection*

The alternative options considered and reasons for rejection were set out in the exempt report.

**Resolved**

- (1) That approval be given to appropriate two Council owned residential properties and adjacent land (as set out in the exempt report) currently held for planning purposes of Section 2 of the Local Government Act 2000, pursuant to Section 232 of the Town & country Planning Act 1990;**
- (2) That approval be given to lease the two properties as the terms provided in the exempt report; and**
- (3) That authority be delegated to the Head of Regeneration and Housing and the Executive Director (Legal and Democratic Services to finalise all other terms of the lease.**

Signed:.....

Date: .....

Chair of the meeting  
At which the minutes were confirmed

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## 5 Selective Landlord Licensing

The Environmental Protection Manager and the Private Rented Sector Manager submitted a report to provide an update on Selective Licensing. The Environmental Protection Manager reported that this was a newly designated licensing scheme which included a number of areas such as West Accrington, Church, Spring Hill, Peel and the town centre. He referred to paragraph 3.7 of the report to provide the Council's position as at 9<sup>th</sup> July 2018. Members were informed that there had been an increase in the number of applications submitted for licences in comparison to the previous designated selective licensing area. The meeting was also informed that the priority was to appoint an Officer to provide administration including processing applications.

Councillor Dobson requested and was provided with an outline of the process of dealing with applications for licences.

**Agreed** - That the report be noted.

## 6 Town Centre and Markets

The Business & Marketing Co-ordinator submitted a report to update the Panel on activity in the town centre. She reported on the following issues:

- Town Square Events Programme - that a tendering exercise had been held to appoint a number of event providers to run events on the new Town Square for a 12 month period.
- Official Opening of the Town Square - a marketing campaign would be organised on social media for the promotion of the opening of the town square. She also reported that a programme of events would be created to coincide with the opening of the Square.
- Accrington Town Team – work was currently taking place on the Town Team's objective and to identify ideas for project work.
- Visit Accrington Website – to develop a website under the banner of Visit Lancashire.
- Market Research – information was provided on the type of market research that she intended to carry out in order to form a strategy for the town centre.
- Broadway Vehicular Access – consideration was being given to imposing new criteria for the use of vehicles on Broadway and for it to be monitored by Traffic Wardens.
- CCTV Upgrades – 21 existing cameras were being upgraded to HD cameras before the end of July.
- THI Update – the Business & Marketing Co-ordinator updated Members on the public realm works nearing to completion and pointed out that Traffic Regulation Orders would restrict loading times for vehicles. Councillor Dobson pointed out that the times operated by Enforcement Officers did not match the times of restriction for loading and unloading. Members were informed that there would be a reliance on members of the public to adhere to the Regulations and the penalisation of those caught would also act as a deterrent.

Councillor Battle expressed concern about the increased risk to disabled people using shared space with vehicles. Members were informed that there were raised surface areas at access points which would provide guidance for people with sight disabilities.

- Markets Update – a Working Group had been established to develop a vision and strategic direction for the Market.

**Agreed** - **That the report be noted.**

## **7 Syrian Refugees**

The Housing Strategy & Policy Manager submitted a report to brief the Panel about the Syrian Refugee households arriving in Hyndburn in July 2018. The Head of Regeneration and Housing reported that ten families had arrived in Hyndburn and been resettled in new homes. He pointed out that all families had been rehoused in Onward Homes properties and were supported by Calico and the voluntary sector.

**Agreed** - **That the report be noted.**

## **8 Housing Growth**

The Head of Regeneration and Housing submitted a report to update the Panel on progress with new housing developments across the Borough. He pointed out that masterplanning for the Huncoat development had begun and gave details of the stages of the process including consultation with local residents. He also indicated that discussions were currently being held with the Planning Department in respect of the former Accrington Police Station and Magistrates Courts. He informed Members that a planning application had been submitted in respect of land on Thwaites Road, Oswaldtwistle and outlined details for a further four significant developments which were underway.

Councillor Battle referred to a development on Newton Drive which had ceased because the Developers had gone into administration. The Head of Regeneration and Housing reported that the properties had been taken off the market by the Administrators for the time being but that they intended to place them back on the market as soon as they could.

Councillor Battle referred to the Church adjacent to Accrington Conservative Club and asked if any further progress had been made to develop it. Councillor Dobson referred to the problems of empty properties and asked if the Council could use Byelaws or other powers to force owners to take action to prevent properties being allowed to deteriorate. The Head of Regeneration and Housing informed the Panel that a response on this matter would be brought to the next meeting.

**Resolved** (1) **That the report be noted; and**  
(2) **That a report be submitted to the next meeting of the Regeneration and Housing Panel in relation to Council strategy for dealing with owners who purposely allow properties to remain empty as a long term strategy.**

## **9 Urgent Business**

## **10 The Time and Date of Future Meetings:**

Signed:.....

Date: .....

Chair of the meeting  
At which the minutes were confirmed

# Agenda Item 6.

<b>REPORT TO:</b>	Cabinet		
<b>DATE:</b>	10 October 2018		
<b>PORTFOLIO:</b>	Cllr Miles Parkinson, Leader		
<b>REPORT AUTHOR:</b>	Chief Planning and Transportation Officer		
<b>TITLE OF REPORT:</b>	Planning Enforcement Management Plan		
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>Options</b>	Not applicable	
<b>KEY DECISION:</b>	<b>Options</b>	If yes, date of publication:	

## 1. **Purpose of Report**

- 1.1 Planning Enforcement is a key responsibility of the Planning and Transportation Service and the National Planning Policy Framework recommends that local authorities have an enforcement plan in place.
- 1.2 Although the Council currently has a protocol in place it is out of date and does not reflect the priorities set out in the National Planning Policy Framework. The proposed draft policy seeks to update the existing protocol so that it reflects current national guidance and the National Planning Policy Framework that was issued in July 2018.

## 2. **Recommendations**

- 2.1 That cabinet support the use of the Planning Enforcement Management Plan when investigating alleged breaches of planning control.

## 3. **Reasons for Recommendations and Background**

- 3.1 The National Planning Policy Framework, issued in July 2018, recommends that local planning authorities publish a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area.
- 3.2 The attached Management Plan sets out the way in which enforcement complaints will be prioritised and managed by the planning service.

#### 4. **Alternative Options considered and Reasons for Rejection**

- 4.1 Although an enforcement plan is not mandatory, it is considered best practice to have a plan in place. The presence of an enforcement plan allows members of the public to see how their complaint will be managed and it also allows the Local Government Ombudsman to understand the approach to enforcement that is being taken by the authority should a complaint be made.
- 4.2 The Planning Enforcement Management Plan is largely a reactive plan. It is intended to set out the means by which complaints made to the Council relating to breaches of planning control will be investigated and the complainant kept informed.
- 4.3 Planning enforcement is undertaken by one officer within the planning service. The Planning Enforcement Officer works full time responding to complaints alleging breaches of planning control, there is not capacity to undertake routine checks of planning permissions to ensure that they are developed in accordance with the approved details.

#### 5. **Consultations**

- 5.1 A draft version of the Planning Enforcement Management Plan was presented to Planning Committee in April 2018. Although the views of members was sought, no comments were received.

#### 6. **Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	The presence of a Planning Enforcement Management Plan may help to ensure that the Council is able to defend LGO investigations without risks of compensation awards.
<b>Legal and human rights implications</b>	The Enforcement Management Plan sets these out where appropriate.
<b>Assessment of risk</b>	The presence of an Enforcement Management Plan reduces the risk of complaints being found against the Council by the LGO, provided enforcement complaints are investigated in accordance with the provisions set out within it.
<b>Equality and diversity implications</b> <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	Attached.

#### 7. **Local Government (Access to Information) Act 1985:**

## **List of Background Papers**

7.1 National Planning Policy Framework

Planning Practice Guidance

**Report to:** Cabinet

**Date:** 10<sup>th</sup> October 2018

**Portfolio:** Planning, Councillor Miles Parkinson

**Report Author:** Chief Planning and Transportation Officer

**Title of Report:** Planning Enforcement Management Plan

## **Customer First Analysis**

The Council's corporate values include putting the customer first, providing opportunities for bright futures and narrowing inequality across the Borough. From 1 April 2011, a new legal duty applies to all public authorities. It covers these protected characteristics:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- gender;
- sexual orientation; and, for some aspects,
- marriage and civil partnerships.

The duty means that – as previously - we should analyse the effect of existing and new policies and practices on equality. It does not specify how we should do this. However, legal cases on the meaning of the previous general equality duties make it clear that the Council must carry out the analysis before making the relevant policy decision, and include consideration as to whether it is possible to reduce any detrimental impact. The Council has developed a template for this to be assessed that requires four areas to be considered:

### **1. Purpose**

- 1.1 The purpose of the report is to seek Cabinet approval for the use of the Planning Enforcement Management Plan when investigating alleged breaches of planning control.

### **2. Evidence**

- 2.1 The need for an enforcement management plan arises from a recommendation made within the National Planning Policy Framework (NPPF).
- 2.2 The purpose of the Planning Enforcement Management Plan is to establish a framework for the management of complaints relating to alleged breaches of planning control. In considering

alleged breaches of planning control it is necessary for officers to assess the degree of harm arising from the breach to the complainant and as well as considering whether development has taken place that requires planning permission.

2.3 The Planning Enforcement Management Plan will be applied equally, but in managing complaints it will be necessary for officers to work flexibility with customers from different groups:

- **Age.** The Borough has a population that is aging and it is necessary to ensure that we plan for our elderly residents. Elderly residents are less likely to use the Council's website and are more likely to make telephone enquires so it is important that the Council's contact details are clearly set out.
- **Disability.** Officers must work flexibly to ensure that they communicate effectively with disabled customers.
- **Race / religion or belief.** The approach taken to managing enforcement applies equally across race, religion and belief.

### 3. Impact

3.1 It is necessary to ensure that the impacts of the recommendations are taken into consideration and regard is had to any adverse impact and the approach adjusted if necessary. Whilst there are no negative impacts associated with the development of an enforcement management plan, it is necessary to ensure that the service remains accessible to all customers, regardless of age, ability or ethnicity.

### 4. Actions

4.1 None required, the Planning Enforcement Management Plan addresses the issues identified.

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# Hyndburn Borough Council



## Planning Enforcement Management Plan

October 2018

## 1 Introduction to Planning Enforcement

- 1.1 The planning system exists to control the development and use of land in the public interest. The planning system can only achieve this if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system.
- 1.2 The main objectives of the planning enforcement function are to remedy harm to public amenity resulting from a breach of planning control and to manage it, making sure that the integrity of the planning system is not undermined. A breach of planning control is development carried out without the requisite consent from the Council.
- 1.3 One of the fundamental principles of planning enforcement is that of 'expediency', and the resolution of breaches of planning control is not therefore limited to taking formal action. A large number of identified breaches are in fact resolved by negotiation.
- 1.4 Most breaches of planning control are not criminal offences and the resulting development is unauthorised rather than illegal. Criminal offences in relation to planning only occur in the following circumstances:
- Unauthorised works to listed buildings;
  - The demolition of some unlisted buildings in conservation areas;
  - Causing damage to a tree protected by a Tree Preservation Order or within a Conservation Area;
  - Displaying unauthorised advertisements; and
  - Failing to comply with the requirements of an Enforcement Notice or other formal notice.
- 1.5 This Planning Enforcement Management Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) issued by the Department for Communities and Local Government, which states at paragraph 58:
- “Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so”.*
- 1.6 Further guidance on taking effective enforcement action is set out in the National Planning Practice Guidance (NPPG) website that can be at the following website:

<https://www.gov.uk/guidance/ensuring-effective-enforcement#planning-enforcement-overview>

This also includes details of the different types of enforcement action that are available under planning law and how they should be applied.

1.7 A number of other documents are also of relevance to Planning Enforcement. These include:

- The Town and Country Planning Act 1990 (as amended)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- The Planning and Compulsory Purchase Act 2004
- The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005
- The Town and Country Planning (General Permitted Development) (England) Order 2015
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (Development Management Procedure) (England) Order 2015
- National Planning Practice Guidance
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- The Hyndburn Core Strategy (2012), the Accrington Area Action Plan (2012) the saved policies of the Hyndburn Local Plan (1996) and associated Supplementary Planning Documents
- The Human Rights Act

1.8 The approach advocated by the Government in the National Planning Policy Framework is embodied in Policy by the Council's Development Management DPD that was adopted in January 2018. Policy GC3 states:

1. The Council will act proportionately in the extent to which it investigates and pursues breaches of planning control. In considering any enforcement action, the decisive issue for the Council should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
2. Where it is considered expedient and in the wider public interest to do so, the Council will take the necessary appropriate action to secure compliance with planning related controls, utilising its powers under the Town and Country Planning Act 1990 (as amended) to ensure, where possible, compliance with the relevant policies of the development plan and National Planning Policy Framework.
3. Where it is considered appropriate to do so, the Council will seek to prosecute those who fail to comply with any statutory planning enforcement notice. Powers under the Town and Country Planning Act 1990 (as amended) allowing direct

action to be taken to remedy breaches of statutory notices may also be utilised where appropriate.

4. Planning enforcement investigations and enforcement action will be carried out in accordance with the guidance in Hyndburn Borough Council's Planning Enforcement Management Plan.

- 1.9 This Planning Enforcement Management Plan makes it clear what those undertaking unauthorised development, and those objecting to it, can expect from the Local Planning Authority. The Plan also explains how the Council will prioritise and undertake its investigations. This Plan supersedes the Hyndburn Planning Enforcement Code of Practice 2010.

## **2. When the Council takes action**

- 2.1 Hyndburn Borough Council operates its planning enforcement activities in accordance with Government advice. This means that:
  - The Council must decide whether a breach of planning control unacceptably affects the character of an area or the amenity of neighbours;
  - It is usually inappropriate to take formal enforcement action against a technical breach of planning control which causes no significant harm to either the amenity of the area or the amenity of the occupiers of neighbouring premises; and
  - Action should not be taken just because development has been undertaken without the necessary consent or permission.
- 2.2 In deciding whether or not to take action, the Local Planning Authority must consider if it is 'expedient' to do so, that is whether the action proposed to be taken is appropriate and commensurate with any alleged harm that has been or is being caused. This involves deciding whether the breach of planning control unacceptably affects public amenity, prejudices planning policy objectives or the existing use of land or buildings meriting protection in the public interest. A judgement has to be made in each case as to the seriousness of the breach and the level of any harm that it causes.
- 2.3 The Council undertakes all enforcement action within Hyndburn with the exception of that which relates to minerals and waste development, and that which relates to works on adopted highways, for which Lancashire County Council as Local Planning Authority and Highways Authority respectively is responsible.

## **3 Non-planning issues**

- 3.1 There are often matters which concern local communities that do not involve a breach of planning control. Such matters will be outside the remit of planning enforcement, and Hyndburn Borough Council as Local Planning Authority will not therefore take action. It may be possible to address issues such as these by way of

civil action but this is a matter for the individual to pursue and is not an area where the Local Planning Authority could become involved. If such matters arise during the course of our investigations, we will however seek to direct you to the relevant department or outside body where possible. Examples of issues which may not be planning matters include:

- Unauthorised use of a highway;
- Dangerous structures;
- Internal refurbishment of buildings that are not listed;
- Party wall disputes;
- Disputes regarding right to light;
- Neighbour disputes;
- Boundary/ownership disputes; and
- Pests or vermin.

#### **4 Reporting unauthorised development**

4.1 Reports about unauthorised development can be made through the Council's website using or by using the following email address:

[planning@hyndburnbc.gov.uk](mailto:planning@hyndburnbc.gov.uk)

4.2 Alternatively you can write to the Council at the following address:

Planning Enforcement Officer  
Planning and Transportation Service  
Hyndburn Borough Council  
Scaitcliffe House  
Ormerod Street  
Accrington  
BB5 0LD

Or telephone the Council on 01254 388111 and ask to speak to the Planning Enforcement Officer.

4.3 In order to deal with an alleged breach of planning control, we will need the following information:

- Your name, address and contact details (preferably an email address or telephone number to enable us to contact you more quickly);
- The address where the alleged breach is taking place;
- What the breach is;
- When the breach occurred;
- How it affects you;
- If possible or known, the name or contact details of the property/land owner.

4.4 Anonymous complaints will not be investigated unless there is considered to be irreparable and immediate harm to public amenity, or the natural or built environment.

- 4.5 If complainants still wish to remain anonymous but are concerned that the alleged breach would not fall into the exception above, they will be advised to contact one of their ward councillors and refer the matter to the Council through them.
- 4.6 All complainants will be made aware of the Council's final decision following the investigation.
- 4.7 The Council will manage personal data in accordance with the Privacy Notice that is available to view on the Council website at:

<https://www.hyndburnbc.gov.uk/privacy-notice/>

## **5 If a Complaint is made about you and your property**

- 5.1 If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it). You are also entitled to explain the situation from your side. If a breach is established, you will be advised of the details and how it may be put right.
- 5.2 Your cooperation in remedying the breach will be sought and you will be given a reasonable amount of time to do this. In some circumstances you may be invited to submit a planning application to retain the unauthorised works or development, if it is considered that planning permission is likely to be granted. Most breaches are resolved through negotiation and discussion, and you will therefore be encouraged to maintain an open dialogue with our enforcement team.
- 5.3 If you are issued with a formal notice, you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.
- 5.4 If you need to speak with the Council's Planning Enforcement Officer and require an interpreter please ask. If an interpreter is required it will be necessary to arrange to meet / speak at a time when the interpreter can attend. The interpreter may be an employee of the Council.

## **6 Power to enter land**

- 6.1 Due to the nature of planning enforcement work, it is not normally prudent or possible to arrange a site visit ahead of time, and officers will not therefore ordinarily make an appointment. Where access is not granted it is likely that the investigation process will be extended. Officers of the Local Planning Authority have the power to enter land for the purpose of effective planning control. This right will be exercised where there are reasonable grounds to enter land to determine whether a breach of planning control has taken place and the nature and degree of the breach or to check for compliance with any requirements imposed. In the case of a property being used

as a dwelling house, 24 hours notice has to be given prior to officers entering a property.

- 6.2 Where entry is refused, a warrant may be sought. Prosecution will be considered where wilful obstruction of an officer attempting to exercise the right of entry takes place. Officers carry identity cards bearing their name, post title and photograph.

## **7 Confidentiality**

- 7.1 The Local Planning Authority will protect the identity of complainants and will treat such details as confidential. Although the general public will not have access to the Local Planning Authority's enforcement files, if the investigation proceeds to formal action, resulting in prosecution or a public inquiry, it may not be possible for the Local Planning Authority to guarantee the anonymity of the complainant. In these cases the complainant will be informed of the situation in advance.

## **8 Decision-making**

- 8.1 In making decisions regarding enforcement, the following principles will be followed:
- The Council will only take enforcement action when it is expedient to do so. Enforcement action will not be instigated solely to regularise breaches of planning control.
  - In considering whether to take enforcement action, the Council will not give weight, either way, to the fact that development may have commenced.
  - Decisions not to take enforcement action will normally be made by the planning enforcement officer in consultation with the Chief Planning and Transportation Officer or the Executive Director (Legal and Democratic Services). Reasons for not taking action will be recorded.
  - The Council will not allow prolonged negotiation to delay essential enforcement action.
  - In situations where an unauthorised development may only be made acceptable by the imposition of appropriate conditions, an application will be sought to regularise the development. Where such an application is not submitted within a pre-agreed period of time, formal planning enforcement action may be pursued.
  - In considering whether to take enforcement action, the Council will not give weight to non-planning considerations.
  - In considering whether to take enforcement action, the Council will have regard to the use of powers under other legislation, as such powers may be able to secure the desired outcome more efficiently.

## **9 Hyndburn Borough Council's Enforcement Priorities**

- 9.1 In order to manage resources appropriately it is necessary for the Council to adopt a priority system for responding to and dealing with alleged breaches of planning

control. Complaints regarding breaches of planning control will be investigated in accordance with the following order of priorities:

**Priority 1 – any immediate and irreparable harm to the natural or built environment, or public safety, for example:**

- unauthorised demolition or alteration to listed buildings;
- substantial demolition to buildings within conservation areas;
- unauthorised residential sites; or
- unauthorised works to protected trees where there is a probability that an immediate response would stop any further damage being caused.

**Priority 2 – any unauthorised development or activity which causes significant clear and continuous harm or danger to amenity, for example:**

- development which is unlikely to be granted planning permission without;
- severe nuisance such as noise at unsociable hours or for a prolonged period; or
- dangerous vehicular access arrangements.

This may also include other unauthorised works to listed buildings and buildings within conservation areas.

**Priority 3 – any unauthorised development or activity where there is a risk of material harm to the environment and/or some harm to residential amenity, for example:**

- a breach causing concerns which may be resolved by limited modification (such as the insertion of obscure glazing or restrictions on hours of operation);
- where works, or uses, have the potential to cause minor material damage to the environment or amenity; or
- developments and uses which are clearly contrary to established policies.

**Priority 4 – other breaches of planning, for example:**

- advertisements, satellite dishes and minor works including boundary treatments (except those affecting listed buildings or within conservation areas); or
- unauthorised uses or development, which would be likely to receive planning permission.

9.2 The examples given above are not exhaustive but give an indication of the type of breach of planning control which may fall into each category. The priority of an alleged breach may alter during the course of an investigation if circumstances change or new information is obtained.

9.3 By prioritising cases, the Council is not condoning unauthorised development or implying that action will not be taken against other breaches of planning control. Some breaches may however, due to their significance, take longer to investigate and resolved.

### **Vexatious, Frivolous and Repetitious Complaints**

- 9.4 The Council may refuse to deal with a dispute if it is frivolous or vexatious. This decision is at our sole discretion and in reaching a decision on this the Council will also have regard to the National Planning Policy Framework, para 207 which states that “*enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.*”

#### **Vexatious complaints**

- 9.5 The Council will refuse to accept a case if it is apparent that the complainant is pursuing a complaint without merit and intends to cause inconvenience, harassment or expense to the company or the person concerned, or to the Council. For example, a complainant raises a new dispute with the Council every few weeks. Each dispute is regarding a relatively minor complaint that the company has already provided a reasonable resolution to. It is clear the only reason for raising the disputes so frequently is to inconvenience the company concerned.
- 9.6 Vexatious complaints may also arise in disputes between neighbours. The Council will consider each complaint it receives on its merits but, as set out above, will take a proportional approach to complaints and use its discretion in determining the extent to which action is required.

#### **Frivolous Complaints**

- 9.7 A frivolous complaint has no serious purpose or value. It may have little merit and be trivial or trifling; investigating would be out of proportion to the seriousness of the issues complained about. For example, where a complaint is made about typographical errors in correspondence that he/she has received and is seeking compensation.

#### **Repetitious Complaints**

- 9.8 The Council will not investigate the same complaint again unless there has been a change in circumstances in the nature of the complaint. For example, where a complaint relates to the development of a building or structure there would normally be no reason to re-consider the merits of a decision. However, where a complaint relates to some form of operational development the Council recognise that these operations may change and it may be necessary to open a new investigation.

#### **Complaints that do not concern Hyndburn or are not related to planning**

- 9.9 Where a complaint is received that concerns a matter that does not fall under the responsibility of the Council, the Council will seek to forward the complaint to the appropriate body or organisation responsible. The Council will inform the complainant accordingly.

- 9.10 Similarly, if a complaint is received that concerns another department of the Council, the complaint will be forwarded to the appropriate person in that department and the complainant will be informed.

## **10 Keeping People Informed**

- 10.1 Hyndburn Borough Council is committed to treating both the person who has reported the alleged breach and the person who has allegedly carried out development without planning permission fairly. In many cases, due to lengthy and complex negotiations, failure to gain access to a property or make contact with the parties involved, there is nothing to report and therefore parties often believe that no work is being undertaken. This is not the case. We will endeavour to keep the person who reported the alleged breach of planning control informed as regularly as possible regarding the progress of our investigations, but potential stages of notification will vary depending upon the nature and outcome of the investigations. In addition, the person who has allegedly carried out a breach of planning controls will be advised of our intended course of action before we are able to advise the person who has reported the alleged breach.
- 10.2 We will make contact with the complainant when our initial investigation has been completed. This will be within 56 days of the date when the complaint was made and the complainant will be advised whether the case has been closed or whether there is a need to take further action to remedy the identified breach of planning control;
1. a case is closed because the investigation identifies that no breach has occurred;
  2. a case is closed because an alleged breach has been identified and resolved by negotiation;
  3. a planning or other application has been submitted following the investigation which satisfactorily addresses the breach; [Please note: a case may be re-opened if a planning application is subsequently found not to address the breach and is refused or cannot be determined within an appropriate timescale due to insufficient information]
  4. a breach of planning control has been identified and an application requested but not submitted. An assessment has been made determining that it is not expedient to take enforcement action in this case at this time; or
  5. a breach of planning control has been identified. An assessment has been made that the breach is de minimis (minor in nature) and is not giving rise to harm and for this reason it is not expedient to take enforcement action in this case at this time; or
  6. a breach of planning control has been identified. An assessment has been made determining that it is expedient to take enforcement action in this case, and formal planning enforcement action has been instigated.
  7. an unauthorised use has ceased or an unauthorised development has been removed.

## **11 Standards and Principles – what you can expect from the service and what we expect from you.**

11.1 Hyndburn Borough Council will seek to ensure that enforcement procedures and decisions are always consistent, fair and appropriate. The Local Planning Authority therefore makes the following commitments:

1. The Local Planning Authority will, in the first instance, seek to negotiate a resolution by being flexible and considering genuine alternative solutions to resolving breaches.
2. The Local Planning Authority will acknowledge the receipt of complaints within 5 days and will keep people informed of the outcome of investigations, as detailed above. The Local Planning Authority will seek to complete the initial investigation, and advise the complainant of the outcome, within 56 days of the complaint being made. Where it is not possible to do this the authority will advise the complainant of the issues arising.
3. In considering whether to take enforcement action the Local Planning Authority will not give weight to the fact that development may have commenced.
4. In considering whether to take enforcement action the Local Planning Authority will not give weight to non-planning considerations.
5. Decisions not to take enforcement action, or to close a case, will be made by the Chief Planning and Transportation Officer in consultation with the Planning Enforcement Officer. Reasons for these decisions will be recorded in writing.
6. The Local Planning Authority will only take enforcement action when it is considered expedient to do so. In taking formal enforcement action the Local Planning Authority will be prepared to use all the enforcement powers available and commensurate with the seriousness of the breach.
7. The Local Planning Authority will keep a full and accurate record of its actions and will be clear and precise in specifying breaches and requirements.
8. The Local Planning Authority will deal with all users of the Planning Enforcement Service in an honest, responsive and courteous manner.
9. Local Planning Authority will not release any information that would identify a complainant as such (the Council can however be required to disclose non-personal information on receipt of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004).
10. Where a complaint has been made about your property, we will ask to enter your property only if necessary and will show you proof of identity.

11.2 Officers at the Council will investigate your complaint in a professional, polite and courteous manner. In doing so, the Council expects Officers to be treated in the same way. If you are abusive or threatening towards staff you will be asked to leave the office or the telephone conversation will be terminated.

## **12. Comments and Complaints**

- 12.1 The Local Planning Authority is committed to providing an effective and efficient planning enforcement service. However, if you are not satisfied with the Service should first contact the member of staff that you have been dealing with, or their manager, to try and resolve the problem. This is Stage 1 of the Council's Complaints Procedure.
- 12.2 If you are not satisfied with the response you receive at Stage 1, you can make a formal complaint under Stage 2. Your complaint will be investigated by a senior member of staff, usually the manager responsible for the service that you are complaining about. The Council aims to reply within 10 working days, but if the complaint is going to take longer we would keep you informed and let you know when you can expect to receive a full response. You should make a formal complaint in writing.
- 12.3 If you are not satisfied with the response you receive at Stage 2, you can appeal to the Council's Chief Executive Officer under Stage 3 of the Council's Complaints Procedure. Details of how to do this are available in the Council's Complaints Procedure and will also be provided in the Council's response to your complaint under Stage 2.
- 12.4 Details of the Council's Complaints Procedure can be found on the Council's website [www.hyndburnbc.gov.uk](http://www.hyndburnbc.gov.uk)

### **The Local Government Ombudsman**

- 12.5 If you remain dissatisfied after having your complaint considered by the Council's Complaints process you may complain to the Local Government Ombudsman. The Ombudsman will normally ask that the Council's procedures are completed before carrying out his/her own investigation. The Ombudsman will investigate the way your case has been handled, or the Council's failure to do something but does not normally question a Council's decision simply because you do not agree with it. Contact details for the Ombudsman can be obtained from the website – [www.lgo.org.uk](http://www.lgo.org.uk)

## **13 Monitoring & Review**

- 13.1 Details of certain enforcement cases (those which can be publicly discussed such as those which are the subject of formal action) are reported to the Council's Planning Committee.

<b>REPORT TO:</b>		Cabinet	
<b>DATE:</b>		10 October 2018	
<b>PORTFOLIO:</b>		Cllr Clare Cleary - Housing and Regeneration	
<b>REPORT AUTHOR:</b>		Ian Halliday (Environmental Protection Manager)	
<b>TITLE OF REPORT:</b>		The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>Options</b>	Not applicable	
<b>KEY DECISION:</b>	<b>Options</b>	If yes, date of publication:	

## 1. Purpose of Report

- 1.1 To brief Cabinet Members of the forthcoming changes to the way in which animal boarding establishments, dog breeding establishments, pet shops and riding establishments are to be licensed by the Council and the commencement of responsibility for the licensing of the keeping of animals for exhibition.

## 2. Recommendations

I recommend that Cabinet:

- 2.1 Notes the changes to the way in which animal-related activities are to be licensed;
- 2.2 Agrees to the proposed fee structure set out in paragraph 3.22 below.
- 2.3 Delegates decisions to the Head of Regeneration and Housing Services in relation to:-
- (i) risk rating appeals;
  - (ii) the suspension or variation of licences; and
  - (iii) reviewing the fee levels annually and adjusting the fees as required.

## 3. Reasons for Recommendations and Background

- 3.1 The Council is at present responsible for the regulation of a variety of animal-related businesses, as well as the keeping of specified dangerous animals by individuals. The licence types currently issued by the Council are:

- **Animal boarding establishment licences** (e.g. kennels, catteries, home boarders, pet day care);
- **Dog breeding establishment licences** (premises used for, or in connection with, the commercial breeding of dogs);

- **Pet shop licences** (any business keeping animals with a view to selling them as pets);
  - **Riding establishment licences** (premises keeping horses and ponies for hire for riding, or for riding tuition – excluding livery stables).
- 3.2 The current number of licences issued by the Council are as follows:
- 26 x Animal boarding establishment licences
  - 7 x Pet shop licences
  - 2 x Riding establishment licences
  - 1 x Dog Breeding licence
- 3.3 In addition to the licences issued by the Council, Lancashire County Council is currently responsible for registering any performing animals based within Hyndburn.
- 3.4 Numerous pieces of legislation and secondary legislation regulate the licence types set out above. Adoption of conditions and implementation of processes have historically been left to the discretion of individual licensing authorities which has led to wide variation of requirements as to how to apply for licences and comply with locally set conditions. This can cause uncertainty and confusion for businesses operating in a number of areas. In addition, currently all types of licence are standalone, so a business that offers two or more of the licensable activities (for example a pet shop that also offers accommodation for dogs and cats) would have to apply for both a pet shop and animal boarding establishment licence, with the additional expenditure incurred.
- 3.5 The Animal Welfare Act 2006 introduced a licensing power which enabled nationally set regulations to be made for any animal-related activities. As a result, The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the regulations”) were published earlier this year, which will significantly change the way animal related businesses are inspected and licensed.
- 3.6 The regulations are due to take effect on 1 October 2018 and they define the animal based activities that require licences, as follows:-
- Selling animals as pets (or with a view to their being later resold as pets) in the course of a business;
  - Providing or arranging for the provision of accommodation for other people’s cats or dogs in the course of a business;
  - Hiring out horses in the course of a business for either riding or instruction in riding;
  - Breeding three or more litters of puppies in any 12-month period; or breeding dogs and advertising a business of selling dogs.
  - Keeping or training animals for exhibition in the course of a business for educational or entertainment purposes.
- 3.7 The first significant change is that all four existing types of licence, together with the additional activity of keeping and training animals for exhibition, (which is brought over from Lancashire County Council), will be encompassed by one new ‘Animal Activity licence’. If an applicant is running more than one licensable animal related activity, each activity will be assessed separately and set out in one licence. The length

of licence (previously one year in most cases) may be anything between one and three years dependent on the outcome of their inspection and the type of licence.

- 3.8 Existing licences that are issued up to 30 September 2018 will continue until their stated expiry dates and will then be renewed under the new regulations.
- 3.9 The Council's existing arrangements include locally set licence conditions. The regulations now include set conditions which cannot be changed in any way. There are general conditions to be applied on all licences which deal with matters such as record keeping, types and numbers of animals, staffing, maintaining a suitable environment and diet, monitoring behaviour, handling of the animals, protecting the animals from pain, suffering, injury and disease and dealing with emergencies. The regulations also include specific conditions that are tailored to each animal activity and both sets of conditions will now form the basis on the new licences going forward.
- 3.10 A set of conditions that apply to each animal activity can be viewed by following the link in paragraph 7.1 below.
- 3.11 The new regime requires a 'qualified inspector' to carry out inspections and in the case of the grant of a dog breeding establishment, and at grant and renewal of horse riding establishments, they must be accompanied by a veterinary surgeon. To qualify to inspect these premises a person must hold a Level 3 certificate granted by a body recognised and regulated by the Office of Qualifications and Examinations Regulations.
- 3.12 Transitional provisions are in place to enable any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses to carry out the inspections until October 2021. After that time, the above requirements will need to be met. In the past, inspections of premises have been carried out by experienced Environmental Standards Officers in Regeneration and Housing Services who will therefore meet the transitional provisions requirement.
- 3.13 Under the new arrangements, the inspection process will be much more comprehensive and built around providing the premises with a 'risk rating'. This process will establish whether the business is 'low risk' or 'higher risk' based on the level to which it meets the standards set out in regulations and guidance. The business is then awarded between one and five stars, thus determining the length of the licence which can be between 1 and 3 years. The exception is 'Keeping and Training Animals for Exhibition' for which all licences will be issued for 3 years as default. The star rating will be displayed on the licence and included in the Council's public register.
- 3.14 Recently published guidance from Defra advises that if a business is certified by a UKAS-accredited body to operate animal welfare certification, it should be considered low risk and receive the higher star rating, unless there is evidence of poor animal welfare or non-compliance. Existing businesses that are not certified must be assessed using the risk rating system to ascertain their star rating. New businesses that are not certified will automatically be considered high risk as they have no operational history.
- 3.15 Operators of businesses will be able to appeal their risk rating and procedural guidance issued by Defra suggests that this should be dealt with by the head of the department

that issued the licence or by a designated deputy. It is proposed, therefore, that any such appeal is to be determined by the Head of Regeneration and Housing Services.

- 3.16 If the grant of a licence is refused the operator will be able to appeal to a First Tier Tribunal which would comprise a panel with specialist knowledge administered by HM Courts and Tribunal Service.
- 3.17 The legislation states that the Council may suspend, vary or revoke a licence if they are satisfied that:
- a) The licence conditions are not being complied with,
  - b) There has been a breach of the Regulations,
  - c) Information provided by the applicant was false or misleading,
  - d) It is necessary to protect the welfare of an animal.
- 3.18 Where the Council chooses to vary or suspend a licence the licence holder has 7 days in which to make written representations to the Council which must make a decision on how to proceed and notify the licence holder within 7 days of receiving those representations.
- 3.19 Due to the short timescales involved it is proposed that the process of hearing any such representations and the subsequent determination on how to proceed will be dealt with by the Head of Regeneration and Housing Services.
- 3.20 Where the Council decides to revoke a licence the licence holder has 28 days to appeal to the First Tier Tribunal which can either confirm the decision of the Council to revoke the licence or overturn the decision and reinstate the licence with or without modification.
- 3.21 The animal licensing scheme falls within the definition of ‘services’ and is subject to the EU Services Directive, incorporated in to UK law as the Provision of Services Regulations 2009. The proposed fees are therefore split into two parts – the application fee, payable at the time of submission to cover the Council’s costs in considering and determining the application, and the licence fee payable on granting the licence, which covers ongoing enforcement and compliance requirements.
- 3.22 The proposed fees are set out in the Table below:

<b>Application Type</b>	<b>Part A Fee</b>	<b>Part B Fee</b>	<b>Total Fee (Parts A and B)</b>	<b>Additional Costs to Applicant</b>
<b>New</b>	<b>£210</b>	<b>£48</b>	<b>£258</b>	<b>Vet fees where required</b>
<b>Renewal</b>	<b>£180</b>	<b>£48</b>	<b>£228</b>	<b>Vet fees where required</b>
<b>Variation to Licence / Adjustments to Licence</b>	<b>£48</b>	<b>N/A</b>	<b>£48</b>	<b>N/A</b>
<b>Variation to Licence / re- evaluation of rating</b>	<b>£121</b>	<b>N/A</b>	<b>£121</b>	<b>Vet fees where required</b>

Notes

1. Part A relates to the costs of processing the application through to determination.
2. Part B relates to the costs of compliance and enforcement of the licensing regime.
3. Fees will apply to new businesses from 1st October 2018, existing businesses will not need to apply for a new licence until the end of the year when their current licence expires.
4. Fees will be reviewed in line with existing licensing fees.

**4. Alternative Options considered and Reasons for Rejection**

- 4.1 The Council has no alternative but to comply with the Regulations and to implement the new licensing regime from 1 October 2018.

**5. Consultations**

- 5.1 The key changes and duties under the Regulations have been communicated to holders of animal related licences in the borough affected by the changes and the website has been updated with a link to the new guidance notes on conditions for each of the activities covered.

**6. Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	There are no major financial implications for the Council. Failure to approve an appropriate fee for the licence could mean that the licence fee may be challenged. The proposed fees have been calculated using the hourly rates for the relevant officers and an assessment of the time required to carry out the licensed tasks. The fees will be reviewed annually and adjusted accordingly to either reduce the fee levels to reduce any surplus or increase the fee levels to repay any deficit in costs from previous years.
<b>Legal and human rights implications</b>	Failure to act appropriately under the legislation will make the Council non-compliant with legislation and prevent appropriate regulatory action being taken to safeguard the welfare of animals in the Hyndburn area. No human rights implications have been identified.
<b>Assessment of risk</b>	Failure to regulate animal welfare activities may result in serious harm to animals and have a serious reputational impact on the Council.
<b>Equality and diversity implications</b>	None arising from this report.

**7. Local Government (Access to Information) Act 1985: List of Background Papers**

- 7.1 The Regulations and Guidance notes referred to in this report can be found here:  
<http://www.cfsg.org.uk/layouts/15/start.aspx#/SitePages/Legislation%20and%20Guidance.aspx>
- 7.2 Open for business: LGA guidance on locally set licence fees:  
<https://local.gov.uk/open-business-lga-guidance-locally-set-licence-fees>
- 7.3 BIS Guidance for Business on the Provision of Services Regulations:

7.4 Defra Guidance: Animal Welfare Licence Fees – A Practical Guide to Fee Setting

# Agenda Item 8.

<b>REPORT TO:</b>	Cabinet		
<b>DATE:</b>	10 October 2018		
<b>PORTFOLIO:</b>	Cllr Joyce Plummer - Resources		
<b>REPORT AUTHOR:</b>	Rachael Walker, Customer Contact Manager		
<b>TITLE OF REPORT:</b>	Council Tax and National Non Domestic Rates Collection and Recovery Policies		
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	No	Not applicable	
<b>KEY DECISION:</b>	No	If yes, date of publication:	

## 1. **Purpose of Report**

- 1.1 To seek Cabinet approval for the adoption of an updated Council Tax and National Non Domestic Rates Collection and Recovery Policy – replacing a previous version from 2015.
- 1.2 To seek approval for the adoption of an updated Enforcement Agent Code of Conduct – replacing a previous version from 2015.
- 1.3 To seek approval for a Vulnerability Policy – a new policy expanding on provisions previously included within the 2015 Collection and Recovery Policy.

## 2. **Recommendations**

- 2.1 That the Council Tax and National Non Domestic Rates Collection and Recovery Policy attached at Appendix 1 is approved and adopted.
- 2.2 That the Enforcement Agent Code of Conduct attached at Appendix 2 is approved and adopted.
- 2.3 That the Vulnerability Policy attached at Appendix 3 is approved and adopted.

## 3. **Reasons for Recommendations and Background**

- 3.1 The Council Tax and National Non Domestic Rates (business rates) Collection and Recovery Policy provides a foundation for our operations as it outlines the service that taxpayers can expect to receive as well as a transparent structure for the collection and recovery of tax due to the Council; a function which is essential to the funding of public services.

- 3.2 Reduced Government funding places greater emphasis each year on the importance of collecting and recovering Council Tax and Business Rates and as further pilots for the local retention of Business Rates continue to refine the Government's intentions for Business Rate retention schemes, it is required that our policies reflect our practices and essential that all policies provide for a robust but fair collection and recovery process.
- 3.3 The Council Tax and National Non Domestic Rates Collection and Recovery Policy remains broadly the same as the 2015 policy with some alterations to bring the policy in to line with incremental changes made to day to day practices since 2015. The updated policy aims to support our administrative practices, streamline our operation and provide for the efficient and effective collection of local taxes.
- 3.4 Vulnerability criteria has been removed from the previous policy and extended in a separate Vulnerability Policy.
- 3.5 There have been no legislative changes affecting this policy and the billing, collection and recovery of Council Tax and Business Rates remains within the relevant legislative framework and guidance.

#### **Enforcement Agent Code of Conduct**

- 3.6 The Collection and Recovery Policy provides the framework for the Council's use of post liability order recovery of Council Tax and Business Rates which includes the use of Enforcement Agents.
- 3.7 The updated Enforcement Agent Code of Conduct forms part of the relevant service level agreements with Enforcement Agents in order to ensure that any agent working on behalf of the Council works within guidelines set by us. The Code of Conduct is available to taxpayers as part of our commitment to transparency, to provide them with information on the standards expected from our agents and an outline of the collection process once an account has been passed to an Enforcement Agency.
- 3.8 There are very few changes to this Code of Conduct since 2015 but it has been updated to reflect changes to data privacy obligations in response to GDPR within relevant Service Level Agreements, to include references to Universal Credit and to reflect some incremental changes in practices such as sending compliance letters within specific timescales. All enforcement agency referrals and practices on behalf of the Council remain within legislation and in line with Government guidelines.

#### **Vulnerability Policy**

- 3.9 Appendix 3 introduces a new Vulnerability Policy specific to the billing and collection of Council Tax and Business Rates as well as the administration and collection of Housing Benefit overpayments. Previously, vulnerability was included within the Collection and Recovery Policy however since the introduction of Council Tax Support in 2013, the collection and recovery of Council Tax from taxpayers previously subsidised in full by the former Council

Tax Benefit system has placed an increased emphasis on billing authorities' obligations towards groups falling within the broad definitions of vulnerability.

3.9 Creating a separate Vulnerability Policy ensures that our everyday flexibility and duty of care towards vulnerable groups and individuals already in place is transparent and available. The definitions of vulnerability contained within this policy and the flexibility and fairness applied in this policy have been in place within our Collection and Recovery practices since 2015. Additions within the new policy include:

- Additional guidance for staff on the identification of vulnerable groups and individuals.
- Guidance for staff and support for individuals on the threat of self-harm or suicide,
- Accessing our services and our commitment to promoting hardship funds such as discretionary housing payments and exceptional hardship fund payments.

#### **4. Alternative Options considered and Reasons for Rejection**

4.1 Collection and Recovery of Council Tax and business rates works within legislative frameworks and the Council adopted its current policy in 2015. Remaining with this policy does not affect the Council's ability to collect and recover local taxes however the incremental changes made since 2015 means that regular update and review provides a more accurate reflection of everyday practices.

4.2 The Enforcement Agent Code of Conduct remains largely unchanged however obligations towards data privacy and updates to every practices requires that this is up to date and an accurate reflection of the Council's current instructions for Agents operating on behalf of the Council.

4.3 Vulnerability was given due regard within the 2015 Collection and Recovery Policy and could remain within this main guidance, however it is considered more reflective of today's emphasis on the treatment of vulnerable groups and individuals to underline our commitments and obligations to our vulnerable residents.

#### **5. Consultations**

5.1 Officers in Revenues, Benefits and Customer Contact have been consulted as well and colleagues in Legal Services. Management representatives for Enforcement Agents have also been consulted.

#### **6. Implications**

<b>Financial implications (including any future financial</b>	The collection of local taxes remains a priority for the Benefits, Revenues and
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<b>commitments for the Council)</b>	Customer Contact service and having up to date policies provides the necessary framework for officers. While there is no direct financial obligation for the Council as a result of this policy review, having up to date policies underpins the efforts to increase collections rates annually.
<b>Legal and human rights implications</b>	All billing, collection and recovery is done within legislative frameworks and guidance. Any and all legal and human rights implications have been considered and balanced against the rights of the individual and the obligations placed on the authority for the collection of local taxes. The protection of vulnerable groups and individuals has been considered extensively as have the rights of our residents and customers at each stage of the collection and recovery process. Legal implications and human rights have been considered at each stage and the policy intentions within this report are considered proportionate and justifiable when balanced against the rights of the individual.
<b>Assessment of risk</b>	Having up to date policies reinforces the department's mandate to collect taxes on behalf of the Council and provides necessary transparency for residents – both of which lessens the risk of accusations of maladministration.
<b>Equality and diversity implications</b> <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	<p>The Council is subject to the public sector equality duty introduced by the Equality Act 2010. When making a decision in respect of the recommendations in this report Cabinet must have regard to the need to:</p> <ul style="list-style-type: none"> <li>• eliminate unlawful discrimination, harassment and victimisation; and</li> <li>• advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and</li> <li>• foster good relations between those who share a relevant protected characteristic and those who don't.</li> </ul> <p>For these purposes the relevant protected characteristics are: age,</p>

disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. To assist the Cabinet in this regard a Customer First Analysis has been carried out for all three policies presented with this report. Cabinet is advised to consider the Customer First Analyses and associated obligations in respect of the public sector equality duty when making a decision in respect of the recommendations contained in this report.

7. **Local Government (Access to Information) Act 1985:**  
**List of Background Papers**
- 7.1 Cabinet July 2015 – [Update to Revenues Policies](#)



**HYNDBURN**

The place to be  
an excellent council

# Council Tax and NNDR Collection and Recovery Policy

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October 2018

## Introduction

This policy covers the main processes adopted by Hyndburn Borough Council and is intended only as an overview and not as a comprehensive explanation of the whole of the Council Tax/NNDR system. As such there are aspects of Council Tax/NNDR law and practices not included in this document but which are nevertheless followed and applied by us in the billing, collection and recovery of Council Tax and NNDR.

## 1. Billing

- 1.1 Council Tax rates are set in February each year and annual bills are generated and delivered mid-March. We bill over 36,000 properties for Council Tax and over 3,000 for NNDR. All bills are delivered 14 days before the first instalment is due in April.
- 1.2 Annual bills or demand notices cover the billing period of 1<sup>st</sup> April to 31<sup>st</sup> March and are sent to the named individual(s) on an account who are jointly and severally liable for pay Council Tax or NNDR on the property or business premises concerned.
- 1.3 In addition to the annual billing process, when a taxpayer notifies us of a property move or a change in their circumstances or household, their account is updated and either a new bill or an adjustment notice is sent.

## 2. Payment methods

- 2.1 Standard Council Tax/NNDR bills are issued with 10 monthly instalments due from April to January. However taxpayers have the option to spread their payments out to include February and March.
- 2.2 We offer seven different payment methods:
  - Direct Debits
  - By cash using barcoded bills at Post Offices and PayPoint outlets

- Online payments by debit or credit card
- Telephone payments by debit or credit card
- Transcash via the Post Office (for which a transaction fee is payable by the taxpayer)
- Standing orders
- Bank transfers

2.3 For direct debit payers there are four available payment dates – 1<sup>st</sup>, 10<sup>th</sup>, 20<sup>th</sup> and 28<sup>th</sup>.

2.4 Taxpayers are expected to make their payments on time or ahead of their instalment date.

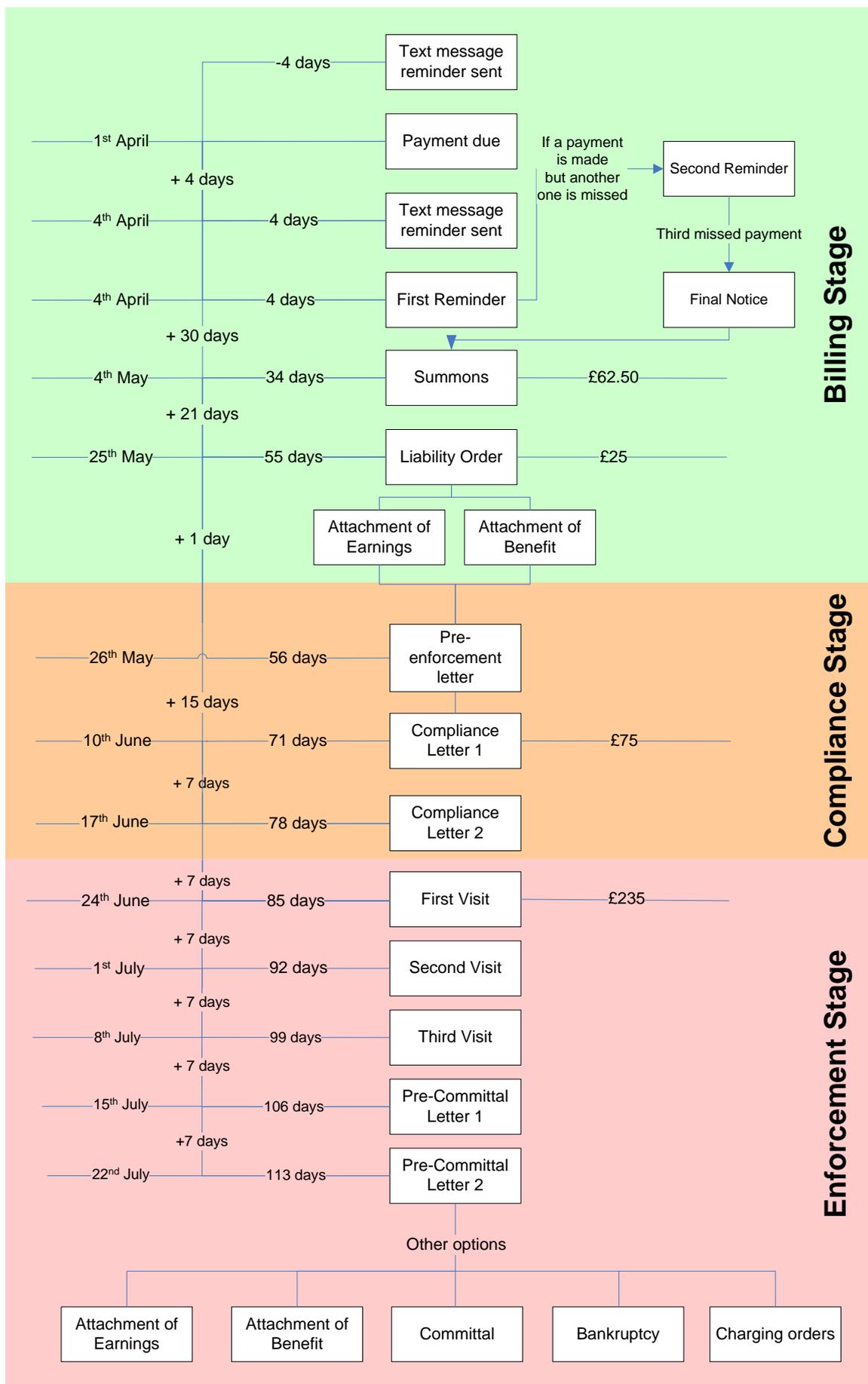
### **3. Recovery**

3.1 Each stage of the process is included in the explanations in this section and the process as a whole has been documented in Chart 1 – Standard Recovery Process, overleaf.

3.2 This chart maps the end to end recovery process assuming that no payment is made. In practice, very few accounts follow this straightforward route; many include some payments and arrangements at some point.

3.3 The days numbered on the left of the flowchart count the number of days between the instalment being due and the action being taken. The charges applied at the different stages are detailed on the right. To put the process into some context, the dates on the chart assume that a payment was due on 1<sup>st</sup> April.

# Chart 1: Standard Recovery Process



## **4. Text Messages and Emails**

- 4.1 We use SMS text messages and emails as additional payment reminders. These messages are not part of the legal process of collection and recovery. Text messages and/or emails are sent to participating customers four days before an instalment is due and again four days after an instalment if it has been missed.

## **5. Reminders and Final Notices**

- 5.1 A reminder letter is issued by post four days after an instalment is missed. If the payment is made and the account is brought up to date by the date on the letter, no further action is taken. If no payment is received at all, or only partial payments are made, the account progresses to the summons stage after a further 30 days.
- 5.2 If a second payment is missed later on in the year, a second reminder is issued. Again, if no further payment is made, the account will progress to a summons. However, if the payment is made and the account is brought up to date then no further action is taken.
- 5.3 If a third payment is missed, the account will progress to a 'Final Notice' which is a demand for the full amount outstanding for that year and notice that the right to pay by instalment has been removed. Customers are encouraged to contact us to re-establish instalments by bringing their account up to date and setting up a direct debit.
- 5.4 If a Direct Debit instalment is cancelled by the customer, the missing payment will not be included in any future payments and the account must be brought up to date before another Direct Debit instruction will be accepted. If the account remains in arrears as a result of a missed Direct Debit payment, the account will progress down the standard recovery route.

## **6. Summons and Liability Orders**

- 6.1 In order to take further recovery action the Council must apply for a Liability Order. A Liability Order is granted by the Magistrates and;
- a) confirms that the person(s) named on an account for Council Tax or NNDR is the person who is properly liable to pay for that property;
  - b) authorises the Council to take enforcement action;
  - c) imposes a duty on the taxpayer to provide information required by the Council to support further recovery such as employment and income details.
- 6.2 A Complaint is made by the Council to the Magistrates Clerks' Office and a summons is subsequently issued. Taxpayers are given at least 14 days' notice of a Liability Order hearing.
- 6.3 Upon the issue of a summons an additional charge is added to the account. A further amount is added if a Liability Order is granted.
- 6.4 A summons from the Council includes details of a provisional payment plan which puts the outstanding amount into equal instalments, usually over a three month period. The

taxpayer must contact us to agree this arrangement or agree an alternative recovery arrangement or method. The provisional arrangement includes summons and liability order costs.

- 6.5 Taxpayers do not have to attend the Liability Order hearing, it is a block application, names of individuals or companies are not read out as it is not a criminal court hearing. Taxpayers can attend the hearing however and Council officers are available to speak to on the day.
- 6.6 If a taxpayer wants to make a representation to the court, they can do so but the onus is on them to prove that the Council has made an error in the billing process up to this point or that they are in fact not liable for Council Tax/NNDR at that property (or the account has been paid and the Taxpayer has proved this is the case). At any stage we encourage customers to contact us if they think a mistake has been made, as if it has, we will rectify it and put the account back to its rightful stage in the billing process.
- 6.7 At any stage if the Council is made aware that a summons and/or liability order has been issued incorrectly, it will be withdrawn and the costs will be removed.
- 6.8 If the full amount due, plus summons costs, is paid before the liability order hearing, the Council will not apply for a liability order.
- 6.9 If the taxpayer contacts the Council prior to the liability order hearing to make a payment arrangement, the arrangement will include the cost of a liability order.
- 6.10 When making an arrangement, we will obtain details of each liable taxpayer's employer or relevant benefit details, as this will allow us to make an application for deductions from earnings or benefits should the taxpayer default on their payment arrangement.
- 6.11 We will normally make only one arrangement with a taxpayer at this stage. If the payment arrangement is not maintained, the account will progress to the next stage of recovery. Payment arrangements will not be altered or adjusted once agreed. Payment arrangements will be made for the first of the month unless set up by Direct Debit.
- 6.12 Once a liability order has been granted, notification is issued to the taxpayer along with a request for further information which would support the recovery of unpaid Council Tax and/or NNDR.
- 6.13 The information requested at this stage includes
  - employment details such as job title, employer, payroll number and take-home pay
  - national insurance number
  - details of any state benefits claimed such as Job Seeker's Allowance or Universal Credit
  - an option to make an offer of payment
  - an option to agree to the proposed payment plan outlined on the summons

## **7. Attachment of Benefits**

7.1 The Council can apply to the Department for Work and Pensions to have a deduction made from main state benefits. An attachment of benefits is only available on Council Tax debt and not NNDR. Deductible benefits are:

- Job Seeker's Allowance
- Income Support
- Employment and Support Allowance
- Universal Credit
- Guaranteed Pension Credit

7.2 A standard deduction of 5% is taken from benefits and paid directly to the Council to clear outstanding arrears.

7.3 It is usually the case that the Attachment of Benefit deduction is less than what is required in order to clear the outstanding Council Tax by the end of the financial year. In this case, the attachment will continue until the arrears are paid or benefits are stopped. If the taxpayer falls into arrears in the following year also, another attachment can be made which will only start to make deductions once the first attachment is ended. Only one attachment will be in place at any one time, but liability orders can be obtained and 'stacked' or queued.

7.4 If a new year's bill is referred to recovery and an attachment of benefits is applied while one is still running, the older debt will be paid off first and any subsequent attachments will follow once the older debt has been paid. However, 'newer' debt can be recovered at the same time as an attachment of benefits using other methods of recovery such as a payment arrangement or by referral to the debt collection section of the Council's Enforcement Agent.

7.5 If the benefit is stopped before the arrears are paid, other recovery options will be pursued.

## **8. Attachment of Earnings**

8.1 The Council can apply to a taxpayer's employer to have a deduction taken directly from earnings and paid to the Council towards Council Tax arrears. An attachment of earnings is only available on Council Tax debt. Employers are legally obliged to comply with an attachment order.

8.2 The deductions made are based on the net amount earned:

Monthly earnings	Weekly earnings	Daily earnings	Deduction
<b>Up to £300.00</b>	Up to £75.00	Up to £11.00	0%
<b>£300.00 - £550.00</b>	£75.00 - £135.00	£11.00 - £20.00	3%
<b>£550.00 - £740.00</b>	£135.00 - £185.00	£20.00 - £27.00	5%
<b>£740.00 - £900.00</b>	£185.00 - £225.00	£27.00 - £33.00	7%
<b>£900.00 - £1420.00</b>	£225.00 - £335.00	£33.00 - £52.00	12%
<b>£1420.00 - £2020.00</b>	£335.00 - £505.00	£52.00 - £72.00	17%
<b>Exceeding £2020.00</b>	Exceeding £505.00	Exceeding £72.00	17% of the first £505.00 and 50% of the remainder

8.3 If an attachment of earnings is less than what is required in order to clear the outstanding Council Tax by the end of the financial year, the attachment will continue until the arrears are paid or employment is stopped. If the taxpayer falls into arrears in the following year also, another attachment can be made which can run concurrent to the first attachment. A maximum of two attachments can be in place at any one time, further attachments can be obtained and 'stacked' or queued and will begin to make deductions once one or both running attachments have been paid.

8.4 If a new year's bill is put in to recovery and there are already two attachments running, the older debts will be paid off first and any subsequent attachments will follow once the older debts have been paid. However, 'newer' debt can be recovered at the same time as an attachment of earnings using other methods of recovery such as a payment arrangement or enforcement agent action.

8.5 If the employment stops before the arrears are paid, other recovery options will be pursued. If the taxpayer moves to a new job and the Council is provided with new employment details, an attachment of earnings order may be applied to the new earnings.

8.6 An employer may make an administration deduction of £1 per transaction, this is prescribed in the regulations but not all employers make this deduction.

## 8. Payment arrangements

8.1 At all stages of the billing and recovery process for Council tax and NNDR we encourage taxpayers to contact us if they are having difficulties making payments.

8.2 We will normally make only one arrangement with a taxpayer per financial year. If the payment arrangement is not maintained, the account will progress to the next stage of recovery. Payment arrangements will not be altered or adjusted once agreed.

8.3 Payments will normally be spread out over any remaining months in the financial year. Cash instalments will be available on the first of the month only. Other dates are available by Direct Debit.

8.4 If a taxpayer is not able to commit to a payment arrangement, they may complete a Statement of Means application which will allow us to assess a payment level which is affordable. This application must be returned to us along with the two most recent monthly bank statements, employment or benefit details and a completed direct debit form. In exceptional circumstances and if the taxpayers' expenditure is considered reasonable, we may consider a lower than standard payment arrangement. All arrangements made via the statement of means application will be reviewed quarterly and new bank statements will be requested. As above, we will normally make only one payment arrangement and if it not maintained, the account will normally progress to the next stage of recovery.

## **9. Compliance and Enforcement stages**

- 9.1 The Council has a separate code of conduct and individual service level agreements which we use to manage our relationship with an appointed Enforcement Agent. Detailed in this policy are the enforcement measures we have agreed with our Enforcement Agent known as compliance and enforcement stages.
- 9.2 The Council's Enforcement Agent will issue a pre-compliance letter once a case has been referred to them, normally one day after a Liability Order hearing. The pre-compliance letter, commonly known as the 14 day letter, gives the taxpayer a 14 day period in which to make contact about the outstanding debt, to pay in full or to make a payment arrangement without the addition of compliance and enforcement fees. The pre-compliance letter also compels the taxpayer to provide information such as employment or benefit details in accordance with the Liability Order.
- 9.3 Following the expiration of the 14 day pre-compliance period, compliance letters are issued on the first available day and then again after seven days. A fee is added to the debt upon the issue of the first compliance letter. This fee covers both agreed enforcement agency letters.
- 9.4 Visits from enforcement agents will begin if after both compliance letters have been issued, the taxpayer has either not engaged with the enforcement agent, has not made a reasonable offer of payment or has made an arrangement and has not paid as agreed. A further enforcement fee is added once visits have commenced.
- 9.5 All fees added to accounts by the enforcement agent are in accordance with legislation and in agreement with the Council.
- 9.6 Enforcement agents are instructed to make all efforts to agree an affordable and reasonable payment arrangement with taxpayers. Enforcement agency practices fall into two categories:
1. Establishing a payment arrangement, taking payment and passing that money to the Council in order to decrease the debt with a view to paying it off in full. Enforcement agencies employ both visiting enforcement agents and customer

services staff who are on hand to help taxpayers to make affordable arrangements and to manage their payments.

2. Distraint or levying distress on goods: an enforcement agent is authorised to list saleable goods belonging to the taxpayer that could be removed and sold to pay off the debt if the taxpayer either does not make or does not honour a payment arrangement.

9.7 Once an account has been passed to an enforcement agent, all taxpayers are instructed to contact the enforcement agents directly. While the Council will not refuse a payment, unless the account is cleared in full including any fees owed, making payments to the Council will not necessarily stop or prevent any enforcement agency action.

9.8 If an enforcement agency is unsuccessful in recovering the Council Tax or NNDR debt, the account will be returned to the Council for further action.

## **10. Charging orders**

10.1 A charging order is a court order which allows the Council to recover a Council Tax debt from the proceeds of sale of a property. Applications for charging orders are made to the County Court and are only available for Council Tax debts.

10.2 A charging order may be considered if all of the following conditions apply to the debt:

- a. The debt is at least £1000;
- b. The billing and recovery process has been followed correctly and a liability order has been obtained;
- c. The Council and its enforcement agent have made all reasonable attempts to establish a payment arrangement and to engage with the taxpayer;
- d. Details of the taxpayer's financial circumstances including details of capital held have been made available and affordable solutions have been explored. This will not be available in all cases as some taxpayers do not engage with or provide details to the Council. In these cases the Council will demonstrate all reasonable attempts to determine the taxpayer's financial circumstances including capital held;
- e. The case has been passed to an enforcement agent;
- f. Consideration has been made to other available recovery methods such as committal or bankruptcy;
- g. Consideration has been made as to the potential impact on other individuals such as any joint owner(s), partners or dependents;
- h. Land Registry information has been obtained and confirms ownership of the property;
- i. The property in question is the property for which Council Tax is owed;
- j. Where there is an outstanding mortgage on the property, consideration should be given as to whether it is likely that the property will be repossessed.

10.3 Whilst it is not possible for a charging order to be issued for NNDR debts, the Council may consider postponing recovery action pending the sale of a commercial or residential property if this is agreed with the taxpayer.

10.4 Once the Council has obtained a Charging Order on a property, we may consider making an application for an Order of Sale which will force the sale of a property in order to recover the Council Tax debt covered by the Charging Order.

## **11. Committal to prison**

11.1 Committal proceedings may be considered if all of the following conditions apply to the debt:

- a. All other recovery methods have been exhausted;
- b. Charging orders are not available or considered to be potentially unsuccessful;
- c. Bankruptcy is not considered a viable option, for example due to other debtors having priority claims against the individual;
- d. The Council has made every effort to engage with the taxpayer and has made a reasonable offer of a payment arrangement;
- e. The debt has been passed to an enforcement agent who has been unsuccessful and has certified the debt as 'Nulla Bona' or that attempts to levy distress on goods has been frustrated by the taxpayer either by lack of contact or refusing enforcement agent entry to premises;
- f. The Council has reason to believe that the taxpayer has had the means to pay the Council Tax but has wilfully refused to do so (deliberately avoided making payments);
- g. The Council has reason to believe that the taxpayer has had the means to pay the Council Tax but has not done so through culpable neglect (failure to pay through carelessness);

11.2 If committal proceedings are being considered by the Council, we will write to the taxpayer inviting them to meet with Council Officers in person in order to discuss management of the debt.

11.3 If this is unsuccessful, (either through lack of contact from the taxpayer, failure to attend the meeting or pay the debt), the Council will write to the taxpayer to inform them that an application for a Committal hearing has been made. The Council will apply to a Magistrates' Court for a summons to be issued requiring the taxpayer to attend the Court for a means enquiry hearing to be held in the taxpayer's presence. This will determine whether the failure to pay is due to wilful refusal or culpable neglect.

11.4 If the taxpayer does not attend the means enquiry hearing, the Council will make an application for a warrant of arrest not backed by bail.

11.5 If the taxpayer attends the court hearing, the Council will discuss the debt with the taxpayer and the Magistrates will conduct a full means inquiry into the taxpayer's circumstances including income and expenditure in an attempt to reach a reasonable payment agreement or payment of the debt in full.

11.6 At the hearing, the Magistrates may sentence the taxpayer to a term of imprisonment not exceeding three months. This sentence can be suspended on whatever terms the

Magistrates considers appropriate, usually upon payment of the outstanding debt – actual imprisonment will not happen unless the taxpayer defaults on a payment arrangement.

- 11.7 The Council will respect the decision made by the court and will write to the taxpayer after the hearing to detail any payment arrangements which may have been agreed.

## **12. Bankruptcy and winding up orders**

- 12.1 Bankruptcy and/or winding up orders may be considered in the following circumstances:

- a. The debt is at least £5000;
- b. Consideration has been made to other available recovery methods such as committal or charging orders;
- c. The billing and recovery process has been followed correctly and a liability order has been obtained;
- d. The Council and its enforcement agent have made all reasonable attempts to establish a payment arrangements and to engage with the taxpayer;
- e. Details of the taxpayer's financial circumstances including details of capital held have been made available and affordable solutions have been explored. This will not be available in all cases as some taxpayers do not engage with or provide details to the Council. In these cases the Council will demonstrate all reasonable attempts to determine the taxpayer's financial circumstances including capital held;
- f. The case has been passed to an enforcement agent;
- g. Consideration will be made as to the potential impact on other individuals such as any joint owner(s) of any property, partners or dependents;
- h. If capital assets include property, Land Registry information has been obtained and confirms ownership of the property;
- i. Where there is an outstanding mortgage on a property, consideration should be given as to whether it is likely that the property will be repossessed.
- j. The Council has reason to believe that the taxpayer has had the means to pay the Council Tax but has wilfully refused to do so (deliberately avoided making payments);
- k. The Council has reason to believe that the taxpayer has had the means to pay the Council Tax but has not done so through culpable neglect (failure to pay through carelessness);

- 12.2 The Council's Insolvency Policy is available on request or at [www.hyndburnbc.gov.uk](http://www.hyndburnbc.gov.uk)

## **13. Fees**

- 13.1 Fees added are normally recovered alongside the original outstanding balance and are incorporated into any payment arrangements made. Fees added at the Summons and Liability Order stage are payable to the Council, Enforcement Agency fees are payable to the Enforcement Agency directly. The Liability Order letter issued by Enforcement Agents on behalf of the Council is not included in the enforcement agency letters fee.

Recovery stage	Additional Fee
<b>Summons</b>	£62.50
<b>Liability Order</b>	£25.00
<b>Enforcement agency letters</b>	£75.00
<b>Enforcement agency visits</b>	£235.00

13.2 The summons and liability order fees applied by the Council are calculated in accordance with the guidance issued to Local Authorities on Good Practice in the Collection of Council Tax Arrears<sup>1</sup>.

## 14. Vulnerable customers

14.1 A separate vulnerability policy has been produced and accompanies this policy at Appendix 1 and due regard is paid to this policy when making decisions on recovery action for Council Tax and NNDR.

## 15. Proactive recovery

15.1 At all stages of recovery, we have a programme of proactive outbound calls which are made to taxpayers at most stages of billing and recovery.

15.2 We recognise that it is not possible to contact every customer and not receiving a telephone call or email from the Council will not prevent ordinary recovery action from taking place. It remains the taxpayers' responsibility to contact the Council about their bill or arrears for Council Tax and/or NNDR.

## 16. Complaints

16.1 Complaints about the handling of any account will be dealt with in accordance with the Council's general complaints policy which can be found at [www.hyndburnbc.gov.uk/complaints](http://www.hyndburnbc.gov.uk/complaints)

## 17. Equality and diversity

17.1 A Customer First Analysis accompanies this policy. No adverse impact has been identified that may discriminate against any group with a protected characteristic as defined by the Equality Act 2010 and outlined in the Public Sector Equality Duty.

## 18. Review/approval

18.1 This policy will be reviewed annually and updated if required.

<sup>1</sup> <https://www.gov.uk/government/publications/council-tax>

## **19. Data Protection**

Details of how we use taxpayers' data for the collection and recover of Council Tax and business rates can be found at [www.hyndburnbc.gov.uk/data-privacy](http://www.hyndburnbc.gov.uk/data-privacy)

## Appendix 1 – Customer First Analysis

### 1. Purpose

- What are you trying to achieve with the policy / service / function?

This analysis covers the Council's Council Tax and National Non Domestic Rates Collection and Recovery Policy

- Who defines and manages it?

The Head of Benefits, Revenues and Customer Contact.

- Who do you intend to benefit from it and how?

Taxpayers will have access to the Council's Council Tax and National Non Domestic Rates Collection and Recovery Policy which outlines what residents of the borough can expect from a robust and transparent collections policy as the collection and recovery of Council Tax and NNDR is essential to the funding of public services.

- What could prevent people from getting the most out of the policy / service / function?

Lack of awareness of the policy – however, this policy is readily available, it is accessible, written in plain English and additional support or explanation of the policy is available. All relevant staff have been trained on the details of this policy and its importance to every day administration.

- How will you get your customers involved in the analysis and how will you tell people about it?

Customers will be informed via normal communication methods and the policies will be available online as well as in hard copy

### 2. Evidence

- How will you know if the policy delivers its intended outcome / benefits?

Adherence to the policy will be evident in the Council's practices – it is hoped that a clear and robust policy will support an increase in collection rates.

- How satisfied are your customers and how do you know?

In relation to this policy, it is not possible to say.

- What existing data do you have on the people that use the service and the wider population?

We hold all relevant data on our Council Tax and Business Rates customers as well as the wider population.

- What other information would it be useful to have? How could you get this?

None

- Are you breaking down data by equality groups where relevant (such as by gender, age, disability, ethnicity, sexual orientation, marital status, religion and belief, pregnancy and maternity)?

No – while we have diversity statistics on our population as a whole we are not able to cross-reference this with our Council Tax/NNDR base.

- Are you using partners, stakeholders, and councillors to get information and feedback?

As part of our ongoing management of the processes, yes.

### **3. Impact**

- Are some people benefiting more – or less - than others? If so, why might this be?

No.

### **4. Actions**

- If the evidence suggests that the policy / service / function benefits a particular group – or disadvantages another - is there a justifiable reason for this and if so, what is it?

n/a

- Is it discriminatory in any way?

No

- Is there a possible impact in relationships or perceptions between different parts of the community?

No.

- What measures can you put in place to reduce disadvantages?

n/a

- Do you need to consult further?

Not at this stage.

- Have you identified any potential improvements to customer service?

Streamlining and improving both customer interaction and the back office revenues administration is reflected in some of the key practices in this policy such as proactive contact and using e-services whenever appropriate.

- Who should you tell about the outcomes of this analysis?

This analysis will be made available alongside our Collection and Recovery Policy to inform residents.

- Have you built the actions into your Business Plan with a clear timescale?

n/a

- When will this assessment need to be repeated?

With any major changes to collection and recovery policies in the future.

**Name: \_ Rachael Walker**

**Service Area: \_\_ Benefits, Revenues and Customer Contact**

**Dated: \_\_ October 2018**



**HYNDBURN**

The place to be  
an excellent council

# Enforcement Agent Code of Conduct

October 2018

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## Introduction

- 1.1 This code of conduct explains the requirements placed upon any enforcement agency and its representatives, hereafter referred to as “the Agent”, contracted by Hyndburn Borough Council (“the Council”) for the purpose of assisting in the collection of Council Tax and National Non Domestic Rates due to the Council through the use of a range of enforcement means.
- 1.2 Responsibility for administering the code lies with the Council.
- 1.3 This code replaces all previous codes and working arrangements. Subsequent variations to the code that result from either legislative changes or improved working practices will be included in the document and recorded through a change control process.
- 1.4 Copies of this code must be freely available from the offices of both the Council and the Agent; it must also be available on the Council’s website, and offered readily to any person who requests it.

## General

- 2.1 At no point must the reputation of the Council be brought into question through the actions of any contracted Agent.
- 2.2 The Agent must comply at all times with the statutory provisions of
  - (a) The Council Tax (Administration and Enforcement) regulations 1992/613 (as amended),
  - (b) The Non Domestic Rating (Collection and Enforcement) (Local Lists) regulations 1989/1058 (as amended)
  - (c) The Taking Control of Goods Regulations 2013 and the Taking Control of Goods National Standards 2014
  - (d) the GDPR, the LED and any applicable national implementing Law as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy (iii) all applicable Law about the processing of personal data and privacy;
- 2.2.1 Any doubt over the interpretation of the law needs to be referred to the Council for reconsideration.
- 2.3 The geographic scope for enforcement is anywhere in England and Wales.
- 2.4 Enforcement Agents must not state or infer that the Council employs them; they are required to confirm they are acting on behalf of the Council. They must carry at all times full and proper photographic identification, issued and authorised by the agent, and produce this without being asked whenever attending a debtor’s property, and show it to any other person having reason to require it. Enforcement Agents must also carry a copy of the Council’s authorisation to the agent to act on behalf of the Council, and be instructed to produce the document if requested to do so by any person having reason to require it.

- 2.5 The Agent's employees will maintain an acceptable standard of dress consistent with the provision of a professional service. They must act in a lawful, dignified and courteous manner, being firm but fair at all times.
- 2.6 The Agent must not discriminate on any grounds including but not limited to those identified in the Equalities Act 2010 as protected characteristics. Enforcement Agents will be respectful of the religion and culture of others.
- 2.7 The Agent will ensure interpreter services are called upon whenever it is apparent the customer is unable to communicate in English or there are clear difficulties in understanding matters at issue.
- 2.8 Enforcement Agents must possess a detailed knowledge of the Law of Distress and revenue collection procedures. Enforcement Agents levying distress on behalf of the Council must hold a current and valid certificate issued by the County Court, and ensure it remains in date at all times.
- 2.9 The Agent must ensure that its recruitment, selection and training purposes are suitably robust to ensure its employees are wholly capable of delivering the contracted service to the standards required by the legislative and regulatory frameworks and the demands of this code of practice.

### **3. Caseload Administration**

- 3.1 The Council will forward caseload to the Agent usually in a secure electronic file format, if necessary secure hard copy referrals will be made. The level of information contained in the files will be as agreed between the Council and the Agent, and wherever possible instructions will be uploaded automatically into the Agent's computer systems.
- 3.2 Personal information transmitted between the Council and the Agent and vice versa is confidential. Data must be encrypted/password protected to ensure it cannot be obtained by an unauthorised source, and the use of all data must comply with the requirements of Data Protection Legislation.
- 3.3 Where either the Council or the Agent retains data on its computer system for access by either party, the data must be kept under secure conditions to prevent its access by an unauthorised source and be within the requirements of Data Protection Legislation
- 3.4 Caseload allocated to the Agent will consist either of accounts for processing as 14-day letter stage, or accounts where enforcement agent action is the required course of action. The Council will ensure caseload is clearly identified as to which enforcement route is required. Suitable checks must be undertaken to ensure the number and value of the cases exported balance when imported into the Agent's systems.
- 3.5 The 14-day caseload will require the Agent to issue pre-enforcement agent action warning notices, the content of which must have been agreed in advance with the Council, and administer all subsequent customer contact in response to the documents. Statistical information must be provided to the Council in respect of the caseload that includes detail on the number of phone calls and value of payments received.
- 3.6 Accounts the Agent administers through 14-day stage where full payment is not obtained may be progressed thereafter as enforcement agent cases without prior referral to the

Council. Enforcement agent only cases do not require the issue of a pre-enforcement agent action warning notice, as the Council will have undertaken this action.

- 3.7 Caseload allocated to the Agent must be uploaded and monitored via the Agent's client web, which must be kept up to date to ensure reliable data can be viewed at all times. The Agent will ensure the Council has constant access to its client web throughout office hours, and provide sufficient training to ensure the Council can interpret accurately the progress of its caseload at all times. Full and unambiguous notation needs to be available on the client web to document the administration of any case passed to the Agent.
- 3.8 The Council reserves the right to recall any case referred to the Agent. In such circumstances the Agent will cease its action immediately and enforcement agent fees will not normally be payable.

#### **4. Visiting Standards**

- 4.1 Visits to domestic properties should take place during the hours specified in the between 08:00 and 20:00 on weekdays and between 08:00 and 20:00 on Saturdays. The Council will retain an option to permit Sunday visits on specified dates to be agreed with The Agent.
- 4.2 The hours of business of a commercial organisation like a nightclub may also warrant visits outside of the above stated hours. The Agent needs to be mindful that during extended visiting hours and weekends or Bank Holidays, the Council is unlikely to have officers available to assist with any enquiries.
- 4.3 Arrangements may be made between the Agent and the Council to vary or reduce visiting arrangements at certain seasonal times such as national and/or religious holidays and festivals.
- 4.4 A minimum of three visits must be made to make contact. The enforcement agent may revisit on the same day for the purposes of either levying distress or removing goods if there is good reason, based on investigations made, to believe the customer will be in during the subsequent visit.
- 4.5 Enforcement Agents will make themselves available by mobile phone during their working hours and have appropriate messages on voicemail to assist customers.
- 4.6 Accounts will progress to a compliance strategy that involves the issue of the statutory enforcement notice and two additional letters. The first additional letter may be issued the day after the expiration of the 14 day letter. The second additional letter may be issued up to ten days after the expiration of the 14 day letter. A first enforcement stage visit scheduled up to seven days following the issue of the second letter, a second visit up to seven days after the first visit and a third visit up to seven days following the second visit.
- 4.7 The Agent will agree the templates for standard documentation with the Council, and ensure that all notices and other documents left with, or sent to customers are on pre-printed stationery, unambiguous and clear in their content, comply with all relevant regulations, and meet plain English standards.
- 4.8 Reasonable checks need to be made to ensure that Enforcement Agents visit the correct address, and they must have access to accurate details concerning each customer's case. If

during their visit it is apparent to the enforcement agent that the customer has moved address, discreet enquiries need to be made with the current/new occupier to establish a forwarding address without revealing the nature of the visit to such third parties. The information gathered including details about the new occupier(s) need to be confirmed on the Agent's client web and referred to the Council without delay.

- 4.9 In the event of a visit resulting in no contact with the customer, notification must be left in a sealed envelope addressed to the customer marked private and confidential. The notification must confirm the enforcement agent's contact details, the date and exact time the visit was made and details of the balance outstanding including any fees incurred.
- 4.10 The enforcement agent should seek to establish the identity of all persons present, and must ensure that when discussing debts they are dealing with the customer and/or their agreed representative.
- 4.11 Entry must not be attempted if the only people at the property are understood to be under the age of eighteen. In such circumstances the procedure detailed at 4.10 above needs to be followed. Entry must be peaceful and Enforcement Agents must under no circumstances seek to gain physical access to a property by use of deception.
- 4.12 The customer's privacy is to be respected at all times. No conversations concerning a debt should occur in a public area, and wherever possible, customers should be interviewed in private unless they wish other persons to be present.
- 4.13 Enforcement Agents must maintain a calm and professional manner at all times, irrespective of whether they are subject to provocation in the course of fulfilling their duties. Physical confrontation must be avoided at all costs, and if the customer becomes violent or the enforcement agent fears for their personal safety they should seek to withdraw and report the incident to the police, their line manager and the Council.

## **5. Payment Arrangements & Payments Received**

- 5.1 The enforcement agent's initial contact with a debtor will be with the intention of levying distress and seeking immediate and full payment of the debt. Where this is unrealistic a payment arrangement should be established, which the Agent must monitor.
- 5.2 Arrangements must be confirmed in writing, and give a clear explanation of the total amount due, the repayment amounts and due dates, and the consequences of it not being maintained. The Agent has the discretion to issue a maximum of one payment arrangement reminder letter, which will require the arrangement to be brought up to date within five working days and maintained thereafter. At all stages of the distress process, apart from where the removal of goods has started, customers are to be encouraged to make a payment arrangement within the agreed guidelines as the Council would wish to avoid the removal of goods unless absolutely necessary.
- 5.3 The Agent is instructed to aim to clear all debts within the relevant financial year wherever appropriate. However this may be impractical dependent on when in a year a case is referred to the Enforcement Agent, what the amount outstanding is, and what the customer's circumstances are. Any account referred progressing to the compliance stage after the 1<sup>st</sup> February will be given a rolling three month period in order to clear in-year debt. For example, arrangements made in February can be agreed for three months from

February to April and arrangements made in March can include payments up to the end of May.

- 5.4 In arrears cases i.e. debt raised in a previous financial year, repayment periods of up to one year may be offered at the Agent's discretion, and arrangements exceeding this period must be referred to the Council for agreement.
- 5.5 Where a customer offers a payment arrangement that appears to be beyond their means, the enforcement agent has a responsibility to advise the customer accordingly.
- 5.6 As with Council Tax referrals, there is a similar need to collect Business Rates due within the year it is referred. For Business Rates the first visit may be an enforcement van call, and if full payment is not made at that time the preferred time frame is for payment within one month, with the possibility of allowing up to three months at the enforcement agent's discretion if the customer's circumstances merit such an extension.
- 5.7 In the event of the enforcement agent not receiving full payment on their first contact, which includes their statutory attendance fee, any payment arrangement ideally needs to be secured by a signed Walking Possession Agreement. The agreement must specify any goods on the premises, which could be removed, and the enforcement agent must make it clear to customers that no goods will be removed if payments are received in accordance with the arrangement.
- 5.8 Enforcement Agents should take reasonable steps to ensure that the value of the levy goods is proportional to the debt outstanding. Care must be taken to ensure the goods are not already subject to a levy by a third party. If the customer refuses to sign the agreement, this must be noted on the document. Payment arrangements may be made where it is possible there are insufficient goods to cover the debt as the levy may act as an incentive to the customer to ensure payment.
- 5.9 There may be occasions where no goods are available on which to levy such as where a property is rented fully furnished, or where a levy occurs in the customer's absence such as when a vehicle is parked on a drive or where the contact is with a spouse or parent.
- 5.10 The enforcement agent must seek to obtain employer details and financial circumstances when negotiating any payment arrangement, which will be shared with the Council. If it is established that the customer receives Income Support, Jobseekers Allowance, Pension Credit Guarantee (PCG) or Employment Support Allowance (ESA) or Universal Credit, the enforcement agent should their National Insurance Number and date of birth, and should make a payment arrangement equivalent to benefit deduction levels of 5% unless it is apparent there are good distrainable effects that would help discharge the debt quicker. In the event of the arrangement failing, or other appropriate circumstances such as exceptional hardship or exceptional vulnerability, the case should be returned to the Council.
- 5.11 If the customer works but their income is only equivalent to subsistence level state benefits, and the enforcement agent is shown evidence to this effect, an arrangement needs to be made that is equivalent to the deductions usually secured through attachments to these benefits, which is 5% of the benefit received.

- 5.12 If the enforcement agent considers the customer's circumstances are such that they may be eligible for some form of benefit but have not applied, the enforcement agent should advise the customer to apply.
- 5.13 There will be occasions when the Council will direct the Agent to accept an arrangement and require the Agent to monitor its payment thereafter.
- 5.14 Official, numbered company receipts must be given in all instances where payment is received in person by an enforcement agent. The receipt must state the date and the exact amount received the method of payment, and confirmation of any balance outstanding. The enforcement agent must advise the customer to keep all receipts in the event that they are required to verify payment.
- 5.15 Where the Agent receives payment by post, a receipt will only be required if the debtor provides a pre-paid self-addressed envelope for this purpose.
- 5.16 Postal payments received by the Agent prior to the start of an enforcement agent visit that clear a debt in full must be accepted by the Agent as final settlement without the additional enforcement agent fees being added.
- 5.17 Where the removal of goods is imminent the Council will not endorse payment by a non-guaranteed method like cheque; cash is the favoured option.
- 5.18 Any online payment functionality offered by the Agent must include the facility for customers to obtain a receipt for any payment made.
- 5.19 The scale of charges the Agent applies to payment by certain methods like debit or credit card will be agreed with the Council in advance of its application and displayed clearly to customers.
- 5.20 The Council will notify the Agent of payments made directly to the Council, ideally on a daily basis.
- 5.21 There may be occasions where the Council refers an additional liability order to the Agent, who has an existing arrangement with the customer. In such instances the Agent will visit to make the necessary levy. However it is at the Agent's discretion (dependent on the timing of the additional referral, how much the referral is for, and how much remains to be paid on the original case), as to whether a separate payment arrangement is set up for the new debt or if its payment is scheduled to begin when the existing one ends.
- 5.22 For Council Tax and Business Rates, if there are sufficient goods and the debtor refuses to make an arrangement, a notice of removal must be left confirming that if neither payment in full (including enforcement agent fees) nor an acceptable payment arrangement is made within five working days, the enforcement agent will revisit with the intention of removing goods from the sixth day onwards.
- 5.23 For Business Rates where the removal of goods may result in the business's closure, or job losses, the enforcement agent must contact the Council for guidance before action proceeds.

- 5.24 If the customer is unable to make a reasonable payment offer, or has insufficient goods or refuses legal access, the Agent will return the case to the Council with a full report of the circumstances duly certified “nulla bona” so further enforcement action may be considered.

## **6. The Removal and Sale of Goods**

- 6.1 The Agent may remove goods with a view to their sale if a suitable payment arrangement is neither made nor maintained with a customer who owns sufficient goods duly identified which, when sold, would discharge a minimum of 50% of one case and the related fees. No removal must be attempted unless there has been prior contact with the customer and all other legal requirements have been fulfilled.
- 6.2 The Agent must only remove goods in accordance with prescribed regulations and codes of practice however some items are exempt from distress as detailed in Schedule 1 to this code of conduct. The Agent must never knowingly remove any items which form part of an existing levy by a third party.
- 6.3 The Agent needs to notify the Council of any intended forced entry to any part of the premises for the purpose of removing goods where walking possession has been secured previously. If the action is agreed, a police officer must be advised of the intention to force entry, and the premises must be secured before departure.
- 6.4 The Agent may make the Council aware of its intention to remove goods if it considers such action to be prudent.
- 6.5 All goods removed need to be listed on an inventory that also details any obvious defects to the items, a copy of which must be left with the customer. Additionally the customer must be provided with written confirmation of the total balance outstanding, including enforcement agent fees, and notification of the intention to commence sale proceedings if payment in full is not received within a further five working days.
- 6.6 If the customer is not present, the authorised possession notice and associated documentation needs to be left in a prominent place within the premises for their attention in a sealed envelope marked private and confidential. Time and date-stamped photographs should be taken of the goods removed to indicate their condition and reduce the possibility of a subsequent claim for damages, where considered appropriate.
- 6.7 The Agent or contractors acting under their supervision must ensure that the removal, transportation and storage of goods occur with due care and attention; the items taken into possession must be covered by an adequate insurance policy.
- 6.8 Where a vehicle is seized a report must be completed detailing its condition prior to removal. Any third party used to remove the vehicle and the customer (if present) must countersign the report. If the customer is present and refuses to sign, the document should be noted to this effect.
- 6.9 The cost of transporting goods to the place of sale and the auction costs must be kept to a minimum. Reputable auction facilities must be used to ensure the sale is properly publicised with a view to encouraging as many potential buyers as possible to assist in securing the best price for the goods. A reserve should be placed on any goods of high value, which is defined as any single item with an estimated value of £500 or more for Council Tax and £1,000 or more for Business Rates.

- 6.10 A specialist sales room should be engaged for the sale of any particularly high value and specialised items like jewellery and antiques.
- 6.11 The Agent must advise the customer where the goods will be stored, which must be a reasonably accessible location, and the anticipated date and place of auction. The customer must be given an opportunity to redeem their goods by paying in full prior to the auction.
- 6.12 The Agent must provide the Council with confirmation of the amount realised through the auction.

## **7. Fees**

- 7.1 Fees must be levied in accordance with legislation.
- 7.2 Where “reasonable fees and expenses” apply, the Agent will agree the scale of charges with the Council, which the Council agrees to review annually.
- 7.3 The Council will inform the Agent of any instances where it is considered fees have been added incorrectly or inappropriately. In any such instance where the customer has paid such fees, the Agent will refund these without delay; unpaid fees will be written off.
- 7.4 Fees must not be added for a future action, although clear information about potential charges that may be incurred for subsequent late or non-payment should be included on documents.
- 7.5 All fees incurred must be clearly stated in a legible manner on documentation provided to customers, with no reference to phrases like “ring for balance”. There may be occasions like where the removal of goods occurs where it is initially impractical to be able to confirm the fees level. Any inappropriate application of fees or alteration or pre-printed stationery identified by the Council will be referred to the Agent, who will be expected to apply their disciplinary code to any of its staff identified as having been involved in such practices. Practices such as this may be considered by the Council to be in breach of this agreement and as such, no further referrals will be made and any agreements may be terminated.
- 7.6 Where the Agent administers more than one liability order for a customer, fees must be calculated on the aggregate balance of all, not individual, orders.
- 7.7 Enforcement/van charges must only be added once where goods are not removed unless removal has commenced and goods are returned due to payment.
- 7.8 Enforcement agent levy fees must be calculated on the amount outstanding at the time of the levy rather than the original amount referred.
- 7.9 Any percentage fees will be rounded to the nearest pound.

## **8. Warrants**

- 8.1 Following the issue of a committal summons and its subsequent approval by the magistrates, the Council will issue a contact letter to customers confirming that unless they pay in full or make an arrangement within seven days, bail warrant or warrant of arrest (no bail) enforcement will proceed.

- 8.2 Cases will be issued to the Agent thereafter, and action to execute the warrants must begin within a maximum of 28 days.
- 8.3 The Council will confirm to the Agent the dates, times and limit on numbers of persons that can attend Court as agreed with the Magistrates for scheduled committal hearings where “no bail” warrants can be executed; the Council will also confirm to the Agent the dates on which the Court have agreed to accept customers arrested under bail conditions.
- 8.4 When executing a bail warrant the Agent’s enforcement officer must, unless payment in full including fees is received, arrest and bail the customer to appear before the magistrates on a date agreed with both the Council and the Court. Payment may be by cash, cheque or debit/credit card and in the event of a cheque payment funds must have cleared by the surrender date.
- 8.5 When executing bail warrants the Agent’s enforcement officer must explain to the customer the reason for their arrest, full details of the charge outstanding, the type of warrant being executed, the time, date and place of the committal hearing the customer has been bailed to attend, and the consequences of non-attendance. Documentation must also be left with the customer that clearly confirms these details.
- 8.6 The Agent must notify the Council of the full details of the bail warrants executed no later than three working days before the hearing.
- 8.7 If the customer refuses to sign a bail warrant the Agent’s enforcement officer must return the warrant to the Authority, which will return to the Court and apply for a “no bail” warrant instead.
- 8.8 When executing “no bail” warrants the agent’s enforcement officer must, unless payment in full including fees is received, arrest and escort the customer to the Court, informing the Council without delay of their actions, who in turn will notify the Court that the customer is being brought in. Payment may be by cash or debit/credit card. In the event of card payment not being honoured further action may continue to execute the warrant.
- 8.9 When executing “no bail” warrants the Agent’s enforcement officer should, where possible, inform another member of the customer’s household that an arrest has been made.
- 8.10 The Agent shall wherever possible provide two enforcement officers to either execute or assist in the execution of a “no-bail” warrant.
- 8.11 “No bail” warrants must not be executed where it is apparent that such action would result in children being left unsupervised in a property.
- 8.12 Where it becomes apparent to the agent’s enforcement officer that the customer is in receipt of Income Support, Jobseekers Allowance, Pension Credit Guarantee, Employment Support Allowance or Universal Credit, the warrant does not need to be returned to the Council. The customer should still surrender to the warrant with a view to the Magistrates undertaking a full means enquiry, resolving to either remit/direct for attachment as appropriate.
- 8.13 The Agent must return bail and “no bail” warrants as soon as it is apparent that they are unenforceable, or within a maximum of six months, whichever is the soonest, unless the

Council gives approval to extend this time frame. It is recognised that access to Magistrates' Court time may require the six month time frame to be extended regularly. Cases need to be returned with a full report that details the actions undertaken.

## **9. The Council's Responsibilities**

- 9.1 The Council must notify the Agent of all payments received and other contacts with the debtor.
- 9.2 The Council has a responsibility to tell the debtor that if payment is not made within a specified period of time, action may be taken to enforce payment.
- 9.3 The Council must not request the suspension of a warrant or make direct payment arrangements with debtors without notifying the Agent.
- 9.4 The Council must not issue a warrant knowing that the debtor is not at the address, as a means of tracing the debtor at no cost.
- 9.5 The Council must provide a contact point at appropriate times to enable the Agent to make essential queries particularly where they have cause for concern.

## **10. Information**

- 10.1 All notices, correspondence and documentation issued by the Agent must be clear and unambiguous and to the satisfaction of the Council.
- 10.2 On returning any un-executed warrants, the Agent should report the outcome to the Council and provide further appropriate information, where this is requested.
- 10.3 The Agent should provide clear and prompt information to debtors and where appropriate, to the Council.

## **11. Disputes, Correspondence & Complaints**

- 11.1 In the event of the customer disputing aspects of their liability or payment history the Agent will contact the Council for clarification on the nature of the charge outstanding and payments received, and how to proceed.
- 11.2 The Agent will answer all correspondence from customers within 5 working days of it being received, wherever possible, supplying copies of such to the Council for its own records where considered appropriate.
- 11.3 The Agent will administer an internal complaints procedure, with which its representatives must be conversant, and provide a monthly statement that summarises the complaints it has administered in respect of the Council's customers, to include confirmation of the number of complaints that were or were not upheld.
- 11.4 The Council will investigate all complaints it receives relating to the actions of the Agent and its representatives, responding to the complainants in accordance with the Council's complaints procedure and informing the Agent of its findings.

- 11.5 The Agent will provide the Council with a copy of its complaints procedure, and advise the Council of any subsequent amendments to the process within five working days of their occurrence.
- 11.6 The Council and Agent will share appropriate documentation, in accordance with Data Protection Legislation, to enable either party to administer its complaints caseload efficiently and to respond to customers fully within ten working days.
- 11.7 The Agent should make use of the complaints and disciplinary procedures of professional organisations like the Association of Civil Enforcement Agencies or the Enforcement Services Association.
- 11.8 The Agent must make available to customers and stakeholders details of their complaints procedure on request and publicise it in accessible places like its website and offices.
- 11.9 Facilities should be in place to ensure the complaints procedure is available by means accessible to disadvantaged customers like those with visual impairment or whose first language is not English.

## **12. Vulnerable Customers**

- 12.1 Attempt should not be made to levy or remove goods from the following type of customers due to their vulnerability without prior reference to the Council:
- a) Any elderly persons over the age of seventy-five;
  - b) Any elderly persons under seventy-five where it is apparent they are frail, confused, ill or having difficulty in dealing with their affairs;
  - c) Any severely disabled persons;
  - d) Any person considered to being mentally impaired;
  - e) Any person considered to be impaired due to intoxication either through alcohol or drugs where the intoxication is severe enough that the person is not able to deal with their affairs;
  - f) Any household where there has been bereavement within the last two weeks;
  - g) Any customer (or their partner) who is in the last two months of pregnancy;
  - h) Any household with a new baby under the age of six weeks;
  - i) Any customer (or household member) who is suffering from long term or serious illness;
  - j) Any customer who is suffering from a terminal illness;
  - k) Any single parent of children under the age of twelve in receipt of a means tested benefit or who is experiencing financial hardship;
  - l) Any property where the English language is not spoken read or understood in the household and where interpretation services are not readily available;
  - m) Any customers living on any of the subsistence level benefits whose circumstances are such that it may be more appropriate for the Council to administer the debt by the application of an attachment;
  - n) Any other person or household where the enforcement agent considers there to be any other vulnerability. The enforcement agent will be expected to explain the nature of the vulnerability and their use of this discretion to the Council.

- 12.2 When the nature of a person or household's vulnerability is temporary, the agent will place a temporary hold on all enforcement action and will re-visit the account at a predetermined date. This must be communicated clearly with the customer.

## **Schedule 1 – Goods Exempt from Distress**

In the process of executing a Council Tax or National Non Domestic Rates distress warrant the enforcement agent must exercise caution, consulting with the Council for advice where there is doubt about removing certain goods. The enforcement agent will not levy on the following items:

- a) For Council Tax only, any tools, books, vehicles and other items of equipment necessary to the debtor for their personal use in the course of their trade, employment, profession or vocation. (Note – while a mini cab driver's vehicle is a tool of their trade, a car used for commuting purposes is not);
- b) Cooking and heating appliances where such items are not duplicated and where this would leave the customer and other household members with no means of preparing a hot meal and maintaining adequate heating within the premises;
- c) Refrigerators where such items are not duplicated and, where this would leave the customer and other household members with no means of keeping food cold;
- d) Food;
- e) Bedding or household linen that would leave the customer and other household members without the basics required for domestic life;
- f) Beds and chairs, where this would leave the premises without one bed and one chair for each occupant;
- g) Children's toys and items reasonably required for the welfare or upbringing of any dependent child who is a member of the household;
- h) Medical aids or medical equipment reasonably required for the use of any member of the household;
- i) Books or any articles reasonably required for the education or training of the customer or any member of their household not exceeding an aggregate value of £500;
- j) Articles required for safety reasons in the property;
- k) Items purchased through authorised loans and grants advanced from the Social Fund;

## Appendix 1 – Customer First Analysis

### 1. Purpose

- What are you trying to achieve with the policy / service / function?

This analysis covers the Council's Enforcement Agent Code of Conduct.

- Who defines and manages it?

The Head of Benefits, Revenues and Customer Contact.

- Who do you intend to benefit from it and how?

Taxpayers will have access to the Council's Enforcement Agent Code of Conduct which outlines what we expect from Enforcement Agents working on behalf of the Council. Residents of the borough all benefit from a robust and transparent collections policy as the collection and recovery of Council Tax and NNDR is essential to the funding of public services – the Enforcement Agent Code of Conduct is part of suite of policies concerning collection and recovery of Council Tax and NNDR.

- What could prevent people from getting the most out of the policy / service / function?

Lack of awareness of the policy – however, this policy is clear on what the Council expects from its Enforcement Agents, it is accessible, written in plain English and additional support or explanation of the policy is available.

- How will you get your customers involved in the analysis and how will you tell people about it?

Customers will be informed via normal communication methods and the policies will be available online as well as in hard copy.

### 2. Evidence

- How will you know if the policy delivers its intended outcome / benefits?

Adherence to the policy will be evident in the Enforcement Agent's practices – it is hoped that a clear and robust policy will support an increase in collection rates.

- How satisfied are your customers and how do you know?

In relation to these policies, it is not possible to say.

- What existing data do you have on the people that use the service and the wider population?

We hold all relevant data on our Council Tax and Business Rates customers as well as the wider population.

- What other information would it be useful to have? How could you get this?

None

- Are you breaking down data by equality groups where relevant (such as by gender, age, disability, ethnicity, sexual orientation, marital status, religion and belief, pregnancy and maternity)?

No – while we have diversity statistics on our population as a whole we are not able to cross-reference this with our Council Tax/NNDR base.

- Are you using partners, stakeholders, and councillors to get information and feedback?

As part of our ongoing management of the processes, yes.

### 3. Impact

- Are some people benefiting more – or less - than others? If so, why might this be?

No.

### 4. Actions

- If the evidence suggests that the policy / service / function benefits a particular group – or disadvantages another - is there a justifiable reason for this and if so, what is it?

n/a

- Is it discriminatory in any way?

No

- Is there a possible impact in relationships or perceptions between different parts of the community?

No.

- What measures can you put in place to reduce disadvantages?

n/a

- Do you need to consult further?

Not at this stage.

- Have you identified any potential improvements to customer service?

Formalising our practise will allow our Enforcement Agents to provide a consistent service which will benefit all customers.

- Who should you tell about the outcomes of this analysis?

This analysis will be made available alongside our Collection and Recovery Policies to inform residents.

- Have you built the actions into your Business Plan with a clear timescale?

n/a

- When will this assessment need to be repeated?

With any major changes to the collection and recovery policies in the future.

**Name: \_ Rachael Walker**

**Service Area: \_\_ Benefits, Revenues and Customer Contact**

**Dated: \_\_ October 2018**



# Benefits, Revenues and Customer Contact Vulnerable Customer Policy

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October 2018

## 1. Introduction

- 1.1 This document outlines how we will broadly define vulnerability, how we identify and how we treat our vulnerable customers and how we may make allowances for our vulnerable customers when administering Council Tax, National Non Domestic Rates, Housing Benefit and Council Tax Support.
- 1.2 There is no definition of vulnerability prescribed by the variety of legislation covering benefits and revenues and while we have listed some circumstances in this policy which may indicate vulnerability, this list is by no means exhaustive.
- 1.3 The policy intentions outlined in this document cover the Council's actions for
  - Housing Benefit including the recovery of overpayments
  - Council Tax Support including the recovery of excess Council Tax Support
  - Council Tax billing and recovery
  - National Non Domestic Rates billing and recovery
  - Discretionary Housing Payments
  - Exceptional Hardship Fund Payments for Council Tax Support claimants
  - Exceptional Hardship Fund Payments for Council Tax payers

## 2. Vulnerable customers

- 2.1 Whilst there are no prescribed descriptions of vulnerable groups, local authorities must have regard to their responsibilities defined under:-
  - The Equality Act 2010 – the public sector Equality Duty in respect of protected characteristics.
  - The Child Poverty Act 2010 – duty to reduce and mitigate the effect of child poverty in local areas.
  - The Housing Act 1996 – duty to prevent homelessness

- 2.2 Particular regard may be taken when delivering our services for the following people:
- a. Any elderly persons over the age of seventy-five;
  - b. Any persons under seventy-five where it is apparent they are frail, confused, ill or having difficulty in dealing with their affairs;
  - c. Any severely disabled persons;
  - d. Any person considered to be mentally impaired;
  - e. Any person considered to be impaired due to intoxication either through alcohol or drugs where the intoxication is severe enough that the person is not reasonably able to deal with their affairs;
  - f. Any household where there has been bereavement within the last two weeks;
  - g. Any customer (or their partner) who is in the last two months of pregnancy;
  - h. Any household with a new baby under the age of six weeks;
  - i. Any customer (or household member) who is suffering from long term or serious illness;
  - j. Any customer who is suffering from a terminal illness;
  - k. Any single parent of children under the age of twelve in receipt of a means tested benefit or who is experiencing financial hardship;
  - l. Any property where the English language is not spoken, read or understood in the household and where interpretation services are not readily available;
  - m. Any customers living on any of the subsistence level benefits where the debt does not exceed £200.00, in which cases it may be more appropriate for the Council to administer the debt by the application of an attachment;
  - n. Any other person or household where a council officer or agent working on behalf of the council considers there to be any other vulnerability. The council officer or agent working on behalf of the council will be expected to explain the nature of the vulnerability and their use of this discretion to the Council.
- 2.3 Not all customers who fall into these categories will consider themselves to be vulnerable nor will falling into one or more of these categories by itself mean that someone is vulnerable and requires an adapted approach to our services. Decisions regarding vulnerability will be made holistically and with due regard each person's or household's circumstances.
- 2.4 Customers who may be vulnerable will not be made exempt from paying Council Tax, Business Rates, Housing Benefit overpayments or any other money owed to the Council as a result of their potential vulnerability alone.

### **3. Identifying vulnerable customers**

- 3.1 All staff working in Benefits, Revenues and Customer Contact are provided with training aimed at increasing awareness of vulnerability, how to spot vulnerability and how we will treat our vulnerable customers.
- 3.2 Vulnerability may be identified via a number of methods:

- Self-identification: customers may tell us specifically that they consider themselves to be vulnerable and why. We may require further information from a customer in order to adapt our services appropriately and this will be handled with sensitivity.
- Speaking to or communicating with customers via email – it may be the case that a customer provides information that can indicate a vulnerability and we aim to be alert to this at all times.
- Referral from another organisation – we work in partnership with a number of organisations and while we will be sensitive to any and all data sharing arrangements, if a partner organisation informs us that they have identified someone as vulnerable, we will consider this for our services too.
- Information we hold about our customers – if during the course of our work, information such as dates of birth, details of children in a household or details of disability benefits in payment is available to us, this may help us to identify someone as potentially vulnerable and guide our staff to adapting our services.

#### **4. Suicide and self-harm**

- 4.1 Threats or indications of self-harm or suicide will be taken seriously and will not be dismissed or ignored. Customers will be encouraged to contact their GP, local mental health team or support worker if they have one. With their consent, it may be appropriate for the Council to contact someone on the customer's behalf.
- 4.2 Emergency services will be contacted if any customer is considered to be in any immediate danger of suicide or self-harm. Customer consent is not required to do this.
- 4.3 All customers who threaten or indicate suicide or self-harm will be referred to a manager to ensure that all options have been explored and that the Council officer has acted appropriately. This may include a review of telephone recordings, emails, letters or further contact with a customer.

#### **5. Accessing our services**

- 5.1 Our customers can access information and advice via a variety of methods including:
- Online via our website and Connect services
  - By telephone
  - By email
  - In writing
  - Face to face
- 5.2 Our face to face availability is limited to vulnerable customers only but is available and will be offered to anyone who cannot communicate with us using one of our other available methods or who may require additional support that a face to face appointment can sometimes provide.
- 5.3 We consider our online services to be integral to the successful future delivery of our services and we will offer online access to all services as a first option. If a customer informs us that

they do not have access to the internet and no one else in their household is able to do this, we will offer them alternatives such as telephone services or paper forms.

## **6. Council Tax and Business Rates Collection and Recovery**

- 6.1 We aim to ensure that all appropriate exemptions and discounts are applied to Council Tax accounts if applicable. This includes but is not limited to disabled adaptation reductions, single occupancy discounts, severe mental impairment discounts, carer's discounts etc.
- 6.2 We will provide suitable payment methods to take into account the varying nature of our residents' access to technology – for example, our barcoded bills allow people to pay by cash using Post Offices or PayPoint outlets throughout the borough.
- 6.3 We will provide a paper billing service to those who do not have access to the internet for e-bills or for those whose preference is paper.
- 6.4 We will consider all appropriate methods of recovering unpaid Council Tax from vulnerable households including limiting referrals to enforcement agents, flexible payment arrangements, attachments of earnings and deductions from benefits which may be more suitable for some customers.
- 6.5 We will consider all appropriate methods of recovering unpaid Business Rates from individuals including limiting referrals to enforcement agents and flexible payment arrangements.
- 6.6 When the nature of an individual's or household's vulnerability is temporary, we may consider a temporary hold on enforcement action and will re-visit the account at a predetermined date.

## **7. Housing Benefit and Council Tax Support**

- 7.1 We aim to ensure that all households are given correct and timely advice and information about available benefits in order to prevent or lessen vulnerability.
- 7.2 We will use all available contact methods to communicate with our customers such as email, telephone, letters and face to face information and advice as appropriate in order to accommodate our customers' varied needs.
- 7.3 We will consider all appropriate methods of recovering overpaid Housing Benefit from vulnerable households including limiting referrals to debt collection agents, flexible payment arrangements, direct attachments of earnings and deductions from benefits which may be more suitable for some customers.
- 7.4 When the nature of an individual's or household's vulnerability is temporary, we may consider a temporary hold on all enforcement action and will re-visit the account at a predetermined date.
- 7.5 We will ensure that we provide information about Discretionary Housing Payments and Exceptional Hardship Fund payments as appropriate in order to support customers through

welfare reforms and to help with the prevention of rent arrears, Council Tax payment issues and financial vulnerability.

## **8. Complaints**

- 8.1 Complaints about the handling of any account will be dealt with in accordance with the Council's general complaints policy which can be found at [www.hyndburnbc.gov.uk/complaints](http://www.hyndburnbc.gov.uk/complaints)

## **9. Equality and diversity**

- 9.1 A Customer First Analysis accompanies this policy. No adverse impact has been identified that may discriminate against any group with a protected characteristic as defined by the Equality Act 2010 and outlined in the Public Sector Equality Duty.

## **10. Review/approval**

- 10.1 This policy will be reviewed annually and updated if required.

## Customer First Analysis

### 1. Purpose

- What are you trying to achieve with the policy / service / function?

The Benefits, Revenues and Customer Contact Vulnerability Policy will provide a framework and basis for the considerations given to our vulnerable customers when dealing with the collection and recovery of Council Tax, National Non Domestic Rates (when dealing with individuals as opposed to companies and corporations) and Overpaid Housing Benefit and excess Council Tax Support.

- Who defines and manages it?

There is no definition of vulnerability; however the Council must have regard to responsibilities laid out in

- The Equality Act 2010 – the public sector Equality Duty in respect of protected characteristics.
- The Child Poverty Act 2010 – duty to reduce and mitigate the effect of child poverty in local areas.
- The Housing Act 1996 – duty to prevent homelessness

The management team within Benefits, Revenues and Customer Contact manage this policy.

- Who do you intend to benefit from it and how?

Residents and taxpayers will benefit from a consistent and appropriate approach to vulnerability and staff will benefit from guidance that this policy is intended to provide.

- What could prevent people from getting the most out of the policy / service / function?

Staff awareness – this will be addressed with a training session on this policy and its application which will support other training in this area delivered as a matter of course.

- How will you get your customers involved in the analysis and how will you tell people about it?

This policy has been developed through experience of supporting vulnerable customers including learning from points raised informally and via complaints. Our staff will be given training and this will be available to the public online and through other formats on request.

### 2. Evidence

- How will you know if the policy delivers its intended outcome / benefits?

Our approach to and support for vulnerable customers will continue to provide a suitable amount of flexibility for vulnerable customers while still supporting our duty to collect local taxes and protect public funds.

- How satisfied are your customers and how do you know?

Our general customer satisfaction has not been monitored in this area but vulnerability will be address in our next customer satisfaction monitoring exercise.

- What existing data do you have on the people that use the service and the wider population?

On an individual basis we hold a range of information from names, address and contact details to the nature of a disability or specific vulnerability criteria – however many of these categories are not searchable. We also hold wider population data on the area.

- What other information would it be useful to have? How could you get this?

Supporting vulnerable customers requires a holistic approach and while information to help us be more proactive in this area would be helpful, it would not necessarily be possible.

- Are you breaking down data by equality groups where relevant (such as by gender, age, disability, ethnicity, sexual orientation, marital status, religion and belief, pregnancy and maternity)?

The information is not currently collated in a way that would facilitate this.

- Are you using partners, stakeholders, and councillors to get information and feedback?

This policy will be presented to Cabinet, has been discussed with partner services and has been developed in part in response to feedback from customers including members.

### **3. Impact**

- Are some people benefiting more – or less - than others? If so, why might this be?

Our vulnerable customers may benefit more and this is the policy intention.

### **4. Actions**

- If the evidence suggests that the policy / service / function benefits a particular group – or disadvantages another - is there a justifiable reason for this and if so, what is it?

This policy intends to provide additional flexibility, when appropriate, to taxpayers and claimants who may be classed as vulnerable and therefore should be afforded further support is possible.

- Is it discriminatory in any way?

No.

- Is there a possible impact in relationships or perceptions between different parts of the community?

This policy intends to support customers from all parts of our community and so this is not intended and hopefully not likely.

- What measures can you put in place to reduce disadvantages?

This policy on the whole is intended to reduce disadvantages caused by vulnerability where possible.

- Do you need to consult further?

Not at this stage.

- Have you identified any potential improvements to customer service?

Identifying vulnerability when not presented explicitly by the customer could help us to act more proactively therefore improving the customer experience.

- Who should you tell about the outcomes of this analysis?

This analysis will form part of the presentation of this policy to Cabinet and will be available online to the public.

- Have you built the actions into your Business Plan with a clear timescale?

n/a

- When will this assessment need to be repeated?

As and when this policy is reviewed and updated in the future.

**Name:** Rachael Walker **Signed:** \_\_\_\_\_

**Service Area: Benefits, Revenues and Customer Contact Dated: October 2018**

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# Agenda Item 9.

<b>REPORT TO:</b>	Cabinet		
<b>DATE:</b>	10 October 2018		
<b>PORTFOLIO:</b>	Cllr Joyce Plummer - Resources		
<b>REPORT AUTHOR:</b>	Rachael Walker, Customer Contact Manager		
<b>TITLE OF REPORT:</b>	National Non Domestic Rates Mandatory, Discretionary and Hardship Relief Scheme		
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	No	Not applicable	
<b>KEY DECISION:</b>	No	If yes, date of publication:	

## 1. **Purpose of Report**

- 1.1 To seek Cabinet approval for the adoption of the National Non Domestic Rates Mandatory, Discretionary and Hardship Relief Scheme.

## 2. **Recommendations**

- 2.1 That the National Non Domestic Rates Mandatory, Discretionary and Hardship Relief Scheme attached at Appendix 1 is approved and adopted.

## 3. **Reasons for Recommendations and Background**

- 3.1 The administration of Mandatory, Discretionary and Hardship Relief for business rates forms part of the Council's mandate for the billing, collection and recovery of National Non Domestic Rates. While the legislative framework for this remains largely unchanged, the policies used by officers in the administration of reliefs is reviewed, amended and updated regularly to ensure that our policies are relevant and reflect current practices.
- 3.2 As the Government is moving further towards higher levels of local business rate retention, it is essential that our policies and practices are reviewed regularly and updated as required in order to remain relevant, accurate and legal.
- 3.3 There have been no legislative changes affecting this policy and administration of the various reliefs available within business rates remains within the relevant legislative framework and guidance.

3.4 While the discretionary relief provisions in this policy have not changed, the policy does now include provisions announced by the Government in 2017 and has consolidated guidance for officers and taxpayers that was previously contained in a number of separate documents.

**4. Alternative Options considered and Reasons for Rejection**

4.1 The administration of business rates reliefs works within legislative frameworks and not adopting this policy does not affect the Council's ability to administer, collect and recover business rates however regular review can ensure that our policies and practices are transparent and robust.

**5. Consultations**

5.1 Officers in Revenues, Benefits and Customer Contact have been consulted as well as colleagues in Legal Services.

**6. Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	The collection of local taxes remains a priority for the Benefits, Revenues and Customer Contact service and having up to date policies provides the necessary framework for officers. While there is no direct financial obligation for the Council as a result of this policy review, having up to date policies underpins the efforts to increase collection rates annually.
<b>Legal and human rights implications</b>	The administration of business rates is done within legislative frameworks and guidance. Any and all legal and human rights implications have been considered and balanced against the rights of the individual and the obligations placed on the authority for the collection of local taxes. The protection of vulnerable groups and individuals has been considered extensively as have the rights of our residents and customers. Legal implications and human rights have been considered at each stage and the policy intentions within this report are considered proportionate and justifiable when balanced against the rights of the individual.
<b>Assessment of risk</b>	Having up to date policies reinforces the department's mandate to collect taxes on behalf of the Council and provides necessary transparency for rate payers – both of which lessens the risk of

<p><b>Equality and diversity implications</b>  <i>A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</i></p>	<p>accusations of maladministration.</p> <p>The Council is subject to the public sector equality duty introduced by the Equality Act 2010. When making a decision in respect of the recommendations in this report Cabinet must have regard to the need to:</p> <ul style="list-style-type: none"> <li>• eliminate unlawful discrimination, harassment and victimisation; and</li> <li>• advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and</li> <li>• foster good relations between those who share a relevant protected characteristic and those who don't.</li> </ul> <p>For these purposes the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. To assist the Cabinet in this regard a Customer First Analysis has been carried out and is presented with this report. Cabinet is advised to consider the Customer First Analysis and associated obligations in respect of the public sector equality duty when making a decision in respect of the recommendations contained in this report.</p>
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**7. Local Government (Access to Information) Act 1985:  
List of Background Papers**

7.1 Not applicable.



# National Non Domestic Rates Mandatory, Discretionary and Hardship Relief

October 2018

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## 1. Introduction

1.1 Rate relief and exemptions are available to ratepayers liable to pay business rates on premises within Hyndburn. The reliefs covered by this policy are

- Mandatory rate relief
- Discretionary rate relief
- Local Discretionary Discounts
- Hardship relief
- Reliefs and discounts announced in 2017 (appendix 1)

1.2 This policy covers the main processes adopted by Hyndburn Borough Council and is intended only as an overview and not as a comprehensive explanation of the National Non Domestic Rates system. As such there are aspects of National Non Domestic Rates law and practices not included in this document but which are nevertheless followed and applied by us in the billing, collection and recovery of National Non Domestic Rates.

## 2. Legislation

2.1 The Local Government Finance Act 1988, as amended, provides the legal framework for the granting of rate relief:-

- Mandatory Relief: Sections 43, 44, and 45
- Discretionary Relief: Sections 44A, 47 and 49

2.2 Other legislation includes:

- Non Domestic Rating (Contributions) Regulations 1992, (as amended) and
- Non Domestic Rating (Rates Retention) Regulations 2013.
- Local Government Act 2003 - Section 64 (Charity Shops)
- The Local Government Finance and Rating Act 1997- Schedule 1 (Rural Rate Relief)

- The Localism Act 2011, Section 69 (relief to ratepayers other than registered charities or not-for-profit organisations)

### 3. Mandatory Rate Relief

3.1 Mandatory Rate Relief is provided for premises used by registered charities, sports and social clubs and not-for-profit organisations.

#### Charities

3.2 Registered charities that are using non-domestic premises for the main purpose or objective of the charity may claim 80% relief if certain conditions are met. The charity must be:

- A registered charity or trustees for a registered charity, registered with the Charity Commission under Section 29 of the Charities Act 2011; and
- The property must be used wholly, or mainly, for charitable purposes.

3.3 If the property is empty, mandatory relief of 100% can be claimed if, when next in use, the property will be used wholly or mainly for charitable purposes.

#### Community Amateur Sports Clubs

3.4 Sports clubs can claim 80% relief by applying for Community Amateur Sports Club (CASC) status. This can be done through the [HM Revenues and Customs website](#).

#### Not-for-profit Organisations

3.5 A not-for-profit organisation may not be registered as a charity but may be treated as a charity/not-for-profit for UK tax purposes which may entitle the organisation to mandatory rate relief of up to 80% under this scheme.

3.6 Whilst Charity *shops* are conducted for profitable purposes to provide income for the charitable organisation, relief may be granted provided that the goods sold are wholly or mainly donated to the charity.

#### Rural Rate relief

3.7 The Occupier of a general store, Post office or food shop in a settlement appearing in a billing authority's rural settlement list is entitled to rate relief if it is the only such business in that settlement and its rateable value is less than £8,500, or if it is the only Public House or Petrol Station and the rateable value is less than £12,500.

3.8 Relief is up to 100% of the full rates bill, or of the transitional bill where transitional arrangements apply.

3.9 Authorities also have a discretion to remit all or part of the rates bill on other properties in a settlement on the rural settlement list if the rateable value is £16,500 or less and the authority is satisfied that the property is used for a purpose which benefits the local community.

## 4. Discretionary Rate Relief

4.1 The Council has discretion to grant relief or to top up mandatory relief up to 100% on properties occupied by certain non-profit making bodies.

### Charities

4.2 The council may consider applications for discretionary relief top up of up to 20% from charities based on a case by case basis.

### Community Amateur Sports Clubs and not-for-profit Organisations

4.3 In deciding whether to grant discretionary relief, the Council will look at the contribution that the organisation makes to the area. Qualifying organisations will generally be working within social welfare, education or are wholly or mainly used for recreation.

4.4 Other criteria assessed include access, membership fees and joining restrictions:

- Membership fees should not be restrictive or excessive
- Membership should be open to everybody
- 75% of the membership should come from the Hyndburn area

4.5 The level of effort made by the organisation to encourage membership from groups such as young people, disabled people, ethnic minorities and unemployed people will be considered:

- The facilities should be open to people other than members
- Differential fee structures for some groups should be in place, for example younger people, older people or the unemployed
- The building should be accessible to disabled people or have plans to become accessible

4.6 Discretionary relief is unlikely to be granted if the majority of the organisation's income is generated from a licensed bar, however the existence of a licensed bar does not disqualify an application.

4.7 Discretionary relief will not be considered for the following types of businesses:

- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers);
- Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors);
- Professional Services (e.g. solicitors, accountants, insurance agents/financial advisors, tutors);
- Post Office sorting offices;
- Other services (e.g. estate agents, letting agents, employment agencies).

### Amount of discretionary relief

4.8 The table below shows the current maximum discretionary relief approved within this policy. These levels are given in addition to any mandatory relief up to a maximum of 100%.

Type of organisation/Property	Maximum discretionary relief
-------------------------------	------------------------------

Voluntary schools	Nil
Local Sporting Clubs	80%
League Cricket Clubs	80%
Scout Huts	20%
Welfare clubs, Community Centres	100%
Miscellaneous	20 to 100%
National organisations	Nil
Working Men's and Social Clubs	80%
Charity Shops	
• Primary shopping zones	Nil
• Secondary shopping zones	10%
• Others	20%

## 5. Part occupied properties

- 5.1 Where a property is partly occupied for a short time, for example when a phased occupation takes place or where there is ongoing refurbishment, we have the discretion to award relief of up to 100% in respect of the unoccupied part.
- 5.2 To calculate the rates on each part, we can ask the Valuation Office Agency (VOA) to revalue the property to accurately apportion the rateable value between the occupied and unoccupied areas of the property.
- 5.3 If agreed, the rates on each part will be calculated so that full rates are charged on the occupied part and empty rates are charged on the unoccupied part.
- 5.4 Rate reductions will only apply for up to three months for commercial premises and six months for industrial premises. After that, the full charge will be reapplied (unless the empty part is otherwise exempt).

## 6. Localism Act 2011 – Local Discretionary Discount

- 6.1 Section 69 of the Localism Act 2011 amends the section 47 of the Local Government Finance Act 1988 which allows the Council the discretion to award rate relief to all types of businesses.
- 6.2 This power recognises that the current business rates scheme is broadly prescribed by central government and its aim is to provide increased flexibility to local authorities to support organisations, recognising the variations in economic conditions and within local authority boundaries.
- 6.3 On this basis, the council will consider exceptional applications for a local business rates discount from organisations, based on their own merits and on a case by case basis.

- 6.4 Applications for rate relief under The Local Discretionary Discount will normally only be considered favourably where the Council is satisfied that an award will result in tangible benefits to local residents and in particular where the award will directly result in attracting businesses, investment or jobs to the local area.
- 6.5 The Local Discretionary Discount may provide temporary financial assistance to rate payers by reducing their Non Domestic Rates liability. The operation of this scheme is at the total discretion of Hyndburn Borough Council.
- 6.6 There is no statutory right to awards from the scheme.
- 6.7 Local discretionary relief will not be considered for the following types of businesses:
- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers);
  - Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors);
  - Professional Services (e.g. solicitors, accountants, insurance agents/financial advisors, tutors);
  - Post Office sorting offices;
  - Other services (e.g. estate agents, letting agents, employment agencies).
- 6.8 The Local Discretionary Discount awards will not be awarded in the following circumstances:
- Where the full Non Domestic Rates liability is being met by any other reduction scheme such as Small Business Rates Relief;
  - Where the Non Domestic Rates liability is nil as a result of any other discount or exemption;
  - For any other reason other than to reduce the Non Domestic Rates liability;
  - To reduce any Non Domestic Rates relief overpayment caused through the failure of the applicant to notify the Council of any changes which may affect their claim in a timely manner or where the application has failed to act correctly or honestly;
  - To cover previous years Non Domestic Rates arrears; or;
  - For properties unoccupied for more than 12 months;
  - Where other reduction schemes or reliefs may apply but for which the rate payer has not applied.
- 6.9 All applications for a Local Discretionary Discount should be one of last resort after any entitlement to financial assistance, discounts or exemptions or Valuation Office/Valuation Tribunal action and appeal has been explored.

## 7. Hardship

- 7.1 The Non Domestic Rates Hardship Scheme is available to all ratepayers in Hyndburn who may be suffering exceptional hardship.
- 7.2 The Non Domestic Rates Hardship Scheme may provide temporary financial assistance to rate payers by reducing their Non Domestic Rates liability. The operation of this scheme is at the total discretion of Hyndburn Borough Council.
- 7.3 There is no statutory right to awards from the scheme, although the Council will consider all applications which have been properly made.
- 7.4 Hardship relief may not be considered for the following types of businesses:
- Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers);
  - Medical services (e.g. vets, dentists, doctors, osteopaths, chiropractors);
  - Professional Services (e.g. solicitors, accountants, insurance agents/financial advisors, tutors);
  - Post Office sorting offices;
  - Other services (e.g. estate agents, letting agents, employment agencies).
- 7.5 The Non Domestic Rates Hardship Scheme awards will not be awarded in the following circumstances:
- Where the full Non Domestic Rates liability is being met by any other reduction scheme such as Small Business Rates Relief;
  - Where the Non Domestic Rates liability is nil as a result of any other discount or exemption;
  - For any other reason other than to reduce the Non Domestic Rates liability;
  - To reduce any Non Domestic Rates relief overpayment caused through the failure of the applicant to notify the Council of any changes which may affect their claim in a timely manner or where the application has failed to act correctly or honestly;
  - To cover previous years Non Domestic Rates arrears; or;
  - For properties unoccupied for more than 12 months;
  - Where other reduction schemes or reliefs may apply but for which the ratepayer has not applied.
- 7.6 All applicants must be able to provide evidence of hardship or potential hardship and any application made to the Hardship Relief Scheme should be one of last resort after any

entitlement to financial assistance, discounts or exemptions or Valuation Office/Valuation Tribunal action and appeal has been explored.

- 7.7 The principle purpose of an award of hardship relief is to provide short-term assistance to businesses that are suffering unexpected hardship, arising from circumstances beyond the business's control and outside of the normal risks associated with running a business of that type, to the extent that the viability of the business would be threatened if an award was not made.

## **8. Applications**

- 8.1 All persons/organisations liable to pay Non Domestic Rates for a property within Hyndburn can apply to reliefs or discounts outlined in this policy, including owners, occupiers or persons appointed to act on their behalf e.g. a solicitor, appointee or rating agents.

- 8.2 Applications cannot be made by

- Landlords of properties where the tenant is liable;
- Estate agents/managing agents on behalf of a landlord;
- Friends/relatives of the liable person (unless acting as an appointee or under a power of attorney);
- Support agencies (unless acting as an appointee, rating agent or under a power of attorney);
- Banks or other holders of a mortgage or other legal charge on a property;

### **Applying for National Non Domestic Rates relief**

- 8.3 Mandatory relief may be applied as part of the main administrative billing process and an application form is not normally required. However, in ensuring that awards are made correctly, applicants from organisations or charities applying for mandatory relief for the first time may be required to provide additional information.
- 8.4 Applications for discretionary awards should be made using a Discretionary Business Rates Relief form provided by the Council and attached at Appendix 2. Once issued there is no deadline by which the form must be submitted but applicants are encouraged to apply as soon as possible.
- 8.5 An application for a discretionary award must be received in order for an award to be considered.

### **Duties of the Applicant**

- 8.6 A person or business claiming any award or relief under this policy is required to:

- Submit an application form, or in the case of mandatory awards notify the Council of their charitable status;
- Provide the Council with such information as it may require to make a decision;
- Inform the Council of any changes of circumstances that may be relevant to their on-going claim.

### **Subsequent and multiple applications**

8.7 Applicants may make subsequent applications for any discretionary award once their award has expired or if their circumstances change again or worsen if they have previously been refused. There is no limit to the number of applications that can be made.

8.8 The Council will only accept one application at a time.

## **9. Awards**

9.1 Both the amount and period of any discretionary award is at the discretion of the Council and will be reviewed every 12 months or by 31<sup>st</sup> March each financial year, whichever comes first.

9.2 Any award or appropriate discount will be a reduction in National Non Domestic Rates liability. The reduction will be applied to the applicant's account and a revised bill will be issued – this reduction will not be given to the applicant as a sum of money, and no cash alternative is available.

9.3 Discretionary relief decisions will be made by the Council's Revenues Manager.

## **10. Backdating**

10.1 Discretionary awards made under this policy will not normally be backdated and will be awarded from the date the application is recorded as received by the Council. However, in exceptional circumstances consideration may be given to an award for a retrospective period where the ratepayer can demonstrate good cause for not applying sooner. Ignorance of the scheme does not constitute good cause.

10.2 A discretionary award or mandatory relief will not normally be made for a retrospective period where the Council is not able to verify that qualifying criteria was present during that time, however mandatory relief may be backdated if provision is made within legislation.

## **11. Notification letters**

11.1 Adjustment notices will be sent to all successful applicants.

11.2 Letters sent to refuse an application will contain the Council's reasons for refusing the application.

11.3 Notification letters sent to successful applicants will contain:

- The amount of the discount,

- The period of the discount,

## **12. Overpaid Awards**

12.1 Overpaid awards applicable to this policy will generally be recovered directly from the applicant's National Non Domestic Rates account, thus increasing the amount due and payable. Overpayments may occur as a result of administrative error by the Council or where the Council is induced to make an award (or a higher rate of relief than it might otherwise have done) as a result of false, inaccurate, incomplete or misleading information provided to the Council by the applicant or by another person on the applicant's behalf or at their request.

## **13. Appeals against decisions**

13.1 Any applicant may request that their application is reconsidered. If, in the case of either mandatory or discretionary relief, new information is provided as part of a reconsideration request, this may be considered a new application.

13.2 Appeals against an incorrect decision regarding mandatory relief may be made to the Valuation Tribunal.

13.3 While there are no formal rights of appeal against discretionary relief decisions, applicants may request that their application is reconsidered. All requests for reconsideration should be made within one calendar month of the original decision notice being issued. The application will be reconsidered by the Head of Benefits, Revenues and Customer Contact.

13.4 All applications for reconsideration must be made in writing or by email and must outline the reasons for the reconsideration request. The outcome of the reconsideration of a discretionary relief award will be final. The applicant will be notified in writing detailing the decision made and the reasons for the decision.

## **14. Fraud**

14.1 The Council is committed to protecting public funds and to ensuring that funds are awarded to the people who are rightly eligible to them.

14.2 Any applicant who tries to claim an award under this policy by declaring false circumstances or providing false statements or evidence in support of their application, may have committed an offence under the Fraud Act 2006.

14.3 Where the Council suspects that such a fraud may have been committed, this matter will be investigated as appropriate and may lead to criminal proceedings being instigated.

## **15. State Aid**

15.1 Reliefs under this policy will not be awarded in any circumstances where it appears that an award will result in the ratepayer receiving state aid that is above the current de minimis

level. Each application must be accompanied by a statement signed by the appropriate person representing the business setting out the amount of state aid, including but not limited to discretionary rate relief, which the ratepayer has received within the previous three years. Applications shall not be considered until this statement is received.

## **16. Complaints**

16.1 The Council's Complaints Procedure will apply in the event of any complaint about the application of this policy.

## **17. Policy Review**

17.1 This policy will be reviewed annually and may be subject to change. The Council will undertake a review of the scheme each year to ensure that the scheme remains fair, equitable and affordable.

## **18. Equalities**

18.1 The Council's intention is to make this policy fair and equitable for all applicants.

18.2 This policy has undergone an equalities review (Customer First Analysis) which has been produced in response to the Council's obligation to the Public Sector Equality Duty as outlined in the Equality Act 2010. No adverse impact on any protected characteristic has been identified as a result of this policy.

## **19. Data protection**

Information about how we use your information can be found on the Council's website at [www.hyndburnbc.gov.uk/privacy-notice](http://www.hyndburnbc.gov.uk/privacy-notice)

## **Appendix 1**

# **National Non Domestic Rates 2017 Revaluation Relief Scheme**

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August 2017

## **1. Introduction**

1.1 In the spring 2017 Budget, the Government announced a series of temporary financial support schemes for businesses affected by the revaluation of National Non Domestic Rates effective from April 2017. This document covers Hyndburn Borough Council's policy on:

- Supporting Small Businesses Relief

- Business Rate Relief Scheme for Pubs
- Discretionary Revaluation Relief Scheme

## 2. Supporting Small Businesses Relief

- 2.1 The standard transitional relief scheme provides for changes to rateable values and does not provide support in respect of changes in relief such as small business rates relief and so the Supporting Small Businesses Relief is available to business rates payers who, as a result of the revaluation, are losing some or all of their small business or rural rate relief and are facing large increases as a result.
- 2.2 This relief will ensure that the increase per year in the bills of these ratepayers is limited to the greater of:
- A cash value of £600 per year (£50 per month). This cash minimum increase ensures that those ratepayers currently paying nothing or very small amounts are brought into paying something, or
  - The matching cap on increases for small properties in the transitional relief scheme.

## 3. Business Rate Relief Scheme for Pubs

- 3.1 The Government has also announced a new relief scheme for pubs that have a rateable value below £100,000. Under the scheme, eligible pubs will receive up to £1000 discount on their bill. The relief will apply only to 2017/18.
- 3.2 Eligibility criteria have been sent to local authorities who will contact eligible pubs directly to notify them of how to apply for the relief.

## 4. Proposed Discretionary Revaluation Relief Scheme (DRRS)

- 4.1 At the spring 2017 Budget the Government announced a £300m discretionary fund over four years from 2017-18 to support those businesses that face the steepest increases in their business rates bills as a result of the 2017 revaluation.
- 4.2 The intention is that every billing authority in England will be provided with a share of the £300m to support their local businesses. Billing authorities are expected to use their share of the funding to develop their own discretionary relief schemes to deliver targeted support to the most hard-pressed ratepayers. The £300m will cover the four years from 2017/18:
- £175m in 2017/18
  - £85m in 2018/19
  - £35m in 2019/20
  - £5m in 2020/21

4.3 To allocate these resources, the Government has assumed that local authorities will provide support only to those businesses who are facing an increase in their bills following revaluation – and have made this a condition of the grant. It further assumes that, by and large, more support will be provided to;

- Businesses/ratepayers that face the most significant increase in their bills; and
- Ratepayers occupying lower value properties.

4.4 In line with these broad assumptions about how local authorities will design their revaluation relief schemes, the Government has allocated resource to each billing authority by working out the total increase in bills (excluding the impact of transitional relief and other reliefs), for every rateable property in the billing authority’s area that satisfies both of the following criteria:

- a. The rateable property has a rateable value for 2017-18 that is less than £200,000;
- b. The increase in the rateable property’s 2017-18 bill is more than 12.5% compared to its 2016-17 bill (before reliefs).

4.5 Funding for Hyndburn is:

Amount of discretionary pot awarded (£000s)			
2017-18	2018-19	2019-20	2020-21
100	38	16	2

## 5. Consultation

5.1 Hyndburn Borough Council’s draft DRRS was put to public consultation from 20<sup>th</sup> July 2017 to 19<sup>th</sup> August 2017. The results of this consultation have informed this policy.

## 6. Scheme principles

6.1 The basic principles underpinning this policy proposal are:

- The Council wishes to operate in a fair and transparent way ensuring its powers are used sensibly, consistently and coherently to benefit the community as a whole;

- The Council wants to deliver its services through a sound and well maintained corporate governance framework that provides clarity on the number and value of awards made;
- 6.2 In line with the Government’s recommendations outlined in paragraphs 4.3 and 4.4, the Council will provide support only to those businesses that are facing an increase in their business rates bills following the 2017 revaluation (this is a condition of the grant).
- 6.3 This policy will also follow Government expectation in that it will aim to support businesses facing the most significant increase in their bills and those who are occupying lower value properties.
- 6.4 The Discretionary Revaluation Relief will not be considered for the following types of businesses:
- a) Financial services (e.g. banks, building societies, cash points, bureau de change, payday lenders, betting shops, pawn brokers);
  - b) Medical services (e.g. health centres, vets, dentists, doctors, osteopaths, chiropractors);
  - c) Professional Services (e.g. solicitors, accountants, insurance agents/financial advisors, tutors, funeral services);
  - d) Post Office sorting offices;
  - e) Other services (e.g. estate agents, letting agents, employment agencies, car showrooms);
  - f) Properties that are operated by the same organisation/business. This applies where the business runs three or more properties in the U.K or in the U.K and overseas;
  - g) Ratepayers in receipt of re-occupation relief in 2016/17 and/or 2017/18;
  - h) Ratepayers taking up occupation of properties after 1 April 2017;
  - i) Properties which were not on the rating list at 1 April 2017. (Relief will not apply where properties are entered into the list retrospectively);
  - j) Properties which are unoccupied;
  - k) Properties where any arrears due from 2016/17 or earlier were not cleared by 31/05/17 or by arrangement with the Council;
  - l) Where the award of relief would not comply with EU law on State Aid.

## **7. How Discretionary Revaluation Relief will be calculated**

- 7.1 Discretionary Revaluation Relief is calculated after any or all of the following have been applied:
- a) Exemptions and other Reliefs;
  - b) Transitional Relief or Premium;
- and after the application of the Business Rates Supplement. Discretionary Revaluation Relief does not apply to the supplement.

## **8. State Aid**

- 8.1 State Aid law is the means by which the European Union regulates state funded support to businesses. Providing discretionary relief to ratepayers is likely to amount to State Aid. However the support for ratepayers will be State Aid compliant where it is provided in accordance with the De Minimis Regulations (1407/2013)2.
- 8.2 The De Minimis Regulations allow an undertaking to receive up to €200,000 of De Minimis aid in a three year period (consisting of the current financial year and the two previous financial years).
- 8.3 To administer De Minimis it is necessary for the Council to establish that the award of aid will not result in the undertaking having received more than €200,000 of De Minimis aid. Further information on State Aid law can be found at <https://www.gov.uk/state-aid>

## **9. Managing the Process**

- 9.1 To ensure transparency, fairness and consistency, businesses must meet eventual scheme criteria and any consideration to award relief under this policy will only be considered after the signing of the State Aid declaration.
- 9.2 All applications must use the standard application form with additional supporting information attached. The Council will encourage emailed applications wherever possible to support our e-services agenda.

## **10. Decisions and awards**

- 10.1 This is a discretionary scheme; there is no right of appeal on any decision made. Any requests for a revision will be dealt with on a case by case basis.
- 10.2 Awards of Discretionary Rate Relief will be deducted from ongoing business rates liability which will reduce the overall bill for the ratepayer. There is no cash alternative to an award.
- 10.3 Any overpaid awards, either as a result of applicant misrepresentation, local authority error or an adjustment in the rateable value of the property will be recovered from the ratepayer directly.

## **11. Scheme Review**

- 11.1 This scheme will be reviewed annually, or sooner should the Government announce any changes to criteria, eligibility or funding levels.

## **12. Complaints**

- 12.1 The Council's Complaints Procedure will apply in the event of any complaint about the application of this policy.

### **13. Equalities**

- 13.1 This policy is accompanied by a Customer First Analysis which has been produced in response to the Council's obligation to the Public Sector Equality Duty as outlined in the Equality Act 2010. No adverse impact on any protected characteristic has been identified as a result of this policy.

## **Appendix 2 - Application Form – Discretionary Hardship Relief**

**Section 1: Your details**

Your National Non Domestic Rates reference number

1	0							
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Your Title:

Your surname:

Your first name(s):

Company Name

Your position at the company or business

Your full address (if used as a billing address):

Postcode:

Preferred telephone number:

Email address:

Address of property for which this Discount is being applied:

Postcode:

If someone else is helping you with this form, please give their details:

Their surname:

Their first name(s):

Their full address:

Postcode:

Their preferred telephone number:

Relationship to you and your business:

**Section 2: your application.**

National Non Domestic Rates Relief being applied for

Please provide a written statement outlining how your business meets the criteria of the National Non Domestic Rates Discretionary Discount you are applying for. For example, please detail how your business contributes to the local economy in terms of local investment and job opportunities.

Do you own or operate from any other properties both within and outside Hyndburn? If so please provide details:

Is the property undergoing any major structural renovations?

Is the property occupied? If not by you, please provide the occupant's details:

### Section 3: statement of income and expenditure

Please provide a verified statement of accounts for the period for which you are claiming discretionary relief.

Please provide a full verified statement of accounts for the last full financial year.

We may require further information from you in order to consider your application, we will contact you if this is the case.

### Section 4: declaration

I declare that the information I have given on this form is true and correct. I understand that I may be prosecuted if I try to get a National Non Domestic Rates Discretionary Hardship award dishonestly. I authorise Hyndburn Borough Council to make enquiries necessary to verify the details I have given on this form.

Your signature:

Date

### Section 4a: declaration to be signed if you have completed this form on behalf of someone else:

I declare that the information I have given on this form is true and correct. I understand that I may be prosecuted if I try to get a National Non Domestic Rates Discretionary

Hardship award dishonestly on behalf of the person named in Section 1 as the applicant. I confirm that I have been given permission by the applicant to complete this form on their behalf. I confirm that I understand that I may not be entitled to any information about this applicant or this application as a result of completing this form. I authorise Hyndburn Borough Council to make enquiries necessary to verify the details I have given on this form.

Your signature:

Date:

Our data privacy notice can be found at [www.hyndburnbc.gov.uk/privacy-notice](http://www.hyndburnbc.gov.uk/privacy-notice)

## Customer First Analysis – NNDR Mandatory, Discretionary and Hardship Relief Scheme

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The Council's response to the public sector equality duty is a comprehensive Customer First Analysis.

### ***Purpose***

- **What are you trying to achieve with the policy / service / function?**

National Non Domestic Rates legislation provides for mandatory relief for rate payers – this policy outlines the Council's approach to this requirement.

Legislation also requires billing authorities to consider discretionary and hardship relief policies – this policy outlines the Council's approach to these requirements.

- **Who defines and manages it?**

The scheme has been devised and implemented by Benefits, Revenues and Customer Contact management team.

- **Who do you intend to benefit from it and how?**

Business ratepayers in Hyndburn who may be eligible for rate relief in any of these categories.

- **What could prevent people from getting the most out of the scheme?**

Lack of awareness – however, staff are fully trained, policies are available online and in paper format and the relief are generally well known and have been available for some time.

- **How will you get your customers involved in the analysis and how will you tell people about it?**

This CFA will be available online as part of our policy availability. Consultation is not intended at this stage.

### ***Evidence***

- **How will you know if the policy delivers its intended outcome / benefits?**

Local businesses will receive financial support.

- **How satisfied are your customers and how do you know?**

The reliefs outlined in this policy have not been subject to any appeals.

- **What existing data do you have on the people that use the service and the wider population?**

Business rates billing data.

- **What other information would it be useful to have? How could you get this?**

N/A at this stage.

- **Are you breaking down data by equality groups where relevant (such as by gender, age, disability, ethnicity, sexual orientation, marital status, religion and belief, pregnancy and maternity)?**

No – this information is not relevant to NNDR billing.

- **Are you using partners, stakeholders, and councillors to get information and feedback?**

This policy will be presented to cabinet and as it is subject to annual review, comment and feedback is welcome at any stage and will be taken into consideration at review.

### ***Impact***

- **Are some people benefiting more – or less - than others? If so, why might this be?**

Only eligible businesses will benefit from any relief.

### ***Actions***

- **If the evidence suggests that the policy / service / function benefits a particular group – or disadvantages another - is there a justifiable reason for this and if so, what is it?**

N/A – legislative requirements form the basis of eligibility.

- **Is it discriminatory in any way?**

No, however this policy will be monitored throughout its implementation for any unintended consequences.

- **Is there a possible impact in relationships or perceptions between different parts of the community?**

Not known. We do not hold enough data on the protected characteristics of the ratepayers or their customer profiles to identify any issues however this will be monitored.

- **What measures can you put in place to reduce disadvantages?**

Not known at this stage. The policy and any unintended consequences will be monitored throughout.

- **Do you need to consult further?**

Not at this stage.

- **Have you identified any potential improvements to customer service?**

Not as part of this policy review.

- **Who should you tell about the outcomes of this analysis?**

This analysis will be included with all documents available to the public as part of our commitment to transparency.

- **Have you built the actions into your Business Plan with a clear timescale?**

N/A

- **When will this assessment need to be repeated?**

The policy will be reviewed annually.

<b>REPORT TO:</b>		Cabinet	
<b>DATE:</b>		10 October 2018	
<b>PORTFOLIO:</b>		Cllr Joyce Plummer - Resources	
<b>REPORT AUTHOR:</b>		Wendy Peck – Licensing Manager	
<b>TITLE OF REPORT:</b>		Adoption of the Institute of Licensing Guidance – Determining the suitability of applicants and licensees in the hackney carriage and private hire trade	
<b>EXEMPT REPORT (Local Government Act 1972, Schedule 12A)</b>	<b>Options</b>	Not applicable	
<b>KEY DECISION:</b>	<b>Options</b>	If yes, date of publication:	

## 1. Purpose of Report

- 1.1 To seek approval for the adoption of the Institute of Licensing Guidance – “Determining the suitability of applicants and licensees in the hackney carriage and private hire trades” in place of the current conviction policy.

## 2. Recommendations

- 2.1 Cabinet approves the adoption of the guidance attached at Appendix 1 that has been published by the Institute of Licensing in conjunction with the Local Government Association (LGA), Lawyers in Local Government (LLIG) and the National Association of Licensing Enforcement Officers (NALEO) to assist Councils when determining the suitability of applicants and licensees in the hackney carriage and private hire trades to replace the current convictions policy with immediate effect.

## 3. Reasons for Recommendations and Background

- 3.1 The overriding aim of any Licensing Authority when carrying out its functions in relation to the licensing of hackney carriage and private hire drivers, vehicles and private hire operators must be the protection of the public.
- 3.2 The relevant legislation provides that any person must satisfy the Council that they are a ‘fit and proper person’ before any licence can be granted and further they must remain ‘fit and proper’ throughout the period of their licence. To assist the Council in determining whether an individual is a ‘fit and proper’ person to hold a licence, and for reasons of transparency, so that applicants can be aware of what our requirements are, the Council has had a Convictions Policy for several years. A copy of the Council’s

current convictions policy is attached at Appendix 2. This policy is based upon the current AGMA model.

- 3.3 The Institute of Licensing in conjunction with the LGA, NALEO and LLIG, after extensive consultation with stakeholders, have produced a comprehensive policy which looks at all aspects of determining the suitability of applicants and licensees in the hackney carriage and private hire trade.
- 3.4 The document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. 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.' As with any guidance it provides a starting point from which decisions can be made taking into account the particular merits of each case.
- 3.5 The guidance, unlike our current convictions policy, contains no detailed list of offences. All offences are allocated to a general category such as 'Drugs' or 'Dishonesty.' This prevents it being argued that a specific offence is not covered by the Policy as it is 'not on the list.' This will also mean that the Policy will not have to be continuously updated as new offences emerge.
- 3.6 In preparing the document the Institute of Licensing working party consulted with and considered the issues from all perspectives including councillors, licensing officers, lawyers, the hackney carriage and private hire trade, academics, the Probation Service and the Police. The working party also included leading legal experts on licensing law and procedures. The LGA and IoL hope that the new guidance will be adopted by as many local authorities as possible to provide a greater level of consistency and fairness in decision making across the country and it is understood that around 12 local authorities have already adopted the guidance since its publication in April 2018.

#### **4. Alternative Options considered and Reasons for Rejection**

- 4.1 The Council could take no action and continue with the current Conviction Policy. However this new guidance is the result of an extensive piece of work carried out by highly respected and knowledgeable practitioners and lawyers in the field of licensing and as such is a far more comprehensive guidance than our current policy.

#### **5. Consultations**

- 5.1 The Institute of Licensing's working party carried out extensive consultation before introducing the guidance as set out in the report.
- 5.2 Consultation has also been carried out with members of the hackney carriage and private hire trade in Hyndburn. There was only one response received, which is attached at Appendix 3. The representation mostly relates to matters that are not subject to any change from the current situation and the respondent appears to misunderstand some aspects of the Council's legal powers as licensing authority. Copies of the representation and the licensing managers' response to the points raised

are attached at appendix 3 and 4 respectively and members are asked to consider both before reaching a decision in respect of this matter.

**6. Implications**

<b>Financial implications (including any future financial commitments for the Council)</b>	None
<b>Legal and human rights implications</b>	Each case must be determined on its own merits having regard both to the convictions policy and to the facts and circumstances of the specific case. Members are not bound by the terms of the convictions policy and will be able to make exceptions to it if they consider this appropriate. Applicants and existing licensees also have the right to appeal to the magistrates court in respect of the refusal or suspension of a licence.
<b>Assessment of risk</b>	No specific risks have been identified.

<p><b>Equality and diversity implications</b>  A <a href="#">Customer First Analysis</a> should be completed in relation to policy decisions and should be attached as an appendix to the report.</p>	<p>The Council is subject to the public sector equality duty introduced by the Equality Act 2010. When making a decision in respect of the recommendations in this report Cabinet must have regard to the need to:</p> <ul style="list-style-type: none"> <li>• eliminate unlawful discrimination, harassment and victimisation; and</li> <li>• advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and</li> <li>• foster good relations between those who share a relevant protected characteristic and those who don't.</li> </ul> <p>For these purposes the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. To assist the Cabinet in this regard a Customer First Analysis has been carried out as part of the review process and is attached as Appendix 4 to this report. Cabinet is advised to consider the Customer First Analysis and its obligations in respect of the public sector equality duty when making a decision in respect of the recommendations contained in this report.</p>
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**7. Local Government (Access to Information) Act 1985:  
List of Background Papers**

7.1 Institute of Licensing – Guidance on determining the suitability of applicants and licensees in the private hire and hackney carriage trade. (appendix 1)

Current Convictions Policy (appendix 2)

Representation (appendix 3)

Summary of points raised and responses (appendix 4)



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# 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

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- 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 qualifications<sup>1</sup>. 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

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<sup>1</sup> 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*<sup>2</sup>.

- 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.

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<sup>2</sup> [2007] 1 WLR 2067

## Chapter 2: Offenders and Offending - An Overview

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- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.<sup>3</sup> 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 harm<sup>4</sup>. 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.

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<sup>3</sup> DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

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

- 2.6 Flaud<sup>5</sup> 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 place<sup>6</sup>.
- 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 future<sup>7</sup>. 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%<sup>8</sup>. 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 offences<sup>9</sup>.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity<sup>10</sup>. 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 population<sup>11</sup>. 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.

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<sup>5</sup> 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.

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

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

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

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

<sup>10</sup> 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

<sup>11</sup> 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”<sup>12</sup>.
- 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”<sup>13</sup>.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over<sup>14</sup>. 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 relationships<sup>15</sup>. 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 males<sup>16</sup>.
- 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 desist<sup>17</sup>. 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 desistance<sup>18</sup>. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

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

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

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

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

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

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

<sup>18</sup> Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3<sup>rd</sup> 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”<sup>19</sup>.

- 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.

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<sup>19</sup> 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

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- 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” person<sup>20</sup>.
- 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 UK<sup>21</sup>.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.<sup>22</sup>
- 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*<sup>23</sup>. 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?’<sup>24</sup>
- 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.

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

<sup>21</sup> 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.

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

<sup>23</sup> [2002] EWHC 1145 (Admin), [2003] RTR 199

<sup>24</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> 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.”<sup>25</sup>

This “information” can include any pre-conditions or tests that they consider necessary

3.20 Some of these are universal, such as medical assessments<sup>26</sup>. 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 declared<sup>27</sup>) 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 maker<sup>28</sup>.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks<sup>29</sup> 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.

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<sup>25</sup> Local Government (Miscellaneous Provisions) Act 1976 s57(1)

<sup>26</sup> See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

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

<sup>28</sup> See *Adamson v Waveney District Council* [1997] 2 All ER 898

<sup>29</sup> “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 suitability<sup>30</sup>.
- 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 account<sup>31</sup>. 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)

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

<sup>31</sup> *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

authority<sup>32</sup>. 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 person<sup>33</sup>.

- 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?”<sup>34</sup>
- 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

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

<sup>33</sup> Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

<sup>34</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> 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 organisation<sup>35</sup>. 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 licence<sup>36</sup> 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

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<sup>35</sup> See s57(1)(c) of the 1976 Act.

<sup>36</sup> 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?”<sup>37</sup>

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

## Chapter 4: Guidance on Determination

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- 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 partnership<sup>38</sup>) 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.

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<sup>38</sup> 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 conviction<sup>39</sup>. Fixed penalties and community resolutions will also be considered in the same way as a conviction<sup>40</sup>.
- 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

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

<sup>40</sup> 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

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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.

The Institute is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

The Institute is also grateful to others who have contributed to the work of the project group, including former probation officer Hannah Jones (now Housing Officer at Flintshire Council) who has assisted the group in providing the chapter on 'Offenders and Offending'.

This project has been further enhanced by invaluable contributions from the following individuals and organisations:

- Ellie Greenwood and Rebecca Johnson, Local Government Association
- Tim Briton, Lawyers in Local Government
- Ben Atrill
- Suzy Lamplugh Trust
- Councillor Richard Wright, North Kesteven District Council
- Professor of Criminology Fiona Measham, Durham University
- Councillor Philip Evans, Conwy County Borough Council
- Councillors Catriona Morris and Mick Legg, Milton Keynes Council
- Louise Scott Garner
- Jenna Parker, Institute of Licensing

Finally, grateful thanks go to all those who responded to the initial fact-finding survey and the subsequent consultation on the draft guidance.

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National Association of Licensing and Enforcement Officers (NALEO). [www.naleo.org.uk](http://www.naleo.org.uk)



**BOROUGH OF HYNDBURN  
HOME OF THE ACCRINGTON PALS**

APPROVED 11<sup>TH</sup> OCTOBER 2017

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**STATEMENT OF POLICY AND GUIDELINES  
RELATING TO THE RELEVANCE OF  
CONVICTIONS, FORMAL / SIMPLE CAUTIONS,  
COMPLAINTS AND OTHER MATTERS WHICH MAY  
IMPACT ON THE GRANTING HOLDING, OR  
RENEWAL OF A HACKNEY CARRIAGE / PRIVATE  
HIRE LICENCE**

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## **STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS**

In the Council's view this statement and the guidelines that follow are compatible with The Human Rights Act 1998 and the rights and freedoms under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**This document aims to provide guidance to any person with an interest in hackney carriage and private hire vehicle licensing. In particular, but not exclusively:**

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Applicants for operators licences
- Existing licensed operators whose licences are being reviewed
- Licensing Officers
- Members of the Licensing Judicial Committee (hereinafter referred to as the "Committee")
- Courts hearing appeals against local authority decisions

The4 statement and guidelines are intended to provide transparency and consistency in accordance with the principles of good enforcement and relevant Regulatory Codes. A copy of the Regulators Code can be obtained at:-

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

## Background

1. In this policy the word “individual” includes an existing licence holder, an applicant for a new licence, and an applicant for the renewal of an existing licence.
2. Licences for drivers of hackney carriages, private hire vehicles or private hire operators may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence.
3. In this policy the word “issue” is used. This includes complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal conviction, caution or other disposal). E.g. incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Committee or officers are satisfied that the incident occurred based on the balance of probabilities)
4. Licences for operators of private hire vehicles may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence.
5. The document is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous convictions and cautions.
6. The Council is concerned to ensure:
  - a. That a person is a fit and proper person.
  - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
  - c. The safeguarding of children and young persons and vulnerable adults.
7. The public are not normally permitted to attend Committee hearings for private hire, hackney carriage driver applications or private hire operator applications or reviews, however, in determining whether to grant, renew or revoke a licence the Committee and Officers will take into account the rights of the wider public and balance these against the human rights of the applicant.
8. When submitting an application for a licence to drive a hackney carriage or private hire vehicle, or for an operator’s licence, individuals are required to declare all previous convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all fixed penalties and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.

9. The information given will be treated in confidence and save where it is required for the purpose of legal proceedings, or the performance of any other legal obligation, will only be taken into account in relation to the relevant application to assist the Council in determining whether the applicant is a fit and proper person to hold a licence for the purposes of sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 and 62 of the Act (i.e. suspension, revocation or refusal to renew a licence).
10. Applicants for a licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure and Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the licensing section will where appropriate contact other agencies for any other information which they may hold for instance, housing providers, Children's Services and Lancashire Constabulary. Information received from the Disclosure and Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the application is determined or any appeal against such determination is decided.
11. The disclosure of a criminal convictions/fines or cautions or other relevant information relating to an individual's conduct will not necessarily debar an individual from being granted, retaining or renewing a licence. It will depend on whether or not the individual can satisfy the Council that they are a fit and proper person to hold such a licence.
12. The Council may fail to be satisfied that an individual is a fit and proper person to hold a driver's licence or an operator's licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a licence.
13. In considering evidence of an individual's good character and fitness to hold a driver's licence or operator's licence, where previous convictions/cautions or other information relating to criminal matters/character is disclosed, the Council will consider the nature of the offence/issue and penalty. When it was committed/took place, the date of conviction/issue and the length of time which has elapsed, the individual's age when the offence was committed/issue took place whether or not it is part of a pattern of criminal behaviour, the intent, the harm which was, or could have been caused and any other factors which might be relevant. Where an individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*].
14. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining new/renewal applications for drivers' licences and operators licences and when considering whether to take any action against an existing licence holder.

15. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an individual, If an individual has a conviction for an offence not covered by the guidelines regard will be given to the factors at paragraph 10 when deciding whether any action should be taken.

Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines

16. The guidelines are not an attempt to define what a “fit and proper person” is.
17. Any individual who is refused a driver’s licence or has such a licence suspended or revoked on the ground that the Council is not satisfied he/she is a fit and proper person to hold such a licence has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.
18. Any individual who is refused an operator’s licence has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.
19. The guidance will be used for the determination of new applications, the renewal of existing licences and the review of existing licences in relation to hackney carriage drivers, private hire drivers and operator licences.

### **GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS and OTHER INFORMATION**

#### **General Policy**

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers and operators are fit and proper persons to hold licences. One aspect of that is the extent to which previous convictions, including but not limited to convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and take advantage of passengers or abuse or assault them.
3. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
4. A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
  - a. Remain free of conviction for an appropriate period; and

- b. Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). A person with a conviction for a single serious offence or a number of separate offences is not barred from applying for a private hire or hackney carriage driver licence, but would normally be expected to remain free from conviction for an appropriate period (which will depend on the nature of the offence).
  - c. Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.
5. Amongst situations where it may be appropriate to depart from the general policy, for example, may be situations where the offence is an isolated one with mitigating circumstances or where a conviction defaults outside of the policy between the application and determination date. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. In any case which involves certain specified sexual offences, murder or manslaughter a licence will normally be refused.
6. The Council will consider any information/ representations received that a person is not/ no longer a “fit and proper” person or has committed a breach of a condition of a licence. If that person is considered not to be a fit and proper person the Council may refuse, revoke or suspend a licence for any specified period.
- a. Hearing with notice – Where the Committee is to consider whether or not a person is a “fit and proper” person, notice of the time and date when the Committee will be convened will then be given ahead of the date listed in order to allow the person to seek independent legal advice and to attend and be represented at the hearing.
  - b. Hearing without notice - Where the Committee is convened as a result of sensitive information being received by the Council an assessment will be undertaken in balancing a person’s right to a fair hearing against whether or not it is in the public interest to take any action without them being present. Urgent decisions may be taken by the Executive Director (Legal and Democratic Services) under delegated powers.
  - c. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.
7. This policy refers to matters being decided by the Committee. In each such case the decision may also be taken by the Executive Director (Legal and Democratic Services), or her nominee, pursuant to the Council’s scheme of delegation to officers.

The following examples afford a general guide on the action, which might be taken where convictions are disclosed:

### **1. Offence of Dishonesty**

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include vulnerable adults and children.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing, passengers may include especially vulnerable people. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty. In particular, an application will normally be refused where the individual has a conviction for an offence or similar offences or offences which replace the below offences and the conviction is less than 3 years prior to the date of application

- i. Theft
- ii. Burglary
- iii. Fraud
- iv. Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- v. Handling or receiving stolen goods
- vi. Forgery (e.g. producing false insurance policy)
- vii. Conspiracy to defraud
- viii. Obtaining money or property by deception
- ix. Other deception
- x. Blackmail

## **2. Violence**

Members of the public and in particular, the elderly, infirm and children or vulnerable adults entrust their personal safety to private hire and hackney carriage drivers whenever they take a journey.

Passengers often travel alone and are vulnerable to physical attack etc.

Users of private hire and hackney carriage vehicles have a right to expect that drivers are not individuals with a predisposition towards or a propensity for violent behaviour at any level.

### **a) Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)**

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons.

It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.

Where the commission of an offence involved loss of life a licence will normally be refused. If a conviction is more than 10 years old the application will be referred to the Executive Director (Legal and Democratic Services) or the Committee for determination. If a conviction less than 5 years old the application will generally be refused.

#### **b) Offences against Other Persons**

As hackney carriage and private hire vehicle drivers maintain close contact with the public, where the commission of an offence involved loss of life a licence will normally be refused.

In other cases where the conviction is less than 10 years prior to the date of the application will be referred to the Executive Director of Legal and Democratic Services or the Licensing Judicial Committee for determination. If a conviction is less than 3 years old the application will generally be refused.

In particular:

- i. An application will normally be refused where the individual has a conviction for an offence or similar offence(s), or similar offence(s) which replace the below offences:
  - Murder
  - Manslaughter
  - Manslaughter or culpable homicide while driving
  
- ii. An application will also normally be refused where the individual has a conviction for an offence (or similar offence(s) or similar offence(s) which replace the below offences) and the conviction is less than 10 years prior to the date of application:
  - Arson
  - Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
  - Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
  - Grievous bodily harm with intent (s.18 Offences Against the Person Act)
  - Grievous bodily harm with intent (s.20 Offences Against the Person Act)
  - Robbery
  - Possession of firearm
  - Riot
  - Assault Police
  - Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
  - Violent disorder
  - Resisting arrest

iii. An application will also normally be refused where the individual has a conviction for an offence (or similar offence(s) or similar offence(s) which replace the below offences) and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)

iv. An application will also normally be refused where the individual has a conviction for an offence (or similar offence(s) or similar offence(s) which replace the below offences) and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Harassment- breach of restraining order- on conviction Protection from Harassment Act 1997 s5(5) s. 5(6)
- Obstruction
- Possession of offensive weapon
- Criminal damage
- Battery

### **3. Drugs**

An application will normally be refused where the individual has a conviction for an offence related to the supply of drugs and the conviction is less than 5 years prior to the date of application.

After 5 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

An application will normally be refused where the individual has more than one conviction for offences related to the possession of drugs and the convictions are less than 5 years prior to the date of the application.

An offence related to the supply of drugs and the conviction is less than 10 years prior to the date of application will be referred to the Executive Director (Legal and Democratic Services) or the Committee for determination. A conviction less than 5 years old will generally be refused.

An application from an individual who has an isolated conviction for an offence related to the possession of drugs within the last 5 years will be referred to the Executive Director (Legal and Democratic Services) or the Committee for determination. If a conviction is less than 3 years old the application will generally be refused.

If any applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

#### **4. Sexual and Indecency Offences**

Any individual currently on the sex offenders' register would not normally be granted a licence.

##### **a) Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)**

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

Where the commission of a sexual offence involves a child or young person an application for a licence will normally to be refused.

##### **b) Offences against persons other than children / young persons**

As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, individual with a conviction for rape, indecent assault, or other similar offences or similar offences under the Sexual Offences Act 2003, will normally be refused a licence.

Individuals with a conviction relating to sexual offences such as soliciting, importuning, indecent exposure or other similar offences or similar offences under the Sexual Offences Act 2003, will normally be referred to the Executive Director Legal and Democratic Services or the Judicial Committee for determination where the conviction is less than 10 years prior to the date of the application. Applicants on the sex offenders register or with a conviction less than 5 years old will generally be refused.

##### **c) Intelligence and other information which has not resulted in a criminal conviction**

The Council will sometimes be made aware of other intelligence or low level information about an individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Where appropriate, officers will refer such information/ intelligence to the Licensing Manager. Any additional information gathered through this process

may then be taken into account by the Executive Director Legal and Democratic Service or the Committee when determining whether an applicant/driver/operator is a fit and proper person.

## **5. Drunkenness**

Driving whilst under the influence of drink is unacceptable under any circumstances and puts not only the driver, but passengers and other road users at risk. Such irresponsible behaviour is not conducive with the responsibilities of a private hire or hackney carriage driver.

The Council takes a serious view of anyone who attempts to drive a licensed vehicle whilst under the influence of alcohol. If a driver is reported to the Council by the police for having alcohol in his/her system whilst in control of a licensed vehicle, whether over the legal limit or not, the matter will be referred to the Committee or the Executive director (Legal and Democratic Services) for consideration. It is recommended that alcohol should not be consumed for up to 12 hours before driving a hackney carriage or private hire vehicle.

### **i. With a motor vehicle (No Disqualification)**

A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink.

An application will normally be refused where the individual has a conviction, which does not result in disqualification, for an offence within 2 years of the date of the application.

More than one conviction for this type of offence, within the last 5 years of the date of conviction is likely to merit refusal.

### **ii. With a motor vehicle (Disqualification)**

Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should normally elapse from the date of the restoration of the DVLA licence before an applicant is considered for a licence.

In addition, individual will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were diagnosed as an alcoholic.

### **iii. Not in a motor vehicle**

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate.

More than one conviction for drunkenness could indicate a medical problem necessitating critical examination and refusal or revocation of a licence.

In addition, individual will generally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were diagnosed as an alcoholic.

## 6. MOTORING CONVICTIONS

### a) Major Traffic Offences

New applicants and existing licensed drivers with a conviction for a 'Major Traffic Offence' as defined below, which is less than 5 years prior to the date of the application (the present date in relation to existing licensed drivers) will be referred to the Committee or the Executive Director (Legal and Democratic Services) for determination. A conviction less than 2 years prior to the date of the application will generally be refused.

Where the conviction resulted in a period of disqualification, an application will normally be refused unless a period of 3 years free from conviction has lapsed from the restoration of the DVLA licence and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

In addition, applicants will generally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were diagnosed as an alcoholic.

**For the purposes of these guidelines the following motoring offences are classed as 'Major Traffic Offences':**

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of Court
BA30	Attempting to drive while disqualified by order of Court
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for alcohol analysis
CD71	Causing death through careless driving the failing to supply a specimen for drug analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit

DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving / attempting to drive
DR61	Failure to provide specimen for drug analysis in circumstances other than driving / attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

### **Aiding, Abetting, Counselling or Procuring**

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12).

### **Causing or Permitting**

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14).

### **Inciting**

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16).

Or similar offences or offences which replace the above offences.

## **b) Intermediate Traffic offences**

**Any Intermediate Traffic Offence, which has attracted 4 or more penalty points will be treated as though it were a Major Traffic Offence.**

### **One Conviction**

Where an individual has a single Intermediate Traffic Offence will normally be expected to show a period of at least 6 months free from conviction before an application is considered.

### **Two or more Convictions**

Where an individual has 2 or more Intermediate Traffic Offences they will normally be expected to show a period of at least 12 months free from conviction before an application is considered.

If any conviction for an Intermediate Traffic Offence results in a disqualification, the individual should refer to the section of these guidelines entitled “disqualification”.

An applicant who has received a disqualification owing to the totting up system for any period of disqualification, will not normally be granted a licence unless they have held a DVLA licence for at least 12 months following the expiry of the period of the disqualification.

**For the purposes of these guidelines the following motoring offences are classed as ‘Intermediate Traffic Offences’:**

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyres
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
CU80	Breach of requirements as to control of the vehicle mobile phones etc
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration of other road users
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road – not resulting in a fixed penalty
SP40	Exceeding passenger vehicle speed limit

SP50	Exceeding speed limit on a motorway
SP60	Exceeding speed limit offence

### **Aiding, Abetting, Counselling or Procuring**

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12).

### **Causing or Permitting**

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14).

### **Inciting**

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16).

Or similar offences or offences which replace the above offences.

### **c) Minor traffic Offences**

Any Minor Traffic Offence which has attracted 4 or more penalty points will be treated as though it were an Intermediate Traffic Offence

#### **Single conviction**

Where an individual has a single Minor Traffic Offence in the 12 months immediately preceding the date of application, the application will normally be granted with a letter of warning being placed on the file.

#### **Two or more Convictions**

Where an individual has two or more Minor Traffic Offences in the 12 months immediately preceding the date of application an individual will normally be expected to show a period of at least six months free from conviction before an application is considered.

**For the purposes of these guidelines the following motoring offences are classed as 'Minor Traffic Offences':**

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
SP30	Exceeding statutory speed limit on a public road resulting in a fixed penalty
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines

TS30	Failing to comply with a “Stop” sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding “Stop” sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

**Aiding, abetting, counselling or procuring**

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

**Causing or permitting**

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

**Inciting**

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Or similar offences or offences which replace the above offences.

**d) Totting up without Disqualification**

There may be occasions where an applicant has accrued sufficient points under totting up for the court to consider disqualification, but successfully argues that exceptional hardship should apply and the court has not, therefore, imposed a disqualification. In these circumstances the Council expects the individual to supply full details of each of the matters that led to the totting up. The Council will take those matters into account in accordance with this policy when deciding whether to grant or refuse an application or whether to take action against an existing licence. Should the individual not supply full details of each of these matters then the Council will take the failure to supply such information into account when deciding whether to take any such action.

**e) Plying for Hire**

In the case of a private hire driver found guilty of an offence of plying for hire, the Committee would normally order the licence to be revoked or suspended.

**7. Breach of Conditions, Bye-laws and complaints**

Any breach of conditions, breach of bye-laws or complaint relating to a licence holders conduct may be referred to the Committee. A licence holder brought before the Committee will be dealt with by no further action, a formal warning, period of suspension or revocation. N.B. This does not influence any decision which may be made to instigate prosecution procedures for any offence committed.

**8. Guidance**

Licence holders will be referred to the Committee in situations where it is clear that the holder has failed to moderate their behaviour following verbal or written warnings administered by Licensing Officers. In any event, any licence holder who receives a third warning [verbal or written] in respect of a breach or complaint occurring within a 12 month period [calculated by reference to the date of the breach/complaint] will be referred to the Committee.

All genuine complaints are investigated as far as it is reasonably practicable to do so.

Where the Council administers a warning to a licence holder this does not preclude a referral to the Committee for the matter for which the licence holder has been warned.

In other cases an investigation may result in a warning. In certain situations the breach or complaint may be deemed so serious that an immediate referral to the Committee is warranted. In those cases the reasoning for the decision for the immediate referral will be recorded within the formal report to Committee.

### **9. Reapplication**

Individuals are advised that Council guidelines are that where an individual has had an application refused or a licence revoked, the Council would normally refuse any subsequent application made within 12 months of the date of the previous refusal or revocation unless there are substantial material changes in the circumstances affecting the individual's fitness and propriety.

### **10. Spent Convictions**

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.

The Council will only consider spent convictions if it appears to be relevant for deciding whether the individual is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction. The Council will in its consideration the nature of the offence(s), the history or pattern of offending, the lapse of time and whether all the convictions have previously been considered

## **FORMAL/ SIMPLE CAUTIONS AND ENDORSABLE FIXED PENALTIES**

**For the purpose of these guidelines formal/simple/conditional cautions and endorsable fixed penalties shall be treated as though they were convictions.**

### **11. Multiple convictions from Single Incident**

Where an individual has multiple convictions arising from a single incident, the convictions will generally be treated as one conviction for the purposes of these guidelines.

In these circumstances the period for which the individual would normally be expected to show free from conviction will be the longest applicable period calculated by reference to each offence.

### **12. Other Offences**

Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws and Section 167 Criminal Justice and Public Order Act 1994.

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") and Hackney Carriage Byelaws, is to ensure the protection of the public.

For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire and/or touting) when deciding whether an individual is to be treated as a fit and proper person to hold a licence.

In particular, an individual will normally be refused a licence if (s)he has been convicted of an offence under the Acts at any time during the 2 years preceding the application or has more than one conviction within the last 5 years preceding the date of the application.

### **13. Reviewing, suspension and revocation of a hackney carriage driver, private hire driver, joint driver and private hire operator's licences**

The above procedures for new applicants will also apply for those licensed drivers and/or operators who receive convictions, commit offences, etc., during the course of their licence.

Once granted licenses may only be suspended or revoked under the circumstances specified in: –

**(i) The governing legislation**

**(ii) The Statement of Policy Criteria for determining applications and relevance of convictions for the grant/renewal of a private hire driver, hackney carriage driver and joint vehicle driver**

The suspension or revocation of a licence could have the effect of depriving the licence holder of their livelihood so this option should only be used in the most serious cases.

A drivers' licence will only be suspended or revoked by the Executive Director (Legal and Democratic Services) after consultation with the chair of Judicial Committee.

Applicants for licences are required to notify the licensing authority of any conviction, caution or fixed penalty notice. Likewise once a licence has been granted a driver, proprietor or operator must notify the Council of any convictions, cautions or fixed penalty notices within 7 days of receiving them. Failure to do so could lead to suspension or revocation of the licence.

Contact details:

Licensing Department  
Hyndburn Borough Council  
Scaitcliffe House  
Ormerod Street  
Accrington  
BB5 0PF

Telephone Number: 01254 380611

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

These guidelines to convictions supersede all others and take effect from:

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Officer under Scheme Of Delegation? Is one person alone capable of an entire character examination? If so, what qualifications will that person need to have attained to make such a decision?

1 Can the local authority, without prejudice, and with full confidence, assure the trade that an Officer under a Scheme of Delegation is acting impartially in their decision process?

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.

2 The trade should take this very seriously. This proposal is a back door to allow the Licensing authority to act with impunity when making decisions as to whether a person is fit and proper. If we do not challenge it now it will come back to bite us in the very near future.

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.

3 Surely generalising all offenses is unfair? Is this being suggested to make it easier for the Licensing authority to apply decisions by bypassing current proper procedure?

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

4 Is the Institute of Licensing attempting to push these recommendations onto the trade without proper Government consultancy? If this is indeed the case, this proposal in its entirety should be rejected by the trade.

2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.<sup>3</sup> 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.

5 It must be made clear to the trade who or what the decision maker is. Also this proposal does not mention the procedure after revocation or refusal.

1) Will the current procedures remain in place? If the answer is yes they should be clearly

written in this proposal.

2) If the current process is to change, the new process should be clearly written in this proposal.

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 harm. 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 reoffending in generic terms.**

6 What courses have the decision makers been on to help them determine the risk of re-offending? If none, then how are they qualified to make such a decision? The question '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?' is subjective.

We are not all destined to get along, personal differences between current or potential new drivers and individual decision makers could sway the decision unfairly in the authorities favour.

Especially when this proposal seeks to remove all claim by the applicant to a free and fair decision by grouping all offences into a general category such as 'dishonesty' or 'drugs'. **This prevents it being argued by the applicant that a specific offence is different from another, it also prevents the applicant from arguing that a knife offense is different to a minor roadside altercation.**

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 declared) 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 maker**<sup>28</sup>.

7 **This proposal is untenable when it seeks to allow the Licensing Authority to make a decision based on anything other than a conviction.**

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.

(8) **(How is this fair? According to this, an Applicant can be judged unfit based on an unconfirmed complaint from anyone. THIS IS VERY DANGEROUS TO THE TRADE AND SHOULD BE QUESTIONED AT ALL LEVELS. The following 4 paragraphs should be scrutinised and questioned with the same level of voracity.**

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.

"4.10 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."

With regards to the new policy proposal and its relation to spent convictions.

## All Drivers

**Please pay particular attention to the following changes relating to spent convictions. If you commit one of the following offences and get a suspended sentence you will not be eligible for a licence until the whole term of the new conditions. Please also remember that in Paragraph 4.12 the policy states; "Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not**

**resulted in a conviction.” This is unfair at best and unlawful at worst.**

**Crimes resulting in death** will not be licensed.

**Exploitation** will not be licensed.

**Offences involving violence** at least **10 years** have elapsed since the completion of any sentence imposed.

**Possession of a weapon** at least **7 years** have elapsed since the completion of any sentence imposed.

**Sex and indecency offences** a licence will not be granted.

**Dishonesty** at least **7 years** have elapsed since the completion of any sentence imposed.

**Drugs, supply of** at least **10 years** have elapsed since the completion of any sentence imposed.

**Drugs, possession of** at least **5 years** have elapsed since the completion of any sentence imposed.

**Discrimination** at least **7 years** have elapsed since the completion of any sentence imposed.

**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.

**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.

### **Summing up**

**Clarity is required on the following points.**

- 1) Will licensing enforcement officers be given officer under a Scheme of Delegation status?
- 2) Where a decision to revoke or refuse a licence is made; Will all the current procedures of appeal remain unchanged?

- 3) Generalising all offences into one category is wholly unfair. To make an assumption that a minor argument is the same as any other offence is ludicrous. This part of the proposal should be removed in full.
- 4) When making a decision based on an applicants propensity to reoffend; What qualifications will the decision maker have attained to help make such a decision?
- 5) The Rehabilitation of Offenders Act 1974 states; “only relevant spent convictions should be considered by the decision maker” This act alone should persuade the policy makers that this proposal is unlawful when it states; **Within this document, any reference to “conviction” will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.**
- 6) The proposed introduction of new timescales for spent convictions is in some cases fully welcomed. But; clarification is required as in point 5. The two following proposals are, in our opinion overly zealous. We would like to discuss these two in particular in much greater detail.

**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.**

**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**

- 7, All the other proposals relating to spent convictions require FULL clarification as to whether this document is lawful in its aim to;
  - i) Include matters that amount to criminal behaviour, but which have not resulted in a conviction.
  - ii) Continue with the assumption that; All offences are allocated to a general category such as ‘dishonesty’ or ‘drugs.

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Point raised by consultee	Response
<p>The representation questioned posed the question:-</p> <p><b>1. Officer under scheme of delegation? Is one person alone capable of an entire character examination? If so, what qualifications will that person need to have attained to make such a decision?</b></p> <p><b>Can the local authority without prejudice and with full confidence assure the trade that an officer under a Scheme of delegation is acting impartially in their decision process?</b></p>	<p>This is no change to the current situation under the council's scheme of delegation. The Executive Director of Legal and Democratic Services is the officer that has been delegated to make these decisions but "borderline" cases are usually referred to Judicial Committee for consideration where the applicant or licensee has an opportunity to make representations.. The Councils current scheme of delegation is not part of this consultation process. Further all applicants aggrieved by a decision made by the Council are safeguarded by their right to appeal to the Court. The current delegation is to a solicitor with knowledge of licensing law and members of Judicial Committee receive training annually before they are able to serve on the Judicial Committee.</p>
<p>The representation in relation to the consideration of an individual's tendencies to reoffend made the comment:-</p> <p><b>2. The trade should take this very seriously. This proposal is a back door to allow the Licensing authority to act with impunity when making decisions as to whether a person is fit and proper. If we do not challenge it now it will come back to bite us in the very near future.</b></p>	<p>Again there will be no change in relation to how decisions are made. Members and officers under the scheme of delegation are very experienced in considering all applications on their own merits and would never act with impunity. As currently members will determine, after taking legal advice, what weight to attach to an applicant's previous convictions and whether there is a pattern of offending behaviour or other incidents which could mean that there is a propensity for a person to act in a particular way or re-offend, before making a decision. This is common practice throughout the Country and has always been common practice in Hyndburn. Again the applicant is safeguarded by his right to appeal to the Magistrates Court.</p>
<p>The representation in relation to the grouping of offences made the comment:-</p> <p><b>3. Surely generalising all offences is unfair? Is this being suggested to make it easier for the licensing authority to apply decisions by bypassing current proper procedure?</b></p>	<p>The first point to make is that the licensing authority would never consider trying to bypass proper procedures. Members will note from the current convictions policy that offences are in fact currently listed under very similar if not the same categories as the proposed policy. However in the existing policy the actual offences have been listed under the headings. The reason for not listing actual offences is clear. Over a period of time offences do change and new offences emerge.</p>

	<p>A clear example of an emerging offence is Child Sexual Exploitation which would have been unheard of at one time. We also have modern day slavery, and people trafficking offences which are becoming more and more prolific. By not listing specific offences the policy will not need to be amended every time a new offence emerges and further an applicant cannot argue that an offence should not be considered as it is not on the list. Members and officers are very capable of distinguishing between offences and determining what weight to attach to them when making a decision and this is what the law currently requires them to do.</p> <p>As stated in previous responses the applicant is further safeguarded by their right to appeal to the Magistrates Court.</p>
<p><b>4. Is the Institute of Licensing attempting to push these recommendations onto the trade without proper Government Consultation? If this is indeed the case, the proposal in its entirety should be rejected by the trade.</b></p>	<p>There is no requirement for the Institute of Licensing to consult with the Government. However this policy was produced by the Institute of Licensing in partnership with the Local Government Association, The National Association of Licensing Enforcement Officers and Lawyers in Local Government. It was widely consulted upon with licensing practitioners, members of the taxi trade, the police and the Probation Service. Furthermore the Council is free to determine its own convictions policy and does not have to accept the guidance produced by the IoL</p>
<p><b>5. It must be made clear to the trade who or what the decision maker is. Also this proposal does not mention the procedure after revocation or refusal.</b>  <b>(1) Will the current procedures remain in place? If the answer is yes they should be clearly written in this proposal.</b>  <b>(2) If the current process is to change, the new process should be clearly written in this proposal.</b></p>	<p>The policy does not change the identity of the decision taker. Any person aggrieved by a decision to refuse, revoke or suspend a licence will still have the right to appeal to the courts as the policy does not change the legal position in this regard. The identity of the decision taker is clearly set out in any decision notice as per the current procedures.</p>
<p><b>6. The representation makes reference to the test that members apply when making decision and it also questions the qualifications of the decision makers and their ability to make correct decisions. The test is set out below and the representation seems to imply that the test is too subjective.</b></p> <p><b>'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</b></p>	<p>Members who sit on the Licensing Judicial Committee will be aware that this is an age old test that has been used for years throughout the country by decision makers including licensing committees and magistrates courts. Members are perfectly qualified and very experienced in making decisions and member training is regularly carried out.</p>

**your son or daughter, spouse or partner, mother of father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’**

7. The representation questions the fact that other matters can be taken into account and that there does not need to be a conviction. This seems to be the basis of the comments marked 7 and 8 on the representation.

**The proposal is untenable when it seeks to allow the Licensing authority to make a decision based on anything other than a conviction.**

**How is this fair? According to this and applicant can be judged unfit based on an unconfirmed complaint from anyone. This is very dangerous to the trade and should be questioned at all levels.**

There is no change to the current procedure. By law the licensing authority can, and should take into account all aspects of a person’s behaviour. The Council have a duty to protect the public and to that end public protection must always be at the forefront of any decision makers mind when determining whether a person is a ‘fit and proper’ person.

All complaints are fully investigated and the decision maker will determine what weight to place on any evidence pertaining to an allegation before making a decision. In most cases the applicant / licensee will be interviewed by licensing officers and have the opportunity to make representations to Judicial Committee before any decision is taken.

The burden of proof that applies when making decisions is the civil burden which means that members only have to determine whether on the balance of probabilities they believe an incident took place unlike the courts who must determine beyond all reasonable doubt.

Once again it must be reiterated that any person aggrieved by a decision of the Council to refuse to grant or to suspend or revoke a licence does have the right to appeal to the Magistrates Court.

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## Hyndburn Borough Council

### Customer First Analysis

#### What is it for?

Our corporate values include putting the customer first, providing opportunities for bright futures and narrowing inequality across the Borough.

From 1 April 2011, a new legal duty applies to all public authorities. It covers these protected characteristics:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- gender;
- sexual orientation; and, for some aspects,
- marriage and civil partnerships.

The duty means that – as previously - we should analyse the effect of existing and new policies and practices on equality. It does not specify how we should do this. However, legal cases on the meaning of the previous general equality duties make it clear that we must carry out the analysis **before making the relevant policy decision**, and include consideration as to whether we can reduce any detrimental impact.

The framework overleaf – our Customer First Analysis - is suggested when making a written record of the analysis. This replaces Equality Impact Assessments.

The Analysis should be **proportionate** to the policy decision being taken. In some cases the written record will be a quick set of bullet points or notes under each heading, to deal with any questions which are relevant (or briefly explain why if they aren't). Others will need to be much more detailed. A meaningful Analysis will help the Council make the best decision or formulate a policy which best meets our customers' needs.

Please return completed Customer First Analyses to Human Resources. I can guide you through the process if this would be helpful.

If you have any suggestions for improving this process, please let me know.

Kirsten Burnett  
Head of HR

## Customer First Analysis

### 1. Purpose

- What are you trying to achieve with the policy / service / function?

Transparency for members of the public and those involved in the hackney carriage and private hire industry. Clear guidance for members and officers making decisions in relation to the suitability of applicants and existing licence holders in relation to the hackney carriage and private hire trade. Protection for those members of the public who may use taxi and private hire vehicles and protection for other road users.

- Who defines and manages it?

Licensing Officers/ Licensing Manager and the Executive Director of Legal and Democratic Services.

- Who do you intend to benefit from it and how?

Members of the public, some of whom may be vulnerable, who use the services of hackney carriage and private hire vehicles. They will have increased reassurance that the Council is continuing to update its policies in order to enable members and officers to ensure that only people that are 'fit and proper' are granted a licence or remain licensed by Hyndburn Borough Council

- What could prevent people from getting the most out of the policy / service / function?

Failure to have regard to the policy when making decisions.

- How will you get your customers involved in the analysis and how will you tell people about it?

The policy will be published on the Council website and an email notifying existing members of the hackney carriage and private hire trade will be sent with a link to the policy. All new applicants will be directed to the policy.

### 2. Evidence

The success of the policy will be measured by a reduction in the number of incidents, reports and complaints.

### 3. Impact

- The policy will provide benefit to all users of hackney carriage and private hire vehicles and to officers and members who have to make difficult decisions. All applications will be considered on their own merit and the policy will guide the decision makers to make fair, consistent and unbiased decisions.

Name: Wendy Peck

Signed: \_\_\_\_\_

Service Area: Licensing

Dated: 11<sup>th</sup> July 2018

UNCLASSIFIED

**If applicable, please attach copy of – or website link to - the cabinet report for reference.**

**Don't forget to return your written record to HR.**

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