



To: Members of the Licensing
Committee

Date: 12 September 2013

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Dear Councillor

You are invited to attend a meeting of the **LICENSING COMMITTEE** to be held at **9.30 am** on **WEDNESDAY, 18 SEPTEMBER 2013** in the **COUNCIL CHAMBER, COUNTY HALL, WYNNSTAY ROAD, RUTHIN.**

Yours sincerely

G Williams
Head of Legal and Democratic Services

AGENDA

PART 1 - THE PRESS AND PUBLIC ARE INVITED TO ATTEND THIS PART OF THE MEETING

1 APOLOGIES

2 DECLARATION OF INTERESTS

Members to declare any personal or prejudicial interests in any business identified to be considered at this meeting.

3 URGENT MATTERS AS AGREED BY THE CHAIR

Notice of items which, in the opinion of the Chair, should be considered at the meeting as a matter of urgency pursuant to Section 100B(4) of the Local Government Act, 1972.

4 MINUTES (Pages 7 - 20)

To receive the –

- (a) minutes of the Licensing Committee held on 12 June 2013 (copy enclosed), and
- (b) minutes of the Special Licensing Committee held on 27 June 2013 (copy enclosed).

5 LICENSING ACT 2003 - LICENSING AUTHORITY AS RESPONSIBLE AUTHORITY (Pages 21 - 24)

To consider a report by the Head of Planning and Public Protection (copy enclosed) informing members of arrangements made to enable the Licensing Authority to carry out its functions as a Responsible Authority and seeking approval to delegate the function of the Responsible Authority on behalf of Licensing to the Senior Community Enforcement Officer.

6 UPDATE ON REVIEW OF LICENSING FEES AND CHARGES FOR 2013/14 (Pages 25 - 30)

To consider a report by the Head of Planning and Public Protection (copy enclosed) updating members on progress with the review of the licensing fees and charges for 2013/14.

7 REVIEW OF HOUSE TO HOUSE AND STREET COLLECTION POLICIES (Pages 31 - 50)

To consider a report by the Head of Planning and Public Protection (copy enclosed) seeking members' review of the policies for the allocation and monitoring of Street Collection and House to House Collection permits.

8 LICENSING COMMITTEE FORWARD WORK PROGRAMME 2013/14 (Pages 51 - 52)

To consider the Licensing Committee's Forward Work Programme (copy enclosed).

PART 2 - CONFIDENTIAL ITEMS

It is recommended in accordance with Section 100A(4) of the Local Government Act 1972, that the Press and Public be excluded from the meeting during consideration of the following items of business because it is likely that exempt information as defined in paragraphs 12 and 14 of Part 4 of Schedule 12A of the Act would be disclosed.

9 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 044473 (Pages 53 - 78)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' determination of the suitability of Driver No. 044473 to hold a Hackney Carriage and Private Hire Vehicle Drivers Licence.

10 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 043120 (Pages 79 - 98)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' determination of the suitability of Driver No. 043120 to hold a Hackney Carriage and Private Hire Vehicle Licence.

11 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 047689 (Pages 99 - 120)

To consider a confidential report by the Head of Planning and Public Protection (copy enclosed) seeking members' determination of the suitability of Driver No. 047689 to hold a Hackney Carriage and Private Hire Vehicle Drivers Licence.

MEMBERSHIP

Councillors

Joan Butterfield
Bill Cowie
Richard Davies
Stuart Davies
Hugh Irving
Pat Jones

Barry Mellor
Win Mullen-James
Peter Owen
Arwel Roberts
Cefyn Williams

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LICENSING COMMITTEE PROCEDURE FOR THE DETERMINATION OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE APPLICATIONS AND REVIEWS OF EXISTING LICENSED DRIVERS

| STEP | DESCRIPTION |
|------|--|
| 1. | The Chair to welcome and introduce the applicant/licence holder to all parties present. |
| 2. | Solicitor to ask the applicant/licence holder to confirm that he/she has received the report and the Committee procedures. If applicant confirms same, move onto step 4. |
| 3. | If it should occur that the applicant/licence holder states that the report has not been received, then such matter will be addressed at this stage. Members may wish to consider adjourning the matter, for a short period, in order for the applicant/licence holder to read the report. |
| 4. | Head of Planning and Public Protection (or representative) briefly introduces the application/review |
| 5. | The applicant/licence holder is requested to present his/her case The applicant/licence holder can call any witnesses he/she chooses in support of the application, for which advance notice should have been given to the Licensing Officers. |
| 6. | Committee Members can question the applicant/licence holder and or his witnesses |
| 7. | Technical officers are invited to present any findings (Licensing/Community Enforcement, First Contact Team (Social Services), School Transport.) |
| 8. | The Committee Members followed by the applicant/licence holder can ask questions of the technical officers |
| 9. | The applicant/licence holder will be invited to make a final statement, if they so wish |
| 10. | The following will be requested to leave the meeting whilst the application/review is discussed by Members – the applicant/licence holder, all third parties, Head of Planning and Public Protection, technical officers NB The only people remaining should be – Committee Members, translator, committee’s legal adviser and the minute taker |

| | |
|-----|---|
| 11. | The committee members will consider the application/review taking into account the evidence heard |
| 12 | Should Committee Members prove it necessary to recommence the asking of questions and recall any party to provide further information or clarification, all persons who have withdrawn from the meeting will be invited to return. After the question(s) have been determined all third parties will be asked to withdraw again for Members to consider all evidence. |
| 13. | When the Members have reached their decision, all parties will be recalled and the applicant/licence holder will be informed of the Members decision by the Chairman. |
| 14. | The Chair will inform the applicant/licence holder of the decision reached. This will include any specific conditions or penalties which may have been imposed. If necessary the Council's Solicitor to provide further clarification of the decision and its implications to the applicant/licence holder. |
| 15. | If the decision is to refuse or there is a decision to suspend or revoke, the Council's Solicitor to inform the applicant/licence holder of the right of appeal to the Magistrates' Court (the decision letter will also include these details). |
| 16. | For an existing licensed driver (issued by Denbighshire), and the decision involves a resolution by the Committee to suspend or revoke the existing licence, Members may do so under either: 1. Section 61 (2A) of the Local Government (Miscellaneous Provisions) Act 1976. 2. Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976. This decision will have IMMEDIATE EFFECT and can only be used when the grounds for suspension/revocation are a public safety matter. The Solicitor will explain to the licence holder the implications of the decision. |
| 17. | The applicant/licence holder will be informed of the decision in writing as soon as practicable. |
| 18. | The applicant/licence holder will be invited to discuss any matter they are unsure of with Licensing Officers after the Committee |

LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in the Council Chamber, Russell House, Churton Road, Rhyl on Wednesday, 12 June 2013 at 9.30 am.

PRESENT

Councillors Joan Butterfield, Bill Cowie, Stuart Davies, Hugh Irving, Pat Jones, Barry Mellor, Win Mullen-James, Arwel Roberts and Cefyn Williams

ALSO PRESENT

Head of Legal and Democratic Services (RGW), Public Protection Manager (EJ), Licensing Officers (NJ & JT), Senior Community Safety Enforcement Officer (TWE), Licensing Enforcement Officer (HB) and Committee Administrator (KEJ)

1 APOLOGIES

Councillors Richard Davies and Peter Owen

2 APPOINTMENT OF CHAIR

In accordance with the appointment process a written statement had been made available from Councillor Cefyn Williams for the position of Chair of the Licensing Committee for 2013/14. Councillor Stuart Davies proposed, seconded by Councillor Bill Cowie that Councillor Cefyn Williams be appointed Chair. There being no further nominations it was –

***RESOLVED** that Councillor Cefyn Williams be appointed Chair of the Licensing Committee for the ensuing year.*

3 APPOINTMENT OF VICE CHAIR

The Chair invited nominations for the position of Vice Chair of the Licensing Committee for 2013/14. Councillor Bill Cowie proposed, seconded by Cefyn Williams that Councillor Stuart Davies be appointed Vice Chair. Councillor Joan Butterfield proposed, seconded by Councillor Pat Jones that Councillor Barry Mellor be appointed Vice Chair. Upon being put to the vote an equal number of votes were cast for each candidate. The Chair used his casting vote and it was –

***RESOLVED** that Councillor Stuart Davies be appointed Vice Chair of the Licensing Committee for the ensuing year.*

4 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

5 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

6 MINUTES OF THE LAST MEETING

The minutes of the Licensing Committee held on 6 March 2013 were submitted.

***RESOLVED** that the minutes of the meeting held on 6 March 2013 be received and confirmed as a correct record.*

7 LICENSING COMMITTEE PROCEDURES FOR DETERMINING HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER APPLICATIONS AND REVIEWS

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection (previously circulated) seeking members' approval of revised Licensing Committee procedures for determining hackney carriage and private hire driver applications and reviews of existing drivers.

It was explained that the current procedures were outdated having been originally tailored for public entertainment/premises licences and there was a need for a set of procedures to deal specifically with driver applications and reviews.

***RESOLVED** that the Licensing Committee procedures for determining hackney carriage and private hire driver applications and reviews of existing licensed drivers (as detailed in the appendix to the report) be approved.*

At this point the Chair indicated his intention to vary the order of the agenda to accommodate those individuals who were attending the meeting in support of their applications/licence reviews and to hear their cases before any other business.

EXCLUSION OF PRESS AND PUBLIC

***RESOLVED** that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12, 13 and 14 of Part 4 of Schedule 12A of the Act.*

8 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 047324

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application received from Applicant No. 047324 for a licence to drive hackney carriage and private hire vehicles;
- (ii) officers having not been in a position to grant the application in light of the information revealed following an enhanced disclosure from the Disclosure and Barring Service together with a motoring conviction detailed on the applicant's DVLA Licence;

- (iii) a summary of the convictions disclosed having been provided which related to a number of offences spanning a period from 1981 to 2007 including incidents relating to drink/drugs, indecency and dishonesty;
- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Applicant having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Applicant was in attendance at the meeting and following introductions confirmed that he had received the report and committee procedures. The Licensing Officer (JT) provided a summary of the report and explained that the matter had been brought before the committee to assess the Applicant's suitability to hold a licence given the amount and nature of the convictions.

The Applicant addressed the committee and spoke of his desire to become a taxi driver as an alternative means to his current employment and physical demands that required. He also explained the circumstances surrounding the offences revealed by the criminal record check. Members questioned the Applicant further on his version of events and recollections of the incidents. The Applicant was also questioned about more recent health issues relating to drugs/alcohol dependencies in light of his convictions and medical certificate. In making his final statement the Applicant expressed regret over his previous actions and reiterated that he did not have a problem with alcohol. He considered himself to be good with the public and provided examples in his present employment. The Applicant had also provided a character reference from his current employer which was read out to the committee prior to deliberations.

The committee adjourned to consider the case and it was –

RESOLVED that the application for a hackney carriage and private hire vehicle drivers licence from Applicant No. 047324 be refused.

The reasons for the Licensing Committee's decision were as follows –

Whilst the application did fall within policy guidelines the committee's overriding duty was to public safety. Having considered the facts of the case and answers given in explanation by the Applicant the committee had particular concerns in respect of the conviction relating to alcohol, dependency on alcohol as discussed and the indecency offence. Consequently the committee was not satisfied that the Applicant was a fit and proper person to hold a licence and resolved to refuse the application.

The committee's decision and reasons therefore were conveyed to the Applicant and he was advised that the decision did not prevent him from making an application in the future. He was also advised of his right of appeal against the decision to the Magistrates Court within twenty one days.

[Councillor Arwel Roberts took no part in the discussion or voting on this matter as he had not been present throughout the entire proceedings]

9 SUITABILITY OF A VEHICLE FOR A PRIVATE HIRE LICENCE

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application having been received for a Private Hire Vehicle Licence;
- (ii) officers having not been in a position to grant the application as the vehicle presented for licensing did not comply with the specifications as detailed in the Council's Hackney Carriage and Private Hire Licensing Conditions, namely (1) the seat configuration did not provide the minimum clearance through which passengers may pass, and (2) passengers would be required to tip one of the other seats to access/exit the rear row of seats, and
- (iii) the applicant having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Applicant was in attendance at the meeting together with his Representative and following introductions confirmed that he had received the report and committee procedures. Members also confirmed that they had received, via email, supplementary information from the Applicant in support of his application which was made available to all parties at the meeting.

The Licensing Enforcement Officer presented the report and asked the committee to consider whether it would be appropriate to depart from the Council's policy concerning vehicle specifications in order to grant the application as applied for.

The Applicant's Representative explained the main concern was that altering the vehicle specification to conform to the current council policy would result in the Applicant falling foul of type approval and lead him to be held personally liable in the event of an accident. He also referred to advice received from VOSA and the Department of Transport in that regard and drew members' attention to the supplemental information (previously circulated) consisting of a letter from the National Private Hire Association in support of the application. The National Private Hire Association had made reference to –

- the Department of Transport's Best Practice Guidance
- judgments from two legal challenges taken to Magistrates Court
- statement from Ford UK relating to seat alterations

In light of the evidence presented the Applicant's Representative asked the committee to grant the application for the vehicle concerned with its present seating configuration. He also asked that this aspect of the policy guidelines be further considered as part of the current hackney carriage and private hire licensing policy review.

In response to questions the Applicant and his Representative explained the seating configuration in further detail including access and egress from the rear of the vehicle together with the implications should seating be removed. It was

confirmed that the Applicant had been provided with a copy of the council's conditions prior to purchasing the vehicle. In terms of the minimum clearance for passengers the Applicant's Representative advised that the front seat gap measured the same as the rear seat on the said vehicle which fell below the minimum stipulated in the conditions. In his final statement the Applicant's Representative asked members to grant the application as applied for. If the committee was not minded to grant the application with the present seating configuration he asked whether a certificate could be supplied absolving the Applicant of any liability in the event of an accident.

The committee adjourned to consider the application and it was –

RESOLVED that the application for a Private Hire Vehicle Licence be granted in respect of the vehicle concerned with its present seating configuration.

The reasons for the Licensing Committee's decision were as follows –

Members had carefully considered the application and evidence presented in this case and had been mindful of their responsibilities in respect of licensing vehicles. The committee was satisfied that the vehicle subject to the application met the legal requirements for use as a private hire vehicle being suitable in type, size and design; was mechanically suitable, safe and it was comfortable. Consequently the committee resolved to grant the application as applied for.

The committee's decision and reasons therefore were conveyed to the Applicant and his Representative. Members asked that this case be taken into account during the review of hackney carriage and private hire licensing policies. Councillor Joan Butterfield also asked that advertising on licensed vehicles be revisited as part of the policy review.

At this juncture (11.10 a.m.) the meeting adjourned for a refreshment break.

10 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 047331

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application received from Applicant No. 047331 for a licence to drive hackney carriage and private hire vehicles;
- (ii) officers having not been in a position to grant the application in light of the information revealed following an enhanced disclosure from the Disclosure and Barring Service together with a motoring conviction detailed on the applicant's DVLA Licence;
- (iii) a summary of the convictions disclosed having been provided which related to a number of offences spanning a period from 1997 to 2010 including incidents relating to drunkenness, driving and traffic offences;

- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Applicant having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Applicant was in attendance at the meeting and following introductions confirmed that he had received the report and committee procedures. The Licensing Officer (JT) provided a summary of the report and explained that the matter had been brought before the committee to assess the Applicant's suitability to hold a licence in light of the convictions disclosed.

The Applicant addressed the committee in support of his application describing his background and personal circumstances at the time the offences had been committed. He was keen to impress upon members his change in attitude since he had moved into the area some years ago becoming a responsible adult in employment with family commitments. He explained that his current employment was seasonal and he wished to become a taxi driver to provide for himself and his family. Members questioned the Applicant on his convictions, particularly in light of the substantial penalties imposed and repeated driving disqualifications, and sought assurances regarding his future behaviour. The Applicant elaborated upon particular incidents in response to members' questioning and assured the committee that he only drank alcohol at social occasions such as weddings. In making his final statement he assured members that he valued his driving licence and was a changed character.

The committee adjourned to consider the case and it was –

RESOLVED that the application for a hackney carriage and private hire vehicle drivers licence from Applicant No. 047331 be refused.

The reasons for the Licensing Committee's decision were as follows –

Members considered all the evidence presented and the response given by the Applicant to questions. Whilst granting the application was in line with individual policy guidelines the committee's overriding consideration was public safety and in light of the prolific and repeated convictions specifically relating to motoring offences including dangerous driving; driving with no insurance, and with excess alcohol members were not satisfied that the Applicant was a fit and proper person to drive hackney carriage and private hire vehicles. Accordingly it was resolved to refuse the application.

The committee's decision and reasons therefore were conveyed to the Applicant and he was advised of his right of appeal against the decision to the Magistrates Court within twenty one days.

11 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 047319

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application received from Applicant No. 047319 for a licence to drive hackney carriage and private hire vehicles;
- (ii) officers having not been in a position to grant the application in light of the information revealed following an enhanced disclosure from the Disclosure and Barring Service and motoring convictions detailed on the applicant's DVLA Licence;
- (iii) a summary of the convictions disclosed having been provided which related to a number of offences spanning a period from 1989 to 2009 including incidents relating to drunkenness and dishonesty;
- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Applicant having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Applicant was in attendance at the meeting and following introductions confirmed that he had received the report and committee procedures. The Licensing Officer (JT) provided a summary of the report and explained that the matter had been brought before the committee to assess the Applicant's suitability to hold a licence in light of the convictions disclosed.

The Applicant addressed the committee in support of his application admitting his wrongdoing and expressing remorse over previous actions. He explained his personal circumstances advising that he had moved to Wales some years ago highlighting his family commitments and responsibilities and referred to his association with the taxi trade and his desire to become a taxi driver. The Applicant also explained the circumstances surrounding the offences, clarifying issues in response to members' questions thereon. Members sought assurances regarding his future behavior and the Applicant elaborated upon his current lifestyle and community links and the trustworthy relationship with his current employer. He assured the committee that he had learnt from past mistakes and had turned his life around. A reference from the Applicant's employer was read out to the committee attesting to his good character. In his final statement the Applicant thanked members for the opportunity to present his case and asked the committee to look favourably on his application.

The committee adjourned to consider the case and it was –

RESOLVED that the application for a hackney carriage and private hire vehicle drivers licence from Applicant No. 047319 be granted.

The reasons for the Licensing Committee's decision were as follows –

The committee had carefully considered the facts of the case and having listened to the Applicant's submission and his response to questioning members had been impressed by the Applicant's demeanor and had found him to be genuine in his assurances regarding his current and future behaviour. Consequently members

considered the Applicant to be fit and proper to hold a hackney carriage and private hire vehicle drivers licence. The Applicant's previous convictions had caused concern to the committee however and he was warned that any future transgression causing him to be brought before the committee would be severely dealt with.

The committee's decision and reasons therefore were conveyed to the Applicant.

[Councillor Stuart Davies wished it to be recorded that he voted against the above resolution.]

12 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 044473

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) the suitability of Driver No. 044473 to hold a licence to drive hackney carriage and private hire vehicles;
- (ii) concerns having been raised by Licensing Enforcement Officers regarding the conduct of the licensed driver on a number of separate occasions (a summary of facts together with witness statements having been attached to the report);
- (iii) the Driver having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver was not present at the meeting despite being invited to attend. In the absence of an explanation from the Driver regarding his non attendance the committee agreed to proceed in his absence.

The Licensing Enforcement Officer (HB) introduced the report and detailed the summary of facts of the case. Members took the opportunity to raise questions and the officers clarified the association of the Driver to the business and taxi referred to within the incidents and the behaviour of the Driver during the events concerned. It was clarified that during the multi agency taxi operation in February 2013 licensed vehicles had been inspected generally and other vehicles were also tested. Officers were concerned about the Driver's failure to engage with them and other officials, the attitude he had displayed and his disregard of authority. The Public Protection Manager highlighted that Enforcement Officers had a difficult and challenging role and maintained positive relationships with licensees in the main and issues would not be brought before committee unless significant.

The committee adjourned to consider the case and it was –

RESOLVED that –

- (a) *consideration of the suitability of Driver No. 044473 to hold a hackney carriage and private hire vehicle drivers licence be deferred to the next*

meeting of the committee to provide a further opportunity for the Driver to attend and present his case, and

- (b) *a letter be sent to Driver No. 044473 advising him of the committee's decision above, requesting his attendance at the committee's next meeting and impressing upon him the seriousness of the matter.*

Having considered the evidence presented the committee expressed serious concerns regarding the behaviour of the Driver in this case and considered their powers in terms of suspension and revocation. In the absence of the Driver and hearing his version of events however the committee agreed that the Driver be given a further opportunity to present his case to the Licensing Committee before a determination was made. Consequently it was resolved to defer consideration of the suitability of the Driver to the committee's next meeting and to invite him to attend advising him of the committee's decision and the seriousness of the matter.

OPEN SESSION

Upon completion of the above business the meeting resumed in open session.

13 PROCEDURES FOR NEW AND REVISED POLICIES

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection Services (previously circulated) seeking members' approval of the procedures to be adopted for drafting new and revised policies.

Apart from statutory requirements, there were no written procedures in place for officers to follow when drafting new licensing policies or reviewing existing licensing policies. Approving a set of procedures should reduce any risk of exposing the Council to challenge and administrative error.

Members' attention was drawn to the following –

- new policies would include a full consultation exercise, including screening the policy using the Equality Impact Assessment Toolkit, and reporting the outline of the policy and scope of consultation to members
- for existing policies requiring general amendments officers would discuss proposed amendments with members, along with any consultation requirements and would seek members to recommend to the Lead Member the adoption of the amendments
- the Head of Service would approve minor policy amendments including legislative updates or in cases where it is considered the change would not affect the purpose of the policy

RESOLVED *that the procedures for drafting new licensing policies and reviewing existing policies (as detailed in the appendix to the report) be approved.*

14 LICENSING PROCEDURES

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection (previously circulated) seeking members' approval of eight procedures, including officer delegations, for dealing with applications for hackney carriage and private hire licensing.

An extensive review of the licensing regime had been undertaken with a view to ensuring that licensing processes were as robust as possible and that the public travelled safely and received a good level of service. The draft procedures had also been scrutinised by a Licensing Legal Specialist and covered the following –

- Expired Insurance and Compliance Documents
- Grant/Renewal of a Private Hire Operator Licence
- Grant/Renewal of a Hackney Carriage and Private Hire Vehicle Licence
- Grant/Renewal of a Hackney Carriage and Private Hire Driver Licence
- Suspension/Revocation of a Hackney Carriage and Private Hire Driver Licence
- Suspension/Revocation of a Hackney Carriage and Private Hire Vehicle Licence
- Transfer of interest/replacement vehicle of a Hackney Carriage and Private Hire Vehicle Licence
- Notification of a Hackney Carriage and Private Hire Vehicle Driver Conviction

The Chair commented that the procedures were very comprehensive and acknowledged the hard work carried out to review them.

RESOLVED that –

- (a) *the eight hackney carriage and private hire procedures (as detailed in the appendix to the report) be approved with effect from 1 August 2013, and*
- (b) *the delegations as detailed within the procedures be approved to form part of the scheme of delegation with effect from 1 August 2013.*

15 LICENSING COMMITTEE FORWARD WORK PROGRAMME 2013/14

A report by the Head of Planning and Public Protection was submitted (previously circulated) on the Licensing Committee's future work programme.

The review of hackney carriage and private hire policy was progressing well and a report thereon would be submitted to the committee in December 2013 before formal consultation commenced. Details on the consultation exercise had also been provided.

RESOLVED that the Licensing Committee work programme as detailed within the report be noted.

The meeting concluded at 1.00 p.m.

LICENSING COMMITTEE

Minutes of a Special meeting of the Licensing Committee held in the Council Chamber, Nant Hall Road, Prestatyn on Thursday, 27 June 2013 at 2.00 pm.

PRESENT

Councillors Bill Cowie, Richard Davies, Stuart Davies, Pat Jones and Cefyn Williams (Chair)

ALSO PRESENT

Head of Legal and Democratic Services (RGW), Licensing Officer (JT), Senior Community Safety Enforcement Officer (TWE), Licensing Enforcement Officer (HB) and Committee Administrator (KEJ)

1 APOLOGIES

Councillors Joan Butterfield, Barry Mellor, Win Mullen-James, Peter Owen and Arwel Roberts

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

3 URGENT MATTERS AS AGREED BY THE CHAIR

In accordance with Section 100B(4) of the Local Government Act 1972 the Chair declared that he intended to include for discussion the following matter which required urgent attention –

Review of a Licence to Drive Hackney Carriage and Private Hire Vehicles – Driver No. 043844

It was agreed to consider the matter following the main business item.

EXCLUSION OF PRESS AND PUBLIC

RESOLVED that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 14 of Part 4 of Schedule 12A of the Act.

4 REVOCATION OF A HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS LICENCE - DRIVER NO. 047224

A confidential report by the Head of Planning and Public Protection Services was circulated at the meeting recommending the licence to drive hackney carriage and private hire vehicles issued to Driver No. 047224 be immediately revoked in the interests of public safety. The facts of the case were presented as follows –

- (i) information having been received regarding the arrest of Driver No. 047224 arising from allegations involving controlled substances and serious sexual misconduct relating to a young person;
- (ii) details relating to the allegations having subsequently been received from North Wales Police who were carrying out an investigation into the claims, and
- (iii) Driver No. 047224 had been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Licensing Enforcement Officer (HB) presented the report and confirmed that the Driver was not present despite being invited to attend. In response to questions members were advised that no further details could be disclosed in light of the ongoing Police investigation into the allegations. The Head of Legal and Democratic Services provided a legal viewpoint on the situation including grounds for suspension and revocation. After deliberation it was –

RESOLVED that the Hackney Carriage and Private Hire Driver's Licence issued to Driver No. 047224 be revoked on public safety grounds.

The reasons for the Licensing Committee's decision were as follows –

Members considered the facts of the case and expressed concern regarding the serious nature of the allegations and the fact that the Police were actively pursuing an investigation. In order to preserve public safety members decided to revoke the licence with immediate effect.

5 REVIEW OF LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 043844

[This item was considered as a matter of urgency, notice having been given by the Chair at the commencement of the meeting]

A confidential report by the Head of Planning and Public Protection Services (circulated at the meeting) was submitted upon –

- (i) the suitability of Driver No. 043844 to hold a licence to drive hackney carriage and private hire vehicles;
- (ii) the Licensing Committee held on 5 December 2012 having suspended Driver No. 043844 on public safety grounds following his accrual of penalty points, three of which related to the use of a mobile phone whilst driving [the Driver had been permitted to retain his DVLA licence by Prestatyn Magistrates who had accepted a disqualification would cause exceptional hardship];
- (iii) the Driver appealed against the Licensing Committee's decision and on 19 December 2012 Magistrates dismissed the Appeal but directed the matter

back to the Licensing Committee at the earliest opportunity to allow the period of suspension to be reviewed;

- (iv) the special Licensing Committee held on 24 January 2012 having lifted the suspension imposed on the Driver and issued a warning as to future conduct;
- (v) a letter having been received on 25 June 2013 from Driver No. 043844 stating that on 13 June 2013 he had been convicted of speeding by Llandudno Magistrates and under the totting up procedure had been disqualified from driving for a period of six months, and
- (vi) Driver No. 043844 had been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver was in attendance at the meeting and all parties present were introduced. Due to the urgent nature of the review the committee report had not been available in advance and had been tabled at the meeting.

Driver No. 043884 addressed the committee in support of his case explaining the circumstances of the speeding offence which had led to his disqualification. It was established that the offence had been committed in October 2012 but had taken until June 2013 for the Magistrates to hear the case. The Driver submitted that he had only been convicted for speeding on one other occasion in 2010 and routinely drove within the speed limit. Once his DVLA Licence had been reinstated in December 2013 it would be free from convictions. He also advised that correspondence received regarding the conviction had referred to the offence as a minor infringement of the Road Traffic Act. The Driver was keen to impress upon the committee that being a taxi driver was his livelihood which he enjoyed and took very seriously. Whilst accepting that he could not fulfill his duties as a licensed driver at present he hoped to continue the profession upon reinstatement of his DVLA Licence.

Members took the opportunity to question the Driver further regarding his speeding conviction and he was asked why he did not disclose his pending court appearance when his licence had been brought before the committee previously for review. The Driver responded that he had not been convicted of any offence at that time and he had not been present at the Licensing Committee meeting in December 2012. He also explained the circumstances surrounding the reference to appropriate use of speed within the Driver Assessment Report produced following completion of the Driving Awareness Course. In terms of historical motoring convictions the Driver confirmed two previous offences and the circumstances surrounding each.

In his final statement the Driver asked for leniency stating that he had learnt from his transgressions. He assured the committee that he would not be brought before them again if he was permitted to keep his licence.

The committee adjourned to consider the case and after deliberation it was –

RESOLVED that the Hackney Carriage and Private Hire Driver's Licence issued to Driver No. 043884 be revoked on public safety grounds.

The reasons for the Licensing Committee's decision were as follows –

In reaching a decision members considered all the evidence presented and the Driver's submissions in support of his case. During deliberations concerns were expressed that (1) the Driver had already been brought before the committee and issued with a warning regarding his conduct; (2) whilst technically there was no legal requirement, the Driver failed to disclose his pending court appearance for speeding on the previous occasion he had been brought before the committee which could have been taken into account at that time, and (3) the series of road traffic offences and the nature of those offences which had resulted in the Driver being disqualified from driving for six months. In light of those concerns and the fact that the Driver could not carry out his duties as a licensed driver during the disqualification period the committee did not consider him a fit and proper person to hold a licence. Given the committee's overriding consideration was for public safety and in light of the concerns expressed it was decided that the licence be revoked with immediate effect on those grounds.

The committee's decision and reasons therefore were conveyed to the Driver and he was advised of his right of appeal. It was clarified that the revocation did not prohibit him from applying for a licence following his period of disqualification.

The meeting concluded at 2.45 p.m.

Agenda Item 5



| | |
|-------------------------|--|
| REPORT TO: | Licensing Committee |
| DATE: | 18 th September 2013 |
| LEAD OFFICER: | Head of Planning and Public Protection |
| CONTACT OFFICER: | Senior Licensing Officer licensing@denbighshire.gov.uk 01824 706451 |
| SUBJECT: | Licensing Act 2003 – Licensing Authority as Responsible Authority |

1. PURPOSE OF THE REPORT

- 1.1 To inform Members of the Licensing Committee of the arrangements put in place for the Licensing Authority to carry out its function as a Responsible Authority.

2. EXECUTIVE SUMMARY

- 2.1 The Police Reform and Social Responsibility Act 2011 added licensing authorities to the list of Responsible Authorities under the Licensing Act 2003. The aim of this change in legislation is to ensure licensing authorities are better able to respond quickly to the concerns of local residents and businesses by taking actions they consider appropriate to tackle irresponsible premises without having to wait for representations from other Responsible Authorities.

3. POWER TO MAKE THE DECISION

- 3.1 Licensing Act 2003 and the Police Reform and Social Responsibility Act 2011.

4. BACKGROUND INFORMATION

- 4.1 Licensing Authorities are now empowered to fulfil the same functions as other Responsible Authorities under the Licensing Act 2003 including:
 - i. Making relevant representations relating to new licence applications and licence variations
 - ii. Requesting that the licensing authority review an existing licence

- iii. Making representations regarding the potential cumulative impact of an application in an area where there is a special policy in place regarding cumulative impact.
- 4.2 The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a Responsible Authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.
- 4.3 Licensing authorities are not expected to act as Responsible Authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these bodies have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as Responsible Authority
- 4.4. Licensing Authorities would expect other Responsible Authorities to intervene where the basis for the intervention falls within the remit of that other Responsible Authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other Responsible Authority.
- 4.5 The 2003 Act enables licensing authorities to act as Responsible Authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other Responsible Authorities.
- 4.6 It is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the Licensing Sub Committee comprising of Elected Members who are advised by a Licensing Officer if it is required. Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority. In these cases, licensing authorities should allocate the different responsibilities to different Licensing

- 4.7 Officers or other Officers within the local authority to ensure a proper separation of responsibilities. The Officer advising the Licensing Sub Committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the Officer who is acting for the Responsible Authority.
- 4.8 The Officer acting for Responsible Authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the Officer acting as Responsible Authority and the Officer handling the licence application regarding the merits of the case. Communication between these Officers in relation to the case should remain professional and consistent with communication with other Responsible Authorities. Representations, subject to limited exceptions, must be made in writing.
- 4.9 It is for the Licensing Authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities.
- 4.10 It is therefore suggested that the Senior Community Enforcement Officer be allocated the role as the Responsible Authority for Licensing
- 4.11 The Senior Community Enforcement Officer will not have any involvement in the application process, but will set up a separate file to consider the application for the authority in its capacity as Responsible Authority, engaging with other Responsible Authorities where appropriate and determining whether the authority acting as a Responsible Authority wants to make a representation.
- 4.12 The two Senior Licensing Officers will receive and process applications. Communication between the Officer exercising the function of Responsible Authority and the Officer processing the application should remain formal and consistent with how communications would be with other Responsible Authorities.
- 4.13 For all future Sub Committee hearings, the Officer acting as the Responsible Authority for Licensing should be seated with the other Responsible Authorities, to ensure that the public perception of separation of roles has been fulfilled.

5. **RECOMMENDATION**

- 5.1 That Members approve that the Senior Community Enforcement Officer be delegated the function of Responsible Authority on behalf of Licensing.

Agenda Item 6



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|-------------------------|--|
| REPORT TO: | Licensing Committee |
| DATE: | 18 th September 2013 |
| LEAD OFFICER: | Head of Planning and Public Protection |
| CONTACT OFFICER: | Senior Licensing Officer licensing@denbighshire.gov.uk 01824 706451 |
| SUBJECT: | Update on review of Licensing Fees and Charges for 2013/14 |

1. PURPOSE OF THE REPORT

- 1.1 To up date Members on the ongoing progress on the review of the licensing fees and charges for 2013/14

2. EXECUTIVE SUMMARY

- 2.1 A review of the fees payable in respect of various types of licences and permits administered and enforced by the Licensing Section has been requested by Members.

3. POWER TO MAKE THE DECISION

- 3.1 Local Government (Miscellaneous Provisions) Act 1976 & 82
Town Police Clauses Act 1847.

4. BACKGROUND INFORMATION

- 4.1 At the meeting in March 2013 Officers informed Members that they were due to attend a course on setting licensing fees and charges. Whilst the course proved to be very informative, Officers were left in no doubt as to the prolonged and complex nature of this process.
- 4.2 In addition to determining the actual cost for administering each function along with associated on-costs etc, Officers must consider the implications of a recent High Court judgement (*Hemmings –v- Westminster City Council*). The outcome of this judgement clarifies what costs can be taken into account when determining fees. For example only direct costs such as administration and compliance can be applied, whereas enforcement against unlicensed activity cannot be included in fees. A copy of the Hemmings judgement can be found at Appendix A.

- 4.3 The Court also re-affirmed earlier cases that Councils cannot make profits from licence fees. The ruling determined that provided the budget is reasonable and set to cover the expected costs, a surplus of income is legitimate, but that any deficits and surplus incurred must be taken into account when setting fees for the following year.
- 4.4. This is an important issue that is recognised countrywide, to the extent that an all Wales Licensing Technical Panel has been tasked with looking at fees and charges. Officers are actively contributing to this Panel with regular meetings scheduled throughout the remainder of the year.
- 4.5 Members will acknowledge that this is a prolonged and detailed process. However it is important that Officers take the time to ensure that the review is conducted thoroughly to avoid any future challenges. Furthermore Members are reminded that time spent perfecting our procedures for the setting of fees, will benefit us in the future, both in terms of fee reviews and reducing the risk to legal challenge.

5. **RECOMMENDATION**

- 5.1 Until such time as the Licensing Technical Panel have agreed on a generic set of procedures for setting fees and charges it is recommended that the current fee structure is retained for 2013/14 until the full review has been undertaken.

LGA briefing on the implication of Hemming v Westminster City Council on locally set licence fees

10th July 2013

This briefing aims to provide councils with a summary of the recent Hemming v Westminster City Council case and the implications for councils more widely.

The case impacts on the type of costs that councils can recover through locally set licence fees and the processes councils have in place to ensure fee setting is transparent and open to scrutiny. We recommend that legal services and licensing departments use this brief to discuss the impact of the case for their council.

The LGA is interested in hearing directly from members that have concerns about the implications of the Hemming v Westminster case for their council, particularly in relation to cost recovery or where any outstanding legal issues have not been resolved by this paper. Please do contact gwyneth.rogers@local.gov.uk or ian.leete@local.gov.uk to ensure we can act effectively on your behalf.

Summary of Hemming v Westminster City Council

Timothy Hemming, owner of Simply Pleasures Ltd, led a case on behalf of various sex shops contesting the level of licence fees for sex shops charged by Westminster City Council on the basis they could not be considered reasonable.

The original court ruling was given in May 2012, but this was subject to appeal and it is the Court of Appeal judgment made on 24th May 2013 that has now been established as the leading law on what costs can be taken into account when setting local licence fees.

The key issue addressed was whether the fees set by Westminster City Council complied with the requirements of the European Services Directive 2009 and the interpretation of Article 13(2) of the Directive. The Services Directive aims to make it easier for service providers to set up or offer their services anywhere within Europe and introduced a range of requirements on those issuing licences to the service and retail sector, including the provision of online applications and payments. The Services Directive also makes it clear that licence fees covered by the Directive can only be used to recover costs and should not be used to make a profit or deter service providers from entering a market.

Briefing

In essence, the Hemming case questioned the lawfulness of Westminster's licence fees for sex establishments as 'charges' under the Directive and whether these were 'reasonable and proportionate to the cost of the authorisation procedures...' and did 'not exceed the cost of the procedure'.

The court ruling

While the Services Directive may be clear that any charges for licences covered by the Directive must be reasonable and not exceed the costs associated with the authorisation procedures, there is no more detail on what costs can or not be included when calculating a fee.

The original hearing also considered whether Westminster City Council had made a valid determination of the licence fee for any year after the year ending on 31 January 2006, which was the last occasion that the fees were considered by the Licensing sub-committee. The judgement, accepted by the Court of Appeal, found that the annual reviews conducted by an officer of Westminster City Council were no substitute for determinations by the Council. The judge rejected the Council's submission that the fee had been fixed on an open-ended basis in 2004 so that the fee rolled over from one year to the next.

In the Hemming V Westminster case, the Court of Appeal specifically considered whether the cost of investigating and prosecuting those who operate without a licence can be recovered through the licence fee paid by those operating within the system. Ultimately, was it lawful to set licence fees which reflected the council's costs of enforcing the system against *unlicensed* operators, as well as those which were licensed?

Unfortunately for Westminster, the Court of Appeal upheld the earlier decision of the Administrative Court from May 2012. It ruled that the fees set must be not exceed the costs of administering the process. As such, the council was no longer able to include the cost of enforcement against unlicensed sex establishment operators when setting the licence fee.

This confirmed the change of approach from what was the accepted position prior to the Regulations coming into force in 2010. Then, the setting of a fee for sex establishment licences was regulated by the Local Government (Misc. Provisions) Act 1982. A 'reasonable' fee under that Act was accepted as including enforcement costs so that the system was, in effect, self- financing.

Whilst the council had sought to argue that there should be no distinction between the enforcement of licensed and unlicensed operators, particularly as licensed businesses ultimately benefit from action to tackle rogue traders and ensuring there is a level playing field in place for responsible businesses, the Judge did not agree.

He commented at paragraph 70 as follows:

"It is difficult to see how even a strained interpretation enables the cost of authorisation procedures and formalities to include the cost of prosecuting unlicensed operatives who have not applied for authorisation".

However, the Judgment makes it clear that the costs of compliance monitoring and enforcement against an applicant who has been given a license can fall within the costs of the council's authorisation procedures. Further, costs associated with monitoring the continued suitability of operators during license renewals (and, potentially, reviews) may also be included as part of the compliance process given that they relate to the terms of their licenses previously granted.

It should be noted that it is not yet clear whether this will be tested in further litigation, possibly with a reference to Europe for a definitive ruling on the meaning of the Directive.

What does this mean for councils?

The LGA recommends that all councils review the costs covered by locally set licence fees in light of this judgment and ensure that they no longer reflect costs of addressing unlicensed business activity. It is clear that not being able to recover costs associated with addressing unlicensed sex establishments will have significant long term financial repercussions for Westminster City Council, however, we do recognise that the financial impact for councils more widely will vary depending on the local economy, the licensed activity and the approach taken to local fee setting in the past.

The LGA also recommends that councils take the opportunity to ensure that all locally set licence fees are based on an up to date cost recovery approach, which is established and regularly reviewed in a transparent manner that can be understood by both businesses and residents. The LGA will be publishing guidance on what can be included in locally set licence fees during the Summer 2013.

Further information

Original court ruling for Hemming V Westminster
<http://www.bailii.org/ew/cases/EWHC/Admin/2012/1260.html>

Court of Appeal ruling for Hemming V Westminster – 24th May 2013
<http://cornerstonebarristers.com/wp-content/uploads/2013/05/Hemming-APPROVED-Judgement.pdf>

EU Services Directive
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:en:pdf>

BIS guidance on the EU Services Directive
<https://www.gov.uk/eu-services-directive>

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Agenda Item 7



| | |
|-------------------------|--|
| REPORT TO: | Licensing Committee |
| DATE: | 18 th September 2013 |
| LEAD OFFICER: | Head of Planning and Public Protection |
| CONTACT OFFICER: | Senior Licensing Officer licensing@denbighshire.gov.uk 01824 706451 |
| SUBJECT: | Review of House to House and Street Collection Policies |

1. PURPOSE OF THE REPORT

- 1.1 To present for Committee's consideration the results of the consultation exercise in relation to a proposed revised policy for the allocation and monitoring of Street Collection and House to House Collection Permits.

2. EXECUTIVE SUMMARY

- 2.1 The Forward Work Programme agreed by Members on the 14th March 2012, identified the requirement for a review of the current policies in relation to House to House Collections and Street Collections.
- 2.2 As a result of the review, revised policies have been drafted and, Members agreed at a Meeting on the 12th September 2012 for Officers to consult with Legal Officers and other interested parties eg. Charity Commission, National Charities and any Charity that has held a Street Collection or House to House Collection in the County within the last 12 months, on the revised policies.

3. POWER TO MAKE THE DECISION

- 3.1 House to House Collection Act 1939 and Police, Factories Etc., (Miscellaneous Provisions) Act 1916

4. BACKGROUND INFORMATION

- 4.1 A 6 week consultation process was undertaken with all organisations and national charities that had collected within the County over the last 12 months. The proposed policies were also sent to all Town and Community Councils within the County together with the Charity Commission. Copies of the proposed House to House and Street

Collection Policies can be found at Appendix A.

- 4.2 As a result of the consultation, Officers have received representations or comments in relation to the Street Collection policy which can be found at Appendix B attached.
- 4.3 A table summarising these comments, along with recommended amendments to the Street Collection policy can be found at Appendix C.
- 4.3 For Members information, no representations or comments have been received relating to the House to House Collection Policy.
- 4.4 When considering this matter, Members may wish to be reminded that a clear policy is needed in this area to assist officers to make decisions in relation to Street Collection and House to House Collections. The proposed policies are about dealing fairly with reputable charities/collection organisations that have made legitimate applications to collect in our area.

5. **RECOMMENDATION**

- 5.1 That Members revisit the draft policy for Street Collection and House to House, taking into consideration the representations received (as detailed in Appendix C), and should they be minded to accept the proposed amendments, authorise Officers to submit the policies to County Council for approval and adoption.



Planning and Public Protection Service

Name of Policy / Procedure / Protocol / Plan:

HOUSE TO HOUSE COLLECTION POLICY

| | |
|---|--------------------------------------|
| Author / Custodian: | Nicky Jones |
| Date agreed and implemented: | |
| Agreed by: | |
| Frequency of Review: | 3 yearly |
| Review date: | |
| Equality Impact Assessment completed: (date) | To be completed |
| Member involvement (if any) | Licensing Committee and Full Council |
| Internal or Public Domain: | Public |
| Head of Service Approval: (signature & date) | |

VERSION CONTROL:

| Reference: | Status: | Authorised by: | Date: |
|------------|---------------|-----------------|------------|
| V01 | Final / Draft | Head of Service | 01.01.2012 |
| | | | |

Policy Aim

The aims of the Council are to:

- a. safeguard the interests of both public donors and beneficiaries
- b. facilitate well organised collections by bona fide charitable institutions and to ensure that good standards are met
- c. prevent unlicensed collections from taking place
- d. Ensure money is collected securely and proceeds properly accounted for
- e. Reduce nuisance to residents and visitors
- f. achieve a fair balance between local and national causes

1. Introduction

- 1.1 House to House collections are governed by the House to House Collections Act 1939 (the Act) and the House to House Collections Regulations 1947, as amended.
- 1.2 As a general rule, house to house collections for charitable, benevolent or philanthropic purposes, whether or not the purpose is charitable within the meaning of the rule of law, are required to be licensed by the Council.
- 1.3 The definition of “collection” is an appeal to the public made by means of visits from house to house, to give, whether for consideration or not, money or other property. This could include the sale of magazines, requests for unwanted clothing and household items.
- 1.4 The definition of “House” includes a place of business.
- 1.5 No collection for a charitable purpose may be made unless the provisions of the Act and the Regulations are complied with, otherwise a criminal offence is committed.

2. Waiving a need for a licence

- 2.1 There are two circumstances where the need for a licence can be waived:
- 2.2 Organisations that have been granted an “Exemption Certificate” issued by the Cabinet Office under the provisions of the House to House Collections Act 1939. This Certificate allows an organisation to collect in the County without applying for a licence. The organisation must inform the Council of the dates and areas of any planned collections. Organisations can generally obtain national exemption orders if they have house-to-house collection licences in at least 70–100 local authority licensing areas for the two preceding years.
- 2.3 Where the chief constable for the police area is satisfied that the purpose is local in character, and that the collection is likely to be completed within a short period he may then under s.1 (4) of the Act grant to the promoter of the collection a certificate in the prescribed form. Where a

certificate is granted, a licence from the Council is not required, and the provisions of the regulations shall not apply to a collection made in conformity with such certificate.

3. Allocation of Permit

- 3.1 To avoid the prospect of multiple collections being made in any one day, the Council will not grant licences for a period of twelve months. To give sufficient time to undertake a collection, it will be the policy of the Council not to grant licences for periods in excess of 14 days unless the Council is satisfied that exceptional circumstances exist.
- 3.2 Applications will be dealt with on a first come first served basis.
- 3.3 No more than one organisation shall be permitted to collect in the same town per week.
- 3.4 In order to allow as many organisations as possible to collect, no individual organisation will be granted more than one collection per town per calendar year.
- 3.5 The designated areas for House to House Collections in Denbighshire will be Bodelwyddan, Corwen, Denbigh, Llangollen, Prestatyn, Rhuddlan, Rhyl, Ruthin, St Asaph, The Council will also permit collections in other areas in the County including surrounding villages.
- 3.6 If the applicant indicates that the organisation has been refused a licence to carry out a house to house collection by another local authority, unless there are special circumstances for the refusal, the default position of the Council will be to refuse the application
- 3.7 If an organisation is found to have carried out unlicensed collections, no licences will be granted to that organisation until a period of at least three years has passed without further contraventions.

4. Fees and Charges

- 4.1 The Council makes no charge for the processing of House to House Collection Permits.

5. Decision Making

- 5.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this Policy document and the principles set out therein.
- 5.2 Notwithstanding the existence of this Policy, each application will be considered on its own merits based on the licensing principles detailed in this Policy

- 5.3 Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons for doing so must be given. The Head of Planning and Public Protection may authorise a departure from the policy in accordance with this section if he/she considers it necessary in the specific circumstances.

6. Refusal of Issue of Permit

- 6.1 The authority can refuse or revoke a licence for a number of reasons, as detailed in the Act:

1. If too high a proportion of the proceeds are to be spent on expenses;
2. If not enough of the proceeds are to be given to the charity or cause;
3. If incorrect information was provided on the application form;
4. If the promoter or any other person involved in the collection has been convicted of certain criminal offences ie burglary, blackmail or fraud
5. If the grant of the licence would be likely to facilitate the commission of an offence under section 3 of the Vagrancy Act 1824
6. If the applicant or holder of the licence has failed to exercise due diligence to ensure that the collectors are fit and proper, to ensure compliance with the provisions of the House to House Regulation or to prevent prescribed badges or certificates of authority being obtained other than by authorised persons.

- 6.2 Organisations can appeal the decision of the Council within 14 days of the notice of refusal, to the Minister for the Cabinet Office if a local authority refuses them a licence to hold a house-to-house collection or if they revoke such a licence. The Cabinet Office processes these appeals. Appeals should be made in writing to:

Office for Civil Society, 2nd Floor, Admiralty Arch, South Side, The Mall, London, SW1A 2WH

7. Determining Amount devoted to Charity

- 7.1 Section 2 (3) of the Act allows the Council to refuse to issue a licence where the total amount likely to be applied for charitable purposes as a result of the collection is inadequate in proportion to the value of the proceeds likely to be received (including any proceeds already received).
- 7.2 The Council will consider each application on its merits, in particular the Council recognises that costs of collection of goods such as textiles by a commercial operator in partnership with a charity can vary.
- 7.3 In order to assess the level of proceeds going to charitable purposes consideration will be given to:
- a) the costs involved with making the collection eg transport/remuneration/materials
 - b) the revenue generated from the goods collected
 - c) the level of proceeds from the collection that will be donated to the charity
 - d) annual accounts submitted

8. Making a Complaint

- 8.1 Should you have a complaint about the way we have provided a service, then you can make a complaint to the Head of Planning and Public Protection, at the address given at the end of this document. Alternatively, you could contact the Council's Complaints Officer on 01824 706169. Every complaint will be investigated and responded to in accordance to the Council's Complaints Policy. The Council's Complaints Policy can be viewed on the website: www.denbighshire.gov.uk.

9. Contacts

- 9.1 This Policy is available in Welsh. Copies can also be made available in any other language, on request. Please refer to the contact detail below.



Licensing Section, Russell House, Rhyl, Denbighshire, LL18 3DP



licensing@denbighshire.gov.uk



01824 706342

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Planning and Public Protection Service

Name of Policy / Procedure / Protocol / Plan:

STREET COLLECTION POLICY

| | |
|---|---|
| Author / Custodian: | Nicky Jones |
| Date agreed and implemented: | |
| Agreed by: | |
| Frequency of Review: | 3 yearly |
| Review date: | |
| Equality Impact Assessment completed: (date) | To be completed |
| Member involvement (if any) | Licensing Committee and County Council |
| Internal or Public Domain: | Public |
| Head of Service Approval: (signature & date) | |

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| VERSION CONTROL: | | | |
| Reference: | Status: | Authorised by: | Date: |
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Policy Aims

The aims of the Council are to:

- a. safeguard the interests of both public donors and beneficiaries
- b. facilitate well organised collections by bona fide charitable institutions and to ensure that good standards are met
- c. prevent unlicensed collections from taking place
- d. Ensure money is collected securely and proceeds properly accounted for
- e. Reduce nuisance to residents and visitors
- f. achieve a fair balance between local and national causes

1. Introduction

- 1.1 The Council is empowered under section 5 of the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 (as amended by the Local Government Act 1972, s.251 and Schedule 29) to licence collections made in “any street or public place” for “charitable or other purposes”.
- 1.2 In accordance with its powers the Council has made Regulations under the above legislation for the control of Street Collections in the area of Denbighshire, in respect of the places where and the conditions under which, persons may be permitted in any street or public place to collect money or sell articles for the benefit of charitable or other purposes.
- 1.3 The legislation and regulations stipulate that any collection to be undertaken in a street or public place requires a Street Collection Permit. It is a criminal offence to conduct a Street Collection within the County of Denbighshire without first obtaining such a permit from the Council.
- 1.4 For clarity a ‘Street’ and ‘Public Place’ are defined in statute as the following:
‘**Street**’ is defined as including any highway and any public bridge, road, lane, footway, square, court, alley or passage whether a thoroughfare or not
‘**Public Place**’ is defined as a “place where the public has access” and can include privately owned land eg shop doorways or car parks. It is the Council’s view that the foyer of a supermarket is considered to be “behind closed doors” therefore would only require the consent of the Manager of the store, however if the collection also took place outside or in the car park, a licence would need to be applied for.
- 1.5 If once approved, Permit holders are not restricted to collecting money, they can also sell charitable articles which is exempt from the requirement of a Street Traders’ Licence under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982
- 1.6 If the sale of charitable items in a street or public place requires the use of a stall or table, written permission to erect same must be obtained from Denbighshire’s Highway Section or the owner of the land prior to a Street Collection Permit being issued by the Licensing Authority

2. Allocation of Street Collection days

- 2.1 The designated areas for Street Collections in Denbighshire will be on streets and/or public places in the towns of Bodelwyddan, Corwen, Denbigh, Llangollen, Prestatyn, Rhuddlan, Rhyl, Rhyl Events Arena, Ruthin, St Asaph, The Council will also permit collections in other areas in the County including surrounding villages.
- 2.2 Street Collections will not be allowed on any of the Promenade areas within the County whether for charitable or other purposes. However exceptions may be made where the charitable collection is part of a larger national/countywide event and the collectors are merely passing through the area.
- 2.3 The Council will permit a maximum of one collection per town each week, ie no more than one organisation can collect within the same area on the same day, except by written consent by the Council if the application falls within the exceptions detailed within 2.7 below
- 2.4 Street Collections will be restricted to Saturdays, with the exception that collections will be permitted on other days of the week if that collection is associated with a nationally, or regionally organised event as detailed in 2.7 below.
- 2.5 In order to allow as many organisations as possible to collect, no individual organisation will be granted more than one collection per town per calendar year.
- 2.6 Applications will be determined on a first come first served basis, although preference will be given to local charities or charities with a local connection. Exceptions to this are detailed in 2.7 below
- 2.7 The following exceptions to this policy will apply:
- 2.7.1 Poppy Appeal collections organised by The Royal British Legion will be permitted to apply for up to a maximum of seven days in November of each year.
 - 2.7.2 National Collections being Children In Need, Comic Relief, Sports Relief will be permitted to collect on both the day of the appeal and the day after to coincide with their appeal.
 - 2.7.3 Collection of donations from the public along the route of a carnival procession or similar event is exempt
 - 2.7.4 For a charity stall on a Regulated Market.
 - 2.7.5 Collections required in times of national and international disasters
 - 2.7.6 Where the charitable collection is part of a larger national/countywide event and the collectors are merely passing through the area.

3. Fees and Charges

3.1 The Council makes no charge for the processing of a Street Collection application

4. Decision Making

4.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this Policy document and the principles set out therein.

4.2 Notwithstanding the existence of this Policy, each application will be considered on its own merits based on the licensing principles detailed in this Policy

4.3 Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons for doing so must be given. The Head of Planning and Public Protection may authorise a departure from the policy in accordance with this section if he/she considers it necessary in the specific circumstances.

4.4 When deciding whether to grant a Street Collection Permit, consideration will be given to:

- a. if the collection is linked to specific events within the district
- b. if the collection is linked to a nationwide campaign, eg Children in Need, Comic Relief, Remembrance Day
- c. if the collection is on behalf of a national charity, is there likely to be some benefit for the residents of Denbighshire
- d. what proportion of the funds collected will be applied for charitable purposes
- e. has a permit been previously refused by Denbighshire County Council or any other local authority

5. Refusal to issue a permit

5.1 There are no statutory grounds for refusing an application for a Street Collection Permit. However, The Council reserves the right to refuse any application for a Street Collection Permit and it is likely that any previous contraventions of the Council's Street Collection Regulations would result in such action being taken or any other relevant/appropriate grounds.

5.2 There is no formal right of appeal against any decision made by the Council to grant or refuse an application for a Street Collection Permit, other than by way of Judicial Review. However, in the interest of fairness an applicant can lodge a request to the Head of Planning and Public Protection for a decision to be reviewed

6. **Making a Complaint**

- 6.1 Should you have a complaint about the way we have provided a service, then you can make a complaint to the Head of Planning, Regeneration & Regulatory Service, at the address given at the end of this document. Alternatively, you could contact the Council's Complaints Officer on 01824 706169. Every complaint will be investigated and responded to in accordance to the Council's Complaints Policy. The Council's Complaints Policy can be viewed on the website: www.denbighshire.gov.uk.

7. **Contacts:**

- 7.1 This Policy is available in Welsh. Copies can also be made available in any other language, on request. Please refer to the contact detail below.



Licensing Section, Russell House, Rhyl, Denbighshire, LL18 3DP



licensing@denbighshire.gov.uk



01824 706342

For a Braille, large-print, tape or CD version of this Protocol and Associated Policy, call free on 0800 243980.

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Rotary Club of
Prestatyn

Head of Planning and Public Protection Services
Denbighshire County Council
Russel House
Churton Road
Rhyl
LL18 3DP



23 June 2013

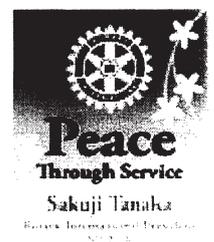
Street Collection Draft Policy

For at least the last 25 years the Rotary Club of Prestatyn has parked our Christmas float on Prestatyn High St on Christmas Eve. This attracts shoppers to the High Street, adds to the festive spirit, provides pleasure and joy for all and in particular for the children who meet Father Christmas.

Also on a Saturday preceding Christmas we have taken the float to the car park of a local supermarket.

Apart from providing the attraction we collect approximately £1500 on these two days. This money, together with at least £2000 collected from our house to house collections (We obtain a certificate of exemption from the Chief Constable for this), is donated to local good causes. Last year we supplied four heart defibrillators which are located in local businesses in Prestatyn, Meliden and Trelawnyd and we have also provided training for approximately 100 people to use them. These, and other defibrillators, have now been registered with the emergency services and we are in the process of providing signage across the area covered. In previous years donations have been made to amongst others St Kentigern Hospice, and local schools etc.

We therefore have objections to two aspects of your proposals. Firstly as Christmas Eve does not always fall on a Saturday, we would be unable to collect on that day. Secondly since you propose that private car parks, such as those owned by supermarkets, are deemed to be "public places" and we are only allowed one collection per year, we will not be allowed to collect in the car park of a local supermarket as well as in the High Street as we have done in the past.





Rotary Club of
Prestatyn

We would be grateful therefore if more flexibility can be written in so that our traditional attraction and collections can continue to provide much needed income for local good causes.

Kind regards,

Peter Dop
Honorary Secretary



Licensing Web Query V3 Enquiry

From :
Jo & Ian Sims [REDACTED]
12/06/2013 15:44

To : licensing@denbighshire.gov.uk
CC: :

Subject : Review of Street Collection Policies, Ruthin Branch RNLI

| | |
|---|--|
| Assigned To: Nicky P Jones/EN/DCC | Status: <input type="radio"/> New <input checked="" type="radio"/> Assigned To But Not Started <input type="radio"/> In Progress <input type="radio"/> Dealt With <input type="radio"/> Ignore <input type="radio"/> Information Only |
| Action Taken: | |

Dear Sir

I've forwarded your draft Street Collection Policy to our regional RNLI headquarters to see if they have any comments, they might respond to you directly.

My initial response from Ruthin is as follows:

- The new policy is much clearer.
- The restriction to Saturdays is unfortunate for towns like Rhyl or Llangollen which attract tourists and it might be helpful to include Bank Holiday weekends in the summer.
- As regards priority to charities having a local connection, I trust that the RNLI is regarded as having a local connection, with a lifeboat station at Rhyl and RNLI regional service centre at St Asaph. A couple of years ago Rhyl was the second busiest lifeboat station in the UK.

For information, in Ruthin we have found a sharp decline in street collection proceeds since Tesco arrived in town and denuded the streets of shoppers on foot. Fortunately this is more than compensated by the in-store collections which Tesco allow. Regrettably Morrisons in Denbigh refused us a store collection, even though they are close to St Asaph where the RNLI were active in recent flood rescue.

We have not conducted house-to-house collections for a few years now, since there seems to have been a change in attitude to collectors on doorsteps and the sums raised were in decline.

Ian Sims
Hon Secretary
RNLI Ruthin Branch

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**APPENDIX C - SUMMARY OF RESPONSES RECEIVED
STREET TRADING PROPOSED POLICY**

| Consultee | Section of Policy | Response | Proposed Amendment |
|--------------------------|---|--|--|
| Rotary Club of Prestatyn | <p>Section 1.4 For clarity a 'Street' and 'Public Place' are defined in statute as the following: 'Street' is defined as including any highway and any public bridge, road, lane, footway, square, court, alley or passage whether a thoroughfare or not 'Public Place' is defined as a "place where the public has access" and can include privately owned land eg shop doorways or car parks. It is the Council's view that the foyer of a supermarket is considered to be "behind closed doors" therefore would only require the consent of the Manager of the store, however if the collection also took place outside or in the car park, a licence would need to be applied for.</p> | Private car parks, such as those owned by supermarkets, are deemed to be "pubic places" are we are only allowed one collection per year, we will not be allowed to collect in the car park of a local supermarket as well as in the High Street as we have done in the past. | <p>Recommended that Section 1.4 to be replaced with : 'Public Place' is defined as a "place where the public has access" and can include privately owned land eg shop doorways or car parks. It is the Council's view that a supermarket, including supermarket car park, is considered to be private land for the purpose of this policy and would only require the consent of the Manager of the store.</p> <p>For clarification the definition detailed in 1.4 relating to 'Street' will remain unchanged</p> |
| Rotary Club of Prestatyn | <p>Section 2.4 Street Collections will be restricted to Saturdays, with the exception that collections will be permitted on other days of the week if that collection is associated with a nationally, or regionally organised event as detailed in 2.7 below.</p> | Christmas Eve does not always fall on a Saturday, we would be unable to collect on that day. | <p>Recommend an inclusion of a further exemption to Section 2.7 to reflect the Rotary Club's response, as follows:</p> <p>2.7.7 To allow established local charities, for example, Rotary Clubs, to hold their annual collection day on any day of the week during the festive season.</p> |
| RNLI Ruthin Branch | <p>General</p> | <p>1. The new policy is much clearer 2. The restriction to Saturdays is unfortunate for towns like Rhyl or Llangollen which attract tourists and it might be helpful to include Bank Holiday weekends in the summer.</p> | Recommend that no change required. |

| | | | |
|--|--|--|--|
| | | 3. As regards priority to charities having a local connection, I trust that the RNLI is regarding as having a local connection, with a lifeboat station in Rhyl and RNLI regional service station at St Asaph. | |
|--|--|--|--|

Agenda Item 8

REPORT TO: LICENSING COMMITTEE

DATE: 18 September 2013

REPORT BY: THE HEAD OF PLANNING AND PUBLIC PROTECTION

SUBJECT: LICENSING COMMITTEE WORK PROGRAMME 2013/14

| DATE | REPORT | COMMENT |
|-------------------|---|---|
| 18 September 2013 | Review of House to House and Street Collection Policies | Update report on the results of the consultation undertaken on the revised policies |
| | Review of Licensing Fees and Charges for 2014/15 | Report for Members' consideration and approval |
| December 2013 | Review of the existing Sex Establishment Policy | Report for Members' consideration |
| | Report for Members' consideration and approval for Officers to consult with all interested parties | Review of existing policy and conditions for Hackney Carriage and Private Hire Vehicles and Operators |
| | Report on implementing a Penalty Point System for Hackney Carriage and Private Hire licence holders | Report for Members' consideration |
| March 2014 | Agree Forward Working Programme priorities for 2014/15 | |
| | Review of the existing Street Trading Policy | Report for Members' consideration and approval for Officers to consult all interested parties |
| | Sex Establishment Renewal | Report for Members' to consider the renewal of existing Sex Establishment Licence |

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