

BARNSELY METROPOLITAN BOROUGH COUNCIL

This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan

**Report of the Service Director
Culture, Housing and
Regulation and Director of
Legal and Governance to the
General and Statutory
Licensing Regulatory Boards
on 24th February, 2016**

Terms of Reference of General and Statutory Licensing Regulatory Boards - Update

1. Purpose of report

To consider recommending to Council proposed amendments to the Terms of Reference of the General and Statutory Licensing Regulatory Boards following an Internal Audit Report into Taxi and Premises Licensing.

2. Recommendation to Council

That the Terms of Reference of the General and Statutory Licensing Regulatory Boards be amended as detailed within Appendix 1 to this report.

3. Introduction and background

Following the corporate inspection of Rotherham Metropolitan Borough Council and the publication of the Casey Report on the 4th February, 2015, the Council's Senior Management Team commissioned a programme of activity aimed at ensuring that all Council Services with a stake in protecting children from harm and exploitation were compliant with this responsibility, statutory regulations and best practice.

The outcome of these reviews was to provide the necessary assurances that the Council's systems and procedures were such that the risk of serious service failure in respect of safeguarding was minimised and well managed.

The taxi licensing function was identified as an area warranting such a review and, therefore, formed part of the agreed programme of audit work relating to 2015/16.

The scope of the Internal Audit review was to provide assurance regarding the effectiveness and rigour of licensing procedures to ensure the appropriate issue and regulation of licensed taxis and premises and that effective mitigations were in place to protect young and vulnerable people in respect of the Authority's role in licensing.

In preparing for the review Internal Audit took account of various specific risks detailed within the Strategic Risk Register and the Regulatory Services Risk Register and specifically the following:

- Strategic Risk 3025 – Failure to Safeguard Vulnerable Service Users; and
- Regulatory Service Risk 2642 – Failure to effectively regulatory specific activities (as prescribed by law) needing licenses to protect the public.

The review was undertaken between the 20th August and 11th December, 2015.

One of the control adequacy issues identified as a result of this audit, and hence the purpose of this report was that the Terms of Reference of the General Licensing Regulatory Board did not include reference to the role of Members in relation to safeguarding and, consequently, that Members may not be fully aware of their Safeguarding responsibilities. Internal Audit recommended, therefore, that a review of the Terms of Reference should be undertaken to ensure that those roles and responsibilities was explicit.

4. Proposal and justification

A review of the Terms of Reference has, therefore, been undertaken within the context of the findings of the Internal Audit Review, the Casey Report and the Safeguarding Framework (approved by Council in November 2015).

The opportunity has been taken to amend the Terms of Reference of both the General and Statutory Licensing Regulatory Board and to make minor drafting amendments to ensure they remain fit for purpose.

It should be noted that the Terms of Reference are about functions and powers and not about how those functions are applied. The proposed revised Terms of Reference are attached to this report as Appendix 1.

Other key issues arising from the Internal Audit review relate to the absence of an effective programme of safeguarding training in order to ensure that service users, Members and officers can recognise the signs of Child Sexual Exploitation and be aware of how to report concerns. Many of these issues were identified within the Safeguarding Framework report submitted to Council on the 26th November, 2015 and all have been addressed or are in the process of being addressed.

5. Implications for local people / service users

The amendment to the Terms of Reference will ensure that proper procedures and practices are in place when the Regulatory Boards are exercising their functions and will ensure that only those entitled receive the appropriate licences.

6. Financial implications

There are no financial implications arising from this proposal

7. Employee implications

There are no employee implications arising from this proposal

8. Consultations

Consultation has taken place with officers within the Licensing Service, the Governance Unit of the Legal and Governance Department and with Internal Audit. All comments received have been incorporated within the proposed amendments to the Terms of Reference.

Consultation has also taken place with the Democratic Services Section of Rotherham Metropolitan Borough Council.

9. Risk management issues

The amendment to the Terms of Reference will ensure that the control adequacy issue identified by Internal Audit is addressed.

10. Compatibility with the European Convention on Human Rights

The Terms of Reference, as amended, are compatible with the rights and freedoms under the European Convention of Human Rights.

The decisions of the Regulatory Boards in relation to the granting of licences amount to a determination of the civil rights of applicants; therefore, as far as it is possible to do so, the Boards must comply with the requirements of Article 6 (the right to a fair trial). The amendment to the Terms of Reference will ensure that all applicants are afforded that opportunity and that decisions are made properly and responsibly in the light of all the necessary evidence.

11. Reduction of crime and disorder

The amended Terms of Reference ensure that the decisions are made appropriately and that Members take account of and recognise the signs of Child Sexual exploitation.

12. List of appendices

Appendix 1 – Terms of reference of the General and Statutory Licensing Regulatory Boards.

13. Background papers

1. Report of Inspection of Rotherham Metropolitan Borough Council – the Casey Report – February, 2015
2. Place – Taxi & Premises Licensing Draft Internal Audit Report – December, 2015
3. Report to Cabinet 4.11.2015 – Barnsley Framework for Safeguarding Children and Adults

General Licensing Regulatory Board

Subject to:

- the overall policy framework of the Council; and
- having regard to the Council's safeguarding arrangements and duties and particularly in relation to the prevention of Child Sexual Exploitation

to exercise the functions of the Council in relation to:-

1. In respect of hackney carriage and private hire licences:-
 - a. To determine licence applications which have not been determined by the Director of Legal & Governance and the Service Director Culture, Housing & Regulation pursuant to their delegated powers, where consideration by the Sub-Committee is not appropriate.
 - b. To receive reports for information on the suspension and revocation of licences and also to suspend and/or revoke licences where adverse reports have been received in those instances where Service Director Culture, Housing & Regulation has referred the matter to the Board for a decision as to whether disciplinary action would be appropriate.
 - c. To receive, at regular intervals, a report of all licences issued, renewed, or refused.
 - d. To receive an annual report of all hackney carriage and private hire licences issued or renewed where the vehicle in question is over the age of five years.
 - e. To receive periodic reports of the Service Director Culture, Housing & Regulation on random inspections carried out.
 - f. To vary, amend or revoke the standard conditions of hackney carriage or private hire operators, vehicle and drivers' licences.
 - g. To determine the fees payable for the issue and renewal of hackney carriage and private hire licences (including inspections), subject to the consideration of any policy aspects by Cabinet and / or full Council as appropriate.
 - h. To determine the hackney carriage tariff from time to time, subject to the consideration of any policy aspects by Cabinet and / or full Council as appropriate.
 - i. After consultation with the Head of Highways, Engineering & Transportation to approve the siting or relocation or removal of hackney carriage ranks and to authorize the appropriate statutory notices.
2. In relation to amusements with prizes permits and licences, betting track licences, sex establishments and house to house collections etc:-
 - a. To grant and renew licences and permits on recommendations from the appropriate officers and outside bodies and to impose conditions, except for

the renewal of Sex Shop licences where officers have delegated powers in the circumstances referred to at 2(h) below.

- b. To vary the conditions attached to an existing licence.
 - c. To determine the licence fee payable in respect of sex establishments.
 - d. To vary, amend or revoke the standard conditions imposed upon the grant of amusements with prizes permits and licences.
 - e. To receive reports on applications for permits for small lotteries where adverse comments have been received from the police and to determine the application.
3. To determine, where there is discretion, the amount to be charged for such approvals, licences, permits or registrations falling within the remit of the Board, subject to the consideration of any policy aspects by Cabinet and / or full Council as appropriate.
 4. To receive reports on applications for permits for house to house collections and street collections where adverse reports are received and to determine the application.
 5. To determine appeals received in respect of the refusal of applications for the registration of premises for civil marriages.

General Licensing Panel

1. To determine hackney carriage and private hire licence applications which have not been determined by the Director of Legal & Governance and the Service Director Culture, Housing & Regulation pursuant to their delegated powers.
2. To suspend and / or revoke hackney carriage and private hire licences where adverse reports have been received in those instances where the Service Director Culture, Housing & Regulation has referred the matter to the Board for a decision as to whether disciplinary action would be appropriate.
3. To determine appeals against the suspension or revocation of hackney carriage or private hire operators, vehicle and drivers' licences.
4. To determine applications for or suspension / revocation of licences or appeals against suspension or revocation of licenses falling within the remit of the General Licensing Regulatory Board when referred to it for a decision by the Service Director Culture, Housing & Regulation.

The General Licensing Panel is comprised of any 3 Members of the General Licensing Regulatory Board

Delegations to Officers from the General Licensing Regulatory Board

1. Director of Legal & Governance

- (a) To receive and administer the registration of charities including those under the War Charities Act 1940 and the National Assistance Act 1948.

2. Service Director Customer Services

- (a) As Proper Officer for Registration, to approve those applications for approval of premises for civil marriages which comply with the standard conditions and to refuse those which do not, and to determine as to whether or not premises are seemly and dignified.

3. Service Director Culture, Housing & Regulation

- (a) To exercise the Council's powers in relation to the Licensing aspects of the following legislation:
- Caravan Sites and Control of Development Act 1960
 - Celluloid and Cinematograph Act 1922
 - Children and Young Persons Act 1933
 - Food Safety Act 1990
 - Housing Act 1985 (Parts 9 and 10 - Slum Clearance and Overcrowding)
 - Housing Act 2004 (Part 1 [Housing Conditions], Part 2 [Licensing of houses in multiple occupation], Part 3 [Selective licensing areas], Part 4 [management orders], Section 216 [overcrowding], Part 7 [supplementary provisions] insofar as it relates to any of these functions, Section 232 (maintenance of register of licences and management orders))
 - Local Government Miscellaneous Provisions Acts 1976 and 1982
 - Local Government Act 2003, Section 120 (insofar as it amends Section 15 of the Local Government (Miscellaneous Provisions) Act to add the regulation of cosmetic piercing and semi-permanent skin colouring businesses)
 - Noise and Statutory Nuisance Act 1993
 - Nurses Agencies Act 1957
 - Performing Animals (Regulations) Act 1925
 - Pet Animals Act 1951
 - Poisons Act 1972
 - Public Health Acts 1936-1961
 - Scrap Metal Dealers Act 1964
 - Scrap Metal Dealers Act 2013 (when legislation allows)
 - Slaughterhouses Act 1974
 - Town Police Clauses Act 1847
 - Zoo Licensing Act 1981

And, notwithstanding the generality of the above:

- (b) Under the Town Police Clauses Act 1847 and Part II of the Local Government (Miscellaneous Provisions) Act 1976 to:
- (i) issue hackney carriage licences and private hire licences, when he / she is satisfied that the application fulfils the statutory

requirements and any criteria or policies of the Council for the time being in force;

(ii) in consultation with the Chairperson of the Licensing Regulatory Board, refuse applications for hackney carriage and private hire licences where he is not satisfied that the application fulfils the statutory requirements and any criteria or policies of the Council for the time being in force, subject to any such decisions being reported for information to the next meeting of the Licensing Regulatory Board;

(iii) to suspend Hackney Carriage and Private Hire Vehicle Licences on vehicle defects being found.

(iv) to suspend or revoke licences in other circumstances those at (iii) above, and to report the action to a subsequent meeting of the General Licensing Regulatory Board or Sub-Committee.

- (c) To grant, vary, transfer and revoke licences in respect of cinemas and theatres after consultation with the appropriate officers and outside bodies.
- (d) To issue permits in respect of house to house collections, street collections, and to receive returns in respect of the same and where adverse reports are received to refer the matter to the General Licensing Regulatory Board for determination.
- (e) To issue permits in respect of small lotteries after consultation with the police and where adverse reports are received to refer the matter to the General Licensing Regulatory Board or Sub-Committee for determination.
- (f) To determine applications for minibus permits of those vehicles under the control of the Council.
- (g) To receive and administer applications for the registration of motor salvage operators under the Vehicles (Crime) Act 2001 (Motor Salvage Operators Regulations 2002), to approve applications for registration where statutory consultation with the Police reveals no contrary indications and to maintain a register which shall be available for public inspection;
- (h) To determine, following consultation with the Chairperson of the General Licensing Regulatory Board, applications for the renewal of Sex Shop premises Licences where no adverse comments have been received to the statutory consultation process and where there are no concerns or substantial changes made regarding the operation of the premises.

Statutory Licensing Regulatory Board

Subject to:

- the overall policy framework of the Council; and
- having regard to the Council's safeguarding arrangements and duties and particularly in relation to the prevention of Child Sexual Exploitation

to exercise the functions of the Council in relation to the Licensing Act 2003 and the Gambling Act 2005:-

1. To monitor the operation of the Council's Licensing Policy Statement
2. To monitor the operation and performance of the Sub Committees (comprising three Members each) established to determine applications for and reviews of licences.
3. To determine the procedure/protocol to be adopted by the Sub Committees in dealing matters referred to them.

Statutory Licensing Sub Committees

To determine, in accordance with the procedure/protocol agreed by the Statutory Licensing Regulatory Board, applications for and reviews of Licences and/or permits made under the provisions of the Licensing Act 2003 and Gambling Act 2005 where adverse comments have been received and not withdrawn.

Delegations to Officers from the Statutory Licensing Board

1. **Service Director Culture, Housing & Regulation**
 - (a) To exercise the Council's powers in relation to the Licensing aspects of the Licensing Act 2003 and Gambling Act 2005.
 - (b) To exercise powers under the Criminal Justice Act 2001 to close premises that are in breach of the conditions of licences granted under the Licensing Act 2003 and Gambling Act 2005.