

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 18th July 2013

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WARD(S): All

PART I

FOR CONSIDERATION, COMMENT AND DECISION

NEW POLICY FOR THE DISCLOSURE AND BARRING SERVICE (DBS)

1. **Purpose of Report**

To update Members on recent national changes for the disclosure of criminal records and the approval of a new Disclosure and Barring Service (DBS) Policy.

2. **Recommendation(s)**

That the Committee;

- (a) Approve the draft policy as a policy document to start with immediate effect, and
- (b) As detailed in the report that delegation is given to all licensing officers to suspend and reinstate a Private Hire or Hackney Carriage Driver licence with immediate effect under the express authorisation of the Licensing Manager. This will ensure that all matters are dealt with in an expedient manner.

3. **Community Strategy Priorities –**

- **Being Safe, Feeling Safe**
- **Prosperity for All**

4. **Other Implications**

(a) **Financial**

There will be financial implications due to additional staffing costs in processing and implementing the new policy requirements. The cost of which is unknown at this time.

The current fee of £55 for the DBS check is not due to change.

If an applicant subscribes to the Update Service the annual fee of £13 will be payable to the DBS by the applicant.

Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
As detailed in Point 2.	The Council is under a duty to ensure that all new applicants and current licence holders of Private Hire and Hackney Carriage Driver licenses are fit and proper persons to hold a licence and that they do not pose a risk to any fare paying passengers or other members of the public.	The approval of this policy will ensure that all relevant checks have been conducted in relation to any criminal conviction or caution.

(b) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(c) Equalities Impact Assessment

A national consultation was conducted by the DBS on the proposed changes. A Privacy Impact Assessment was included within the consultation. The full Privacy Impact Assessment can be found at www.gov.uk

5. Supporting Information

- 5.1 The Council, as the Licensing Authority (the 'District Council') under the 1976 Act is responsible for licensing all Hackney Carriage and Private Hire Drivers pursuant to Sections 51, 57 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 operating within its area. In doing so the Council has a legal duty to ensure that all licensed drivers are 'Fit and Proper Persons' to apply for and continue to hold such a licence. This includes the power to refuse to grant a licence and suspend or revoke a licence where a driver is not deemed or no longer deemed to be 'Fit and Proper' where they have been convicted or cautioned for criminal and road traffic offences.
- 5.2 On 4th February 2003 the Licensing Committee approved a policy for enhanced Criminal Record Bureau disclosure checks under The Police Act 1997. This is applicable for all new and existing Private Hire and Hackney Carriage Drivers and for the disclosure to be applied for and completed every 3 years. This requirement is pursuant to the 1976 Act.
- 5.3 On 1st December 2012 the Criminal Records became the Disclosure and Barring Service (DBS). On 17th June 2013 the new disclosure service and requirements

took effect and apply nationally. The changes have been brought about through amendments to the Police Act 1997 by the Protection of Freedoms Act 2012.

5.4 To receive DBS criminal record disclosure certificates, Slough Borough Council is a Registered Body with the DBS. For this to happen the two licensing authorised Countersignatories attended a DBS run Countersignatory training day on 13th June 2013. This fully covered the DBS changes and Update Service.

5.5 The summary of the procedure for the Licensing Team to obtain criminal disclosure certificates before 17th June 2013 is detailed below:

1. A blank DBS application form is provided for the applicant.
2. The applicant attends a pre-arranged appointment with the Licensing Team at the Licensing Office, Landmark Place.
3. The completed DBS disclosure application form is handed to a member of the Licensing Team with their original supporting identification documents.
4. The Licensing Officer checks the form has been completed correctly, as well as the supporting documents to verify the applicant's identity.
5. Whilst the applicant pays the current relevant fee £55, the Licensing Officer takes scanned copies of all the supporting documents.
6. The supporting documents are returned to the applicant.
7. The Licensing Officer renames and saves the supporting documents to the applicant's file on the Licensing Team computer drive.
8. The information is also manually input into the relevant check section on the applicant file on the bespoke licensing computer system (Lalpac).
9. The officer then completes the Registered Body section of the DBS application form and passes the form to one of the two Licensing Team members who are DBS registered, authorised Countersignatories.
10. The Countersignatory double checks the DBS application form has been:
 - correctly completed.
 - checks the information against the scanned copies of the applicant supporting documents.
 - checks the information input by the Licensing Officer is correct.
11. Once the form has been fully and correctly completed, the Countersignatory signs and dates the relevant declaration to confirm all the above.
12. The DBS application form is then posted to the DBS offices in Liverpool – **Appendix A** is an example completed form.
13. The DBS generate two criminal record disclosure certificates; one is sent to the applicant's address, one is sent to the Countersignatory at the Licensing Office on completion of their checks on the Police National Computer (PNC) and with relevant Police Forces nationally.
14. On receipt of the Registered Body copy, the information disclosed on the certificate is added to the applicants Lalpac file – **Appendix B** is a copy a DBS certificate issued pre-17th June 2013.
15. The information disclosed is then used to determine the application and of what further action is required.

5.6 In May 2013, the DBS informed all Registered Bodies and Local Authority's of the impending changes to the disclosure service and that the implementation date would be 17th June 2013. Those changes have now taken effect following the start of the amendments through the Protection of Freedoms Act 2012.

5.7 In essence the changes are two-fold:

(1) The introduction of Applicant only certificates.

(2) The introduction of a voluntary Update Service.

In addition the DBS have published two guidance documents:

- DBS Update Service - Employer Guide
- DBS Update Service - Applicant Guide

Both documents can be downloaded from the DBS website: www.gov.uk/dbs

5.8 (1) The introduction of Applicant only certificates.

5.8.1 Currently, both the applicant and the Countersignatory receive a copy of the disclosure certificate issued by the DBS.

5.8.2 As of 17th June 2013 the DBS no longer issues a copy of the applicant's DBS certificate to the Registered Body who countersigned the DBS application form. From that date only the applicant will receive the disclosure certificate and employers/councils will need to ask the applicant for sight of the original DBS certificate.

5.8.3 This important change will impact on how all Councils / Licensing Authorities deal with applications to renew Private Hire and Hackney Carriage Driver licenses. All Slough licensed Private Hire and Hackney Carriage Drivers have been written to and advised of the applicant only certificate issue. A copy of this letter is attached at **Appendix C**.

5.8.4 The current licensing process states when a licensed driver applies to renew their licence they are issued with a one year licence subject to a satisfactory DBS disclosure certificate being applied for and received by the Licensing Team. If, when the disclosure certificate is received new convictions are revealed the Officers will arrange for the application for renewal to be determined and of what further action is required.

5.8.5 From 17th June 2013 Officers are now reliant on the applicant to bring their original disclosure certificate to the Licensing Office. Due to this change the Licensing Team internal process for dealing with DBS certificate information has also changed. In addition to the process detailed in 5.4 above, the Countersignatories are now also required to perform a weekly check on the DBS online Application Tracking Service to confirm the date a DBS certificate is issued. To effectively monitor certificate issue by the DBS, it is necessary to:

1. Log all relevant details needed to use the DBS online application tracking service onto a spreadsheet prior to the DBS disclosure application form being sent to the DBS in Liverpool.
2. Individually check each entry on a weekly basis using the DBS online Application Tracking Service.
3. When the Tracking Service shows the certificate has been issued a reminder letter is sent to the applicant advising the Licensing Team need sight of their original DBS certificate.
4. The spreadsheet is updated to show which stage the application has reached and what action has been taken until the DBS certificate is produced to the Licensing Team and the application can be determined – **Appendix D** is a copy of DBS certificate issued after 17th June 2013.

5. Update Lalpac once the Licensing Team has seen the certificate.

5.9 (2) The introduction of a voluntary Update Service

- 5.9.1 At the same time as introducing the Applicant only certificate, the DBS have launched an optional/voluntary online service. For an initial, then annual, subscription of £13.00 applicants/drivers can register their DBS certificate with the DBS Update Service within 14 days of its issue. Provided that the annual subscription is maintained their DBS certificate becomes 'portable' and can be taken from role to role within the same workforce where the same type and level of check is required i.e. level = enhanced, workforce = child, role = teacher.
- 5.9.2 As long as an applicant has registered for the Update Service, maintains their subscription and has given written consent, the Registered Body or any other employer can carry out online status checks to obtain updated criminal record information. There will be no need for the applicant to complete a new disclosure application form or to wait for a certificate to be sent to them. This is unless the status check shows the status has changed as new information has come to light. In this instance a new disclosure certificate must be obtained in the usual manner.
- 5.9.3 The DBS are encouraging employers/registered bodies to promote the benefits of the Update Service to applicants but it is an optional / voluntary service.

5.10 Policy

- 5.10.1 Local Authority Licensing Departments, the Institute for Licensing (I. o. L.) and National Association of Licensing and Enforcement Officers (NALEO) have concerns and reservations over the new Update Service and the issuing of applicant only certificates primarily as there is no legal requirement for the Licensing Department to be sent a copy of the DBS disclosure certificate and secondly there is no specific time period for the applicant to submit their copy of the disclosure certificate to the Licensing Team, although all DBS Update Service guidance recommends 28 days.
- 5.10.2 It is therefore essential that Slough Borough Council has a suitable policy in place to ensure that all new applicants and current licence holders of Private Hire and Hackney Carriage Driver licenses are fit and proper persons to hold a licence and that they do not pose a risk to any fare paying passengers or other members of the public.
- 5.10.3 A draft 'Disclosure and Barring Service Policy' had been produced and attached at **Appendix E** and in summary the following will apply:

5.11 New applicants

- 5.11.1 It is proposed that all new applicants who must complete a criminal record check with the DBS as part of their full new application procedure will, from the implementation of the policy, be given 28 days from the date the DBS certificate is issued to produce the original certificate to the Licensing Team at the Licensing Office, Landmark Place.
- 5.11.2 Failure to produce the DBS certificate within the above detailed timescale will result in the applicant being required to complete and pay for a new DBS

certificate. Again, once received by the applicant the original certificate must be produced to the Licensing Team within 28 days.

- 5.11.3 In addition, if all other requirements of the full driver application procedure have not been completed within 4 months of the date of issue of the DBS Certificate, then a new DBS application will have to be submitted.

5.12 Currently licensed holders

- 5.12.1 It is proposed that all current licence holders who are due a criminal record check with the DBS as part of their renewal application process will, from the implementation of the policy, be given 28 days from the date the DBS certificate is issued to produce the original certificate to the Licensing Team. The licence holder will be contacted by telephone and formally advised in writing that this is the case.
- 5.12.2 If the licence holder does not produce the disclosure certificate within this timescale a further 28 days will be allowed. The Licence holder will be advised in writing at this stage that if the disclosure certificate is not produce within this further 28 day period the driver licence will be suspended with immediate effect and until such time as a valid disclosure is produced, upon which the licence will be re-instated.
- 5.12.3 A new certificate will need to be obtained to ensure all information provided is current **especially as the DBS themselves advise that a DBS certificate is only valid for the day it is printed.**

5.13 DBS certificate disputes

- 5.13.1 The exception to the above timescales applies if the applicant has lodged a formal dispute with the DBS regarding the information contained in the DBS certificate. In such cases it will be the applicant / licence holders responsibility to notify the Licensing Team within 28 days of the issue of the DBS certificate, that they have formally lodged a dispute and to produce any supporting documentation from the DBS confirming that a dispute has been lodged.
- 5.13.2 It will also be the responsibility of the applicant / licence holder to inform the Licensing Team of the outcome of the dispute and also to produce any supporting documentation from the DBS that the dispute has been finalised. **The DBS have confirmed they will not inform or provide any information to Licensing Departments regarding any disputes.**
- 5.13.3 The applicant then has 28 days from the date of the dispute resolution to produce the original certificate to the Licensing Team, or 28 days from the issue of their new DBS certificate, dependant on the dispute outcome. There are no extensions allowed on these timescales.

5.14 Recommendation of delegated powers

- 5.14.1 It is recommended that all Licensing Officers have powers delegated to them to enable the suspension and reinstatement of Private Hire and Hackney Carriage Driver licenses under the express authorisation of the Licensing Manager in the circumstances outlined in the policy to ensure that all matters are dealt with in an expedient manner.

6. Comments of Other Committees

None

7. Conclusion

The Committee is therefore requested to:

- (a) Approve the draft policy as a policy document to commence with immediate effect, and
- (b) As detailed in the report, delegation is given to all licensing officers to suspend and reinstate a Private Hire or Hackney Carriage Driver licence with immediate effect under the express authorisation of the Licensing Manager to ensure that all matters are dealt with in an expedient manner.

8. Appendices Attached

'A' - Example of a completed DBS application form

'B' - Copy of a DBS Certificate issued pre - 17th June 2013

'C' - Copy of letter sent to all licensed Hackney Carriage and Private Hire Drivers

'D' - Copy of a DBS Certificate issued post - 17th June 2013

'E' - Draft ' Disclosure and barring service Policy.

9. Background Papers

The Police Act 1997

The Protection of Freedoms Act 2012

The Disclosure and Barring Service Privacy Impact Assessment

DBS Update Service - Employer Guide

DBS Update Service - Applicant Guide