

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 22nd July 2015

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WARD(S): All

PART I **FOR DECISION**

REVISED POLICY FOR THE DISCLOSURE AND BARRING SERVICE (DBS)

1. **Purpose of Report**

For Members to approve the revisions to the Council's Disclosure and Barring Service Policy.

2. **Recommendation(s)**

That the Committee:

(a) Approve the revised draft DBS policy.

(b) To start the consultation exercise on the new draft policy

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

The primary responsibility of the Licensing Authority is to ensure that all new applicants for and current holders of Hackney Carriage and Private Hire drivers licenses are 'Fit and Proper Persons' to hold such a licence. Any criminal behaviour can be taken into account when determining whether an applicants is 'fit and proper'.

The revision of the DBS policy making registration with the DBS Update Service compulsory will ensure that the Licensing Team are able to conduct annual checks with the Update Service to confirm any status of the licence holder.

3a. **Slough Joint Wellbeing Strategy Priorities –**

As the report outlines there is currently a dispute between the Police, the Home Office and the DBS over the disclosure to Licensing Authorities in relation to arrest, cautions, conviction and 'any other information' held on the DBS Certificate. As the primary responsibility of the Licensing Authority is ensuring that all persons are 'Fit and proper' to be granted and hold a drivers licence the revisions to the DBS policy will contribute to the following wellbeing themes.

- Economy and Skills
- Safer Communities

Cross-Cutting themes:

Approving the revised policy will contribute to the cross cutting theme of **Improving the image of the town**, in that all licensed drivers will be 'Fit and proper Persons' to hold such licences and ensure the safety and wellbeing of the public.

3b. **Five Year Plan Outcomes**

The report outlines fully the reason for the revision to the DBS policy which will ensure the safety and wellbeing of the public. This will contribute to the Five Year Plan with the specific outcome of:

- Slough will be one of the safest places in the Thames Valley

4. **Other Implications**

(a) **Financial**

There will be financial implications by approving the revised policy. There are on average 289 DBS applications made annually which includes an £11.00 administration fee for processing each application. This totals £3,179 on an annual basis. This administration fee income will be lost, however there are (on average) 90 new applications per year which will produce administration fees totalling £990, therefore the annual loss is estimated to be approximately £2,189.

Although there will be minimal loss in income the approval of the revised policy will go further to ensure that all licensed drivers are and will continue to be deemed 'Fit and Proper' and enhance the protection, safety and wellbeing of the public which is of paramount importance at all times.

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 revised policy will ensure that all relevant checks have been conducted on an annual basis in relation to any criminal conviction or caution or 'other information' detailed on the DBS certificate.

(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

An initial EIA has been completed which indicates that there are no negatives or adverse impacts on any equality group. However a further EIA will be completed following the outcome of the formal consultation.

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 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/or road traffic offences.
- 5.2. 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 applied nationally. The changes were brought about by the Protection of Freedoms Act 2012 that amended the Police Act 1997.
- 5.3. On 18th July 2013 the Licensing Committee approved a new Disclosure and Barring Service (DBS) Policy, to cater for the changes introduced by the creation of the new service.
- 5.4. Since that date and most recently, there has been a dispute between the Home Office and the Police on the lawfulness of local authorities being informed of criminal investigations as well as convictions and cautions involving Taxi and Private Hire Drivers. This information was previously passed to local authorities under the Notifiable Occupations Scheme by relevant local police forces.
- 5.5. Concern has been raised following some local authorities being told by the DBS that they could no longer check whether a prospective Taxi or Private Hire Drivers had been barred from working with children or vulnerable adults unless they worked on a school transport contract.

The Local Government Association (LGA) has raised these issues as well as the risk being posed to public safety with the Home Office and DBS and a press release by the LGA is attached at **Appendix E**.

- 5.6. Since 2007 there have been a total of 31 drivers in the Borough who have had their licenses revoked as a result of serious offences, including extremely serious offences of sexual assault on lone females (whilst operating as a driver), serious

offences of violence, attempted murder, possession and or supply of controlled drugs, theft and death by careless driving. The majority of these had been previously notified to the Licensing Team by the Police, however over the last 18 months the notification has been limited.

5.7. The Council, in common with others, has encountered problems with not being notified of drivers that have been arrested, bailed, charged and cautioned for criminal offences. Notifications from the police have been limited over the last 18 months, with only a 2 official notifications being received.

5.7.1. In January 2015 the Licensing team were informed by a third party of a driver who had recently been convicted of two counts of ABH. Enquiries were made with the police who confirm that the offences had taken place in January 2013 on two passengers in the drivers vehicle and the driver was sentenced to a 12 months suspended prison sentence. The Licensing team had not been informed by the Police of the arrest in 2013.

5.7.2. Another example is where a driver informed the Licensing team that he had been involved in a serious accident injuring a member of the Public. The notifiable occupations unit did not inform the licensing team of the accident or that the driver had been charged. The driver was subsequently convicted of death by careless driving, and his licence was revoked

5.8. Members will also be aware of the recently published 'Jays Report' and 'Independent Inspection Report' of Child Sexual Exploitation and human trafficking in Rotherham. The report was highly critical of that Council's licensing officers and members of the Licensing Board. It should be pointed out that there is no direct evidence that what has happened in Rotherham is or has been happening Slough.

5.9. As of 1st October 2015 the Deregulation Act 2015 takes effect amending the Local Government (Miscellaneous provisions) Act 1976 as follows:

'Taxi and Private Hire Drivers'

- Standardising at 3 years the duration of both Taxi and Private Hire Driver licenses, and at 5 years for a Private Hire Operator licenses. A shorter duration may be specified depending on the circumstances of each case.

5.10. In light of both the above, the Licensing Team are conscious that the Council needs to look at strengthening it's current processes and procedures, certainly in relation to new applicants and current holders of Hackney Carriage and Private Hire driver licenses and in order to do so have completely reviewed the policy on DBS disclosures to recommend that it should be a mandatory requirement that all licensed drivers and new applicants **MUST** register with the DBS Update Service to create a 'living certificate' which the licensing authority can then access.

5.11. The revised DBS Policy is attached at **Appendix A**. For ease of reference the changes in brackets, italics and underlined are to be deleted and the areas shaded in grey are the proposed amendments.

5.12. The benefits of the revised policy are;

- Mandatory registration with the DBS Update Service by all new applicants at the initial application stage and at the next renewal by current licence holders
- Licence holders will only have to pay an annual fee of £13.00 to the DBS to maintain the registration rather than the current fee of £55.00 every 3 years to the Council for a new DBS application.
- By maintaining the registration with the Update Service this creates a living certificate which becomes portable and can be accepted by any other licensing authority rather than a new application being made in each licensing authority area.
- Officers will be able to carry out a status check with the DBS at the anniversary of the previous status check rather than deal with DBS applications for each licence holder on a 3 year basis.
- If a Status Change is shown then this means that a criminal conviction or caution has been put on or taken off the DBS certificate, which will require a new DBS application being made.
- Where information is received or obtained that there may be a 'status change', officers will conduct a further 'status check'.

The Financial Aspects document at **Appendix B** details the financial benefits to licence holders through compulsory registration with the Update Service.

- 5.13. A copy of the 'DBS Update Service - Applicant Guide' and 'How to subscribe to the Update Service' document are attached at **Appendices C and D**.
- 5.14. A further report will be put before the Licensing Committee with the results of the consultation.

6. **Comments of Other Committees**

None

7. **Conclusion**

The Committee is therefore requested to note the revised draft DBS policy.

8. **Appendices Attached**

- 'A' - Revised DBS Policy
- 'B' - Financial Aspects document
- 'C' - DBS Update Service - Applicant Guide
- 'D' - How to subscribe to the Update Service
- 'E' - LGA Press Release

9. **Background Papers**

The Police Act 1997

The Protection of Freedoms Act 2012

The Disclosure and Barring Service Privacy Impact Assessment

Jays Report (Rotherham)

Rotherham Council Independent Inspection Report

Deregulation Act 2015