

CAMBRIDGE CITY COUNCIL

REPORT OF: Yvonne O'Donnell
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TO: Licensing Committee

24 July 2017

WARDS: All

CRIMINAL RECORD CHECKS FOR NON-DRIVER PROPRIETORS OF VEHICLE AND OPERATOR LICENCES

1. INTRODUCTION

- 1.1 In October 2016 Cambridge City Council's 'Hackney Carriage and Private Hire Licensing Policy' (the 'policy') was reviewed and updated following consultation with the trade and members of the public.
- 1.2 One of the changes relates to the requirement for 'non-driver proprietors' of vehicle and operator licences to undertake a criminal record check at 'enhanced disclosure' level at three-yearly intervals. This check is now known as an Enhanced DBS (Disclosure and Barring Service) check.
- 1.3 The DBS, however, advised the Council in May 2017 that non-driver proprietors of vehicle and operator licences were not eligible for an Enhanced DBS check and therefore the policy needs to be changed.

2. RECOMMENDATIONS

- 2.1 Members are recommended to:
 - 2.1.1 Amend the policy to require non-driver proprietors and operators to undertake a Basic DBS check at 3-yearly intervals.
 - 2.1.2 Confirm the continuation of the requirement for all non-driver proprietors to attend, and successfully pass, the Customer Awareness, Safeguarding, Equality and Protection training course.
 - 2.1.3 Direct the refund of £19 to each non-driver proprietor whom has already undertaken an Enhanced DBS check.

3. BACKGROUND

- 3.1 The term 'non-driver proprietor' relates to individuals who are attached to a Hackney Carriage Vehicle, Private Hire Vehicle or Private Hire Operator licence, and are not also a licensed driver. These individuals tend to be 'joint proprietors' who are often relatives of the 'lead proprietor'. It is common for Hackney Carriage Vehicle licences to have more than one proprietor attached and there are no legal provisions prohibiting this.
- 3.2 All drivers are required to complete an Enhanced DBS check every 3 years. Prior to the change of policy in October 2016 the requirements for non-driver proprietors were as follows:
- Hackney Carriage and Private Hire Vehicle licences:
Required to submit proof of address before being able to be attached to the licence
 - Private Hire Operator licences:
Required to submit a Basic DBS certificate before the grant of the licence and then at every renewal appointment.
- 3.3 A Basic (or 'standard') DBS involves a check of an applicant's criminal record against the Police National Computer for any reprimands, warnings, cautions or convictions.
- 3.4 An Enhanced DBS check includes all the information included as part of a basic check, in addition to checks of the barred lists, and any information held locally by police forces that is considered relevant to the child workforce and post applied for.
- 3.5 In May 2016 there were discussions between Licensing, Legal Services and our internal DBS expert within Human Resources, with respect to changing the policy to require non-driver proprietors to undertake enhanced disclosure checks.
- 3.6 This process included a review of the relevant guidance on whether the Council could ask for enhanced checks for non-driver proprietors.
- 3.7 The DBS's guidance document, '*A guide to eligibility for DBS checks*', provides that that licences included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 were for "*Taxi Driver and Private Hire Vehicle licensing purposes*". This suggested that it was not specifically drivers that would be eligible for an enhanced check.

- 3.8 The conclusion was that a licensing authority may require an applicant for a licence under the Town and Police Clauses Act 1847, or under Section 57 of the Local Government (Miscellaneous Provisions) Act 1976, to submit any information that they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.
- 3.9 In light of internal consultations, and the relevant guidance, it was felt that although non-driver proprietors would not be driving a licensed vehicle, they may still form part of, or have access to, the running of the business e.g. able to check records, be party to transactions etc.
- 3.10 Due to this access to relevant business information the Council took the view that that all licence holders should be subject to an Enhanced DBS check every 3 years and, attend the 'Customer Awareness: Safeguarding, Equality and Protection' training course, as part of the 'fit and proper' test to be a licence holder. It was therefore decided in the interests of public safety to pursue a change of the policy.
- 3.11 The draft policy went out to consultation from the 18th July 2016 until the 22nd August 2016. No feedback was received on this particular proposal.
- 3.12 On the 19th October 2016 the Licensing Committee unanimously resolved to adopt the draft policy, which came into immediate effect.
- 3.13 The policy currently provides:

35.4 ...Cambridge City Council therefore requires any Proprietors or Operators that are not licensed drivers with Cambridge City, to undertake an enhanced DBS upon application and every three years after (if subsequent renewal applications are made).

44.6 Private Hire operators, that are not licensed drivers, are required to produce an enhanced DBS certificate.

- 3.14 Subsequently systems were introduced to implement this change in policy, including confirming the process for how non-driver proprietors could apply for an enhanced disclosure check.
- 3.15 In May 2017 the Commercial & Licensing Team received contact from two members of the trade who had made their own independent enquiries with the DBS. They had been advised that non-driver proprietors were not eligible for an Enhanced DBS check. It was

therefore put to the Council that the checks currently being undertaken for non-driver proprietors were unlawful.

- 3.16 The Council therefore decided to contact the DBS directly as matter of urgency in order to seek clarification on the matter.
- 3.17 On the 10th May 2017 the Council received a response from the DBS who advised that from looking at all the legal provisions and guidance available that eligibility for an Enhanced DBS check is restricted to taxi and private hire driver licences only. Non-driver proprietors therefore do not meet the criteria to be eligible for an Enhanced DBS check.
- 3.18 Following receipt of this information all future appointments with non-driver proprietors were cancelled. It has been calculated that approximately 40 individuals have so far applied for an Enhanced DBS check through the Council.
- 3.19 Legal advice has been sought and confirmed that the Council can lawfully ask for a Basic DBS for non-driver proprietors of vehicle and operator licences. Disclosure Scotland has also indicated to the Council that a Basic DBS can be completed for a non-driver proprietor.
- 3.20 It is therefore proposed that non-driver proprietors and operators will be required to provide a Basic DBS every 3 years. The Council will, however, accept any Enhanced DBS certificates received from a non-driver proprietor thus far.
- 3.21 There is, however, the issue of those licence holders who have already undertaken an Enhanced DBS check unnecessarily. The Commercial & Licensing Team has so far received two enquiries from individuals asking if they will be compensated.
- 3.22 The cost difference between an enhanced and Basic DBS is £19. With an estimated 40 Enhanced DBS checks having been undertaken to date by non-driver proprietors or operators, an estimated £760 in total has been paid by non-driver proprietors to undertake the requested Enhanced DBS checks.
- 3.23 It is intended to leave the requirement for all licence holders, including non-driver proprietors to attend, and successfully pass, the Customer Awareness, Safeguarding, Equality and Protection training course.

- 3.24 It is proposed, however, to add an exemption policy for non-driver proprietors who can demonstrate that it would be wholly unreasonable or impractical for them to attend one of the Customer Awareness, Safeguarding, Equality and Protection training courses e.g. they permanently live abroad, unable to travel due to a medical condition etc. Exemptions would be issued on a case-by-case basis by the Environmental Health Manager, where a request is made and evidence is duly presented. This exemption will be reviewed every 3 years when the refresher training is due.

4. OPTIONS

4.1 Members may:

- a. Agree to change the policy and request that all non-driver proprietors of vehicle and operator licences undertake a Basic DBS every 3 years.
- b. Agree to change the policy in some other way.

- 4.2 Should members choose option A then it suggested that those licence holders who have already completed and paid for an Enhanced DBS application be refunded the difference between a basic and enhanced check, which stands at £19.00. All individuals will be written to, advised of the situation and invited to apply for a refund.

5. CONSULTATION

- 5.1 No consultation is required.

6. CONCLUSIONS

- 6.1 In order to comply with current direction from DBS Scotland, the policy needs to be changed as non-driver proprietors and operators cannot undertake Enhanced DBS checks at this time.
- 6.2 In the interests of public safety it is suggested that non-driver proprietors and operators instead provide a Basic DBS certificate at 3-yearly intervals.

7. IMPLICATIONS

(a) **Financial Implications**

If refunds are to be issued then these will be sourced from the taxi licensing budget. It is estimated refunds will amount to approximately £760.

(b) **Staffing Implications**

Any processing of refunds will be undertaken within existing provision.

(c) **Equal Opportunities Implications**

Nil.

(d) **Environmental Implications**

Nil.

(e) **Procurement**

Nil.

(f) **Consultation and communication**

Nil.

(g) **Community Safety**

Nil.

To inspect these documents contact Alex Beebe on extension 7723.

The author and contact officer for queries on the report is Alex Beebe on extension 7723.

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