



# Doncaster Council

## Report

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**Date: 17 June 2020**

### **To the Chair and Members of the LICENSING COMMITTEE**

### **TERMS OF REFERENCE, PROCEDURES AND DELEGATIONS**

#### **EXECUTIVE SUMMARY**

1. The purpose of this report is for the Licensing Committee to note the Terms of Reference for the discharge of licensing functions, to agree the procedure for hearings, to agree the delegation of functions, to agree the appointment of Members to the Licensing Sub-Committee and to agree the procedure for dealing with appeals.

#### **RECOMMENDATIONS**

2. a) It is recommended that Members note:
  - (i) The Terms of Reference for the Licensing Committee as detailed in Appendix A to this report.
  - (ii) The Terms of Reference for the Licensing Sub-Committees as detailed in Appendix A.
- b) It is recommended that Members agree:
  - (i) The procedures set out in Appendices B1 and B2 continue to be the procedures for Licensing Committee and Sub-Committee hearings held under the Licensing Act 2003 and the Gambling Act 2005 respectively.
  - (ii) The council's taxi licensing policy was recently amended to involve members in determining taxi applications where applicants fall below the minimum standards set out in the policy, a role which was previously undertaken by officers. The procedure is set out in the policy as shown at Appendix B3.
  - (iii) The delegation of functions set out in Appendix C1, C2 and C3.
  - (iv) The appointment of Members to the Licensing Sub-Committee as set out in Appendix D.
  - (v) The procedure for dealing with settling appeals after the Sub Committee hearing but before the appeal hearing in the Magistrates' Court is decided

as set out in Appendix E.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER**

3. Doncaster Council as the licensing authority is required to establish a licensing committee and sub-committee(s) in order to discharge its duties under the Licensing Act 2003 and the Gambling Act 2005. The establishment of defined terms of reference, clear procedures and delegations allows the Council to make licensing decisions.

## **BACKGROUND**

4. The licensing sub-committee terms of reference have been amended. The changes reflect the wider remit of the Licensing sub-committee, particularly in considering non Licensing Act 2003 matters such as sexual entertainment venues and taxi driver/operator licences. A copy of the Terms of Reference is set out in the Appendix A to this report for the Committee to note.
5. The Licensing Act 2003 and the Gambling Act 2005 enables the Licensing Committee to determine its own procedure and those of its Sub-Committees subject to the provisions of the Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 respectively. The procedures are set out in Appendix B1 and B2 of this report and are unchanged.
6. The Councils Hackney Carriage and Private Hire Licensing Policy which was approved by this committee in January 2021 sets out the procedure for determining applications and reviews in relation to the licensing of private hire and hackney carriage drivers, operators and vehicles. The procedure is set out at Appendix B3.
7. The Licensing Act 2003 provides that the functions of the Council as the Licensing Authority shall be carried out by its Licensing Committee, with the exception of the Statement of Licensing Policy. The Licensing Committee may delegate those functions to Sub-Committees or, where permitted, to officers. The delegation of functions are set out in Appendix C1 of this report.
8. The Gambling Act 2005 provides that all decisions relating to premises licences are, with the exception of those listed below, delegated to the Licensing Committee that has been established under the Licensing Act 2003. The Licensing Committee may delegate those functions to the Sub-Committee or, where permitted, to officers. Details of these delegations are set out in Appendix C2 of this report.  
Exceptions:
  - A resolution not to issue casino licences (Full Council decision only)
  - Functions in relation to the Statement of Policy (Full Council decision)
  - Setting of fees (Full Council)
9. The Councils Hackney Carriage and Private Hire Licensing Policy details that the functions of the Council as the Licensing Authority shall be carried out by its Licensing Committee, except where those functions have been delegated to officers. These delegations are set out in Appendix C3.
10. The appointment of the Licensing Sub-Committee and Member make-up process, as

set out in Appendix D, is unchanged with the minimum number of Members required to be quorate being 3.

11. For hearings held to consider matters relating to the Licensing Act 2003 or the Gambling Act 2005, where more than 3 Members attend those additional Members would be able to choose from the following options:
  - Stay and take part in the meeting and determine the outcome with the rest of the Sub-Committee Members;
  - Sit in the public area as an observer; or
  - Leave the meeting if they so wished.
12. Hearings held to consider Hackney Carriage / Private Hire matters are not public meetings and only parties to the hearing may attend.
13. In the case of an appeal against a Sub-Committee decision there is no reason why mediation or other discussions should not be held between the Licensing Authority and the appellant, once an appeal has been lodged, to either settle the matter entirely or to resolve those issues that can be resolved or indeed to identify issues in dispute. The procedure for dealing with settling appeals after the Sub Committee hearing but before the appeal hearing in the Magistrates' Court is set out in Appendix E. The procedure remains unchanged from the version agreed on 14<sup>th</sup> June 2018.

#### **OPTIONS CONSIDERED**

14. No other option was considered.

#### **REASONS FOR RECOMMENDED OPTION**

15. The Committee must note the Terms of Reference, may adopt its own Procedures, may establish one or more sub-committees and may determine the delegation of functions.
16. The principles behind the delegation of functions are published in Doncaster Council's respective Licensing Policies. It is recognised that many of the decisions and functions will be purely administrative in nature and it is therefore the policy of Doncaster Council that functions, so far as possible, should be delegated in the interests of speed, efficiency and cost effectiveness. *(Section 13 of the Council's Statement of Licensing Policy – Licensing Act 2003, Section 3 of the Council's Statement of Licensing Policy – Gambling Act 2005 and Appendix 19 of the Council's Hackney Carriage & Private Hire Licensing Policy)*

#### **IMPACT ON THE COUNCIL'S KEY OUTCOMES**

17.

	<b>Outcomes</b>	<b>Implications</b>
	<b>Doncaster Working:</b> Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;	Functions are delegated in the interests of speed, efficiency and cost effectiveness wherever possible. This ensures that licensing decisions can be made in

	<ul style="list-style-type: none"> <li>• Better access to good fulfilling work</li> <li>• Doncaster businesses are supported to flourish</li> <li>• Inward Investment</li> </ul>	a timely manner.
	<p><b>Doncaster Living:</b> Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> <li>• The town centres are the beating heart of Doncaster</li> <li>• More people can live in a good quality, affordable home</li> <li>• Healthy and Vibrant Communities through Physical Activity and Sport</li> <li>• Everyone takes responsibility for keeping Doncaster Clean</li> <li>• Building on our cultural, artistic and sporting heritage</li> </ul>	
	<p><b>Doncaster Learning:</b> Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> <li>• Every child has life-changing learning experiences within and beyond school</li> <li>• Many more great teachers work in Doncaster Schools that are good or better</li> </ul> <p>Learning in Doncaster prepares young people for the world of work</p>	
	<p><b>Doncaster Caring:</b> Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> <li>• Children have the best start in life</li> <li>• Vulnerable families and individuals have support from someone they trust</li> <li>• Older people can live well and independently in their own homes</li> </ul>	None
	<p><b>Connected Council:</b></p> <ul style="list-style-type: none"> <li>• A modern, efficient and flexible</li> </ul>	

	<p>workforce</p> <ul style="list-style-type: none"> <li>• Modern, accessible customer interactions</li> <li>• Operating within our resources and delivering value for money</li> <li>• A co-ordinated, whole person, whole life focus on the needs and aspirations of residents</li> <li>• Building community resilience and self-reliance by connecting community assets and strengths</li> <li>• Working with our partners and residents to provide effective leadership and governance</li> </ul>	
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## **RISKS AND ASSUMPTIONS**

18. It is a requirement of the Licensing Authority, under the Licensing Act 2003 and the Gambling Act 2005, to adopt Terms of Reference, the procedure for hearings and approve the delegation of functions.

## **LEGAL IMPLICATIONS**

**MC Churchman**

**Date 20/5/21**

19. Sections 101 and 102 of the Local Government Act 1972 empower the Council to arrange for the discharge of any of its functions by a Committee or Sub-Committee. Whilst these sections do not apply to the Licensing Committee or Licensing Sub-Committees the Council has chosen to utilise the format as set out in these provisions to ensure the good governance of the committee. The Council is obliged by law to appoint a Licensing Committee under the Licensing Act 2003 and Gambling Act 2005. Further secondary Regulations determine the requirements of a licensing hearing and the process to follow. Any additional procedures the Licensing Committee chooses to recommend and the Council agrees must comply with these regulations. Therefore, care must be taken to ensure the procedure agreed and delegations comply with the relevant statutes.

## **FINANCIAL IMPLICATIONS [RT \_\_ Date \_18/05/21\_]**

20. There are no specific financial implications associated with this report. The costs associated with applications and their determinations are generally met from fees paid to the Council by applicants for Authorisations/Licences under the relevant licensing enactments and there are no further financial considerations.

## **HUMAN RESOURCES IMPLICATIONS [Officer DK Date 18/05/2021]**

21. There are no human resource implications to this type of report.

## **TECHNOLOGY IMPLICATIONS [Officer PW Date 18/05/21]**

22. There are no technology implications to this report.

## **HEALTH IMPLICATIONS [Officer CT\_\_ Date 19.5.21 \_\_]**

23. Public Health supports the adoption of the updated terms of reference. It is essential to have up to have these in place to enable a shared understanding of the procedures and delegation of functions. Public Health also agrees to the appointment of Members to the Licensing Sub-Committee and the procedure for dealing with appeals. Clearly defining these ensures that the various committees are functioning in a way that ensures that licensed activity is carried out according to the law thus protecting our residents from unlawful activity.

### **EQUALITY IMPLICATIONS [Officer DDS Date 20/05/21]**

24. Decision makers must consider the Council's duties under the Public Sector Equality Duty at s149 of the Equality Act 2010. The duty requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. There are no specific equality implications arising from this report. However, any activities arising from this report will need to be the subject of separate 'due regard' assessments.

### **CONSULTATION**

25. Consultation has taken place between Democratic Services, Legal Services and the Licensing Department.

### **BACKGROUND PAPERS**

- 26.
- Report to Annual Council, Terms of Reference Report.
  - Licensing Act 2003
  - Gambling Act 2005
  - Licensing Act 2003 (Hearings) Regulations 2005
  - Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007
  - Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 – April 2018
  - Gambling Commission Guidance to licensing authorities 5<sup>th</sup> edition.
  - Doncaster Council's Statement of Licensing Policy (2021) – Licensing Act 2003
  - Doncaster Council's Statement of Licensing Policy (2019) – Gambling Act 2005
  - Doncaster Council's Hackney Carriage & Private Hire Licensing Policy (2021)

### **REPORT AUTHOR & CONTRIBUTORS**

David Smith, Licensing Officer  
Tel: (01302) 862546  
Email: david.smith@doncaster.gov.uk

**Dan Swaine**  
**Director of Economy and Environment**

**LICENSING COMMITTEE**

This Committee is a Committee of the Council constituted:

- (1) In relation to its functions under the Licensing Act 2003, under Section 6 of that Act.
- (2) In relation to its functions under the Gambling Act 2005.
- (3) In relation to its other functions, under Sections 101 and 102 of the Local Government Act 1972.

**Terms of Reference**

**FOR RECOMMENDATION TO COUNCIL:-**

1. In respect of the relevant prescribed period to consider the adoption of the Statement of Licensing Policy.
2. During the relevant prescribed period to keep the Statement of Licensing Policy under review, and to recommend any revisions to it.

**FOR RECOMMENDATION TO THE EXECUTIVE AND THEN TO COUNCIL:-**

1. In respect of the relevant prescribed period to advise on the preparation, content and implementation of the Statement of Gambling Policy.
2. During the relevant prescribed period to keep the Statement of Gambling Policy under review, and to recommend any revisions to it.

**DELEGATED MATTERS:-**

1. To discharge the functions of the Council which are licensing functions within the meaning of the Licensing Act 2003.
2. To discharge the functions of the Local Authority as set out in the Gambling Act 2005.
3. The appointment of Licensing Sub-Committees under Section 10 of the Licensing Act 2003.
4. To determine Policies that are relevant to the Council's functions under Part 3 of the Constitution which relate to those licensing and registration functions unless the policy must be determined by Full Council.
5. To exercise the Council's functions under Part 3 of the Constitution which relate to those licensing and registration functions except where the function has been delegated to Officers of the Council

## **LICENSING SUB-COMMITTEES**

These Sub-Committees are Sub-Committees of the Licensing Committee appointed by that Committee and constituted:

- (1) Pursuant to section 10 of the Licensing Act 2003, in relation to their functions under the Licensing Act 2003,
- (2) In relation to their functions under the Gambling Act 2005.
- (3) In relation to their functions under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009
- (4) In relation to the other licensing and registration functions as set out in Part 3 of the council's constitution

### **Terms of Reference**

1. To determine applications under the Licensing Act 2003, where relevant representations are received.
2. To determine applications under the Gambling Act 2005, where relevant representations are received.
3. To determine applications under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by section 27 of the Policing and Crime Act 2009
4. To determine applications and reviews in relation to the licensing of private hire and hackney carriage drivers, operators and vehicles except where those functions have been delegated to officers under the Council's Hackney Carriage and Private Hire Licensing Policy
5. To determine all other applications and reviews in relation to the Council's functions under Part 3 of the Constitution which relate to those licensing and registration functions, except where those functions have been delegated to officers

**DONCASTER METROPOLITAN BOROUGH COUNCIL****LICENSING ACT 2003**  
**LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005****1. Meaning of Expressions used in this Document**

<i>“the Act”</i>	- Licensing Act 2003
<i>“the Regulations” or any particular reference to a “Regulation”</i>	- The Licensing Act 2003 (Hearings) Regulations 2005
<i>“the Authority”</i>	- Doncaster Metropolitan Borough Council, in its capacity as the relevant licensing authority under the Act, or where the context so admits the Committee
<i>“the Committee”</i>	- the Sub-Committee of the Authority’s Licensing Committee constituted under the Act to determine the matter before it
<i>“the Chair”</i>	- the member of the Committee appointed to act as Chairperson of the Committee
<i>“the Applicant”</i>	- the party making the application e.g. the licence/certificate holder or prospective holder, or the party seeking a review
<i>“responsible authorities”</i>	- the public or other bodies described in the Act as “responsible authorities” and who have made representations
<i>“party”</i>	- means person(s) to whom notice of hearing is to be given (including their representatives) and “party” and “parties” shall be construed accordingly

**2. Rights of attendance, assistance and representation at hearings**

- (a) A party may attend the hearing and may be assisted or represented by any other person. There is no requirement that a party’s representative is legally or otherwise professionally qualified.
- (b) The hearing shall take place in public, unless the Authority decides to exclude the public from all or part of the hearing because it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of

the hearing taking place in public. A party and any person assisting or representing a party, may be treated as a member of the public.

- (c) The Authority may exclude from a public hearing any person attending who acts in a disruptive manner, and refuse to re-admit that person, or impose conditions on his/her re-admission. Any such excluded person may, before the end of the hearing, submit to the Authority in writing any such information that he/she would have been entitled to give orally.
- (d) The Authority may dispense with a hearing if all of the persons required by the Act agree that a hearing is unnecessary, have given notice to the Authority that they consider a hearing to be unnecessary, and the Authority have given notice to all parties that the hearing has been dispensed with.
- (e) The Authority has the power to consider adjournments and an extension of time limits provided for within the Regulations on the basis it is in the public interest to do so. When a request for an adjournment or an extension of time is received the request is referred to the Chair for agreement provided the request can be accommodated in the statutory time frame. If this is not possible the matter shall be determined by the Committee at the prelisted hearing.

### **3. Non-attendance of a party at the hearing**

- (a) If a party has informed the Authority that he/she does not intend to attend the hearing, or be represented at the hearing, the hearing may proceed in his/her absence.
- (b) If a party who has not so notified the Authority does not attend either in person or by his/her representative, the Authority shall adjourn the hearing to a specified date if it considers it in the public interest to do so, but it shall otherwise proceed with the hearing in that party's absence.
- (c) Where the hearing proceeds in the absence of a party, the Authority shall consider the application, representations or notice made by that party.
- (d) Where the hearing is adjourned, the Authority shall forthwith, notify the parties of the date, time and place to which the hearing has been adjourned.

### **4. Procedure at the Hearing**

The hearing shall take the form of a discussion led by the Authority. The following procedure is intended to give form to such a discussion to ensure that all parties are able to put their case. Each party shall have equal maximum time in which to address the Committee. The Committee may take into account documentary or other information provided by a party before the hearing, or with the consent of all other parties at the hearing. The Committee may change the procedure in individual cases, upon the application of a party, or upon its own motion, if it considers it necessary to properly determine the business before it.

- (a) At the commencement of the hearing, the Chair will make introductions and establish that all parties understand the procedure to be followed. The Committee will then receive and determine any application that a party may wish to make to permit another person to appear at the hearing, and any

application that any party wishes to make to vary the following order of addresses.

- (b) The Applicant may then address the Committee and provide any further information that the Authority have requested. At the conclusion of the Applicant's address, members of the Committee may ask the Applicant questions. Following questions by Committee members, any other party that wishes to question the Applicant may request permission to do so. If granted, the party or parties receiving permission may question the Applicant.
- (c) Other parties entitled to address the Committee or given permission to do so under paragraph (a) above, may then do so; and also provide to the Committee any information that the Authority have requested. Following the address, the members of the Committee may question the party addressing the Committee. Following any Committee questions, any other party wishing to question the party that has addressed the Committee may seek the Committee's permission to do so. If granted, the party or parties receiving permission may question the Applicant.

**Order of Addresses under paragraph (c)**

Subject to any direction given by the Committee under paragraph (a) above, the order of addresses by other parties, under paragraph (c) above, shall be:-

- [1] Any representative of a "responsible authority" (as defined in the Act)
- [2] Any other party opposing the Applicant
- [3] Any other party not falling within category [1] or [2] above, or category [4] below
- [4] Any other party supporting the Application

**Permission to question or cross-examine the Applicant or other party**

A party may question any other party appearing if given permission by the Authority.

The Committee will determine any application by a party to question another party on its merits.

Cross examination shall not be permitted unless the Authority considers that cross examination is required for it to consider the representations, application or notice, as the case may require.

The Committee shall determine any application by one party to permit cross examination of another on its merits.

Normally, permission will be given to one party to question or cross-examine another, only where:-

- (i) a material fact put forward by one party is disputed by another party and the dispute can be properly determined, only if cross examination is permitted; or

- (ii) the question that one party wishes to put to the other is non contentious and is for the purpose of clarification only.

## **5. The Committee's Deliberations and Determination**

- (a) The Authority considers that normally, it will be in the public interest that the deliberations of the Committee are conducted in the presence of the note taker and legal adviser only, unless an application is made by any party present for these to be conducted in public. If any such application is made, the Committee shall determine such application. The function of the legal adviser shall be to advise the Committee on points of law and procedure only.
- (b) Subject to paragraph (a) above, the Chair shall formally exclude the public including, the parties and their representatives from the meeting under Regulation 14(2), to enable the Committee to deliberate. All persons required to vacate the room during the deliberations shall be required to take all their personal belongings out of the room except as may be directed by the Committee.
- (c) If during its deliberations, the Committee require any further information from any party in order to assist in its deliberations, the Chair shall reconvene the public hearing for the purpose of attempting to secure that further information.
- (d) Following the Committee's deliberations, the public shall be re-admitted to the hearing, whereupon the Chair shall announce the determination of the Authority, where the provisions of the Act or the Regulations require a determination to be made at the conclusion of the hearing or otherwise where the Committee is unable to announce its determination.
- (e) Following the announcement of any determination of the application, representations or notice before the Committee, the hearing shall conclude.

## **6. Record of proceedings**

A record of the hearing will be taken in a permanent and intelligible form. Any such record will be kept for a period of six years from the date that the application or review is finally determined (including any appeal or judicial review).

**DONCASTER METROPOLITAN BOROUGH COUNCIL**  
**HEARING PROCEDURE**

**Gambling Act 2005**

**The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees)**  
**(Premises Licences and Provisional Statements) (England and Wales) Regulations**  
**2007**

**1. Meaning of Expressions used in this Document**

<i>“the Act”</i>	- Gambling Act 2005
<i>“the Regulations” or any particular reference to a “Regulation”</i>	- the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007
<i>“the Authority”</i>	- Doncaster Metropolitan Borough Council, in its capacity as the relevant licensing authority under the Act, or where the context so admits the Committee
<i>“the Committee”</i>	- the Sub-Committee of the Authority’s Licensing Committee constituted under the Act to determine the matter before it
<i>“the Chair”</i>	- the member of the Committee appointed to act as Chairperson of the Committee
<i>“the Applicant”</i>	- the party making the application e.g. the licence holder or prospective holder, or the party seeking a review
<i>“Responsible Authorities”</i>	- the public or other bodies described in the Act as “responsible authorities” and who have made representations
<i>“party”</i>	- means person(s) to whom notice of hearing is to be given (including their representatives) and “party” and “parties” shall be construed accordingly

## 2. Rights of attendance, assistance and representation at hearings

- (a) A party may attend the hearing and may be assisted or represented by any other person. There is no requirement that a party's representative is legally or otherwise professionally qualified.

In conducting a hearing the relevant committee must ensure that each party is given the opportunity to—

- i. address the relevant committee on any matter that is relevant to the application or review, or any representations made on the application or review;
  - ii. call witnesses to give evidence on any matter that is relevant to the application or review, or any representations made on the application or review;
  - iii. provide further information on, or explanation of, any matter on which the relevant committee has indicated that it will want further clarification.
- (b) The hearing shall take place in public, unless the committee direct that all or part of a hearing must be in private if it is satisfied that it is necessary in all the circumstances of the case, having regard to—
- (a) any unfairness to a party that is likely to result from a hearing in public; and
  - (b) the need to protect as far as possible, the commercial or other legitimate interests of a party. A party and any person assisting or representing a party may be treated as a member of the public.
- (c) The Authority may exclude from a public hearing any person attending who acts in a disruptive manner and refuse to re-admit that person, or impose conditions on his/her re-admission. Any such excluded person may, before the end of the hearing, submit to the Authority in writing any such information that he/she would have been entitled to give orally.
- (d) The Authority may dispense with a hearing if all of the persons required by the Act agree that a hearing is unnecessary, have given notice to the Authority that they consider a hearing to be unnecessary, and the Authority have given notice to all parties that the hearing has been dispensed with.
- (e) The Authority has the power to consider adjournments and an extension of time limits provided for within the Regulations on the basis it is in the public interest to do so. When a request for an adjournment or an extension of time is received the request is referred to the Chair for agreement provided the request can be accommodated in the statutory time frame. If this is not possible the matter shall be determined by the Committee at the prelisted hearing.

### **3. Non-attendance of a party at the hearing**

- (a) If a party has informed the Authority that he/she does not intend to attend the hearing, or be represented at the hearing, the hearing may proceed in his/her absence.
- (b) If a party who has not so notified the Authority does not attend either in person or by his/her representative, the Authority may adjourn the hearing to a specified date if it considers it in the public interest to do so, but it may otherwise proceed with the hearing in that party's absence.
- (c) Where the hearing proceeds in the absence of a party, the Authority shall consider the application, representations or notice made by that party.
- (d) Where the hearing is adjourned, the Authority shall forthwith, notify the parties of the date, time and place to which the hearing has been adjourned.

### **4. Procedure at the Hearing**

The hearing shall take the form of a discussion led by the Authority. The following procedure is intended to give form to such a discussion to ensure that all parties are able to put their case. Each party shall have equal maximum time in which to address the Committee. The Committee may take into account documentary or other information provided by a party before the hearing, or with the consent of all other parties at the hearing. The Committee may change the procedure in individual cases, upon the application of a party, or upon its own motion, if it considers it necessary to properly determine the business before it.

- (a) At the commencement of the hearing, the Chair will make introductions and establish that all parties understand the procedure to be followed. The Committee will then receive and determine any application that a party may wish to make to permit another person to appear at the hearing, and any application that any party wishes to make to vary the following order of addresses.
- (b) The Applicant may then address the Committee and provide any further information that the Authority have requested. At the conclusion of the Applicant's address, members of the Committee may ask the Applicant questions. Following questions by Committee members, any other party that wishes to question the Applicant may request permission to do so. If granted, the party or parties receiving permission may question the Applicant.
- (c) Other parties entitled to address the Committee or given permission to do so under paragraph (a) above, may then do so; and also provide to the Committee any information that the Authority have requested. Following the address, the members of the Committee may question the party addressing the Committee. Following any Committee questions, any other party wishing to question the party that has addressed the Committee may seek the Committee's permission to do so. If granted, the party or parties receiving permission may question the Applicant.

### **Order of Addresses under paragraph (c)**

Subject to any direction given by the Committee under paragraph (a) above, the order of addresses by other parties, under paragraph (c) above, shall be:-

- [1] Any representative of a “responsible authority” (as defined in the Act)
- [2] Any other party opposing the Applicant
- [3] Any other party not falling within category [1] or [2] above, or category [4] below
- [4] Any other party supporting the Application

### **Permission to question or cross-examine the Applicant or other party**

A party may question any other party appearing if given permission by the Authority.

The Committee will determine any application by a party to question another party on its merits.

Cross examination shall not be permitted unless the Authority considers that cross examination is required for it to consider the representations, application or notice, as the case may require.

The Committee shall determine any application by one party to permit cross examination of another on its merits.

Normally, permission will be given to one party to question or cross-examine another, only where:-

- (i) a material fact put forward by one party is disputed by another party and the dispute can be properly determined, only if cross examination is permitted; or
- (ii) the question that one party wishes to put to the other is non-contentious and is for the purpose of clarification only.

## **5. The Committee’s Deliberations and Determination**

- (a) The Authority considers that normally, it will be in the public interest that the deliberations of the Committee are conducted in the presence of the note taker and legal adviser only, unless an application is made by any party present for these to be conducted in public. If any such application is made, the Committee shall determine such application. The function of the legal adviser shall be to advise the Committee on points of law and procedure only.
- (b) Subject to paragraph (a) above, the Chair shall formally exclude the public including, the parties and their representatives from the meeting under Regulation 8(2), to enable the Committee to deliberate. All persons required to vacate the room during the deliberations shall be required to take all their

personal belongings out of the room except as may be directed by the Committee.

- (c) If during its deliberations, the Committee require any further information from any party in order to assist in its deliberations, the Chair shall reconvene the public hearing for the purpose of attempting to secure that further information.
- (d) Following the Committee's deliberations, the public shall be re-admitted to the hearing, whereupon the Chair shall announce the determination of the Authority, where the provisions of the Act or the Regulations require a determination to be made at the conclusion of the hearing, or otherwise where the Committee is unable to announce its determination, notification will be given to all parties within five days.
- (e) Following the announcement of any determination of the application, representations or notice before the Committee, the hearing shall conclude.

## **6. Record of proceedings**

A record of the hearing will be taken in a permanent and intelligible form. Any such record will be kept for a period of six years from the date that the application or review is finally determined (including any appeal or judicial review).

**Doncaster Metropolitan Borough Council Taxi Licensing Committee Hearing**

**Town Police Clauses Act 1847**  
**Local Government (Miscellaneous Provisions) Act 1976**

**Reasons for a Committee Hearing**

A Committee hearing may be required for;

- New applicants who do not meet the minimum standards required for the grant of a licence without further investigation.
- Existing licence holders whose actions have fallen below the standards of the Councils policy.

**Attendance, Assistance and Representation**

The applicant/licence holder who is the subject of the Committee hearing will be sent a notice of the time, date and location of the hearing.

The applicant/licence holder shall also be sent a report outlining the reasons for the Committee hearing.

The applicant/licence holder should complete the form 'Notice of actions following receipt of notice of Committee hearing' and give the notice to the Licensing Committee not later than five (5) working days before the day (or the first day) on which the Committee hearing is to be held.

The subject should attend the Committee hearing at the appointed time and may be assisted or represented by any person whether or not that person is legally qualified.

Hearings may be held in person or remotely.

**Committee Members**

The Committee will consist of a minimum of three elected members of the Licensing Committee.

Also present at the hearing will be an officer of the Licensing department who will present the case to the Committee. This officer is not part of the Committee and is not involved in the decision making process.

**Representations and Supporting Information**

At the hearing you shall be entitled to —

- Give further information in support of your application (where applicable)
- Give a response to any of the questions raised by the Committee.
- Give a response or make comment on any items contained within the hearing report or raised at the hearing.

- Give a response to any of the reasons why the hearing is being held.

### **Failure to Attend the Committee Hearing**

If you have informed the authority that you are unable to attend the hearing. The Committee may -

- With the agreement of all Committee members, rearrange the hearing to a later date of which you will be notified.
- Proceed with the hearing in your absence.

If you fail to attend and have not previously notified the authority. The Committee may –

- Proceed with the hearing in your absence.
- With the agreement of all Committee members, rearrange the hearing to a later date of which you will be notified.

If you fail to attend a hearing where you have previously advised you would be in attendance. The Committee may –

- Proceed with the hearing in your absence.
- With the agreement of all Committee members, rearrange the hearing to a later date of which you will be notified.

Where the Committee agrees to rearrange a hearing as a result of the above and sends notification of the new date on which the hearing will take place - the hearing will proceed on the date specified on the notice regardless of your attendance.

### **Procedure at the Committee Hearing**

At the beginning of the hearing, the authority shall explain the reasons for the Committee hearing and the procedure which will be followed.

All persons present at the hearing will introduce themselves. Any persons in attendance who have not been invited by the Committee, shall be required to explain their reason for attendance and their suitability to remain part of the hearing will be subject to the approval of the Committee members.

The Committee hearing shall take the form of a discussion led by the chair of the Committee. You will be given the opportunity to respond to any questions raised and to provide further detail on any matters arising which are relevant to the hearing.

The Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may —

- Refuse to permit that person to return, or
- Permit him to return only on such conditions as the Committee may specify.

### **Closing Statement and Deliberations**

Once the Committee has concluded their questions, you will be invited to make a closing statement. This is your opportunity to address the Committee and raise any relevant points in support of your suitability to hold a licence.

At the conclusion of the hearing, the meeting will close and you will be invited to leave.

The Committee will enter into deliberations. You will not be required to wait for the deliberations to conclude as the Committee may need to conduct further checks and reconvene at a later date.

## **Decisions and Appeals**

When making a decision the Committee will take into account the representations made at the hearing, the Councils Hackney Carriage & Private Hire Licensing Policy and, where a licence is already held, all relevant licence conditions and code of conduct.

Where an applicant/licence holder has been convicted of a criminal offence, the Council cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)]

The Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 provides that all convictions, irrespective of age, remain "live" for the purposes of a Hackney Carriage or Private Hire driver's licence, these occupations being added to the exemptions list from that time.

Licensing authorities have a duty to ensure that any person to whom they grant a Hackney Carriage or Private Hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

**Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?**

If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.

Licensing authorities have to make difficult decisions but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the Committee members are only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides a licensing authority with the ability to suspend or revoke a driver's licence on the following grounds: -

- a) that he has since the grant of the licence—
  - I. been convicted of an offence involving dishonesty, indecency or violence; or
  - II. been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;

- aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or
- b) any other reasonable cause

Licensing authorities have the option to suspend or revoke a licence should information be received that causes concern over whether a driver is a fit and proper person. Where the licence holder has been served an immigration penalty or convicted of an immigration offence the licence should be revoked immediately. Guidance for licensing authorities to prevent illegal working in the taxi and private hire vehicle sector has been issued by the Home Office. As with the initial decision to license a driver, this determination must be reached based on the balance of probabilities, not on the burden of beyond reasonable doubt.

Before any decision is made, the licensing authority must give full consideration to the available evidence and the driver should be given the opportunity to state his or her case. If a period of suspension is imposed, it cannot be extended or changed to revocation at a later date.

A decision to revoke a licence does not however prevent the reissuing of a licence should further information be received that alters the balance of probability of a decision previously made. The decision to suspend or revoke was based on the evidence available at the time the determination was made. New evidence may, of course, become available later.

New evidence may be produced at an appeal hearing that may result in the court reaching a different decision to that reached by the council or an appeal may be settled by agreement between the licensing authority and the driver on terms which, in the light of new evidence, becomes the appropriate course. If, for example, the allegations against a driver were now, on the balance of probability, considered to be unfounded, a suspension could be lifted or, if the licence was revoked, an expedited re-licensing process used.

A suspension may still be appropriate if it is believed that a minor issue can be addressed through additional training. In this instance the licence would be returned to the driver once the training has been completed without further consideration. This approach is clearly not appropriate where the licensing authority believes that, based on the information available at that time, on the balance of probability it is considered that the driver presents a risk to public safety.

A refusal to license an individual as a driver or to suspend or revoke a driver licence does not automatically mean that that individual cannot be issued or continue to hold a vehicle or Private Hire vehicle operator licence; these decisions must be independent of a driver licence refusal and based on the appropriate information i.e. it should not consider information that would only be available via an enhanced DBS check but instead that which would be disclosed on a basic check. DBS certificate information can only be used for the specific purpose for which it was requested and for which the applicant's full consent has been given.

A failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

Where the Committee are unable to reach a unanimous decision, a majority decision will be accepted.

The Committee will endeavour to inform you of the decision within 7 working days or, where they are unable to make the decision within 7 working days; they will inform you within 7 working days of when a decision is likely to be made.

A decision notice will be sent to you in writing.

Where the decision of the Committee is to suspend / revoke / refuse a licence, the notice will also include a statement explaining your right to appeal that decision to the Magistrates Court within 21 days.

### **Deviation for Serious Offences**

In circumstances where it is in the interest of public safety to take immediate action against an existing licence holder due to the serious nature of the incident which questions the suitability for the continuation of a licence, it may be necessary for the Council to deviate from this policy.

Committee Hearings will be convened urgently and may consist of less than 3 elected members. Notice of the hearing may be given by telephone and the determination will be made at the first hearing even if the licence holder does not attend.

Where an immediate risk to the public is identified. The Head of Service, Licensing Manager and Licensing Officer have delegated powers to authorise the revocation of a licence with immediate effect without the need for a hearing. In these circumstances the officer taking the decision will engage with the Chair / Vice Chair of the Licensing Committee to advise them of the reasons for the deviation at, or as soon as reasonably practicable, after authorising the revocation.

Any deviation from this policy will not remove the licence holders right to appeal the decision to a Magistrates Court.

### **Referrals**

Any decision to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult, shall be referred to the Disclosure & Barring Service (DBS).

Information may also be disclosed to South Yorkshire Police Disclosure Unit.

Where a licence is refused or revoked, an entry will be recorded on the National Register of Revocations and Refusals (NR3) database.

Delegation of Functions – Licensing Act 2003

Matters to be dealt with	Sub Committee	Officers
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Application for personal licence	If a police or Home Office objection	If no objection made
Application for personal licence with unspent convictions (coming to light after grant).	If a police or Home Office objection	
Application for premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application for provisional statement	If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate	If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor	If a police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If a police or Home Office objection	All other cases
Applications for interim authorities	If a police or Home Office objection	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a representation is irrelevant frivolous vexatious etc.		All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of an objection to a temporary event notice	All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition	If a police objection	All other cases
Decision whether to consult other responsible authorities on minor variation application		All cases
Determination of minor variation application		All cases
Suspension of premises licences and club premises certificates for non-payment of annual fees		All cases
Revoke or suspend personal licence	All cases	Required actions before the final decision is made.

## Delegation of Functions - Gambling Act 2005

<b>Matters to be dealt with</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for premises licences	Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a variation to a licence	Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a transfer of a licence	Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a provisional statement	Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Review of a premises licence	All cases	
Application for club gaming /club machine permits	Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Cancellation of club gaming/ club machine permits	All cases	
Applications for other permits		All cases
Cancellation of licensed premises gaming machine permits		All cases
Consideration of temporary use notice		All cases
Decision to give a counter notice to a temporary use notice	All cases	

**Delegation of Functions - Town Police Clauses Act 1847 and Local Government  
(Miscellaneous Provisions) Act 1976**

**Hackney Carriage & Private Hire Licensing Policy**

Approval of revisions to the Hackney Carriage & Private Hire Licensing Policy is delegated to the Licensing Committee.

**Determination of New Applications and Renewals (where minimum standards are met)**

Where an application meets or exceeds all of the required minimum standards, the decision to grant or renew a licence is delegated to authorised officers.

**Determination of New Applications and Renewals (which do not meet the minimum standards)**

Where an application falls below the required minimum standards, the decision to grant or refuse a New or Renewal application is delegated to the Licensing Committee.

**Suspension of Licence (where certain conditions are not met)**

Where the licence holder has failed to provide required documents or failed to allow for continuing checks of their suitability to hold a licence in accordance with conditions of licence (e.g. vehicle insurance, criminal record checks, medicals etc.), the suspension of licence is delegated to authorised officers.

**Suspension or Revocation of Licence (Conduct)**

In cases where consideration is given to the suspension or revocation of a licence, these decisions are delegated to the Licensing Committee.

**Immediate Revocation of Licence (Public Safety)**

Where information is received which, in the opinion of the Council, requires consideration for the immediate revocation of a licence, determination is delegated to the Head of Service, Licensing Manager or Licensing Officer.

**LICENSING COMMITTEE**

**Chair: Cllr 1, Vice-Chair: Cllr 2**

**Members: Cllr 3, Cllr 4, Cllr 5, Cllr 6, Cllr 7, Cllr 8, Cllr 9, Cllr 10, Cllr 11, Cllr 12, Cllr 13, Cllr 14**

**LICENSING SUB-COMMITTEES**  
**(Appointed under the Licensing Act 2003, section 10)**

In the event of there being a Hearing required under the Licensing Act 2003, the Gambling Act 2005 or other relevant statutory provision then the Chair of the Licensing Committee shall be asked to Chair the Sub-Committee and all other Members shall be asked if they can attend. 3 Members shall be enough to be quorate but 4 Members shall be asked to attend to ensure the Hearing can go ahead in the event of Member illness or other incapacity.

Please note:

1. There is no need for the Sub-Committee to be balanced politically or for Members to be barred from taking part in the Hearing when the event or premises etc. is in their Ward,
2. If the Chair is unavailable the Vice Chair will be asked to Chair the Sub-Committee. If neither is available a chair shall be appointed at the Hearing.

### **The procedure for dealing with settling appeals after the Sub Committee hearing but before the appeal hearing in the Magistrates' Court is decided.**

Licensing Officers are authorised to conduct discussions with an appellant or other party to appeal. However, no agreement is to be made with an appellant reflecting a departure from a decision made by the licensing authority or licensing subcommittee without the approval of either the chair of the licensing committee or the chair of the relevant licensing subcommittee that made the decision subject to the appeal.

Where possible, and in any event where either the licensing officer or the chair of the licensing committee or the chair of the relevant licensing sub-committee considers it appropriate, responsible authorities and other persons who made relevant representations, together with any other responsible authority and other members of the relevant sub-committee are to be consulted as to the proposed departure from the original decision.