





**Brighton & Hove
City Council**

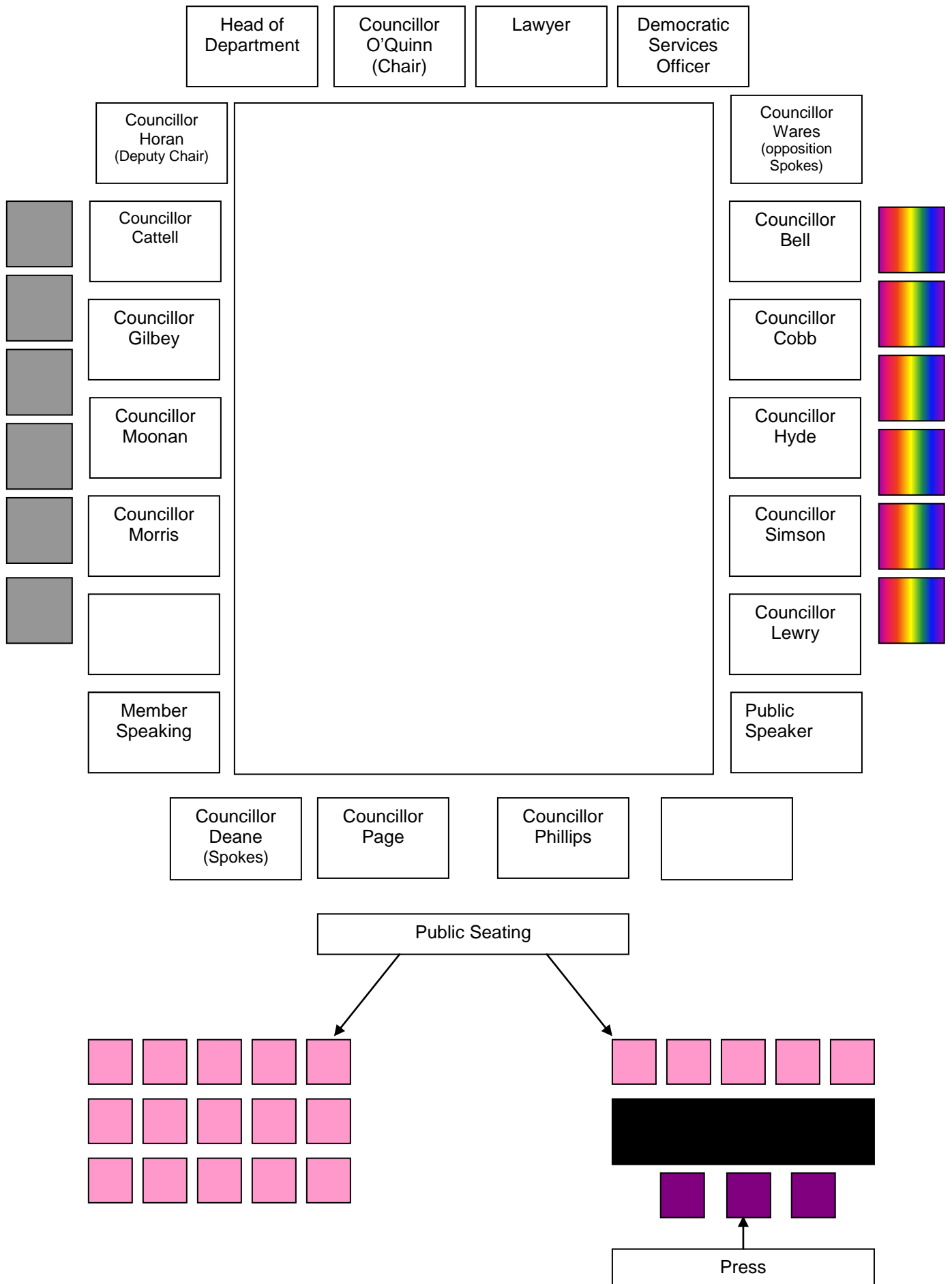
Licensing Committee

(Non-Licensing Act 2003 Functions)

Title:	Licensing Committee (Non Licensing Act 2003 Functions)
Date:	30 June 2016
Time:	3.00pm
Venue	Friends Meeting House, Ship Street, Brighton
Members:	Councillors: O'Quinn (Chair), Horan (Deputy Chair), Wares (Opposition Spokesperson), Deane (Group Spokesperson), Bell, Cattell, Cobb, Gilbey, Hyde, Lewry, Moonan, Morris, Page, Phillips and Simson
Contact:	Penny Jennings Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

	The Town Hall has facilities for wheelchair users, including lifts and toilets
	An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter and infra red hearing aids are available for use during the meeting. If you require any further information or assistance, please contact the receptionist on arrival.
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Democratic Services: Meeting Layout licensing Cttee



AGENDA

1 PROCEDURAL BUSINESS

(a) Declaration of Substitutes: Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.

(b) Declarations of Interest:

- (a) Disclosable pecuniary interests
- (b) Any other interests required to be registered under the local code;
- (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

(c) Exclusion of Press and Public: To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: *Any item appearing in Part Two of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.*

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

2 MINUTES OF THE PREVIOUS MEETING

1 - 4

Minutes of the meeting held on 3 March 2016 (copy attached)

3 CHAIR'S COMMUNICATIONS

4 CALLOVER

(a) Items (5 – 10) will be read out at the meeting and Members invited

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

to reserve the items for consideration.

- (b) Those items not reserved will be taken as having been received and the reports' recommendations agreed.

5 PUBLIC INVOLVEMENT

To consider the following matters raised by members of the public:

- (a) **Petitions:** to receive any petitions presented to the full council or at the meeting itself;
- (b) **Written Questions:** to receive any questions submitted by the due date of 12 noon on 22 June 2016;
- (c) **Deputations:** to receive any deputations submitted by the due date of 12 noon on 22 June 2016

6 MEMBER INVOLVEMENT

5 - 6

To consider the following matters raised by councillors:

- (a) **Petitions:** to receive any petitions submitted to the full Council or at the meeting itself;
- (b) **Written Questions:** to consider any written questions;
- (c) **Letters:** to consider any letters;

Zone B Street Trading Review – Letter from Councillor Peltzer
Dunn (copy attached)

- (d) **Notices of Motion:** to consider any Notices of Motion referred from Council or submitted directly to the Committee.

7 HACKNEY CARRIAGE STANDS

7 - 10

Report of the Acting Director of Public Health (copy attached)

Contact Officer: Martin Seymour Tel: 01273 296659
Ward Affected: All Wards

8 HACKNEY CARRIAGE & PRIVATE HIRE DRIVER ENFORCEMENT

11 - 14

Report of the Acting Director of Public Health (copy attached)

Contact Officer: Martin Seymour Tel: 01273 296659
Ward Affected: All Wards

9 ITEMS REFERRED FOR COUNCIL

To consider items to be submitted to the Council for information.

In accordance with Procedure Rule 24.3a, the Committee may determine that any item is to be included in its report to Council. In addition, any Group may specify one further item to be included by notifying the Chief Executive no later than 10am on the eighth working day before the Council meeting at which the report is to be made, or if the Committee

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

meeting take place after this deadline, immediately at the conclusion of the Committee meeting

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Electronic agendas can also be accessed through our meetings app available through www.moderngov.co.uk

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065), email penny.jennings@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Wednesday, 22 June 2016

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 3 MARCH 2016

THE MAIN HALL - FRIEND'S MEETING HOUSE

MINUTES

Present: Councillors Marsh (Chair), Horan (Deputy Chair), Cobb (Opposition Spokesperson), Deane (Group Spokesperson), Allen, Bell, Inkpin-Leissner, Lewry, Moonan, O'Quinn, Page, Simson, G Theobald, Wares and West

PART ONE

19 PROCEDURAL BUSINESS

19a Declaration of Substitutes

19.1 Councillor Inkpin-Leissner declared that he was substituting for Councillor Gilbey.

19b Declarations of Interest

19.2 There were none.

19c Exclusion of the Press and Public

19.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

19.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda

20 MINUTES OF THE PREVIOUS MEETING

- 20.1 **RESOLVED** – That the minutes of the Licensing Committee (Non Licensing Act 2003 Functions) Meeting held on 19 November 2015 be agreed and signed as a correct record.

21 CHAIR'S COMMUNICATIONS

- 21.1 The Chair explained that since the last meeting of the Committee:

Hackney Carriage & Private Hire Vehicles

Suspensions & Revocations

3 Driver's had their driver licences revoked for non-payment of the licence fee.

1 Driver had their licence revoked for allegations of historic child sexual abuse.

1 Driver had received a formal warning for refusing to carry an assistance dog.

1 licence was refused due to a conviction for battery.

The Council had lost an appeal in the courts against the revocation of a drivers licence. The driver had knocked down a cyclist and driven off without stopping. Details in respect of this incident had been circulated to Members separately, this was particularly regrettable as the judge's decision appeared to fly in the face of the criminal conviction.

- 21.2 In answer to questions by Councillor it was explained that it was necessary it was necessary for the minutes of the previous meeting to be agreed at the subsequent meeting, these could not however be agreed by the Licensing Committee (Non Licensing Act 2003 Functions). Councillor Simson noted the position and requested that in future any business relevant to this Committee be provided to it, on this occasion information which related to non-licensing matters had been included in the Annual report which had been provided to the Licensing Committee.

- 21.3 **RESOLVED** – That the content of the Chair's Communication be noted.

22 CALLOVER

- 22.1 **RESOLVED** – There were no items to be considered.

23 PUBLIC INVOLVEMENT

23a Petitions

- 23.1 There were none.

23b Written Questions

- 23.2 There were none.

23c Deputations

23.3 There were none.

24 MEMBER INVOLVEMENT

24a Petitions

24.1 There were none.

24b Written Questions

24.2 There were none.

24c Letters

24.3 There were none.

24d Notices of Motion

24.4 There were none.

25 ITEMS TO GO FORWARD TO COUNCIL

25.1 There were none.

The meeting concluded at 3.10pm

Signed

Chairman

Dated this

day of

Councillor Garry Peltzer Dunn
Brighton & Hove City Council
c/o King's House
Hove
BN3 2LS

Chief Executive
Brighton & Hove City Council

Date: 29 April 2016

Our Ref: GPD

Dear Chief Executive,

RE: ZONE B STREET TRADING REVIEW

I should like this letter to be referred to the Licensing Committee in June for consideration.

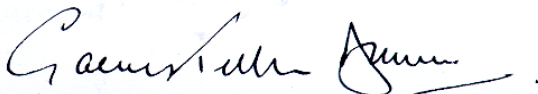
I have previously raised my concern about a serious road safety problem that has arisen outside the entrance to West Hove Junior School and other schools where it appears that street traders have sited their ice cream vans in very close proximity to the school's exit. This results in the pavement being blocked and children and adults being forced out into School Road placing them in danger during the very busy time when the children leave school.

Provided the traders van is in a legal parking space no action can be taken as they are not breaking any Council regulations for Street trading within Zone B of the scheme.

Over the past years there has been increasing debate over the unhealthy nature of school children's eating habits and this is certainly not helped by the proximity of street traders vans such as that above.

I am aware that a review was undertaken in 2009 in respect of the possibility of having exclusion zones and that the Street Trading Policy was agreed in 2013. However, I believe that in the interests of both road safety and on health grounds it would be appropriate for the committee to request officers to undertake a review of the Council's Street Trading Policy within Zone B to prohibit such street trading within a minimum of 50 metres of a School's entrance/exit.

With best wishes



Cllr Garry Peltzer Dunn

Tel; 01273 291186

Email: garry.peltzerdunn@brighton-hove.gov.uk

Conservative Member for Wish Ward

**LICENSING COMMITTEE
(NON LICENSING ACT 2003
FUNCTIONS)**

Agenda Item 7

Brighton & Hove City Council

Subject: Hackney Carriage Stands
Date of Meeting: 30 June 2016
Report of: Acting Director of Public Health
Contact Officer: Name: Martin Seymour Tel: 29-6659
E-mail: martin.seymour@brighton-hove.gcsx.gov.uk
Wards Affected: All

1. SUMMARY AND POLICY CONTEXT:

To advise members on hackney stand provision

2. RECOMMENDATIONS:

2.1 That committee notes the report

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The council licenses hackney carriage vehicles and private hire vehicles. The principal differences between the two licensing regimes are (i) hackney carriages can ply for hire in the streets and at taxi ranks (referred to as "stands" in legislation) whilst private hire vehicles can only accept bookings made through a private hire operator (ii) powers exist to limit the numbers of hackney carriages in prescribed circumstances but there is no power to limit the number of private hire vehicles (iii) the council prescribes fares for hackney carriages but has no power to determine fares for private hire bookings.

3.2 This council last reviewed its policy of quantity control of hackney carriages on 19 November 2015. At present council policy limits the number of hackney carriage vehicle licenses to 565 with 5 additional licenses issued annually in May.

3.3 Hackney Stands may be created by

- Byelaws made under TPCA 1847, s68
- Local Government (Miscellaneous Provisions) Act 1976, s63

But, since the introduction of the current parking regime in June 2001 stands made under the above legislation were decriminalised and the Council now creates stands using Traffic Regulation Orders.

- 3.4 Hackney carriage stands on the public highway must be marked out and signed in accordance with the Traffic Signs Regulations and General Directions 2002. In particular the road markings must be yellow.
- 3.5 Private Stands maybe created on land that does not form part of the highway but requires the consent of the owner to do so. Brighton Station is a Private Stand not appointed by the Council but allows proprietors to use its land to ply for hire by way of permit. Each permit currently costs £750pa. Mark Prior, Head of Transport, is chairing a meeting about Brighton station and surrounding area on the 20th June and an update from this meeting will be provided via Chair's communications at Licensing Committee on the 30th June.
- 3.6 Hackney Carriages Stands are important as they are the only legal place that they can wait for business whilst working and not carrying passengers. The need for stands needs to be constantly assessed as what may have been a busy well used stand three years ago may have fallen into disuse. Equally if ranks are not created in areas of demand hackney carriages create unofficial ranks giving rise to problems of congestion, obstruction of access to premises and bus stops, parking offences, local resident complaints and the fact that any unofficial stand is not itself protected solely for the use of hackney carriages.
- 3.7 The creation and deletion of stands is undertaken by the Environment, Transport and Sustainability Committee.
- 3.8 Following decriminalisation Officers from the Hackney Carriage Office have no powers to deal with vehicles including hackney carriage parked on stands this need to be carried out by Civil Enforcement Officers. This causes problems especially in late evenings and nights where the public use the stands which in turn cause problems with unofficial ranking elsewhere.
- 3.9 Byelaws that govern hackney carriages and use of stands state:
- The driver of a hackney carriage shall, when plying for hire in any street and not actually hired:
- (a) proceed with reasonable speed to one of the stands appointed by the Council which that hackney carriage is permitted to use;
 - (b) if a stand, at the time of his arrival, is occupied by the full number of carriages authorised to occupy it, proceed to another stand which that hackney carriage is permitted to use;
 - (c) on arriving at a stand not already occupied by the full number of carriages authorised to occupy it, station the carriage immediately behind the carriage or carriages on the stand and so as to face in the same direction; and
 - (d) from time to time when any other carriage immediately in front is driven

off or moved forward cause his carriage to be moved forward so as to fill the place previously occupied by the carriage driven off or moved forward.

The enforcement of these byelaws is fraught with difficulty. What is reasonable speed, TRO appointed stands do not show the number of vehicles a stand is for so how are drivers or officers to know if a stand is full. A driver maybe taking a break, taking a phone call etc. All this would need to be established before an offence can be identified. Officers believe that no Council has successfully prosecuted drivers using these model byelaws which demonstrates the problems with the way that the legislation is drafted.

5 Related Issues

5. None

6. CONSULTATION

6.1 Hackney Carriage Stands is a standing item on the Hackney Carriage and Private Hire Consultation Forum agenda. Members of the forum include the hackney carriage and private hire trade, Unions, Sussex Police, Brighton & Hove Bus Company, Disability Groups and Officers of the Council including Officers from Highways.

7. FINANCIAL & OTHER IMPLICATIONS:

This report is for information only, so there are no financial implications.

Finance Officer Consulted: Mike Bentley Date: 18/05/16

Legal Implication.

7.2 These are dealt with in the body of the report. The report is only for information and so carries no implications.

Lawyer: Rebecca Siddell Date: 26/05/2016

Equalities Implications:

7.3 The Department of Transport had planned to make taxi accessibility regulations under the Equality Act 2010 but these have yet to be enacted.

Sustainability Implications:

7.4 The role of the taxi trade is included in the Local Transport Plan, which identifies it as a key element in providing sustainable transport choices. It creates important links in the transport network to other forms of sustainable transport providing a seamless connection. It will contribute to three of the government's four shared transport priorities – reducing congestion, improving air quality and accessibility. Use of taxis for school transport,

licensed vehicles using bus lanes, locating ranks at railway stations and the city coach station, approved use of liquid petroleum gas all contribute to reducing congestion and moving passengers quickly.

Crime & Disorder Implications:

- 7.5 Sufficient late night transport to reduce public place violent crime is recognised in the community safety, crime reduction and drugs strategy. The presence of CCTV can be an important means of deterring and detecting crime.

Risk and Opportunity Management Implications:

- 7.6 The transport industry should be safe, profitable and be a positive experience for residents and visitors.

Corporate / Citywide Implications:

- 7.7 Tourism needs to provide a warm welcome to visitors and the tourism strategy depends upon effective partnership with transport operators particularly to achieve safe late night dispersal for the night time economy.

SUPPORTING DOCUMENTATION

Appendices: None

**LICENSING COMMITTEE
(NON LICENSING ACT 2003
FUNCTIONS)**

Agenda Item 8

Brighton & Hove City Council

Subject: Hackney Carriage & Private Hire Driver Enforcement
Date of Meeting: 30 June 2016
Report of: Acting Director of Public Health
Contact Officer: Name: **Martin Seymour** Tel: **29-6659**
E-mail: martin.seymour@brighton-hove.gcsx.gov.uk
Wards Affected: All

1. SUMMARY AND POLICY CONTEXT:

To advise members on driver enforcement.

2. RECOMMENDATIONS:

2.1 That committee notes the report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

3.1 The council licenses hackney carriage and private hire vehicles, drivers and operators. Hackney Carriages can ply for hire in the streets and at taxi ranks (referred to as "stands" in legislation) whilst Private Hire Vehicles can only accept bookings made through a Private Hire Operator.

3.2 Passengers that have booked a taxi through a taxi operator and have a complaint about their journey, such as the route taken, the driver's attitude or the fare charged, should in the first instance speak to the taxi operator if not satisfied with the response from the taxi operator, or have a complaint about a taxi operator, should contact the Hackney Carriage Office using the taxi service complaint form available on the councils web site. This form can also be used if the customer has hailed a taxi off the street or from a rank and the complaint is about:

- a driver's behaviour
- the vehicle
- the driver not taking the direct route
- the meter being incorrect
- overcharging
- the driver refusing to take a wheelchair user or not strapping a wheelchair in the vehicle, or refusing an assistance dog

Complaints about:

- antisocial driving
- unsafe driving/speeding

- using mobile phones while driving
- moving traffic offences
- road rage
- ignoring traffic signs and signals

Should be reported to Sussex Police via Operation Crackdown.

Complaints such as assault, verbal abuse or suspected theft by the driver should be reported to Sussex Police as soon as possible for an investigation.

Complaints about illegal parking should be reported to the parking enforcement team.

Officers can only investigate identifiable drivers and vehicles such as the vehicle licence number, which is displayed on the rear passenger doors or on the plate at the rear of the vehicle.

- 3.3 Legislation in relation to the Town Police Clauses Act 1847 Local Government (Miscellaneous Provisions) Act 1976 which applies to both hackney carriages and private hire vehicles is enforced by the local authority. Non criminal enforcement can also be effected by means of action taken against the licence held by the person who has transgressed.
- 3.4 The council can suspend, revoke or refuse a hackney carriage or private hire vehicle and/or driver licence. However, a driver licence cannot be suspended and then revoked at a later date such as at the conclusion of a prosecution. Other actions are available to officers such as verbal or written warnings can be applied in line with the Councils [Licensing Enforcement Policy](#)
- 3.5 Appeals against suspension or revocation of private hire vehicles are by way of the Magistrates Court and hackney carriage vehicles the Crown Court. Driver appeals are made through the Magistrates Court.
- 3.6 Following an appeal in the High Court relating to the revocation of a drivers licence by the Council and subsequently upheld by the Magistrates the High Court ruled that it was for the Council to prove that a driver is not a “fit and proper” person rather than the driver proving that they are. This was a significant change in the way that the law was interpreted. It is based upon the idea that once a licence is granted (where the driver has to establish that they are ‘fit and proper’), then any interference with the licence changes the position so that the licencing authority has to establish that they are not fit and proper.
- 3.7 This case was in relation to an accident between a private hire vehicle and a cycle where the driver cut across the path of the cyclist knocking her off the bike. He then drove off at speed without checking if the cyclist was injured or offering any assistance. The taxi driver then did a job before going to report the accident to the Police. The Council revoked his licence believing that he was not a fit and proper person. He was also prosecuted by the Police and pleaded guilty of failing to stop and was found guilty of careless driving. On initial appeal Magistrates agreed with the Council that the driver

was not a fit and proper person but following the High Court appeal ruling at a rehearing of the appeal the District Judge ruled in favour of the driver.

- 3.8 The routes of appeal are statute defined. They apply across the board whether civil or criminal (in this case it is considered Civil and thus the standard of proof is 'on the balance of probability'). Either way the judicial system is set up in part to prevent repetitive and endless appeal. People often will appeal not because they are innocent but because they will not accept their guilt. So there has to be some brake system in place. That brake system is to limit appeals to errors in law. However as interpretation of facts is much more subjective the Courts have to prevent the system from being overloaded by making the Judges word final. They are independent arbiters of fact. This limits the right of appeal to where there is an error in the interpretation of the law. In the case above the High Court had hand down its decision and so on that basis the Judge had to decide on the revised balance of proof. On the facts she decided to reinstate the licence.
- 3.9 The Council did discuss an appeal with Counsel who was of the view that we would not succeed. It should also be noted that the Magistrates did not award costs against the Council. It can do so when it concludes that a decision of the Council was manifestly unreasonable. Clearly the Court did not decide that the actions of the Council were unreasonable but rather that on the facts she felt that we had not established to her satisfaction that the conduct of the driver was such as to make him not fit to hold a licence.

4 Related Issues

4. None

5. CONSULTATION

- 5.1 Enforcement is a standing item on the Hackney Carriage and Private Hire Consultation Forum. Members include the members of the hackney carriage and private hire trade, Unions, Sussex Police, Disability Groups, Brighton & Hove Bus Company and Officers of the Council.

6. FINANCIAL & OTHER IMPLICATIONS:

This report is for information purposes only, so there are no financial implications.

Finance Officer Consulted: Mike Bentley
Legal Implication

Date: 18/05/16

- 6.2 These are dealt with in the body of the report. The lawyers have been consulted in the drafting of this report and confirm that the above commentary is correct.

Further as this is an explanatory report rather than a for action report no further advice is required.

Equalities Implications:

6.3 None

Sustainability Implications:

6.4 None

Crime & Disorder Implications:

6.5 Sufficient late night transport to reduce public place violent crime is recognised in the community safety, crime reduction and drugs strategy. The presence of CCTV can be an important means of deterring and detecting crime.

Risk and Opportunity Management Implications:

6.6 The transport industry should be safe, profitable and be a positive experience for residents and visitors.

Corporate / Citywide Implications:

6.7 Tourism needs to provide a warm welcome to visitors and the tourism strategy depends upon effective partnership with transport operators particularly to achieve safe late night dispersal for the night time economy.

SUPPORTING DOCUMENTATION

Appendices: None