

When telephoning, please ask for: Liz Reid-Jones
Direct dial 0115 9148214
Email lreid-jones@rushcliffe.gov.uk

Our reference: LRJ
Your reference:
Date: 13 June 2012

To all Members of the Council

Dear Councillor

A meeting of the RUSHCLIFFE BOROUGH COUNCIL will be held on Thursday 21 June 2012 at 7.00 pm in the Council Chamber, Civic Centre, Pavilion Road, West Bridgford to consider the following items of business.

Yours sincerely

Head of Corporate Services

AGENDA

Opening Prayer

1. Apologies for absence
2. Declarations of Interest
3. Minutes

To receive as a correct record the minutes of the Meeting of the Council held on Thursday 24 May 2012 (pages 1 - 4).

4. Mayor's Announcements
5. Leader's Announcements
6. Chief Executive's Announcements
7. New Standards Arrangements

The report of the Head of Corporate Services is attached (pages 5 - 11).

8. New Code of Conduct

The report of the Head of Corporate Services is attached (pages 12 - 17).

9. Revision of Policy Regarding the Relevance of Previous Convictions

The report of the Head of Environment and Waste Management is attached (pages 18 - 42).

10. Armed Forces Community Covenant

The report of the Head of Corporate Services is attached (pages 43 - 44).

11. To answer questions under Standing Order 11(2)

Meeting Room Guidance

Fire Alarm Evacuation: in the event of an alarm sounding please evacuate the building using the nearest fire exit, normally through the Council Chamber. You should assemble in the Nottingham Forest car park adjacent to the main gates.

Toilets are located opposite Committee Room 2.

Mobile Phones: For the benefit of others please ensure that your mobile phone is switched off whilst you are in the meeting.

Microphones: When you are invited to speak please press the button on your microphone, a red light will appear on the stem. Please ensure that you switch this off after you have spoken.



**MINUTES
OF THE ANNUAL MEETING OF
COUNCIL
THURSDAY 24 MAY 2012**

Held at 7.00 pm in the Council Chamber, Civic Centre, Pavilion Road, West Bridgford

PRESENT:

Councillor G S Moore – Mayor
Councillor I I Korn – Deputy Mayor

Councillors L J Abbey, R A Adair, J R Bannister, D G Bell, Mrs D M Boote, S J Boote, N K Boughton-Smith, B Buschman, R L Butler, H A Chewings, J N Clarke, T Combellack, L B Cooper, J E Cottee, J A Cranswick, B G Dale, G Davidson, A M Dickinson, J E Fearon, J E Greenwood, M G Hemsley, R Hetherington, R M Jones, K A Khan, N C Lawrence, E J Lungley, A MacInnes, Mrs M M Males, G R Mallender, S E Mallender, Mrs J M Marshall, D J Mason, F J Mason, B A Nicholls, E A Plant, F A Purdue-Horan, S J Robinson, D V Smith, Mrs J A Smith, P Smith, J A Stockwood, Mrs M Stockwood, B Tansley, H Tipton, D G Wheeler

OFFICERS PRESENT:

C Bullett	Deputy Chief Executive (CB)
A Graham	Chief Executive
L Reid Jones	Democratic Services Manager
Peter Steed	Director of Finance
D Swaine	Head of Corporate Services

APOLOGIES FOR ABSENCE:

Councillors Mrs S P Bailey, N A Brown, T Vennett-Smith

OPENING PRAYER

The Meeting was opened by the Mayor paying tribute to Guardsman Michael Roland from the 1st Battalion Grenadier Guards, who had been killed in Afghanistan recently. Guardsman Roland had grown up in Tollerton, where his parents still lived. The Meeting was then led in prayer by the Mayor's Chaplain

1. Declarations of Interest

There were none declared.

2. Minutes

The minutes of the meeting held on Thursday 1 March 2012 were received as a correct record and signed by the Mayor.

3. **Address of the Retiring Mayor**

The Retiring Mayor, Councillor Moore, addressed the Council giving the highlights of his year from the 185 engagements he had undertaken. In particular the Mayor spoke of the Scouts Parade, the 10k run and the walk at the Rushcliffe Country Park. He thanked the staff of the Council's Cultural Services Department for the well executed events they managed. The Mayor announced that he had raised over £25,000 for his Maggie's Charity during his year as Mayor. He thanked those who had supported his charity events, and those who had supported him during his time as Mayor, particular the Deputy Mayor, the Mayor's Secretary, the driver and his Chaplain. He concluded by saying that he had thoroughly enjoyed his year.

4. **Vote of Thanks to the Retiring Mayor**

Councillor Clarke proposed a vote of thanks to Councillor Moore for his successful year in office as the Mayor. He said that the Mayor's energy, enthusiasm and exuberance had been an asset during his year and that the Mayor had risen to the challenge of the role. He referred to the engagements carried out by the Mayor and Mayoress, in particular attending the Garden Party at Buckingham Palace and the Mayor's Charity Golf Day on a very rainy day. He recognised the amount of work the Mayor and Mayoress had accomplished in order to raise such a significant sum of money for Maggie's Charity. He added that Councillor Moore had been a great ambassador for the Borough of Rushcliffe and that he should be proud of his year in office.

Councillor Clarke then presented Councillor Moore with his Past Mayor's Badge, an album of photographs from his year, and a photographic portrait.

The other Group Leaders endorsed the remarks of Councillor Clarke, and thanked the Retiring Mayor for his great work and enthusiasm during his term of office. They also thanked the Mayoress for her role in achieving such a large sum of money for their charity.

RESOLVED that:

A vote of thanks be accorded to Councillor Moore and Mrs Moore for the excellent manner in which they had carried out their duties during Councillor Moore's year of office as Mayor of the Borough of Rushcliffe.

5. **Election of Mayor 2012/13**

Nominations were invited for the election of Mayor of the Borough of Rushcliffe for the 2012/13 municipal year.

It was proposed by Councillor Nicholls and seconded by Councillor Fearon that Councillor Korn be nominated for the Office of Mayor of the Borough for the year 2011/12.

RESOLVED that:

Councillor Irving Korn be elected Mayor of the Borough of Rushcliffe for the 2012/13 municipal year.

Councillor Korn read and signed the declaration of acceptance of office and after thanking his proposer, seconder and Members, took the Chair and was invested with the Chain of Office by the Retiring Mayor. The Mayor announced his chosen charity for the year, that being the Cardiac Department at Nottingham Hospital's Trust.

6. Election of Deputy Mayor 2012/13

Nominations were invited for the election of Deputy Mayor of the Borough of Rushcliffe for the 2012/13 municipal year.

It was proposed by Councillor Wheeler and seconded by Councillor Tipton that Councillor Buschman be nominated for the Office of Deputy Mayor of the Borough for the year 2012/13.

It was proposed by Councillor Davidson and seconded by Councillor S Boote that Councillor Khan be nominated for the Office of Deputy Mayor of the Borough for the year 2012/13.

The nominations were put to a vote.

RESOLVED that:

Councillor Brian Buschman be appointed Deputy Mayor of the Borough of Rushcliffe for the 2012/13 Municipal Year.

Councillor Buschman read and signed the declaration of acceptance of office and after thanking his proposer, seconder and Members, was invested with his Chain of Office by the Mayor.

7. Appointment of Committees and Member Groups 2012/13

It was proposed by Councillor Clarke and seconded by Councillor Cranswick that the Membership of the following Committees, Member Groups and Working Groups with Chairmen and Vice Chairmen as set out in the appendix be appointed for 2012/13.

- Community Development Group
- Corporate Governance Group
- Partnership Delivery Group
- Performance Management Board
- Alcohol and Entertainment Licensing Committee
- Development Control Committee
- Employment Appeals Committee
- Interviewing Committee
- Licensing Committee
- Standards Committee
- Local Development Framework Group

- Member Development Group
- Civic Hospitality Panel

Councillor Clarke stated that the Standards Committee appointments were for the period up to 30 June 2012, after which point new arrangements would be in place.

Councillor Davidson expressed his disappointment that all of the scrutiny chairmen positions were being taken by the lead group. He stated that in the interests of the independence of scrutiny the positions should have been taken by Members other than those in the lead group. This, he said, would give confidence to the public that scrutiny was truly independent.

RESOLVED that:

the Committees and Member Groups set out in the Appendix be appointed to for 2012/13 with the membership as indicated.

8. Appointment of Representatives to Outside Bodies 2012/13

It was proposed by Councillor Clarke and seconded by Councillor Cranswick that the representatives be appointed to the Outside Bodies as set out in the appendix to the report, excluding the two contested appointments to the Rushcliffe Community and Voluntary Service and the Trent Valley Internal Drainage Board.

RESOLVED that:

- a) the appointments to Outside Bodies for 2012/13, excluding the contested appointments, as indicated in the appendix to the report, be approved, and
- b) For the contested appointments Members be appointed to the outside bodies as follows:
 - (i) Rushcliffe Community and Voluntary Service - Councillor Cooper
 - (ii) Trent Valley Internal Drainage Board – Councillors Cranswick, Hetherington, Lawrence and P Smith.

The meeting closed at 8.10 pm.

MAYOR

REPORT OF THE HEAD OF CORPORATE SERVICES

Summary

This reports sets out the recommendations of the Standards Committee outlining proposed revised arrangements following changes to the Standards regime resulting from the Localism Act 2011

Recommendation

It is RECOMMENDED that Council:

- a. agree the establishment of a new Standards Committee in accordance with the terms of reference set out at **appendix 1** and that this committee comprise of six Borough Councillors, two parish members and one independent member,
- b. receives nominations and appoints the six Borough Councillor members of the committee for the remainder of the municipal year giving due regard to paragraphs seven and eight within the report setting out the relevant considerations regarding committee appointments as contained within the Local Government and Housing Act 1989,
- c. appoints a Chairman to the new Standards Committee from the Borough Council membership for the remainder of the municipal year,
- d. agrees that a Sub-Committee of the new Standards Committee, comprising of at least 3 Borough Councillors, hear cases where an investigation into alleged misconduct finds a case to answer, with more significant or serious cases being referred to the full Standards Committee based on the criteria as set out at **appendix 2** of the report,
- e. authorises the Chief Executive and Monitoring Officer to make the necessary arrangements to recruit to the two parish and one independent member positions; and agrees that existing allowances under the Members' Allowances Scheme continue to apply to these members of the Committee;
- f. authorises the Chief Executive and Monitoring Officer to make the necessary arrangements for Council to appoint the Independent Person as required by section 28 (7) of the Localism Act and that the Independent Person be paid an annual fee equivalent to that of an independent member of the Standards Committee.

- g. Requests that the Monitoring Officer report a proposed revised Councillor Complaints Procedure reflective of the new arrangements to a future meeting of Council for agreement.

Details

1. At its meeting on 7 March the Standards Committee established a Sub Committee to consider the future of the ethical standards regime given the changes contained within the Localism Act and the need to have new arrangements in place from the end of June 2012. The Sub Committee met on two occasions reporting its recommendations to the meeting of the Standards Committee held on 31 May.
2. Having considered the report of the Sub Committee the Standards Committee has made a number of recommendations to Council as set out in this report. Further information supporting these recommendations is set out as follows.

*Recommendation (a) agree the establishment of a new Standards Committee as per the terms of reference set out at **appendix 1** and that this committee comprise of six Borough Councillors, two parish members and one independent member.*

3. Both the Sub-Committee and the existing Standards Committee indicated that some form of Standards Committee should be retained as part of the new regime and recommendation (a) reflects this. In making this recommendation the Sub-Committee and the Standards Committee considered that it was not appropriate to delegate disciplinary type decisions to officers, even if the preliminary and investigatory stages could be dealt with by the Monitoring Officer in his role as principal advisor on ethical standards issues and Councillor conduct. Furthermore the new Standards Committee as part of it's work programme should also consider Councillors' behaviour as a wider policy issue particularly how relevant training could be delivered to aid and assist understanding of the new arrangements.
4. Draft terms of reference for a proposed new Standards Committee are set out at **appendix 1**. These are broadly similar to the existing terms of reference although the role will in practice be different because of the less prescriptive nature of the new standards provisions under Part 1 of the Localism Act.
5. The Sub-Committee and the Standards Committee were of the opinion that the new Standards Committee should comprise of six Borough Councillors two parish members and one independent member (instead of the three independent and three parish members on the present Committee).. Any independent or parish members would need to be co-opted by the Council under section 102(3) of the Local Government Act 1972 and therefore would not have voting rights. However the Standards Committee believed that they would still be able to exert some influence on proceedings and would also bring external experience and knowledge demonstrating a transparent and fair process.

Recommendation (b) appoints the six Borough Councillor members of the committee for the remainder of the municipal year giving due regard to paragraphs seven and eight within the report setting out the relevant considerations regarding committee appointments within the Local Government and Housing Act 1989,

6. The appointment of the Borough Councillor representation on the new Standards Committee needs to be in accordance with the provisions within the Local Government and Housing Act 1989. These provisions set out principles in relation to political representation and the allocation of committee seats and are applied to the appointments to a number of Committee positions as agreed by Council at its annual meeting. Applying these principles to the proposed new Standards Committee requires four appointments from the Conservative Group, one appointment from the Liberal Democrat Group and one appointment from the Labour Group.
7. Alternatively Section 17 of the Local Government and Housing Act 1989 enables the Council to disregard the principles of political representation when appointing Councillor Membership of a committee. However this has to be agreed by Council at the time that committee's membership is determined with no member voting against.
8. Once Council has determined the Councillor membership of the new Standards Committee it will need to appoint a Chairman as reflected in recommendation c. It is not possible for a co-opted member of the Committee to be appointed as the Chairman as they have no have no voting right. Therefore the appointment of Chairman has to be made from the Committee's Borough Council membership.

*Recommendation (d) agrees that a Sub-Committee of the new Standards Committee, comprising of at least 3 Borough Councillors, hear cases where an investigation into alleged misconduct finds a case to answer with more significant or serious cases being referred to the full Standards Committee based on the criteria as set out at **appendix 2** of the report.*

9. In relation to considering specific cases the Standards Committee believed that a Sub Committee, comprising of at least 3 Borough Councillors could be drawn together, when necessary, to undertake complaint hearings. This Sub-Committee would only meet to hear investigation reports where there was a potential finding of misconduct. For more significant cases it was considered that these should be referred to the full Standards Committee by the Monitoring Officer and such referrals should be based on an agreed **set out** criteria as set out at **appendix 2**.

Recommendation (e) authorises the Chief Executive and Monitoring Officer to make the necessary arrangements to recruit to the two parish and one independent member positions; and agrees that existing allowances under the Members' Allowances Scheme continue to apply to these members of the Committee.

10. The Standards Committee considered that the Council's approved Members' allowance scheme already made provision for the payment of co-optees' allowances for independent and parish members of the Standards Committee and therefore these should continue to apply. The Committee also considered that Council should authorise the Chief Executive and the Monitoring Officer to make the necessary arrangements to recruit to the two parish and one

independent member positions. Once these recruitment arrangements have been undertaken then a report will be provided to Council in order to agree the individuals to be appointed.

Recommendation (f) authorises the Chief Executive and Monitoring Officer to make the necessary arrangements for Council to appoint the Independent Person as required by section 28 (7) of the Localism Act and that the Independent Person be paid an annual fee equivalent to that of an independent member of the Standards Committee.

11. The new arrangements within the Localism Act 2011 require an Independent Person to be appointed who must be consulted by the Monitoring Officer prior to any decisions or findings on alleged breaches of the Code. They may also be consulted at other stages of the complaint process, eg as to whether the complaint warrants investigation. As such the Independent Person is a different and separate role from any independent members on the Standards Committee.
12. The Standards Committee considered that the Independent Person should be remunerated however the expected workload was unknown at this stage. However, having regard to the relatively small number of complaints received under the old regime (19 in 4 years), the role does not appear to be unduly onerous. Any remuneration would not be governed by the Members' Allowances Scheme as the Independent Person is not a co-opted member of the new Standards Committee. Therefore it was proposed that they be paid an annual fee equivalent to that of an independent member of the Standards Committee for the first year, but this would be reviewed annually.
13. The appointment of the Independent Person must be approved by a majority of the Members of the authority which is 26 in the case of Rushcliffe. Following the recruitment process a report will be provided to Council in order to agree the individual to be appointed.

Recommendation (g) Requests that the Monitoring Officer report a proposed revised Councillor Complaints Procedure reflective of the new arrangements to a future meeting of Council for agreement.

14. Subject to Council agreeing the recommendations within this report it will be necessary to develop a revised Councillor Complaints Procedure reflective of the new arrangements. This would need to be considered by the new Standards Committee once established prior to referral to a future meeting of the Council for approval.

Financial Comments

There are no financial comments arising directly from this report.

Section 17 Crime and Disorder Act

There are no direct implications arising from this report, however where necessary the new Standards regime will facilitate the investigation of potential criminal offences by the Police arising from failure to disclose significant pecuniary interests.

Diversity

There are no direct diversity implications arising from this report.

Background Papers Available for Inspection:

Localism Act 2011

Report of the Head of Corporate Services - Standards Committee 31 May 2012

Proposed Terms of Reference for Standards Committee (or equivalent)

- a. promoting and maintaining high standards of conduct by Councillors and co-opted Members;
- b. assisting Councillors and co-opted Members to observe the Members' Code of Conduct;
- c. advising the Council on the adoption or revision of the Members' Code of Conduct;
- d. monitoring the operation of the Member's Code of Conduct;
- e. advising, training or arranging to train Councillors and co-opted Members on matters relating to the Members' Code of Conduct;
- f. dealing with complaints about Councillors in accordance with the published Members' Complaints Procedure approved under section 28(6) of the Localism Act 2011;
- g. the exercise of (a) to (f) above in relation to parish councils wholly or mainly in its area and the members of those parish councils;
- h. granting dispensations to Councillors and co-opted Members from requirements relating to disclosable pecuniary interests;
- i. considering any reference to the Committee by the Chief Executive pursuant to paragraph 10 of the Members' Allowances Scheme relating to the failure of a member to attend any meeting during a period of three months, with power to suspend the payment of allowances under the Scheme to the member concerned, unless the reasons for non-attendance are approved by the Committee.

Standards Committee Hearing Sub Committee

Criteria for referral of cases to Standards Committee for hearing

- Does the status of the member or members, or the number of members about whom the complaint is made, make it difficult for the Sub Committee to deal with the complaint? For example, is the member a group leader, elected mayor or a member of the authority's Cabinet?
- Does the status of the complainant or complainants make it difficult for the Sub Committee to deal with the complaint? For example, is the complainant a group leader, elected mayor or a member of the authority's cabinet or the Chief Executive, the Monitoring officer or other senior officer?
- Does the Sub Committee believe that there is a potential conflict of interest of so many members of the Sub Committee that it could not properly consider the complaint?
- Is the case so serious or complex, or involving so many members, that it cannot be handled by the Sub Committee?
- Does the complaint relate to long-term or systemic member/officer bullying and therefore should it be considered by the full Standards Committee?
- Might the public perceive the authority to have an interest in the outcome of the complaint and therefore is it in the public interest for the case to be heard by the full committee rather than the Sub Committee?

REPORT OF THE HEAD OF CORPORATE SERVICES

Summary

This reports sets out a proposed new Code of Conduct as recommended to Council by the Standards Committee following changes to the Standards regime resulting from the Localism Act 2011.

Recommendation

It is RECOMMENDED that Council:

- a. considers and agrees the draft Code of Conduct set out at **appendix 1** and accepts this as the code governing Borough Councillor behaviour;
- b. requests that the Monitoring Officer makes the necessary arrangements for training to be provided to Borough Councillors to aid understanding of the new code and the provisions within it, and
- c. authorises the Monitoring Officer to make minor and consequential amendments to the Council's Guidance on Planning Applications Procedures as contained with Part 5, Codes and Protocols of the Council's Constitution.

Details

1. At its meeting on 7 March the Standards Committee established a Sub Committee to consider the future of the ethical standards regime given the changes contained within the Localism Act and the need to have new arrangements in place from the end of June 2012. The Sub Committee met on two occasions reporting a proposed new Code of Conduct to the meeting of the Standards Committee held on 31 May.
2. As part of its consideration of the proposed new Code the Standards Committee recognised that the Localism Act does not prescribe any particular form of national model code and each authority is able to decide what is most suitable for its purposes. This is subject to the requirement for consistency with the seven principles of public life and the mandatory requirements relating to disclosable pecuniary interests (DPIs). The DPIs are defined in Regulations which have only been made within the last few days.
3. The Standards Committee considered the 'Illustrative Text' for a code of conduct provided by the Department for Communities and Local Government. Consideration was also given to the Local Government Association template Code of Conduct and it was recognised that both documents were different in

style from the existing Model Code, being more 'light touch' in style and less prescriptive in defining examples of unacceptable behaviour.

4. The Standards Committee gave consideration to both of these templates and the existing Code of Conduct and agreed that a hybrid of these, including provisions from the existing Code relating to advice of the statutory officers, confidentiality and equality, should be recommended to Council for approval. A copy of the proposed new code is attached as **appendix 1**.
5. As reflected in recommendation c it will be necessary to make minor and consequential amendments to the Council's Guidance on Planning Applications Procedures should Council approve the proposed Code attached to the report. This will ensure that any reference to the old Code of Conduct is updated and replaced with reference to the new Code.
6. As part of its deliberations the Standards Committee believed that it was important, where possible, that there was consistency across the parish and town councils with regard to the Code to be adopted. Therefore it is intended that the Monitoring Officer will write to the parish and town councils following Council's consideration of the code in order that they can consider adopting it.

Financial Comments

There are no financial implications arising from this report.

Section 17 Crime and Disorder Act

There are no direct implications arising from this report, however where necessary the new Standards regime will have to provide redress for potential criminal offences arising from failure to disclose significant pecuniary interests

Diversity

There are no financial implications arising from this report.

Background Papers Available for Inspection:

Localism Act 2011

Code of Conduct for Members – Rushcliffe Borough Council Constitution – Part 5 Codes and Protocols

S 51 Local Government Act 2000 – Duty of Relevant Authorities to adopt codes of conduct

Department for Communities and Local Government – 'Illustrative text' – Code of Conduct 2012

Local Government Association - Template Code of Conduct 2012

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Draft Member Code of Conduct

You are a Member or Co-opted Member of Rushcliffe Borough Council and as such are committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

Accordingly, when acting in your capacity as a Member or Co-opted Member –

- i. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate
- ii. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties
- iii. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit
- iv. You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office

- v. You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions
- vi. You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below
- vii. You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986
- viii. You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example
- ix. You must have regard to any relevant advice provided to you by the Council's Monitoring Officer, Section 151 Officer and Chief Executive where they are acting pursuant to his or her statutory duties
- x. You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:-
 - a. You have the consent of a person authorised to give it
 - b. You are required by law to do so
 - c. The disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - d. The disclosure is:
 - i. Reasonable and in the public interest and
 - ii. Made in good faith and in compliance with the reasonable requirements of the authority.
- xi. Members must promote equality by not discriminating against any person , and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State (see attached Schedule), where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

SCHEDULE

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.



Rushcliffe
Borough Council

COUNCIL

21 JUNE 2012

**REVISION OF POLICY REGARDING THE
RELEVANCE OF PREVIOUS CONVICTIONS**

9

REPORT OF THE HEAD OF ENVIRONMENT AND WASTE MANAGEMENT

Summary

This report seeks endorsement of the revised policy regarding the relevance of previous convictions which are considered in relation to persons applying for a Hackney Carriage / Private Hire Driver's Licence and Private Hire Operators licences. The revised policy is contained at **appendix one** of this report and has been endorsed by Cabinet at their meeting on the 12 June 2012.

Recommendation

It is RECOMMENDED that the revised policy regarding the relevance of previous convictions is approved.

Background

1. In 2001 the Council along with Nottingham City Council, Gedling Borough Council and Broxtowe Borough Council, introduced guidelines in relation to persons applying for a Hackney Carriage / Private Hire Driver's Licence and Private Hire Operators licences.
2. The document set out guidelines in respect to the relevance of previous convictions of the applicant and the Council's policy in respect of these in relation to such applications.
3. The document forms the basis of all decisions made on the granting or renewal of such licences on a daily basis and is regularly used in the Magistrates Courts in cases of appeal by applicants who have been refused a licence.
4. On the 12 June 2012 the policy was taken to and endorsed by the Cabinet and now requires full Council approval in accordance with the constitution.

The Review

5. The Nottinghamshire Licensing Officers Group (NLOG) has recently reviewed the policy in conjunction with advice given by the Local Government Regulation Office on 'Taxi and Private Hire Vehicle Criminal Conviction's Policy'. The intention is that this revised policy will now be adopted by all Nottinghamshire councils.

6. The review has taken into consideration new offences created since 2001, together with a wholesale review of existing offences, some of which were not included in the previous guidelines.
7. The revised policy has also been produced in consultation with the Legal and Member Services section of the Council.
8. With all councils across Nottinghamshire working from the same guidelines it will significantly reduce the likelihood of a situation arising, where a driver, who has a relevant conviction, is refused a licence by one council but then granted one by another due to different policies. This situation, if it arises, has the opportunity to give rise to public concern over consistency and safety.
9. Consultation has been undertaken and existing licensed taxi drivers have been signposted to the revised document on the Council's website for the opportunity to make comments. None have been received.
10. The proposed revised policy together with the re-introduction by the government of enhanced Criminal Record Bureau checks for all drivers, which had been stopped for the past eighteen months, will ensure that all those applying for a Hackney Carriage/Private Hire Driver's licence and Private Hire Operator's licence with the Council go through rigorous procedures to ensure they are a 'fit and proper' person to be granted a licence. This will also assist the Council in continuing to protect the safety of the public when using such vehicles.
11. If approved, it is intended that the above policy will be introduced for all applicants, both new and those renewing their licences as soon as possible. Other Nottinghamshire authorities are proceeding in the same way and the progress with implementation will be monitored by NLOG.

Financial Comments

There are no financial implications.

Section 17 Crime and Disorder Act

Having a policy that is up to date and relevant is crucial in promoting consistent decision making that has a primary function of protecting the public from harm.

Diversity

A wide range of people, some who will be vulnerable, use taxis. This policy helps to protect them from harm when accessing a taxi.

Background Papers Available for Inspection: Nil

REVISED POLICY ON THE RELEVANCE OF PREVIOUS CONVICTIONS



**STATEMENT OF POLICY AND GUIDELINES FOR THE
CONSIDERATION OF
APPLICATIONS FOR HACKNEY CARRIAGE
DRIVERS', PRIVATE HIRE DRIVERS' AND
PRIVATE HIRE OPERATORS' LICENCES**

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This policy was revised in April 2012

DELEGATIONS AND REFERRAL TO COMMITTEE

The Council's scheme of delegation provides that the Head of Environment and Waste Management is able to determine applications in most instances. In a small number of cases applications may be referred to the Licensing Committee

ROLE OF THE COUNCIL

- A When dealing with applications the Council acts impartially and in a quasi-judicial manner. It's role is to determine whether licences should be granted or renewed, or in cases where licensees fall below the standards required by the Council, to revoke or suspend the licence or issue warnings or penalty points in respect of licences.
- B When an appeal is made to the Licensing Committee sufficient opportunity should be given to the applicant and to the Council's licensing representative, to present their cases. The applicant is entitled to bring a friend or representative with them to support them in presenting their case or speak on their behalf.
- C Both the applicant and the Council's licensing representative are open to cross-examination from each other and by the members of the Committee.
- D The cross-examination should take the form of questions only. It must be remembered that the purpose of the hearing is to hear both sides of the case.
- E When making their decision the Committee will do so in private.

GENERAL GUIDANCE AND POLICY

- | | | |
|-----------------------------|---|--|
| Must be fit and proper | 1 | A licence shall not be granted to an applicant unless the Council is satisfied that the applicant is a fit and proper person to hold such a licence. |
| Persons refused in the past | 2 | Persons, who have been refused licences in the past, on the grounds that they are not fit and proper persons, are not necessarily debarred from being granted licences. The Council however, will not be able to grant a licence unless satisfied the applicant is a fit and proper person to hold such a licence. |

The lapse in time that has occurred, changes in domestic or business circumstances, added responsibilities are examples of matters that may be relevant.

Meaning of fit and proper	3	<p>There is no definition of the term fit and proper; this is for the Council to determine. However, regard should be had to the applicant's driving standards and experience, his character and any relevant previous convictions. Regard will also be had to whether or not the applicant is physically and mentally fit to drive a hackney carriage or private hire vehicle.</p> <p>The Council may fail to be satisfied that an applicant is a fit and proper person to hold a driver's licence for any good reason. If adequate evidence of good character and record is not adduced or if there is good reason to question or doubt the evidence provided then that could amount to good reason to refuse a licence.</p>
Treat each application on its merits	4	<p>Each application for a licence should be considered on its own merits.</p>
Main concern public safety	5	<p>The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers.</p>
Personal circumstances	6	<p>When considering whether to grant, renew, suspend or revoke a licence, the Council is not required to consider or take into account the applicant's (or licence holder's) need to provide for his or her family or the personal circumstances of those (s)he provides for.</p>
Driving experience	7	<p>As required by law, no application for a driver's licence shall be granted where the applicant has held a full driving licence for less than one year. In addition, applications should not be granted unless the applicant also has adequate driving experience.</p>
Conduct of driver	8	<p>Conduct of licence holders is relevant in considering renewal, revocation or suspension of their licence.</p>

Drivers already licensed	9	Where the holder of a driver's licence has been convicted of an offence involving dishonesty, indecency or violence a licence may be suspended, revoked or any application to renew a licence can be refused. A licence can also be suspended or revoked (or not renewed) where the holder has been convicted of an offence under the provisions of the Town Police Clauses Act 1847 or Part II of the Local Government (Miscellaneous Provisions) Act 1976 (this includes illegally plying for hire) or for any other reasonable cause.
Complaints of drivers' standards, conduct of behaviour	10	Where evidence of complaints about a driver's standards, conduct or behaviour or other allegations which reflect upon the conduct or behaviour of a driver are brought before the Council and the driver disputes those allegations, the Council should consider whether those complaints or allegations can be substantiated.
Licence-holder charged with criminal offence	11	<p>Where an applicant or licence-holder has been charged with a criminal offence, the Council may decide to adjourn consideration of the matter pending the outcome of the criminal proceedings. Alternatively, the Council may proceed to consider the charge and determine what action to take. Where a licence-holder has been charged with an offence:</p> <ul style="list-style-type: none"> • It is not necessary for the Council to wait for a guilty verdict in criminal proceedings where a serious criminal offence is alleged to have been committed before it can be decided to suspend or revoke a licence. • It is not necessary to hear live evidence from witnesses to such an offence before it can be decided to suspend or revoke a licence. • It is not necessary to decide there is a reasonable chance of the person being convicted of that offence before his licence can be properly suspended or revoked. It is for the Council to decide whether the person is fit and proper to hold a licence on a balance of probabilities. • It is not necessary to look at the impact on that person's livelihood or consider compensation if that person is ultimately acquitted of the criminal charge.
Reliance on evidence	12	In hearing evidence the Council is not subject to the strict rules of evidence. Care, however, should be taken in determining the relevance and admissibility of any evidence.

- 13 Where evidence has been presented which is later deemed to be not relevant or admissible, the decision maker should take care to exclude such from his/her/their minds when making their decision.
- 14 The Council should be careful to attach the appropriate weight to evidence presented to them. An independent witness with nothing to gain is more likely to give an unbiased account than someone who has a personal interest in the case. Corroborative evidence will add weight. If evidence is presented without calling the witness to that evidence, then great care should be taken in relying upon such.
- Standard and burden of proof
- 15 The civil standard of proof applies to proceedings. The Council must be satisfied on a balance of probabilities.
- 16 The burden of proof rests with the applicant/licence-holder to establish that he is a fit and proper person to hold a licence.
- Failure to notify the Council of convictions
- 17 A serious view will be taken if an applicant or licence-holder **fails to disclose** convictions, police reprimands or warnings, endorsable fixed penalties or criminal matters of which they are currently the subject of criminal investigation or prosecution, on the application for a licence but signs the declaration confirming that the information they have given is correct **or fails to notify** the Licensing Service of convictions during the period of the licence in accordance with the conditions. This may be regarded as an attempt to mislead the Council with a view to obtaining a licence or continuing to hold a Licence. The Council is entitled to take the failure to disclose the conviction into account when determining what action to take as well as the actual conviction itself.
- 18 Where a licence-holder has continued to hold a licence following an undisclosed conviction, this will be taken into account when that conviction is ultimately considered. If the Licence is revoked, the length of time the licence-holder continued to hold a licence following an undisclosed conviction may be taken into account when considering future applications.
- Human Rights Act considerations
- 19 A licence-holder can be deprived of his/her licence if it is in the public interest and in accordance with the law. When determining what action is appropriate the Council will

balance the rights of the licence-holder with the rights of the public at large.

GUIDELINES RELATING TO MEDICAL CONDITIONS

- | | | |
|---------------------------------|---|--|
| Medical checks | 1 | The Council requires applicants to pass a medical examination on initial application and when aged 45 years, 50 years, 55 years, 60 years, 65 years and annually thereafter. |
| Consideration of medical report | 2 | In determining whether the applicant is physically and mentally fit to drive a hackney carriage or private hire vehicle, the Council will consider the medical report to assess the fitness of applicant. The Council will also consider any relevant medical evidence of a qualified medical practitioner submitted by the applicant and may take such evidence into account when determining the application. The presumption will be that any applicant who fails their medical examination will be refused a licence ; any applicant wishing to pursue their application and who has failed their medical examination will be able to appeal to the magistrates' court. |
| Standard to be applied | 3 | The Council applies the Group 2 medical standards applied by the Driver and Vehicle Licensing Authority (DVLA) to taxi drivers. If an applicant fails to meet the Group 2 medical standard, the application will normally be refused. Where an existing licence holder develops a medical condition which means (s) he will not meet the Group 2 medical standard, the licence will normally be revoked or not renewed. |

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

- | | | |
|---------------------------------------|---|---|
| Definition of convictions | 1 | For the purpose of these guidelines, simple and conditional cautions, reprimands, warnings, endorsable fixed penalties , and any other offences shall be treated as though they were convictions . |
| Consideration of previous convictions | 2 | In considering evidence of an applicant's previous convictions the Council will take into account the nature of the offence, when it was committed, the date of conviction, the applicant's age when the offence was committed and any other factors which might be relevant. |
| Correctness of conviction not to | 3 | Where evidence of previous convictions is presented to the Council, the Council must accept that the applicant was |

be questioned correctly convicted. Subject to this, the Council may, however, look at the circumstances of the offence to determine its seriousness. The sentence imposed by the Court may be relevant to determine its seriousness. **Appendix I** list a range of sentencing powers available to the magistrates' court, which may assist the Council in assessing the seriousness of the offence committed. It is, however, important to note that in imposing a fine the court will take account of the offender's family and financial circumstances.

Consideration of 4
spent
convictions The Council can consider convictions which are usually regarded as spent convictions for the purpose of The Rehabilitation of Offenders Act 1974. Such convictions can be considered by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended.

When considering spent convictions the Council will take into account the offence involved, its relevance, its age and apparent seriousness.

A person with a current conviction for a serious crime need not be permanently barred from obtaining a licence but should be expected to (a) remain free of conviction for an appropriate period and (b) show adequate evidence of good character from the time of the conviction. Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.

Isolated incident 5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances.

Multiple 6
Offences While it is possible that an applicant may have a number of convictions that, individually, meet the guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licenced. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. **The overriding consideration is the protection of the public.**

The following examples afford a general guide on the action, which might be taken where convictions are disclosed.

(a) Offences of Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by

demanding more than the legal fare and in other ways.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. Passengers may comprise especially vulnerable people. For these reasons a serious view is taken of any convictions involving dishonesty. In general, a period of **3 to 5 years free of conviction** will be required before an application is likely to be considered favourably.

In particular, an application will **normally be refused** where the applicant has a conviction for any of the following offences and the conviction is **less than 3 years** prior to the date of the application: -

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- Taking a motor vehicle without the owner's consent
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Or any similar offences (including attempted or conspiracy to commit) offences.

Between **3 and 5 years** after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

Where an existing licence-holder is convicted of an offence of dishonesty, the licence should normally be revoked and in general, a period of 3 to 5 years free of conviction will be required before a new application is likely to be considered favourably.

(b) Violence

As hackney carriage and private hire drivers maintain close contact with the public, in general a period of **3 to 10 years free of conviction** for offences involving violence (depending on the nature and seriousness of the offence) will be required before an application is likely to be considered favourably.

In particular: -

(i) An application will normally be refused where the applicant has a conviction for any of the following offences and the conviction is less than **10 years** prior to the date of application: -

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Arson
- Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
- Or any similar offences (including attempted or conspiracy to commit) offences.

Between **10 and 12 years** after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(ii) An application will normally be refused where the applicant has a conviction for any of the following offences and the conviction is less than **8 years** prior to the date of application: -

- Grievous bodily harm with intent (s.18 Offences Against the Person Act)
- Grievous bodily harm (s.20 Offences Against the Person Act)
- Robbery
- Riot (s.1 Public Order Act 1986)
- Violent Disorder (s.2 Public Order Act 1986)
- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- All racially aggravated offences against Public Order
- All racially-aggravated offences of Harassment
- Or any similar offences (including attempted or conspiracy to commit) offences.

Between **8 and 10 years** after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(iii) An application will normally be refused where the applicant has a conviction for any of the following offences of and the conviction is less than **3 years** prior to the date of application:-

- Common assault
- Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Assault on a police officer
- Affray (s.3 Public Order Act 1986)
- Offences against Public Order (non racially aggravated)
- Offences of Harassment (non-racially aggravated)
- Obstruction
- Possession of offensive weapon
- Possession of firearm
- Criminal damage
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences.

Between **3 and 5 years** after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

Where an existing licence-holder is convicted of an offence of violence, the licence should normally be revoked and in general, a period of 3 to 12 years free of conviction (depending on the nature and seriousness of the offence) will be required before a new application is likely to be considered favourably.

(c) Drugs

A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.

A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.

An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last **3-5 years** may be granted a licence, but consideration should be given to the nature and quantity of the drugs.

If there is **evidence of persistent drug use**, misuse or dependency, a specialist examination (in accordance with DVLA group two medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of **5 years** free from drug taking after detoxification treatment.

Where an existing licence-holder is convicted of a drugs related offence, the licence should normally be revoked and in general, a period of 5 years free of conviction will be required before a new application is likely to be considered favourably.

(d) Alcohol related offences

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate. However, a number of convictions for drunkenness, including drunk and disorderly or drunk and incapable, could indicate a medical problem necessitating critical examination and refusal of a licence. (See also **Motoring Convictions (f)** when drink and/or drugs is involved.)

In addition, applicants will normally be required to show a period of at least **5 years** has elapsed after completion of detoxification treatment if (s)he was an alcoholic.

(e) Indecency Offences

As hackney carriage and private hire drivers often carry unaccompanied passengers, applicants with convictions for soliciting, importuning, indecent exposure or any sexual offence will normally be refused a licence until they can show a substantial period (**usually between 3 and 10 years**) free from any such conviction.

(i) In particular, an application will normally be refused where the applicant has a current conviction for any of the following offences and the conviction is less than **10 years** prior to the date of the application: -

- Rape
- Indecent/Sexual assault
- Gross indecency with a female
- Gross indecency with a male
- Sexual offences against a child under 16 including sexual grooming
- Sexual offences against persons with a mental disorder impeding choice
- Buggery
- Exposure
- Offences involving indecent images of children
- Voyeurism
- Or any similar offences (including attempted or conspiracy to commit) offences

Between **10 and 12 years** after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(ii) In particular, an application will normally be refused where the applicant has a

current conviction for any of the following offences and the conviction is less than **3 years** prior to the date of the application: -

- Kerb-crawling
- Persistent soliciting

Between **3 and 5 years** after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

Where an existing licence-holder is convicted of an offence of indecency, the licence should normally be revoked and in general, a period of 3 to 10 years free of conviction, depending on the nature and seriousness of the offence, will be required before a new application is likely to be considered favourably.

(f) Motoring Convictions

(i) Driving offences involving the loss of life

A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted unless the applicant is free of conviction for **7 years** or at least three years have passed since the completion of the sentence, whichever is longer.

(ii) Motoring Offences involving alcohol and/or drugs

A serious view will be taken of convictions of driving, or attempting to drive, or being in charge of a vehicle while under the influence of drink or drugs. Where a disqualification has occurred as a result of a drug or drink-driving offence, at least **5 years** free from conviction should elapse after the **restoration** of the DVLA licence before an applicant is granted a licence.

More than one conviction for this type of offence or one such offence within the last **5 years** is likely to merit refusal.

In addition, applicants will normally be required to show a period of at least **5 years** has elapsed after completion of detoxification treatment if (s)he was an alcoholic or drug addict.

Where an existing licence-holder is disqualified from driving as a result of a drink and/or drug related driving offence, the licence will be revoked.

Where an existing licence-holder is convicted of driving or being in charge of a vehicle while under the influence of drink or drugs, but the licence-holder is not

disqualified from driving, the licence should normally be revoked. Any subsequent application for a new licence will be determined in accordance with the guidance in paragraph (f) (ii) above.

(iii) Major Traffic Offences

Subject to (i) and (ii) above, an isolated conviction for a major traffic offence, without disqualification, such as dangerous driving or driving without due care and attention will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused.

In cases of disqualification at least **3 years** free from conviction after the restoration of the DVLA licence should normally elapse before an applicant is granted a licence.

Where an applicant has been convicted of a major traffic offence which has not resulted in disqualification, careful consideration should be given to the circumstances surrounding the offence. An application for a licence will normally be refused where the offence occurred less than **2 years** prior to the application.

Where an existing licence-holder is disqualified from driving as a result of a conviction for a major traffic offence, the licence will normally be revoked.

Where an existing licence-holder is convicted of a major traffic offence, but the licence-holder is not disqualified from driving, the licence should normally be revoked or not renewed and any subsequent application for a new licence will be determined in accordance with the guidance above.

A list of offences to which this paragraph applies is attached as **Appendix II**.

(iv) Minor Traffic Offences

Isolated convictions for minor traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account. If there are several minor traffic offences the applicant will normally be expected to show a period free of conviction of at least 6 months.

An application will normally be refused where the applicant has **12 or more penalty** points on his DVLA licence for minor traffic offences but has not been disqualified from driving.

Where an offence has resulted in the applicant being disqualified from driving for a period of time this will normally be taken as reflecting seriously on the applicant's driving standard.

Generally, a period of **6 months** free from conviction must have elapsed from the restoration of the DVLA licence.

Where an existing licence holder is disqualified from driving the licence will normally be revoked by the Head of Environment and Waste Management under delegated powers.

A list of offences to which this paragraph applies is attached as **Appendix III**.

(v) Totting –up Disqualifications

Where a number of traffic offences has resulted in a driver receiving **12 penalty points** or more on his/her licence the driver will be disqualified from driving unless the Court is satisfied that exceptional hardship would be suffered by an individual if disqualified. This is known as a “totting-up” disqualification. Where an applicant has a totting-up disqualification an application will usually be refused until a period of **between 12 months and 2 years** has lapsed from the restoration of the DVLA licence depending on the seriousness of the offences which led to the totting up.

Where an existing licence-holder is disqualified from driving as a result of a totting up, the licence will normally be revoked.

(vi) Hybrid Traffic Offences

Offences of the type listed in **Appendix IV** will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

(g) Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") is to ensure the protection of the public. For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence.

In particular, an applicant will normally be refused a licence where (s)he has been convicted of an offence under the Acts at any time during the 6 months preceding the application or has more than one conviction within the last 2 years preceding the date of the application.

(i) “Plying for hire” Offences

A suspension of a driver’s licence will normally be appropriate where an existing licence-holder has been convicted of an offence of plying for hire.

The Council takes a serious view where it is alleged that an applicant has committed an offence of illegally plying for hire at any time during the 6 months preceding the application. In such circumstances, the applicant will normally be refused a licence

(h) Breaches of Orders of the Court

Drivers of hackney carriage and private hire vehicles are expected to be persons who respect the authority of all enforcement agencies, including the Police, Court and local authorities.

For these reasons a serious view is taken of any convictions involving failure to comply with an Order of the Court or direction of any enforcement authority. In general, a period of **1 to 3 years** free of conviction will be required before an application is likely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for any of the following offences and the conviction is less than 1 year prior to the date of the application: -

- Breach of an Anti-Social Behaviour Order:
- Breach of a Community Order.
- Failure to surrender to bail.
- Breach of a Non-Molestation Order.
- Breach of a Protective Order.
- Breach of a Restraining Order.

Where an existing licence-holder is convicted of a breach of an Order of the Court, the licence will normally be revoked and in general, a period of 1 year free of conviction will be required before a new application is likely to be considered favourably.

(i) Smoking offences

It is an offence to smoke in a licensed vehicle by virtue of the Health Act 2006. The Council may decide to suspend the Licence for a period of time or issue a warning or penalty points on the licence where applicable.

POLICY ON IMMEDIATE REVOCATION/SUSPENSION OF DRIVER'S LICENCE

1. If the Council decides to revoke or suspend a driver's licence, it will then have to consider whether that revocation/suspension should take immediate effect under Section 61(2B) 52 of the Local Government (Miscellaneous Provisions) Act 1976.
2. The Council only has the power to resolve that the revocation/suspension will take immediate effect **if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect.**
3. Each decision to resolve that the revocation/suspension will take immediate effect should be considered on its own merits.
4. "In the interests of public safety" is not defined and is for the Council to determine. However, regard should be had to any risks to public safety arising from concerns about the licence-holder's driving standards, his character including for example dishonesty, violent behaviour, involvement in drink or drugs, inappropriate sexual conduct, any relevant previous convictions and any other matters the Council may deem relevant.
5. Before reaching a decision, in most cases and where practical, the Council shall give the licence-holder the opportunity to make representations as to whether or not the revocation/suspension should take immediate effect.
6. The overriding consideration shall always be the safety and protection of passengers and the general public.
7. Matters such as unemployment and home circumstances may be taken into account when determining whether the revocation or suspension should take place immediately but shall not outweigh the public safety factor.
8. Where the Council has decided that a licence-holder is no longer "fit and proper" to hold a licence, the presumption should be that the interest of public safety require the revocation of the licence to have immediate effect. The Council may however consider that the particular circumstances of a case are exceptional and compelling to justify allowing the licence to continue to have effect until **21 days** after the date of the decision to revoke or if an appeal is lodged, until that appeal is determined. For example, a licence-holder may be able to demonstrate that the risk to public safety is so diminished that it is right to allow the licence to continue.

9. If, however, it is considered that a person is still a fit and proper person to hold such a licence but that his conduct falls below the standard required by the Licensing Authority, and the Council has therefore decide to suspend him, the presumption should be that the interest of public safety will not require the suspension of the licence to have immediate effect. The Council may however consider that the particular circumstances of a case are exceptional and compelling and do not justify allowing the licence to continue to have effect until **21 days** after the date of the decision to revoke or if an appeal is lodged, until that appeal is determined.

10. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, the Council will give notice to the driver, which includes a statement to that effect and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

SENTENCES AVAILABLE TO THE MAGISTRATES' COURT FOR OFFENDERS
AGED 18 AND OVER
[in ascending order]

1. **Absolute and Conditional Discharge** - either discharge completely or subject to the offender committing no further offences for a certain period.
 2. **Bind Over** - bind over to keep the peace.
 3. **Compensation** [up to £5,000] – payment to compensate the victim of the crime for loss, injury or suffering.
 4. **Fine** [up to £5,000 or more if specified for certain offences] – financial penalty.
 5. **Community Order** – a court may pass on an offender a community order of a low, medium or high level. The order must have one or more of the following requirements:
 - an unpaid work requirement
 - an activity requirement
 - a programme requirement
 - a prohibited activity requirement
 - a curfew requirement
 - an exclusion requirement
 - a residence requirement
 - a mental health treatment requirement
 - a drug rehabilitation requirement
 - an alcohol treatment requirement
 - a supervision requirement
 - an attendance centre requirement – if the offender is under 25
- NB offences committed before 4 April 2005 are dealt with by way of old style community orders:
- i. Community Rehabilitation Order
 - ii. Community Service Order
 - iii. Combination Order
 - iv. Attendance Centre – under 21s only
 - v. Drug Treatment and Testing Order
6. **Short Detention** – usually for a day or a few hours defendant must be detained in the court house or local police station
 7. **Suspended sentence Order** – a period of imprisonment/detention is imposed but suspended for a period up to two years. The order must include one or more of the requirements listed above. For pre 4th April 2005 offences an old style suspended sentence can be given.
 8. **Detention in Young Offenders Institution** - under 21 only
 9. **Imprisonment** - over 21 only

10. **Ancillary Orders** may be imposed in relation to certain convictions in addition to a usual penalty for example Anti-Social behaviour Orders, Football Banning Orders, Drink banning Orders, Disqualification from driving.

MAJOR TRAFFIC OFFENCES*(Paragraph (f) (iii) refers)*

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA20	Attempting to drive while disqualified by order of court
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
CD80	Causing death by careless or inconsiderate driving
CD90	Causing Death by driving: unlicensed, disqualified or uninsured drivers
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR70	Failing to provide specimen for a breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN 10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
UT50	Aggravated taking of a vehicle

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

For information: TT99 signifies a disqualification under the totting up procedure

MINOR TRAFFIC OFFENCES

(Paragraph (f)(iv) refers)

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to the identity of the driver etc.
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign
CU80	Breach of a requirement as to control of a vehicle, using a mobile etc.

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC 14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

HYBRID TRAFFIC OFFENCES

(Paragraph (f)(vi) refers)

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
SPI0	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Undefined speed limit offence

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

REPORT OF THE HEAD OF CORPORATE SERVICES

Summary

This reports sets out a proposal for the Council to pledge its support to the Armed Forces Community Covenant which aims to foster a sense of community spirit between a civilian community and the local Armed Forces community.

Recommendation

It is RECOMMENDED that Council pledges its support to the Armed Forces Community Covenant.

Details

1. The Armed Forces Community Covenant is a voluntary statement of mutual support between the Council and its local Armed Forces community. The Armed Forces community is defined by the MOD as service personnel and their families, service veterans and their families, and widows/ers of those who died whilst serving. The Covenant aims to encourage local communities to support Armed Forces personnel and their families in the Borough. The Covenant also encourages local communities to develop an understanding and awareness of issues affecting the Armed Forces community. It provides a mechanism to ensure the Armed Forces community, including ex-service personnel, is aware of the support available.
2. In simple terms the aims of Covenant are to:
 - encourage local communities to support the Armed Forces community in their area and vice versa
 - nurture public understanding and awareness amongst the public of issues affecting the Armed Forces community
 - recognise and remember the sacrifices faced by the Armed Forces community
 - encourage activities which help to integrate the Armed Forces community into local life; and
 - encourage the Armed Forces community to help and support the wider community, whether through participation in events and joint projects, or other forms of engagement.
3. The first step in building a partnership between the Borough Council and the local Armed Forces community is signing the Community Covenant Pledge with lead signatories from the Armed Forces community, the local authority, and voluntary and community sector organisations. Following this high level statement of support, details of the existing activities which support the

delivery of the Pledge can be included. For example, celebrations and acts of remembrance including the annual event held in West Bridgford Park to celebrate Armed Forces Day can be included. Consideration can then be given to the inclusion of any further additional measures that could be put in place by the Council, its partners or the community giving greater effect to the Pledge.

4. Pledging support to the Covenant would enable the Council to assist projects in the accessing of grant funding from the MOD. This funding is available to support local schemes that strengthen ties or mutual understanding between the Armed Forces community and the locality. This work could help to inform consideration of the existing and additional measures that might be included in the Pledge to build on and develop any existing community support. It is anticipated that this work would form part of any further discussions between signatories and the Council's Head of Community Shaping once the Pledge has been signed.

Financial Comments

There are no direct financial implications arising from this report.

Section 17 Crime and Disorder Act

There are no direct financial implications arising from this report.

Diversity

There are no direct diversity implications arising from this report however making a commitment to pledge is illustrative of the Council's commitment to ensuring Armed Forces personnel and their families are supported within the community strengthening inclusion and understanding.

Background Papers Available for Inspection: Nil