

LICENSING COMMITTEE AGENDA

Wednesday, 27 February 2019 at 07:15pm

Committee Room 1, Braintree District Council, Causeway House,
Bocking End, Braintree, CM7 9HB

THIS MEETING IS OPEN TO THE PUBLIC
(Please note this meeting will be audio recorded)

www.braintree.gov.uk

Members of the Licensing Committee are requested to attend this meeting to transact the business set out in the Agenda.

Membership:-

Councillor Mrs J Allen	Councillor H Johnson
Councillor M Banthorpe (Chairman)	Councillor Mrs J Pell
Councillor P Barlow	Councillor B Rose
Councillor J Baugh (Vice-Chairman)	Councillor Mrs L Walters
Councillor J Elliott	Councillor Mrs S Wilson
Councillor J Goodman	Vacancy
Councillor A Hensman	

Members unable to attend the meeting are requested to forward their apologies for absence to the Governance and Members Team on 01376 552525 or email governance@braintree.gov.uk by 3pm on the day of the meeting.

A WRIGHT
Chief Executive

INFORMATION FOR MEMBERS - DECLARATIONS OF INTERESTS

Declarations of Disclosable Pecuniary Interest, Other Pecuniary Interest or Non-Pecuniary Interest

Any member with a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a Disclosable Pecuniary Interest or other Pecuniary Interest or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

Question Time

The Agenda allows for a period of up to 30 minutes when members of the public can speak. Members of the public wishing to speak are requested to register by contacting the Governance and Members Team on 01376 552525 or email governance@braintree.gov.uk by midday on the working day before the day of the Committee meeting. For example, if the Committee Meeting is due to be held on a Tuesday, the registration deadline is midday on Monday, (where there is a bank holiday Monday you will need to register by midday on the previous Friday).

The Council reserves the right to decline any requests to register to speak if they are received after this time. Members of the public can remain to observe the public session of the meeting.

Please note that there is public Wi-Fi in the Council Chamber, users are required to register in order to access this. There is limited availability of printed agendas.

Health and Safety

Any persons attending meetings in the Council offices are requested to take a few moments to familiarise themselves with the nearest available fire exit, indicated by the fire evacuation signs. In the event of an alarm you must evacuate the building immediately and follow all instructions provided by officers. You will be assisted to the nearest designated assembly point until it is safe to return to the building.

Mobile Phones

Please ensure that your mobile phone is switched to silent during the meeting in order to prevent disturbances.

Webcast and Audio Recording

Please note that this meeting will be audio recorded only.

Documents

Agendas, reports and minutes for all the Council's public meetings can be accessed via www.braintree.gov.uk

We welcome comments from members of the public to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended, you can send these via governance@braintree.gov.uk

PUBLIC SESSION

Page

1 Apologies for Absence

2 Declarations of Interest

To declare the existence and nature of any Disclosable Pecuniary Interest, other Pecuniary Interest, or Non-Pecuniary Interest relating to Items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.

3 Minutes of the Previous Meeting

To approve as a correct record the Minutes of the meeting of the Licensing Committee held on 12th December 2018 (copy previously circulated).

4 Public Question Time

(See paragraph above)

5 Disclosure and Barring Service - Update Service

4 - 8

6 Hackney Carriage and Private Hire Driver Applications - DVLA Check Code

9 - 11

7 Urgent Business - Public Session

To consider any matter which, in the opinion of the Chairman, should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.

8 Exclusion of the Public and Press

To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.

At the time of compiling this Agenda there were none.

PRIVATE SESSION

Page

9 Urgent Business - Private Session

To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

Disclosure and Barring (DBS) Update Service		Agenda No: 5
Portfolio	Environment and Place	
Corporate Outcome:	A sustainable environment and a great place to live, work and play	
	Residents live well in healthy and resilient communities where residents feel supported	
Report presented by:	John Meddings, Principal Licensing Officer	
Report prepared by:	John Meddings, Principal Licensing Officer	
Background Papers:	Public Report	
<ol style="list-style-type: none"> Government Response – Report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing – February 2019 Local Government Association - Example Taxi & PHV Licensing Criminal Convictions' Policy (22nd March 2017) DBS Update Service: Employer Guide Guidance on determining the suitability of applicants & licensees - hackney & private hire trades 2018 Braintree District Council Relevance of Conviction Policy 2018 	Key Decision: No	
Executive Summary:		
<p>Under the powers conferred to Braintree District Council under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 (as amended), Braintree District Council has responsibility for licensing Hackney Carriage, Private Hire and Dual Licence Drivers as well as vehicle proprietors and Private Hire Operators within the District.</p> <p>Licensed drivers provide a public service and the District Council will not licence any individual to drive a Hackney Carriage or a Private Hire Vehicle unless it is satisfied that they are a fit and proper person. There is no definition of 'fit and proper' in legislation, nor a fixed legislative process. It is for Braintree District Council to determine how it wishes to be satisfied that a driver is fit and proper and, to this end, the Authority considers a range of documentary evidence, practical criteria and testing mechanisms provided by an applicant in order to be satisfied of this.</p> <p>One of the requirements is for a driver to undertake a criminal record check at 'enhanced disclosure' level upon application and at three yearly intervals. This check is known as an Enhanced Disclosure and Barring Service (DBS) Check. The DBS is an executive non-departmental public body sponsored by the Home Office. It aids organisations to make safer decisions and prevent unsuitable people from working with</p>		

vulnerable groups, including children. The DBS checking process is a credible means of checking on an individual's criminal activity, whether convicted or otherwise. The DBS Update Service is an online service which allows licence holders to keep their DBS Certificates up to date and with the relevant permissions allows the District Council to check a DBS Certificate easily.

Since the launch of the Update Service in June 2013, Braintree District licensed drivers have been encouraged to subscribe to it. Given the benefits for licence holders and the Authority, it is proposed that subscription to the DBS Update Service becomes mandatory for all licensed drivers <https://www.gov.uk/dbs-update-service>

Recommended Decision:

Members of the Licensing Committee are recommended to start a formal consultation to seek the views of safeguarding partners and licensed drivers and operators on making subscription to the DBS Update Service mandatory for all licensed drivers.

Purpose of Decision:

To ensure Braintree District Council has a robust, fast and efficient way of accessing licence holders' criminal records' history. The proposals are necessary in order to contribute to the District Council's safeguarding responsibilities, along with the statutory licensing obligations.

Corporate Implications

Financial:	The proposed procedure will reduce the time taken to process renewal applications. This may have an effect on the cost recovery for this process.
Legal:	No matters arising out of this report
Safeguarding:	The proposals are necessary in order to contribute to the District Council's safeguarding responsibilities.
Equalities/Diversity:	An Equality Impact Assessment will be completed during the consultation period, if Members agree to the recommended decision.
Customer Impact:	Once applicants have signed up to the update service the licence holder will see a reduction in the total cost of licensing for drivers.
Environment and Climate Change:	No matters arising out of this report
Consultation/Community Engagement:	There is a proposed six week consultation with safeguarding partners and Braintree District Council drivers and operators.
Risks:	The current system leads to significant delays in accessing licence holders' criminal history and potentially places the travelling public at avoidable risk.
Officer Contact:	John Meddings
Designation:	Principal Licensing Officer
Ext. No:	2213
E-mail:	John.meddings@braintree.gov.uk

1. Background

- 1.1 Braintree District Council has responsibility for licensing Hackney Carriage, Private Hire and Dual Licence Drivers as well as vehicle proprietors and Private Hire Operators within the District.
- 1.2 Braintree District Council will not licence any individual as a Hackney Carriage, Private Hire or Dual Driver unless it is satisfied that they are a fit and proper person (Local Government (Miscellaneous Provisions) Act 1976, Section 51 (1)(a) and Section 59 (1)(a)).
- 1.3 There is no definition of 'fit and proper' in legislation, nor a fixed legislative process. Braintree District Council considers a range of documentary evidence, practical criteria and testing mechanisms provided by an applicant in order to be satisfied of an individual's fitness and propriety.
- 1.4 Since 2001 all driver applicants to the licensed trade have undertaken CRB (Criminal Records Bureau) or (as it is known now) Disclosure and Barring Service (DBS) checks. Prior to that, the responsibility for disclosure rested with the Police and all drivers prior to 2001 were subject to a Police check.
- 1.5 The Council is registered with the DBS in order to carry out Criminal Record Checks, which are used as one of the testing mechanisms to assess an applicant's suitability for the role of licensed driver. Any information disclosed on an individual's DBS certificate is vital to the decision making process to enable the Authority to meet its statutory requirements.
- 1.6 An Enhanced DBS Check (for a fee of £44) is currently sought upon first application by an individual for a driver's licence and every three years thereafter (for a fee of £44) and if subsequent renewal applications are made).
- 1.7 The DBS Disclosure Certificate includes details of spent and unspent convictions, spent and unspent cautions, additional Police information and barred list(s) information for an individual undertaking the role of a licensed driver.
- 1.8 A DBS check is undertaken, face to face, at an appointment with an Officer of the Council. Following an application being made, the DBS certificate is issued directly to the applicant. It is then the applicant's responsibility upon receipt of the certificate to present it to the Council as part of their application, before their licence application can be fully processed.
- 1.9 If an individual's DBS certificate is not presented to the Council as part of the application prior to the expiry date of the current licence, the licence will be deemed to have expired.
- 1.10 Upon receipt of a disclosure certificate from the DBS, via the applicant, the information (if there is any) will be risk assessed by a Senior Officer who will consider whether the information disclosed is capable of having relevance as to whether or not the individual is a fit and proper person to hold a licence in line with the Hackney Carriage and Private Hire Licensing Policy and the

guidance as set down in Braintree District Council's Relevance of Conviction Policy.

- 1.11 Up until this point in time, the Council has been strongly encouraging all licensed drivers to subscribe to the DBS Update Service. In doing so the Update Service allows individuals to keep their DBS Certificate up to date online, subject to an annual fee which is currently set at £13. This represents a reduction in the costs year on year associated with undertaking a full DBS Check.
- 1.12 Some licensed drivers are subscribed to the Update Service and this works well for them and for the Council in undertaking relevant checks and in processing their licence application.
- 1.13 Subscription to the Update Service is quick and simple and must be done within specified timescales. Subscription lasts for a year and must be renewed annually, before the current subscription ends.
- 1.14 In addition to other benefits, the DBS Update Service allows Officers to carry out a quick online status check to see if an individual's certificate is up to date. It enables the Council to see if any relevant information has been identified about the individual since their DBS Certificate was issued.
- 1.15 If a change is highlighted since the original certificate was obtained a new enhanced DBS would then need to be made to establish the details of the changes. This would also suggest that a conviction had been obtained since the previous certificate and could potentially pose a significant risk to public safety. It is highly likely that in this instance the licence would be suspended or revoked, as drivers are required to declare convictions received.
- 1.16 Further benefits are:
 - Allows an instant update of changes to status of the check.
 - No more DBS application forms to fill in.
 - Strengthens application and renewal processes.
 - Can take DBS certificate from role to role within the same workforce.
 - Supports safeguarding and protection of the public.
 - Individual is in control of their DBS certificate.
 - Reduces risks.
- 1.17 As detailed in the background papers, current guidance from the Department of Transport, the Local Government Association and the Institute of Licensing all advise Local Authorities to ensure that licence holders are registered with the Disclosure and Barring Service Update Service.

2. Proposed Amendments to Policy and Procedures

- 2.1 An enhanced DBS shall be undertaken upon application and every three years thereafter (if subsequent renewal applications are made). The Licensing Authority may, at its discretion, require additional DBS checks within the standard three year cycle.

- 2.2 An enhanced DBS shall be undertaken upon application and all licensed drivers will at that point be required to subscribe to the DBS Update Service within the specified timescale of receiving their DBS Certificate.
- 2.3 Every three years, Officers of the Council will undertake an online check of the DBS Update Service in order to check the applicant's current status. Depending on what is revealed from the online status check, the Council may require an additional DBS check to be undertaken.
- 2.4 All licensed drivers will be required to renew their subscription to the DBS Update Service on an annual basis, before their current subscription ends, should they wish to continue to hold a Braintree District Council driver's licence.
- 2.5 Where an individual fails to maintain and/or renew their subscription before it ends, they will be required to apply for a new DBS Check and register for the Update Service again. This would also be a breach of conditions and pose a risk to public safety and would require the suitability of the licence holder to be determined. This could ultimately result in the suspension, or revocation of the licence.
- 2.6 Where legislation allows, the condition below will be attached to drivers' licences.

Braintree District Council requires all licensed drivers to subscribe to the DBS Update Service and to maintain the annual subscription. Licensed drivers will need to retain their DBS Certificate once they have subscribed as this will need to be provided to the officer undertaking the online check.

- 2.7 In conclusion, it is considered that the proposals are necessary in order to contribute to the District Council's safeguarding responsibilities, along with the statutory licensing obligations. The time-frame for moving all existing licensed drivers to the DBS Update Service is a three year cycle, due to the logistical set up of licence renewals.

3. Consultation

- 3.1 It is proposed that the consultation would run for a period of six weeks and include safeguarding partners (Essex Police, Community Safety etc.) and Braintree District Council Licensed Drivers and Operators.
- 3.2 The responses from the consultation will then be collated and presented to the Licensing Committee when the item is next scheduled to be discussed.

HACKNEY CARRIAGE AND PRIVATE HIRE APPLICATIONS - DVLA CHECK CODE		Agenda No: 6
Portfolio	Environment and Place	
Corporate Outcome:	A sustainable environment and a great place to live, work and play	
	Residents live well in healthy and resilient communities where residents feel supported	
Report presented by:	John Meddings, Principal Licensing Officer	
Report prepared by:	John Meddings, Principal Licensing Officer	
Background Papers:	Public Report	
1. DVLA Driver Licence Checking Service	Key Decision: No	
Executive Summary:		
<p>This report provides the Committee with information regarding administrative changes that will be introduced in relation to validating information in respect of Hackney Carriage and Private Hire drivers' DVLA licence details.</p> <p>As part of the application process for a new, or the renewal of a Braintree District Council Private Hire or Hackney Carriage Driver's Licence a check is conducted into the status of the applicant's DVLA licence status. This has historically been achieved through a paid service which is borne by the applicant. The DVLA, through GOV.UK, now offers a free check service that provides the information required to assist in determining the fit and proper status of applicants.</p>		
Recommended Decision:		
That the Committee notes the report.		
Purpose of Decision:		
To provide the Committee with information regarding administrative changes that will be introduced in relation to gaining information in respect of Hackney Carriage and Private Hire drivers' DVLA licence details.		

Corporate Implications	
Financial:	The change could see reduced time to process driver applications.
Legal:	The information being used and how we determine applications has not changed.
Safeguarding:	No matters arising out of this report
Equalities/Diversity:	No matters arising out of this report
Customer Impact:	Customers should see a significant improvement in the process and also a reduction in costs.
Environment and Climate Change:	No matters arising out of this report
Consultation/Community Engagement:	No matters arising out of this report
Risks:	No matters arising out of this report
Officer Contact: John Meddings	
Designation: Principal Licensing Officer	
Ext. No: 2213	
E-mail: john.meddings@braintree.gov.uk	

1. Information

- 1.1 Braintree District Council has responsibility for licensing Hackney Carriage, Private Hire and Dual Licence Drivers as well as Vehicle Proprietors and Private Hire Operators within the District.
- 1.2 Braintree District Council will not licence any individual as a Hackney Carriage, Private Hire, or Dual Driver unless it is satisfied that they are a fit and proper person (Local Government (Miscellaneous Provisions) Act 1976, Section 51 (1)(a) and Section 59 (1)(a)).
- 1.3 There is no definition of 'fit and proper' in legislation, nor a fixed legislative process. Braintree District Council considers a range of documentary evidence, practical criteria and testing mechanisms provided by an applicant in order to be satisfied of an individual's fitness and propriety.
- 1.4 The status of an applicant's DVLA licence is a vital part of assessing their suitability to hold a licence.
- 1.5 The Council currently uses a private company (DriveTech) to conduct DVLA checks at a cost of £7.25 per application. This cost is passed on to the applicant when an application is submitted.
- 1.6 The process takes between 7-14 days for the information to be returned to the Authority.
- 1.7 The DVLA offers a service through GOV.UK that allows drivers to generate a check code to share their licence information. This code is valid for a period of 21 days, after which it expires and can no longer be used. The code can also

only be used once and any further checks would require an additional code to be generated.

- 1.8 Once the report has been generated it details a full overview of the information held by the DVLA on the applicant, including offences and convictions.
- 1.9 The check is free to the applicant and Braintree District Council and also speeds up the process significantly, allowing for an almost instantaneous check.
- 1.10 It is expected that this change will be well received due to the increased speed and reduced costs to applicants.
- 1.11 If applicants have any difficulties using a computer to generate the code Officers will assist in this process during an appointment. It is also expected that applicants may forget to produce the code prior to an appointment. In this instance the Council provides public access computers in the main reception area.
- 1.12 Whilst in transition Officers will continue to accept applications using the paid for service from DriveTech.