

Licensing Committee

Agenda

Date: Tuesday, 16th July, 2013
Time: 2.00 pm
Venue: Committee Suite 1 & 2, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

To receive apologies for absence.

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

Please contact Julie Zientek on 01270 686466
E-Mail: julie.zientek@cheshireeast.gov.uk with any apologies or requests for further information or to give notice of a question to be asked by a member of the public

4. **Minutes of Previous Meeting** (Pages 1 - 2)

To approve the minutes of the meeting held on 23 May 2013.

5. **Minutes of Licensing Sub-Committees** (Pages 3 - 10)

To receive the minutes of the following meetings:

Licensing Act Sub-Committee

24 May 2013

General Licensing Sub-Committee

3 June 2013

6. **Draft Street Trading Policy** (Pages 11 - 32)

To consider a proposed Street Trading Policy.

7. **Penalty Points System for Hackney Carriage and Private Hire Licensing**
(Pages 33 - 48)

To consider a proposed penalty points scheme for Hackney Carriage and Private Hire Licensing.

8. **Revised Convictions Policy for Hackney Carriage and Private Hire Drivers**
(Pages 49 - 64)

To consider a proposed revised convictions policy for joint hackney carriage / private hire drivers.

9. **Statement of Licensing Policy Review** (Pages 65 - 104)

To consider a draft revised Statement of Licensing Policy.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Committee**
held on Thursday, 23rd May, 2013 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor P Whiteley (Chairman)
Councillor W S Davies (Vice-Chairman)

Councillors C Andrew, Rhoda Bailey, I Faseyi, M Hardy, D Mahon, M Parsons
and L Smetham

OFFICERS IN ATTENDANCE

Fiona Crane, Lawyer
Kim Evans, Licensing Team Leader
Julie Zientek, Democratic Services Officer

Apologies

Councillors D Bebbington, H Davenport, A Harewood, M Sherratt and G Wait

1 DECLARATIONS OF INTEREST

There were no declarations of interest.

2 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

3 MINUTES OF PREVIOUS MEETING

RESOLVED – That the minutes of the meeting held on 5 November 2012
be approved as a correct record and signed by the Chairman.

4 MINUTES OF LICENSING SUB-COMMITTEES

RESOLVED – That the minutes of the Licensing Act Sub-Committee
meetings held on 3 January 2013, 11 February 2013 and 11 March 2013
and the General Licensing Sub-Committee meetings held on 1 February
2013, 1 March 2013, 9 April 2013, 3 May 2013 and 8 May 2013 be
received.

5 DRAFT CHARITABLE COLLECTION POLICY

The Committee considered a report regarding a proposed Charitable
Collection Policy.

All applications were currently processed in accordance with the policy or working practice adopted in each of the former Boroughs, as the Council did not have a Borough-wide Charitable Collections Policy.

RESOLVED - That the Licensing Team Leader be authorised to undertake formal consultation on the proposed Charitable Collections Policy, subject to any necessary amendments being made to the first bullet point in paragraph 6.14.1.

6 PROPOSED CHANGES TO THE JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER KNOWLEDGE TEST

The Committee considered a report regarding proposed changes to the testing of applicants for joint Hackney Carriage and Private Hire Driver Licences.

During the course of research, it had become evident that many Licensing Authorities required applicants for driver licences to undergo a more formal testing process than that in place in Cheshire East, including the attainment of a national accredited and recognised qualification.

RESOLVED

- (a) That all applications for the grant of a Joint Hackney Carriage and Private Hire Driver Licence received with effect from 1 July 2013 be accompanied by a Certificate confirming that the applicant has passed the BTEC Level 2 Certificate in the introduction to the role of the Professional Taxi and Private Hire Driver.
- (b) That any application received prior to 1 July 2013 be processed in accordance with existing procedures.
- (c) That the Licensing Team Leader be granted delegated authority to agree and sign Service Level Agreements with the relevant colleges and set out how the application process would work in practice.
- (d) That the Licensing Team Leader be requested to investigate the feasibility of conducting physical assessments of applicants' driving skills and encouraging or requiring all licensed drivers to undertake the NVQ Certificate in Road Passenger Vehicle driving (Taxi and Private Hire Driver).

The meeting commenced at 2.00 pm and concluded at 2.25 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Friday, 24th May, 2013 at The Capesthorne Room - Town Hall,
Macclesfield SK10 1EA

PRESENT

Councillor P Whiteley (Chairman)

Councillors C Andrew and M Hardy

OFFICERS IN ATTENDANCE

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Julie North, Senior Democratic Services Officer

1 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 APPLICATION FOR A PREMISES LICENCE - MERITON ROAD PARK, MERITON ROAD, HANDFORTH, SK9 3HA

The Sub-Committee considered a report regarding an application for a Premises Licence for Meriton Road Park, Meriton Road, Handforth, SK9 3HA.

The following attended the hearing and made representations with respect to the application:

- the applicant
- two local residents

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)

- All the evidence, including the oral representations made at the meeting and the written representations of interested parties

the following course of action had been agreed:

RESOLVED - That the application for a Premises Licence be granted as applied for, subject to the following additional agreed conditions:

1. Any licensable activity which the Premises Licence Holder anticipates will involve 1,000 or more people may only take place when a minimum of 28 days notice has been given by the Premises Licence Holder to the Licensing Authority, Police, Fire Authority and, where appropriate, the Ambulance Service (or First Aid Provider) notifying them of the nature of the event, the location of the marquees, stages etc, on a plan of the park; the hours of each activity, the numbers anticipated to attend and include the Risk Assessments for Health and Safety and Public Order.
2. Licensable events will be limited to two events per calendar year.
3. There will be a minimum of four Area Stewards on duty at each of the events. The Area Stewards will be supported by a suitable number of Event Marshalls. The Area Stewards and Event Marshalls will remain on duty whilst licensable activities take place.
4. Hot food vendors must be positioned away from boundaries of domestic dwellings to prevent cooking odours causing a public nuisance.

Parties who had made relevant representations were reminded of the right to appeal the decision to the Magistrates Court within 21 days.

4 APPLICATION FOR A PREMISES LICENCE - THE CHEESE YARD, 69 KING STREET, KNUTSFORD, WA16 6DX

The Sub-Committee considered a report regarding an application for a Premises Licence for The Cheese Yard, 69 King Street, Knutsford, WA16 6DX.

The following attended the hearing and made representations with respect to the application:

- the applicant
- a local resident

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy

- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the oral representations made at the meeting and the written representations of interested parties

the following course of action had been agreed:

RESOLVED - That the application for a Premises Licence be granted as outlined in the Operating Schedule.

Parties who had made relevant representations were reminded of the right to appeal the decision to the Magistrates Court within 21 days.

The meeting commenced at 10.00 am and concluded at 2.00 pm

Councillor P Whiteley (Chairman)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Monday, 3rd June, 2013 at West Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillor P Whiteley (Chairman)

Councillors D Bebbington, W S Davies, L Smetham and J Wray

OFFICERS IN ATTENDANCE

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Jim Hopper, Licensing Officer

Vilma Robson, Senior Licensing Officer

Julie Zientek, Democratic Services Officer

1 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

2 APOLOGIES FOR ABSENCE

There were no apologies for absence.

3 DECLARATIONS OF INTEREST

There were no declarations of interest.

4 APPLICATION FOR THE RENEWAL OF A SEXUAL ENTERTAINMENT VENUE LICENCE - SCHEDULE 3, LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982: MANHATTAN, 35-37 HIGH STREET, CREWE, CW2 7BL

The Sub-Committee considered a report regarding an application for the renewal of a sexual entertainment venue licence for Manhattan, 35-37 High Street, Crewe under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act').

The following attended the hearing and made representations with respect to the application:

the applicant

a representative of the Chief Officer of Police

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- the provisions of Schedule 3 of the 1982 Act;
- the Home Office Guidance relating to sexual entertainment venues;
- Cheshire East Borough Council's policy on the licensing of sexual entertainment venues; and
- all the evidence presented to the Sub-Committee, including the submissions of each of the parties to the hearing and the written objection within the report;

the following course of action had been agreed:

RESOLVED - That the application to renew a twelve month sexual entertainment venue licence be REFUSED for the following reasons:

- a) the applicant is unsuitable to hold the licence
- b) the premises are unsuitable for the relevant entertainment

5 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED - That the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100(A) 4 of the Local Government Act 1972 on the grounds that it involved the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972 and public interest would not be served in publishing the information.

6 13-14/1 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

The Sub-Committee considered a report regarding the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the matter fell within the Council's policy for determination by the Sub-Committee. Accordingly, the hearing had been convened to enable the Sub-Committee to determine whether the licence holder remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The licence holder attended the hearing and made representations.

After a full hearing, and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all the evidence, the following course of action had been agreed.

RESOLVED

- (a) That the Licence Holder remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that no formal action be taken in relation to the future of their licence.
- (b) That a formal warning be issued in respect of the Licence Holder's future conduct.

The Licence Holder was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

The meeting commenced at 10.00 am and concluded at 2.40 pm

Councillor P Whiteley (Chairman)

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CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting: 16th July 2013
Report of: Miss Kim Evans – Licensing Team Leader
Subject/Title: Draft Street Trading Policy
Portfolio Holder: Cllr Les Gilbert - Communities and Regulatory Services
Portfolio Holder

1.0 Report Summary

1.1 This report seeks Members' approval on the adoption of a policy concerning the Council's Street Trading function.

2.0 Recommendation

2.1 That the Street Trading Policy attached at appendix A be adopted with immediate effect.

3.0 Reasons for Recommendations

3.1 The Council does not currently have a Borough wide Street Trading Policy. All applications are therefore processed in accordance with the policy or working practise applicable in each of the former Boroughs.

3.2 In accordance with the Council's Constitution the Licensing Committee is authorised to determine such matters.

4.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 Not applicable

6.0 Policy Implications

6.1 None indentified

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 The fees applicable may need to be re-considered to ensure that the administration of the regime runs on the basis of a nil costs to the Authority and is therefore self funding.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Section 3 of the Local Government (Miscellaneous Provisions) Act 1982 grants a Local Authority the power to adopt legislation to control Street Trading within its area.

8.2 Schedule 4 of the 1982 Act sets out the powers available, including

- the designation of streets as prohibited, consent, or licence
- Exemptions
- Setting of fees
- Applying conditions
- Any offences

9.0 Risk Management

9.1 Full consideration of the policy and any objections received in response to the consultation would mitigate the risk of challenge to any decision taken.

10.0 Background

10.1 On the 13th October 2011, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 was adopted in respect of the whole Borough.

10.2 A street for these purposes includes any road, footway, beach or other area to which the public has access without payment, including highway service areas. In brief terms, street trading is defined as anyone selling or exposing or offering for sale any article (including a living thing).

10.3 The purpose of controlling street trading is to ensure appropriate controls are in place to regulate and ensure that:

- An area is not saturated with street traders to the detriment of permanent businesses
- The highway is not obstructed
- The presence of the trading unit does not present a danger to pedestrians and other road users or an annoyance is caused to residents

10.4 There are approximately 20 street trading consents issued annually by the Licensing Team. The fee currently stands at £364.00 per consent.

10.5 Following the decision of the Licensing Committee on the 14th January 2013 the Licensing Team consulted on the draft Policy. The consultation on the draft Policy was conducted by:

- i. Publication on the Council's website for a period of 12 weeks
- ii. Letters were sent to existing consent holders directing them to the draft policy and asking for their comments

10.6 Despite the length of consultation and proactively writing to all current consent holders, no responses during the consultation period were received. Members may therefore need to consider whether any further consultation is appropriate prior to the adoption of the Policy.

10.7 Members may wish to note that, at the time of the consultation, there were 17 extant consents. Additionally, street trading is not a high profile issue and this may have influenced a lack of response during the consultation period.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

Name: Miss Kim Evans
Designation: Licensing Team Leader
Tel No: 0300 123 5015
Email: kim.evans@cheshireeast.gov.uk

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Street Trading Policy

Contents

- 1 Purpose
- 2 What is Street Trading
- 3 Exemptions
- 4 Street Trading for which no fee is payable
- 5 Application Process
- 6 Consultation
- 7 Site Assessment
- 8 General Conditions
- 9 Enforcement
- 10 Delegation of Functions
- 11 Renewals
- 12 Decisions
- 13 General
- 14 Review of the Policy
- 15 Contacts

Appendix A – Details of Consent and Prohibited Streets

Appendix B – Application Form

Appendix C – List of Conditions



1 Purpose

- 1.1 The Council's Street Trading Policy is to create a street trading environment which complements premises-based trading, is sensitive to the needs of residents, provides diversity and consumer choice, and seeks to enhance the character, ambience and safety of the local environment.

2 What is Street Trading

- 2.1 Street Trading means selling, exposing or offering for sale any article in a street. The term 'street' includes any road, footway or other area to which the public have access without payment. This may also include private land.
- 2.2 Cheshire East Council has adopted Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of the Borough Area. A list of the designated streets is set out at appendix A.
- 2.3 The effect of this designation is that Street Trading in a Consent Street is prohibited (subject to legal exemptions) without first obtaining a Street Trading Consent from the Council.
- 2.4 Street Trading in a Prohibited Street is not permitted at any time. Anyone found to be trading in a prohibited street may be liable to prosecution.

3 Exemptions

- 3.1 Some types of trade are exempt from the need to obtain a street trading consent. These include:
- A person trading under the authority of a pedlars' certificate granted under the Pedlars Act 1871
 - Trade carried out by a roundsman e.g. milkmen
 - Trade carried on at a petrol filling station
 - News vendors in certain circumstances
 - Trade carried out in a street adjoining a premises used as a shop; provided it is part of the business of that shop (such business must not obstruct the highway).
 - Anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.

4 Application Process

- 4.1 Street Trading application can be made for:
- a 'Fixed Pitch' nominated by the applicant (if that pitch is deemed suitable)
 - a 'Roaming Zone' (Borough wide consent when a schedule of stops/streets is included with the application, ie ice cream vans etc)

- 4.2 Applicants for 'Roaming Consent' (e.g. ice cream vendors) must include a list of all streets where they will be stopping to trade. The application form is set out at appendix B.
- 4.3 A Street Trading Consent can be held by more than one person, providing that person(s) has a business interest and authority to manage the Street Trading site. Once granted, all Consent Holders will be held equally responsible for any breach of terms of conditions of a Street Traders Consent.

5 Consultation

- 5.1 On each application received the Licensing Team may consult the following:
- i. Cheshire Constabulary
 - ii. Highway's Authority
 - iii. Planning Authority
 - iv. Environmental Health
 - v. Waste and Recycling
 - vi. Cheshire East Event Safety Advisory Group
- 5.2 The Licensing Team will also consult any other person or body that is deemed necessary.
- 5.3 If any objections/representations are received in respect of an application, that application will be determined by the Council's General Licensing Sub-Committee.

6 Site Assessment

- 6.1 In determining whether Street Trading in a particular area is appropriate the Council will have regard to:
- any effect on road safety, either arising from the siting of the pitch or from customers visiting or leaving
 - any loss of amenity caused by noise, traffic or smell
 - existing Traffic Orders e.g. waiting restrictions
 - any potential obstruction of pedestrian or vehicular access
 - any obstruction to the safe passage of pedestrians
 - the safe access and egress of customers and staff from the pitch and immediate vicinity
 - whether there are any Consents (Fixed or Roaming) already granted to a site in the vicinity
 - Whether the trading applied for would adversely affect any existing shops or traders.

7 General Conditions

- 7.1 In addition to the above, the following criteria will need to be met before a Street Trading Consent will be issued:

Prevention of obstruction or danger to road users

- To be sited in accordance with highways legislation as appropriate, such that no obstruction is caused to highway users or to adjacent properties
- The position of any vehicle must be such that it does not encourage children to cross any Class I, Class II or Class III Primary Distributor Road
- No advertising boards to be used other than adjacent to the vehicle, which shall not cause any obstruction to users of the street
- Operator to cease trading, if asked to by the Highways Authority or the emergency services.

Prevention of nuisance or annoyance

- No music or other broadcasts to be made from the Consent site other than with the permission of this Authority
- Litter bins and recycling bins to be provided and litter collected as appropriate where litter is likely to be generated
- A refuse contract must be entered into where refuse is likely to be generated
- The Council encourages Operators to recycle litter or waste where facilities are available

Suitability of the applicant

- An application may be refused if the applicant is unsuitable to hold the consent.
- Consent cannot be issued to a person under the age of 18 years

7.2 The Council can issue a consent with any conditions that are deemed reasonably necessary. The full list of conditions is set out at appendix C.

8 Enforcement

- 8.1 Standard conditions may be attached to every Street Trading Consent detailing the holder's responsibilities to maintain public safety, avoid nuisance and generally preserve the amenity of the locality.
- 8.2 Failure to comply with conditions may lead to revocation or non renewal of Consent.
- 8.3 Street Trading Consent can be revoked at any time. Additionally, the Conditions attached to a consent may be varied at any time.
- 8.3 It is an offence to carry out street trading without the consent of the Council and any person convicted of such an offence shall be liable to a fine not exceeding £1,000. This will include any person who holds a certificate granted under the Pedlars Act 1871, but who fails to operate in accordance with the certificate.

9 Fee Structure

- 9.1 The fee for street trading consent is determined by the Licensing Committee in accordance with the Council's Constitution.
- 9.2 The current fee for the grant of a consent is £364.00.

10 Delegation of Functions

- 10.1 Determination of applications where no objections or representations have been received (or received and subsequently withdrawn) is delegated to officers.
- 10.2 Determination of applications where objections or representations have been made (and not withdrawn) lies with the Council's General Licensing Sub-Committee.
- 10.3 Any application made that falls outside this policy or where an applicant requires removal of a condition will also be referred to the Council's General Licensing Sub-Committee for determination.
- 10.4 The power to designate streets or to amend the current designation of a street is reserved to the Licensing Committee.

11 Renewals

- 11.1 Street Trading Consents are issued for a period of up to one year
- 11.2 Applicants should then re-submit their application if they wish to continue to trade at least one month before the expiry of their current Consent.

12 Decisions

- 12.1 Following the determination of an application the Council will notify the applicant of the decision in writing as soon as possible.
- 12.2 There is no statutory right of appeal against refusal to issue a Street Trading Consent.

13 General

- 13.1 This policy will complement and inform other Council initiatives including those on street markets and life in the public realm.
- 13.2 This policy will inform the detailed conditions attached to every Street Trading Consent.
- 13.3 This policy will be applied in a manner that is consistent with the Council's equalities policies.
- 13.4 At all times, each application will be determined on its own merit.

14 Review of the Policy

- 14.1 This Policy will be reviewed every five years. As well as the five-yearly reviews, the policy will continue to be evaluated and may be updated at any time. Any

changes to this policy must be agreed by the Licensing and Regulation Committee, unless this function is delegated to an appropriate officer.

15 Contacts

Licensing Team
Cheshire East Council
Westfields
Sandbach
CW11 1HZ
☎ 0300 123 5015
✉ licensing@cheshireeast.gov.uk
🌐 www.cheshireeast.gov.uk/licensing

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Street Trading - Street Designations

Congleton District

In March 2000 the Congleton Borough Council designated all streets within the borough with the exception of Class "A" routes as consent routes.

- All Class "A" routes are designated as "Prohibited".
- Apart from 2 lay-bys on "A" routes
- A534 near to the junction with Smethwick Lane
- A54 near to junction with Mill Lane at Browns Bank

Crewe and Nantwich District

You may apply for a consent to trade in any street within Crewe and Nantwich District area which is not prohibited.

The prohibited streets are as follows:-

All class A roads including A500, A5020, A51, A534, A532, lay-by at Crewe Green Road (A534).

Macclesfield District

With the exception of the four lay-bys set out below, which shall be consent streets, to designate all 'A' and 'B' roads together with adjoining streets for a distance of 50 metres, are designated as prohibited streets for the purposes of street trading with effect from 15th December 2008.

- Lay-by on the Macclesfield Road (A536) at Gawsworth directly adjacent to the Chain and Gate Public House;
- Lay-by on the east side of the A523 at Adlington adjacent to the Legh Arms;
- Lay-by to the west of Monks Heath on the southern side of the A537
- Lay-by on Mobberley Road (B5470) near to the Longridge Trading Estate, Knutsford.

With the exception of the roads listed below, which shall be prohibited streets, to designate all other roads within the Borough not covered by (1) as consent streets for the purposes of street trading with effect from 15th December 2008.

- Macclesfield – Market Place, Mill Street, Park Green, Chestergate, Castle Street (with the exception of an area adjacent to number 6 Castle Street), Sunderland Street, Waters Green and Albert Place;
- Wilmslow – Grove Street (with the exception of an area at the junction of Grove Street and Grove Avenue), Hawthorn Lane, Church Street;
- Knutsford – Princess Street, King Street, Tatton Street and Canute Place;
- Poynton – Park Lane
- Poynton Industrial Estate, Adlington – First Avenue (from the junction with the A523 for the remainder of its length), Second Avenue and Third Avenue.

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**Local Government (Miscellaneous Provisions) Act 1982 –
Schedule 4**

APPLICATION FOR A STREET TRADING CONSENT

I/We HEREBY MAKE APPLICATION for the (grant) (renewal) of a Street Trading Consent in accordance with Section 3 and Schedule 40 to the Local Government (Miscellaneous Provisions) Act 1982

Personal Details: Applicant No. 1

Surname			
First Name(s)			
Home Address			
Postcode		Date of Birth	
Home / Mobile Telephone Numbers			

Personal Details: Applicant No. 2

Surname			
First Name(s)			
Home Address			
Postcode		Date of Birth	
Home / Mobile Telephone Numbers			

Do you intend to trade from a fixed pitch or roam an approved area?

Fixed Pitch (see sections 13-17)

Roaming (see sections 23-27)

Trading Location Details (Fixed Consent):

Trading Site (give street name and precise location including map)	
Trading Name (if applicable)	
Trade Days	
Trade Times	
Goods to be Sold – state type, standard and method of presentation of goods	

Trading Location Details (Roaming Consent):

Trading Site (give Area eg Sandbach or Macclesfield and provide details of the route to be undertaken)	
Trading Name (if applicable)	
Trade Days	
Trade Times	
Goods to be Sold – state type, standard and method of presentation of goods	

Vehicle / Stall / Unit Details:

Type of vehicle / stall / unit	
If mobile unit, state vehicle registration number	
Vehicle / stall / unit - height	
Vehicle / stall / unit - width	
Vehicle / stall / unit – length	

Address of base used for storage of goods for sale	
Details of refuse storage and disposal	

Have you ever been refused a Street Traders Licence or Consent by this or any other local authority? If yes, give dates and details YES / NO

Do you intend to engage assistants, if yes, please state how many _____

I declare that to the best of my knowledge and belief, the answers given are true and I realise that information disclosed in this application form may be made available to other authorised agencies.

If a Consent is granted, I undertake to comply with the conditions attached to the grant of the licence, and also comply with the Food Safety Act 1990, where appropriate, and to any Regulations made thereunder.

Signed:

Date:

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LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**STREET TRADING CONSENT – CONDITIONS**

The Operator shall at all times observe and perform to the satisfaction of the Council the conditions set out below:

- The Operator shall not transfer or attempt to transfer a Street Trading Consent to any other person.
- No class or classes of articles or things may be sold or exposed or offered for sale other than those specified in the consent.
- The trading unit used for street trading shall not obstruct the street or cause any danger to persons using the street.
- The trading unit shall be kept in a clean and tidy condition at all times.
- Nothing shall be placed on or in the trading unit in connection with street trading or otherwise which emits fumes odours or smoke to the annoyance of persons using the street or occupying premises in the street.
- Any property building or structure in or adjacent to any street to which street trading is carried out shall not be defaced or interfered with or any placards posters signs or otherwise placed thereupon.
- No unreasonable noise by the Operator or persons assisting the Operator which may cause annoyance to persons using the street or occupying premises in the street in which trading is carried out.
- The trading unit shall be immediately removed for so long a period as may be necessary to allow building works/demolitions, statutory undertakers works, or Local Authority works to take place either in the street or to premises adjoining or in the street.
- The trading unit shall be immediately removed for so long a period as may be necessary from the space in front of any premises where the trading unit unduly obstructs or hinders the access or egress from such premises by any persons or vehicles.
- If required by a Constable or Fire Officer or a duly authorised officer of the Council in the event of an emergency or in the exercise by the Council of any of its powers and its duties the trading unit and goods used for street trading shall be removed.
- All litter and refuse from and around the trading unit arising from street trading shall be removed from the Site by the Operator and properly disposed of. The Operator shall leave no refuse or litter in any litter bins in the street or any adjoining streets.
- The Council encourages Operators to recycle litter or waste where facilities are available
- The Operator shall display the consent notice on the trading unit where it may be visible to members of the public.

- Any person found engaging in street trading shall, on being requested to do so by a Police Officer or a duly authorised officer of the Council, produce for inspection his/her street trading consent and shall provide his/her name and address.
- If the Operator changes his/her place of residence he/she must notify the Council of the new address within three weeks of the date of the change.
- Notwithstanding any time specified for street trading contained within the consent, the Operator is not authorised to trade at any time in contravention of any statutory enactment.
- Before commencing to trade, the Operator shall ensure that the trading unit and his goods comply with all statutory requirements and regulations for time being in force, and that any consents or permissions relating thereto remain valid throughout the period of the consent. Any Operator who sells food is required to be registered as a food business with the Council's Environmental Health Department. All Operators shall comply with the requirements of the Health and Safety at Work etc Act 1974.
- The Operator shall ensure before commencing to trade, that all notice or advertisements have received the necessary approvals in accordance with the Town and Country Planning Act 1990 and associated regulations and that all such approvals remain valid throughout the period of the consent and no other advertisements shall be displayed in relation to the trading unit at any time.
- Notwithstanding the above, no notices, adverts, placards, signs or otherwise shall be placed on or attached to the trading unit or any proximate area thereto without the written approval of the Council
- The Operator may, in writing, at any time surrender this Consent to the Council and it shall then cease to be valid.
- The Operator hereby indemnifies the Council and any successor local authority from and against all claims, costs, charges or expenses arising from or out of any loss, damage or injury to any persons or property occasioned in the exercise of trading under this Consent. The Operator shall throughout the duration of this Consent hold appropriate public liability insurance at a level approved by the Council.
- The Operator shall only trade in respect of the purpose set out in the consent and at the location, days and hours specified on the consent. Outside the hours the specified the trading unit shall be removed from the Site to a location approved by the Council. Notwithstanding the days and hours of trading stated on the consent, the Council reserves the right to approve in writing other days and hours of trading.
- The consent is valid for up to twelve months from the date of issue and may be revoked by the Council at any time for breach of any of the conditions contained herein
- The Operator undertakes not to use the grant of this Consent as a defence to any enforcement action under the Town and Country Planning Act 1990.

- The Council reserves the right to cancel and/or vary and/or impose additional conditions upon giving one week's notice in writing to the Operator at the address stated above or any new address provided by the Operator.
- The Consent is only valid so long as the location referred to on the consent is available for use by the public and may be taken out of use for so long as may be necessary by the Council (or any successor local authority) for maintenance storage safety or any other reason or purpose.
- No compensation for loss of trade or disturbance will be payable in relation to any conditions hereof.
- The position of the trading unit as shown edged red on the attached plan shall not be altered without the consent in writing of the Council.
- The Operator shall only use a trading unit approved by the Council.
- The Council will not refund the annual consent fee if the council finds it necessary to revoke consent for a licence due to non-compliance with the council's conditions.

Consent holders trading within Town Centres are required to comply with all foregoing conditions and also to:

- The operator shall provide written detail of their method and place of disposal and recycling of litter, to the Town Centre Manager, prior to commencing trading
- Provide litter bins of a type approved by the Council if required to do so by the Council's Town Centre Manger in the locations stated.

Consent holders operating catering units parked at particular fixed locations, such as lay-bys, to be required to comply with foregoing conditions and also to:

- Obtain formal planning consent for use of the land as a site for the catering unit
- Operate on a strictly takeaway basis only, serving food for consumption away from the unit, unless specifically authorised in the consent to have seating for customers
- Restrict hours of operation to between sunrise and sunset, in accordance with 'lighting up' times
- Remove stall or vehicle from the consent site at the end of the approved trading time each day
- Provide adequate integral sanitary accommodation including closet and wash hand basin with hot and cold water, to be made accessible from outside the unit only, or arrange for access to be available to such facilities at an immediately adjoining premises
- Maintain the site and adjoining verges in a clean and tidy condition and to be responsible for the removal of all litter. The Council encourages Operators to recycle litter or waste where facilities are available.

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CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting: 16th July 2013
Report of: Miss Kim Evans – Licensing Team Leader
Subject/Title: Penalty Points System for Hackney Carriage and Private Hire Licensing
Portfolio Holder: Cllr Les Gilbert - Communities and Regulatory Services Portfolio Holder

1.0 Report Summary

- 1.1 This report seek Members approval on a draft policy concerning a penalty points scheme for Hackney Carriage and Private Hire Licensing

2.0 Recommendation

- 2.1 That Members consider the results of the consultation exercise and
- i. Resolve to approve the Policy at appendix 1 without amendment and confirm that it will apply to all licence holders with effect from the 1st September 2013
 - OR**
 - ii. Resolve approve the Policy at appendix 1 with any appropriate amendments and confirm that it will apply to all licence holders with effect from the 1st September 2013

3.0 Reasons for Recommendations

- 3.1 In accordance with the Council's Constitution the Licensing Committee is authorised to determine such matters.
- 3.2 Members of the Committee have previously asked Officers to provide information concerning a Penalty Points System and produce a draft policy and procedure.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 N/A

6.0 Policy Implications

6.1 Not applicable

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 None identified

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 If Members were minded to implement a Penalty Points Scheme this would be used to record breaches of legislation or conditions and be a trigger for a referral to the Council's General Licensing Committee.

8.2 Section 46 of the Town Police Clauses Act 1847 provides local authorities the power to issue Hackney Carriage driver's licences. Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') provides the authority to issue licences to drive private hire vehicles.

8.3 The provisions of section 59 (1) (a) (in relation to hackney carriage drivers licences) and section 51 (1) (a) (in relation to private hire drivers licences) of the 1976 Act state that a council shall not grant a licence 'unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence'.

8.4 Section 60, 61 and 62 of the Act enable the Council to suspend or revoke a vehicle licence, a driver's licence or an operator's licence.

8.5 A Penalty Points system would provide a means for breaches to be noted and recorded prior to a formal consideration of a suspension or a revocation. There is no legal requirement to have such a system, but it does offer an effective means of dealing with breaches of the Licensing Legislation or Licence terms and conditions, which do not necessarily in themselves reach the threshold for a possible suspension or revocation, and when a matter is brought before the Sub-Committee the points provide evidence to the Sub-Committee of whether someone is still a fit and proper person to hold a licence.

8.6 The Council cannot fetter its discretion in respect of decision making. Therefore each case must be considered on its merits, even when a licence holder reaches the trigger point for consideration by the Sub-Committee.

9.0 Risk Management

9.1 Full and thorough consideration of any consultation responses received would be required to reduce any risk of challenge to any subsequent decisions.

9.2 Members must also be mindful that consultation should be undertaken when matters are at a formative stage rather than at the end of a process.

9.3 It should also be noted that the system is designed to be a referral system to the Council's General Licensing Sub-Committee. It is not intended that the

Committee will be required or directed to take a particular action. The Committee will determine each case on its own merit and if any action should be taken.

- 9.4 Any action to suspend, revoke, or refuse to renew a licence taken by the General Licensing Sub-Committee would be subject to a licence holder having a right of appeal. Any appeal would be made to the Magistrates' Court by way of complaint.

10.0 Background

- 10.1 Currently, the Licensing Team does not always record minor breaches or misdemeanours. It is therefore possible for non-compliant drivers, operators, or proprietors to fall through our enforcement procedures and remain licensed when they may not be fit and proper persons.
- 10.2 The provisions of the 1976 Act make it clear that a licence should not be granted to a driver where they are not a fit a proper person. It is therefore necessary to have a robust system of recording breaches.
- 10.3 The Policy is designed to give licence holders a clear indication of what is expected of them. It is also intended to give them an indication of what action the Council will take in respect of breaches of legislation, Conditions, or Byelaws.
- 10.4 The Council is mindful of its requirements to ensure public safety and it is hoped that the instigation of this system will affirm the public's confidence in the licensed trade.
- 10.5 Members should also note that the system will be used to raise compliance with in the trade and identify licence holders whose actions fall short of what is expected or have caused the safety of the public to be undermined.
- 10.6 Following the meeting of the Licensing Committee on the 14th January 2013, where the Committee approved the draft content, the Licensing Team conducted a consultation exercise with the licensed trade and more widely via the Council's website. The exercise ran for 12 weeks and any responses received are set out at appendix 2.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

Name: Miss Kim Evans
Designation: Licensing Team Leader
Tel No: 0300 123 5015
Email: kim.evans@cheshireeast.gov.uk

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Hackney Carriage and Private Hire Licensing Penalty Points Policy

Contents

- 1 Introduction
- 2 Issuing of Penalty Points
- 3 Penalty Points Tariff
- 4 Appeals
- 5 Delegation of Function
- 6 General
- 7 Consultation
- 8 Review
- 9 Contacts

1 Introduction

- 1.1 Those licensed as Hackney Carriage drivers and proprietors and Private Hire drivers, operators, and vehicle owners are principally governed by the Town and Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976, the and the Council's own byelaws conditions, and policies set by the Licensing Committee.
- 1.2 Should operators, drivers or vehicle proprietors commit an offence or breach those rules, regulations, or conditions the Council's Licensing Team will conduct an investigation. This may include a taped interview and compilation of witness statements.
- 1.3 There are a number of options available following an investigation, including:
- No further action
 - Formal warning
 - Issuing penalty points in accordance with this policy
 - Referral to the General Licensing Sub-Committee
 - Prosecution (or the offering of a Caution)
- 1.4 The outcome of an investigation will depend on the facts of the case and the severity of any breach. In all instances a record of the matter will be kept on the driver's file. This would include cases where no further action was taken.
- 1.5 The penalty points scheme is designed to work in conjunction with other enforcement options. Its purpose is to record misdemeanours and to act as a record of a driver's behaviour and conduct.
- 1.6 The primary objective of this scheme is to raise standards and improve compliance with licensing regulations and requirements. The ultimate aim of the Licensing regime is to protect the public and the Council is committed to ensuring that those licensed are fit and proper persons.

2 Issuing of Penalty Points

- 2.1 Complaints from the public concerning any breaches of conduct will be subject to investigation by Officers. These investigations may be dealt with by way of issuing penalty points under this scheme or in serious cases automatic referral to the General Licensing Sub-Committee.
- 2.2 Where a licence holder accumulates 12 or more penalty points in a 12 month rolling period (a period of 12 consecutive months determined on a rolling basis with a new 12 month period beginning each day) or in respect of drivers 18 during the course of a licence the matter will be referred to the Council's General Licensing Sub-Committee. The Committee will be required to determine whether the driver or operator is a fit and proper person. The following action can be taken by the Committee:
- i. Take no action
 - ii. Issue a warning
 - iii. Issue additional penalty points
 - iv. Suspend a licence as a punitive sanction
 - v. Suspend a licence to correct a fault, defect, or breach

vi. Revoke or refuse to renew a licence

- 2.3 Periods of suspension will be determined by the Sub-Committee and will depend on the nature of the offence, breach, or misdemeanour and the individual's compliance history. A determination will also be made as to whether the suspension or revocation is on the grounds of public safety, thereby having immediate effect.
- 2.4 Where a driver, proprietor or operator reaches the tariff of 12/18 points and is referred to the Sub-Committee it will not preclude all relevant information being disclosed. This will include any other penalty points, complaints, warnings, and suspensions etc. The 12/18 point tariff will be a referral trigger.
- 2.5 Any points issued by an Officer or the Committee will be confirmed in writing within 14 days of their issue. Acceptance of the points issued should be completed within 21 days of notification.
- 2.6 As the scheme is designed to raise standards through compliance the licence holder will be offered penalty points as an alternative to other enforcement action. The licence holder will be given the option of accepting the penalty points offered. The acceptance of points will be considered as having been sufficient to deal with the matter and no further action will be taken nor will the licence holder be able to ask for the matter to be re-examined at any later stage e.g if referred to the Licensing Sub-Committee on accumulation of 12 or more points
- 2.7 If penalty points are offered and refused the Council will consider taking alternative action. This may include the instigation of prosecution proceedings or referral to the Council's General Licensing Sub-Committee depending on the circumstances. A record of the refusal will kept on the relevant file.

3 Penalty Points Tariff

- 3.1 The penalty points scheme will cover a range of offences, breaches, and misdemeanours.
- 3.2 The full list together with the number of points to be applied is set out at Appendix A. Where a range of points are available (ie 3-6), the number of points given will depend on the individual circumstances.
- 3.3 Where there is a range of points available and a subsequent offence of the same nature is committed, the maximum number of points will automatically be applied.
- 3.4 The form used to apply points is set out at Appendix B.

4 Appeals

- 4.1 In respect of suspension, revocations, and refusals to renew licences the aggrieved person has a right of appeal within 21 days by way of complaint to the Magistrates' Court.
- 4.2 When a decision has been taken against a driver's licence on the grounds of safety the decision will have immediate effect. There will be no right to continue driving during any appeal period.

- 4.3 Where a decision against a driver's licence has not been taken on the grounds of public safety, the driver will preserve the right to drive a licensed vehicle until the end of the 21 day appeal period. Where an appeal has been made the driver will preserve the right to drive until disposal of the appeal.
- 4.4 There is no right of appeal against the acceptance of penalty points issued in accordance with this policy.

5 Delegation of Functions

- 5.1 The Licensing Team Leader is given delegated authority to issue penalty points in accordance with this policy.
- 5.2 The Licensing Team Leader is authorised to delegate this authority to any other officer.

6 General

- 6.1 At all times, each investigation will be determined on its own merit. As a result, any case may be referred directly to the General Licensing Sub-Committee without the imposition of penalty points.

7 Consultation on the Policy

- 7.1 The Council will conduct consultation with those who might be affected by the Policy. Government Guidance will be taken into account when conducting consultations.
- 7.2 Any changes or updates made to this Policy will also be subject to the same level of consultation.

8 Review of the Policy

- 8.1 This Policy will be reviewed every five years. Notwithstanding, this the policy will continue to be evaluated and may be updated at any time. Any changes to this policy must be agreed by the Licensing Committee, unless this function is delegated to an appropriate officer and will be subject to consultation.

9 Contacts

Licensing Team
Cheshire East Council
Westfields
Sandbach
CW11 1HZ

☎ 0300 123 5015
✉ licensing@cheshireeast.gov.uk
🌐 www.cheshireeast.gov.uk/licensing

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	Offence/Breach/Misdemeanour	Points	Driver	Op / Prop
1	Unsatisfactory condition of a vehicle (interior or exterior)	1 - 6	✓	✓
2	Refusal to accept hiring without reasonable cause	1 - 6	✓	
3	Unsatisfactory behaviour or conduct of a driver	1 - 9	✓	
4	Use/Cause/Permit a vehicle to be driven with a defect contrary to Road Vehicle (Construction & Use) Regs 1986 (as amended) (per defect)	1 - 9	✓	✓
5	Failure to wear driver's badge	3	✓	
6	Failure to notify the Council, in writing, of a change of address within 7 working days	3	✓	✓
7	Displaying unsuitable, inappropriate or unauthorised signs or advertisements in or on a vehicle	3	✓	✓
8	Using a private hire vehicle with an appearance that might suggest it is a hackney carriage	3	✓	✓
9	Failure to give assistance with loading/unloading luggage	3	✓	
10	Failure observe rank discipline or etiquette	3	✓	
11	Failure to maintain proper records of private vehicle(s)	3		✓
12	Failure to carry a fire extinguisher, first aid kit, warning triangle, or fluorescent jacket (per item)	3 - 6	✓	✓
13	Unsatisfactory appearance of a driver	3 - 6	✓	
14	Failing to ensure the safety of a passenger entering, alighting or conveyed in a vehicle	3 - 6	✓	
15	Failure to produce relevant documents when requested by an Authorised Officer	4	✓	✓
16	Failure to display current vehicle excise licence	4	✓	✓
17	Failure to report an accident or damage to a licensed vehicle (in writing and within 72 hours)	4	✓	✓
18	Failure to display external/internal licence plate or signs as required	4	✓	✓
19	Failure to notify transfer of a Private Hire or Hackney Carriage vehicle licence	4		✓
20	Failure to maintain records in a suitable form	4		✓
21	Failure to produce records of drivers work activity when requested	4		✓
22	Failure to attend punctually at appointed time and place without reasonable cause	4	✓	✓
23	Failure to carry Driver/Vehicle Conditions in vehicle	6	✓	✓
24	Failure to display fare card	6	✓	✓
25	Failure to notify the Council, in writing, of any conviction, caution, fixed penalty or similar within 7 working days	6	✓	✓
26	Unreasonably prolonging a journey or any misconduct regarding the charging of fares	6	✓	
27	Failure to provide proof of insurance when requested	6	✓	✓
28	Failure to produce a DVLA Licence when requested	6	✓	
29	Smoking or evidence of smoking in a vehicle	6	✓	✓
30	Failure to return a vehicle licence plate within 7 days after request	6		✓
31	Providing false or misleading information on a an application form / failing to provide relevant information or the relevant fee (including dishonoured cheques)	6 - 9	✓	✓
32	Charging hackney carriage passenger more than the metered or agreed fare	6 - 9	✓	

33	Failure to behave in a civil and orderly manner (including rude or aggressive behaviour)	6 - 12	✓	✓
34	Using insulting or threatening words or disrespectful behaviour towards any Officer of the Council	6 - 12	✓	✓
35	Plying for hire by Private Hire Drivers	9	✓	
36	Driving while using a mobile phone or any other driving offence (whether convicted or received FPN or penalty points or not)	9	✓	
37	Failure to undergo the 6 monthly vehicle test	9		✓
38	Failure to produce a Hackney Carriage or Private Hire vehicle for testing	9		✓
39	Failure to return any licence on suspension or revocation	9	✓	✓
40	Presenting a vehicle for testing in an unsafe or dangerous condition	9		✓
41	Collusion or interfering with evidence, victims or witnesses, when Officers of the Council are carrying out an investigation	9	✓	✓
42	Physical abuse towards any person	9 - 12	✓	✓
43	Carrying an offensive weapon in the vehicle	9 - 12	✓	
44	Carrying more passengers than stated on the vehicle licence	12	✓	
45	Using or allowing a vehicle to be used subject to a suspension issued by an Authorised Officer or Police Officer	12	✓	✓
46	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓
47	Using an unlicensed vehicle or licensed vehicle without insurance	12	✓	✓
48	Driver not holding a current or valid DVLA licence	12	✓	
49	Failure to carry an assistance dog without an exemption notice	12	✓	
50	Using a non-approved or non-calibrated taximeter	12	✓	✓
51	Any other offence/breach/misdemeanour not specifically covered in this scheme	1 - 12	✓	✓
52	Failure to comply with any other condition or by-law	3 - 6	✓	✓
53	Failure to comply with any other legislation	6 - 12	✓	✓
54	Obstructing and authorised officer or police officer	12	✓	✓

Penalty Points Form Hackney Carriage and Private Hire Licensing



Name	
-------------	--

Licence Number (s)	
---------------------------	--

Offence/breach/misdemeanour (including date):

Number of points issued	
--------------------------------	--

Declaration	
<p>I _____ hereby accept the above penalty points in accordance with Cheshire East Council's Hackney Carriage and Private Hire Licensing Penalty Points Policy for the the offence/breach/misdemeanour set out above. I understand that by signing this form the Council undertakes not to commence any enforcement action against me in respect of this offence/breach/misdemeanour. I also understand that if I reach the tariff of 12 penalty points in a 12 month rolling period (or in respect of drivers 18 during the course of the licence) my licence(s) will be referred to the Council's General Licensing Sub-Committee for it to determine whether I remain a fit and proper person.</p>	

Signed		Date	
--------	--	------	--

Issuing officer		Designation	
-----------------	--	-------------	--

Signed		Date	
--------	--	------	--

General	
<p>Where there is a range in points available the Licensing Officer has the discretion to award the number of points according to the severity of the breach. Unless a subsequent offence of the same nature is committed when the maximum number of points will automatically be applied.</p>	
Drivers/Operators/Proprietors	
<p>On accumulation of 12 or more points in a rolling 12 month period or 18 points during the course of the licence, the subject will be referred to the General Licensing Sub-Committee</p>	
Suspension/Revocation	
<p>All suspensions and revocations will be determined by the General Licensing Sub-Committee</p> <p>Any driver or operator subject to suspension or revocation has a right to appeal to the Magistrates Court within 21 days of the decision</p> <p>Suspensions and revocations will not be implemented until the 21 day appeals period has elapsed. However, driver suspensions on public safety grounds will take immediate effect</p>	

	Offence/Breach/Misdemeanour	Points	Driver	Op / Prop
1	Unsatisfactory condition of a vehicle (interior or exterior)	1 - 6	✓	✓
2	Refusal to accept hiring without reasonable cause	1 - 6	✓	
3	Unsatisfactory behaviour or conduct of a driver	1 - 9	✓	
4	Use/Cause/Permit a vehicle to be driven with a defect contrary to Road Vehicle (Construction & Use) Regs 1986 (as amended) (per defect)	1 - 9	✓	✓
5	Failure to wear driver's badge	3	✓	
6	Failure to notify the Council, in writing, of a change of address within 7 working days	3	✓	✓
7	Displaying unsuitable, inappropriate or unauthorised signs or advertisements in or on a vehicle	3	✓	✓
8	Using a private hire vehicle with an appearance that might suggest it is a hackney carriage	3	✓	✓
9	Failure to give assistance with loading/unloading luggage	3	✓	
10	Failure observe rank discipline or etiquette	3	✓	
11	Failure to maintain proper records of private vehicle(s)	3		✓
12	Failure to carry a fire extinguisher, first aid kit, warning triangle, or fluorescent jacket (per item)	3 - 6	✓	✓
13	Unsatisfactory appearance of a driver	3 - 6	✓	
14	Failing to ensure the safety of a passenger entering, alighting or conveyed in a vehicle	3 - 6	✓	
15	Failure to produce relevant documents when requested by an Authorised Officer	4	✓	✓
16	Failure to display current vehicle excise licence	4	✓	✓
17	Failure to report an accident or damage to a licensed vehicle (in writing and within 72 hours)	4	✓	✓
18	Failure to display external/internal licence plate or signs as required	4	✓	✓
19	Failure to notify transfer of a Private Hire or Hackney Carriage vehicle licence	4		✓
20	Failure to maintain records in a suitable form	4		✓
21	Failure to produce records of drivers work activity when requested	4		✓
22	Failure to attend punctually at appointed time and place without reasonable cause	4	✓	✓
23	Failure to carry Driver/Vehicle Conditions in vehicle	6	✓	✓
24	Failure to display fare card	6	✓	✓
25	Failure to notify the Council, in writing, of any conviction, caution, fixed penalty or similar within 7 working days	6	✓	✓
26	Unreasonably prolonging a journey or any misconduct regarding the charging of fares	6	✓	
27	Failure to provide proof of insurance when requested	6	✓	✓
28	Failure to produce a DVLA Licence when requested	6	✓	
29	Smoking or evidence of smoking in a vehicle	6	✓	✓
30	Failure to return a vehicle licence plate within 7 days after request	6		✓
31	Providing false or misleading information on an application form / failing to provide relevant information or the relevant fee (including dishonoured cheques)	6 - 9	✓	✓
32	Charging hackney carriage passenger more than the metered or agreed fare	6 - 9	✓	
33	Failure to behave in a civil and orderly manner (including rude or aggressive behaviour)	6 - 12	✓	✓
34	Using insulting or threatening words or disrespectful behaviour towards any Officer of the Council	6 - 12	✓	✓
35	Plying for hire by Private Hire Drivers	9	✓	
36	Driving while using a mobile phone or any other driving offence (whether convicted or received FPN or penalty points or not)	9	✓	
37	Failure to undergo the 6 monthly vehicle test	9		✓
38	Failure to produce a Hackney Carriage or Private Hire vehicle for testing	9		✓
39	Failure to return any licence on suspension or revocation	9	✓	✓
40	Presenting a vehicle for testing in an unsafe or dangerous condition	9		✓
41	Collusion or interfering with evidence, victims or witnesses, when Officers of the Council are carrying out an investigation	9	✓	✓
42	Physical abuse towards any person	9 - 12	✓	✓
43	Carrying an offensive weapon in the vehicle	9 - 12	✓	
44	Carrying more passengers than stated on the vehicle licence	12	✓	
45	Using or allowing a vehicle to be used subject to a suspension issued by an Authorised Officer or Police Officer	12	✓	✓
46	Using a vehicle for which the licence has been suspended or revoked	12	✓	✓
47	Using an unlicensed vehicle or licensed vehicle without insurance	12	✓	✓
48	Driver not holding a current or valid DVLA licence	12	✓	
49	Failure to carry an assistance dog without an exemption notice	12	✓	
50	Using a non-approved or non-calibrated taximeter	12	✓	✓
51	Any other offence/breach/misdemeanour not specifically covered in this scheme	1 - 12	✓	✓
52	Failure to comply with any other condition or by-law	3 - 6	✓	✓
53	Failure to comply with any other legislation	6 - 12	✓	✓
54	Obstructing and authorised officer or police officer	12	✓	✓

Consultation Responses

1. I have received your letter concerning the proposed changes. I have no comment on them.
2. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
3. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
4. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
5. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
6. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
7. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
8. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
9. Draft penalty points are a good idea providing there is consultation with us on the tariffs. Penalty points for having a dirty car (very difficult to define and this is Britain) would be unfair.

The main issue, as we have already discussed is complaints and enforcement.

10. How do you propose to monitor your penalty points scheme, is this by the appointment of more licensing officers and if so who is going to fund this at a time when it is **almost impossible to speak to a licensing officer** due as we are told to staffing issues and as Cheshire East are cutting back on staff.
11. How do you propose to monitor your penalty points scheme, is this by the appointment of more licensing officers and if so who is going to fund this at a time when it is **almost impossible to speak to a licensing officer** due as we are told to staffing issues and as Cheshire East are cutting back on staff.

12. How do you propose to monitor your penalty points scheme, is this by the appointment of more licensing officers and if so who is going to fund this at a time when it is **almost impossible to speak to a licensing officer** due as we are told to staffing issues and as Cheshire East are cutting back on staff.

13. Draft Penalty Points Scheme

With respect to the above I have no comments.

14. I would welcome the introduction of the new tariff, Btec certificate, retest fee and points system.

CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting: 16th July 2013
Report of: Miss Kim Evans – Licensing Team Leader
Subject/Title: Revised Convictions Policy for Hackney Carriage and Private Hire Drivers
Portfolio Holder: Cllr Les Gilbert - Communities and Regulatory Services Portfolio Holder

1.0 Report Summary

- 1.1 This report seeks Members' approval on the adoption of a Convictions Policy concerning Hackney Carriage and Private Hire Licensing.

2.0 Recommendation

- 2.1 The Licensing Committee is requested to consider the results of the consultation and adopt the Policy set out at appendix 1 subject to the amendments set out in 10.7 and confirm that the Policy will be applicable to all new applicants and to existing licensed drivers in respect of any convictions/endorsements etc which have not previously been considered.

3.0 Reasons for Recommendations

- 3.1 In accordance with the Council's Constitution the Licensing Committee has delegated authority determine such matters.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 Not applicable

6.0 Policy Implications

- 6.1 Not applicable

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 None identified

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 By virtue of section 59 (1) (a) (in relation to hackney carriage drivers licences) and section 51 (1) (a) (in relation to private hire drivers licences) of the Local Government (Miscellaneous Provisions) Act 1976 a Council shall not grant a licence 'unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence'.
- 8.2 What constitutes fit and proper is not defined in the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976. It is for the Licensing Authority to determine whether an applicant or driver is fit and proper based on the information presented and having regard to the following:
- The rules of natural justice
 - The Human Rights Act 1998
 - Section 17 of the Crime and Disorder Act 1998
 - The Council's own Conditions, By-laws and Policies
- 8.3 Members must consider each application on its own merit in light of the Council's policies. However, the Licensing Authority must not apply its policies in such a way as to fetter its discretion.
- 8.4 The overriding concern for any decision-maker must be the protection of the safety of the public.

9.0 Risk Management

- 9.1 Full and thorough consideration of any consultation responses received would be required to reduce any risk of challenge to any subsequent decisions.

10.0 Background

- 10.1 On the 5th November 2012 the Licensing Committee considered a report concerning a revised policy in relation to the suitability of applicants and licence holders where relevant information may give cause for concern.
- 10.2 Members approved the content of the policy subject to some minor amendments and authorised that consultation be conducted with the Licensed Trade and with the public via the Council's website. The consultation was conducted for a 12 week period and any responses received are attached at appendix 2.
- 10.2 The Licensing regime exists to ensure that the safety of the public is protected. As a result it is necessary for the Council to have a robust convictions policy that adequately deals with any issue that might undermine the safety of the public.
- 10.2 The Council's current convictions policy was adopted in 2009 following Local Government Reorganisation and only minor subsequent amendments have

been made. It is acknowledged as best practice to revise and update such policies every three years or so.

- 10.3 There have been changes in legislation that do need to be taken into consideration in a new policy. In addition, the Licensing Section has seen an increase in certain types of offences appearing on applications that are not dealt with specifically in the current policy.
- 10.4 A review of the current policy has been undertaken and revisions have been deemed necessary. The draft revised policy is attached at appendix A. Some of the more significant changes to the policy include:
- Expanding on the types of convictions dealt with under the policy, including the addition of ASBOs and Restraining Orders
 - Clarifying, for the benefit of applicants and decision-makers, that the Licensing Authority will deal with Cautions and Other Sanctions in a similar way to convictions
 - Dealing specifically with repetitive endorsements on DVLA driving licences
 - Confirming that the Licensing Authority makes its decisions on a balance of probability and that consequently, information concerning offences that did not lead to prosecution may still render the applicant as not fit and proper
- 10.5 Members should also note that the policy sets out the minimum requirements before an application will be considered. This does not mean that an applicant will automatically be suitable once the 3-5 years (or other applicable periods) have elapsed. It merely confirms that their application will be considered and still refused if the Licensing Authority is not satisfied that they are fit and proper to hold a licence.
- 10.6 The Department for Transport's best practice guide to Hackney Carriage and Private Hire Licensing issued in March 2010 states the following in respect of criminal records checks:

'A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable...

An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police, for example, details of minor offences, non-conviction information on the Police National Computer such as Fixed Penalty Notices and, in some cases, allegations...

In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal

challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences...'

10.7 Since the publication of the policy there have been some changes that will need to be reflected in our Policy:

i. **Proven Complaints of rude or aggressive Behaviour**

In less serious cases a written warning of future conduct may be given. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety, this may result in the immediate suspension (pending investigation) or revocation of a licence.

In all other cases where an alleged offence has been committed and not listed within this Policy, the Licensing Authority will deal with each case on its own merit.

Replaced with:

Proven Complaints of rude or aggressive Behaviour

In less serious cases a written warning of future conduct may be given. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety, this may result in the refusal to renew, suspension, or revocation of a licence.

In all other cases where an alleged offence has been committed and not listed within this Policy, the Licensing Authority will deal with each case on its own merit.

Reasons for the change:

In R (on the application of Singh) v Cardiff City Council the High Court determined that suspensions can only be used as a punitive sanction and not as an interim measure pending an investigation.

ii. **Foreign Offences**

Offences from any jurisdiction outside the United Kingdom of Great Brittan and Northern Ireland must be declared in full. For applicants not of British Nationality a Certificate of Good Conduct/Behavior must be provided from their Country of Origin. The Licensing Authority will deal with foreign offences in a similar way to comparable offences under UK law.

Replaced with:

Foreign Offences

Offences from any jurisdiction outside the United Kingdom of Great Brittan and Northern Ireland must be declared in full. For applicants not of British Nationality a Certificate of Good Conduct/Behavior must be provided from their Country of Origin. For applicants who have not lived in the UK for any part of the previous 5 years, a Certificate of Good Behavior must be provided from all countries in which they have lived.

The Licensing Authority will deal with foreign offences in a similar way to comparable offences under UK law.

Reasons for the change:

If an applicant were to have lived outside the UK for any period of time, any offences committed during that time might not be reflected in their criminal records disclosure. With such a gap in their history it is likely that the Licensing Authority could not be satisfied that they are a fit and proper person.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report author:

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Designation: Licensing Team Leader
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Guidelines Relating to the Relevance of Convictions

Hackney Carriage and Private Hire Drivers

The Licensing Authority must be satisfied that all those who are licensed to drive Hackney Carriage and Private Hire Vehicles are fit and proper persons. This Policy relates to the Council's assessment of the suitability of an applicant for licensing as a licensed Driver in terms of their Criminal and Driving records.

By virtue of The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 a requirement is placed on all Licensed Hackney Carriage and Private Hire Vehicle Drivers, and applicants, to disclose ALL convictions including those 'spent'.

GENERAL POLICY

1. Each case will be decided on its own merit.
2. A person with a conviction or other sanctions need not be permanently barred from obtaining a licence, but should be expected to remain free from conviction (or other sanction) for 3 to 5 years, according to the circumstances, before an application is considered. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances.
3. Where offences have led to a term of imprisonment the necessary period free from conviction will commence from the date the applicant was released from detention. All other periods will run from the date of sentence or in the cases of disqualification from the date of restoration of any licence.
4. Where, in these guidelines, an 'application' or 'applicant' is mentioned, this also refers to an application upon revocation of a licence and the renewal of existing licences, new grants, and reviews of existing licences.
5. Any applicant with 6 or more valid penalty points on their driving licence shall expect their application to be heard by the Council's Appointed Licence Committee or Sub-committee thereof (the Committee). For this purpose valid penalty points will mean points that are not more than 4 years old. This will be the trigger for a

referral to the committee, but will not preclude all relevant information being disclosed.

6. As a general guide the following test will be also be used to determine whether an applicant is fit and proper:

‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’

7. Notwithstanding any guidance within this document, at all times the overriding consideration will be the protection of the public. On that basis any application may be referred to the Committee for determination.
8. Where in this document it states that a period of time must elapse before the consideration of an application, there is no expectation that a licence will be granted after that period of time has elapsed. The Committee will still need to be satisfied that taking all circumstances into consideration an applicant is a fit and proper person.
9. Case law indicates that the Committee should not review the criminal convictions of an applicant, a conviction is a conviction. There is also a clear distinction between the criminal and civil standards of proof. Decisions taken by the Licensing Authority are to be taken on a balance of probabilities.

The Licensing Authority expects all those who are licensed drivers to show a regard for the law and public safety. The following examples afford a general guide on the action to be taken where convictions are declared:

TRAFFIC OFFENCES

Licensed drivers are responsible for the safety of members of the public who are travelling in their vehicles. Therefore the Licensing Authority needs to be satisfied that licensed drivers are capable of driving safely and understand the need to comply with traffic regulations.

Minor Traffic Offences

Convictions or endorsements for a minor traffic offence, such as obstruction, waiting in a restricted street, speeding, etc should not prevent a person from making an application.

Where an applicant has more than one current conviction for such an offence (i.e. 6 or more penalty points issued by the DVLA) the Licensing Authority will need to consider whether the applicant is fit and proper to hold a licence.

If an applicant has accrued sufficient penalty points to require a period of disqualification a period of 24 months free from further conviction or endorsement after the restoration of the driving licence must elapse before the consideration of an application.

If an applicant has been disqualified from driving during the first 2 years since passing their driving test, then a period of 3 years free from further conviction or endorsement after the restoration of the driving licence must elapse before the consideration of an application. A strict warning as to future conduct may be given.

Major Traffic Offences

An isolated conviction or endorsement for reckless or dangerous driving or driving without due care and attention, failing to disclose the identity of a driver etc may merit a warning as to the future conduct expected of a licensed driver, suspension or revocation depending on the circumstances.

However, where an isolated offence resulted in discretionary or obligatory disqualification, 24 months free from further conviction or endorsement must elapse before the consideration of an application.

More than one conviction or endorsement for this type of offence within 2 years of the application should merit refusal and no further application will be considered until a period free from conviction of at least 3 years has elapsed.

Driving Without Insurance or Driving Whilst Disqualified

Licensed drivers are responsible for the safety of members of the public who are travelling in their vehicles, a serious view will always be taken of a conviction or endorsement for driving without insurance or driving whilst disqualified.

It must be shown that 24 months have elapsed without further conviction or endorsement before an application is considered. This period of 24 months would run consecutively to any other periods applicable. If more than one conviction or endorsement of this type has been accrued within the last 2 years then a period of 3 years (plus any other periods applicable) must elapse before an application will be considered.

Drunkenness

i) With a Motor Vehicle

A serious view will always be taken of driving or being in charge of any vehicle whilst under the influence of alcohol or drugs or failing to provide a specimen for analysis. If an applicant has been disqualified, a period of 24 months free of further conviction after restoration of the licence must pass before an application will be considered.

ii) Not in a Motor Vehicle

An isolated conviction for a drink related offence should not debar an applicant from obtaining a licence. However, more than one conviction for such offences will raise serious doubts as to the applicant's fitness to hold a licence.

Penalty Points on a Driver's DVLA Licence

Where an applicant or driver habitually commits motoring offences this clearly demonstrates a disregard for the safety of the public and the law. In such cases the Licensing Authority will consider this applicant as high risk and this may result in the refusal to grant an application or, in respect of current drivers, the suspension or revocation of a licence.

NON-DRIVING OFFENCES

Drugs

An applicant with a conviction for a drug related offence will be required to show a period of at least 3 years free of conviction before an application is considered, or 5 years after detoxification treatment if the applicant was an addict.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than 5 years before the date of the application.

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail, where a custodial sentence has been imposed, is less than 10 years before the date of the application.

Indecency Offences

Applicants with conviction for indecent exposure, indecent assault, importuning, or of any offence of a sexual nature will be refused a licence until a period of 10 years free from conviction has elapsed. If the applicant was required to register on the National Sex Offenders

Register as a result of an offence, then no application will be considered whilst the applicant remains on the Register. In general 5 years would need to have elapsed since an applicant was removed from the Register before an application will be considered.

An applicant with more than one conviction of this type of offence will normally be refused. If a conviction of this type arose as a result of the person acting as a licensed driver then no application will be considered for at least 20 years after the conviction or the conclusion of the sentence imposed.

When considering applications, the Licensing Authority may take into account any information regarding an applicant's sexual behaviour or activity. This includes information that did not amount to a criminal offence where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

Violence

A firm line will be taken with applicants with a conviction for grievous bodily harm, wounding, assault, public order or any other type of offence of a violent or aggressive nature. An applicant must be free of further convictions for at least 3 years before an application will be considered. In all cases, if a licence is granted, a strict warning will be given as to the standards expected of licensed drivers. Applicants with a history of committing offences of a violent or aggressive nature will normally be refused. Where an offence involves the loss of life, a licence will normally be refused.

Dishonesty

A Licensed Driver is expected to be honest and trustworthy and is responsible for the security for the public. A serious view will be taken of any conviction involving dishonesty. In general a period of 5 years free of further conviction will be required before an application is considered. Applicants with a history of committing offences of dishonesty will normally be refused. (Offences of dishonesty would include offences against Section 111A and 112 of the Social Security Administration Act 1992).

Offences under the Town and Police Clauses Acts, Local Government (Miscellaneous Provisions) Act 1976 and any Local By-Laws and Conditions

The main purpose of the Licensing regime is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the above, particularly offences of illegally plying for hire, when deciding if a person is a fit and proper person to hold a licence. If an applicant has more than one of this type of conviction, in

the 2 years preceding the date of the application, the application will likely be refused.

Refusal to carry an assistance dog

The Licensing Authority is keenly aware of the duties placed on the licensed trade by the Equality Act 2012. Any driver found to be refusing to carry assistance dogs without the correct exemption certificate may be committing an offence which may be dealt with by way of prosecution. The matter would also be referred to the Licensing Committee for it to determine whether or not the driver is a fit and proper person.

Proven Complaints of rude or aggressive Behaviour

In less serious cases a written warning of future conduct may be given. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety, this may result in the immediate suspension (pending investigation) or revocation of a licence.

In all other cases where an alleged offence has been committed and not listed within this Policy, the Licensing Authority will deal with each case on its own merit.

Smoking in Vehicle

Where an applicant is convicted or received a fixed penalty for smoking in a vehicle or permits smoking in a vehicle a serious view will be taken as this demonstrates a clear disregard for the law and public safety.

Formal/Simple and Police Cautions

For the purposes of these guidelines, the Council will treat all Cautions as though they were a conviction before the Court. All Cautions must be declared on the application.

Other Sanctions

Where a Binding Over Order, Anti-Social Behaviour Order, Banning Order or Restraining Order etc has been imposed by a court, applications will not be considered whilst that order is current. A period of 12 months free of further sanction must have elapsed, after expiry of the order, before an application is considered. In general, the overriding consideration should be the protection of the public.

The Licensing Authority views fixed penalties and administrative penalties as a clear indication that the applicant has committed an offence. The body issuing the sanction has to be satisfied that there is

sufficient evidence that an offence has been committed before they can issue such a sanction.

Similarly, case law has confirmed that the Licensing Authority can take into consideration information concerning offences where the prosecuting agency chose not to pursue the matter or the case was discharged. The Licensing Authority is keenly aware that the standard of proof applicable in criminal and civil proceedings is different.

Warnings

The Licensing Authority will issue warnings as are appropriate to the circumstances. Minor or first time transgressions are likely to attract a written warning and/or suspension, repeated or more serious conduct may lead to suspension or revocation of any licence. The Licensing Authority will only expect to issue one warning. Further transgressions, that may normally warrant a warning, may be dealt with by way of prosecution, suspension, or revocation depending on the circumstances.

Serious Offences

If an offence or conviction is deemed to be 'serious' and if granting a licence would be of detriment to the protection of the public, the Council will be minded not to grant a licence, subject to each application being considered on its own merits.

Foreign Offences

Offences from any jurisdiction outside the United Kingdom of Great Britain and Northern Ireland must be declared in full. For applicants not of British Nationality a Certificate of Good Conduct/Behaviour must be provided from their Country of Origin. The Licensing Authority will deal with foreign offences in a similar way to comparable offences under UK law.

Decriminalised Offences

If an applicant has been convicted of an offence which has since been decriminalised, the offence should still be declared. Consideration will be given to the circumstances including the length of time since decriminalisation and the nature of the offence. However, the Licensing Authority will also be mindful of the fact that an offence was committed and the applicant chose to contravene a law that was extant at the time the offence was committed.

Failure to report/declare a conviction

The failure to report/declare a conviction or other sanction will normally be dealt with by the issuing of a written warning in addition to any

further actions that may be warranted by the nature of the offence. Subsequent offences may be dealt with by way of suspension or revocation. However, if it is considered that there was a premeditated intent to deceive, the Licensing Authority will have to decide on whether or not the applicant is a fit and proper person.

Knowingly or recklessly making a false statement or omitting any material

The Licensing Authority considers this to be a serious offence as it is dishonest. The Licensing Authority will consider prosecuting any applicant who makes a false statement or omits any material requested on an application form or at a committee meeting.

Consultation Responses

1. I have received your letter concerning the proposed changes. I have no comment on them.
2. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
3. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
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8. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
9. **Revised Guidelines Relating to the Relevance of Convictions**

With respect to the above I have no comments.

10. With regard to CRB checks, how is it possible that someone can obtain a badge without a full disclosure, ie, foreign nationals who have not resided in the UK for 10 years? I propose refusing all applicants that have not resided in the UK for the 10 years required for CRB.

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CHESHIRE EAST COUNCIL

Licensing Committee

Date of Meeting:	18 th July 2012
Report of:	Miss K Evans – Licensing Team Leader
Subject/Title:	Statement of Licensing Policy Review
Portfolio Holder:	Cllr Les Gilbert - Communities and Regulatory Services Portfolio Holder

1.0 Report Summary

- 1.1 The Licensing Act 2003 requires that Licensing Authorities prepare and publish a statement of policy that they propose to apply when exercising their functions under the Act during the five year period to which the statement applies.
- 1.2 The Council is required to review its existing statement of principles and publish the revised version by no later than 31st January 2014. In preparing a revised statement the Council must undertake a consultation exercise with stakeholders. The purpose of this report is to recommend to the Cabinet Member that approval is provided for the statement of principles in its draft form so that the consultation exercise may take place.

2.0 Decision Requested

- 2.1 That the Committee considers the content of the draft revised policy set out at appendix 1.

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Licensing Act 2003, to enable the proper discharge of the Council's responsibilities for the regulation of alcohol sales, regulated entertainment and late night refreshment.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 None identified

7.0 Financial Implications

- 7.1 The Licensing Authority is required to consult on the revised policy and this will require a number of letters being sent to license holders and other consultees. The cost of letter production and postage is anticipated to be approximately £300.00.

8.0 Legal Implications

- 8.1 In accordance with Section 5 of the Licensing Act 2003 the Licensing Authority is required to determine and publish a Statement of Licensing Policy.
- 8.2 The statement of policy forms part of the Council's Policy Framework. As such, the final decision to approve a statement of principles or a revision of the statement rests with full Council. In addition, in developing a revised statement of policy, the authority must comply with its Budget and Policy Framework Procedure Rules (as set out within the Constitution).
- 8.3 In order to comply with statutory requirements, the following agencies must be consulted:
- Cheshire Constabulary
 - North West Fire and Rescue Service
 - Planning Services
 - Trading Standards (Weights and Measures Inspector)
 - Environmental Health
 - Local Safe Guarding Children Board
 - Health and Safety
 - Representatives of the local licensing trade
 - Representatives of local businesses and residents

9.0 Risk Management

- 9.1 Should the Council not adopt a reviewed Statement of Licensing Policy within the required time frame, all decisions made may be open to challenge.
- 9.2 Giving appropriate weight and consideration to any consultation responses received will mitigate the risk of a successful challenge of the final statement of policy.

10.0 Background and Options

- 10.1 The first Statement of Licensing Policy approved by this Council came into effect in January 2009.

- 10.2 The Statement of Licensing Policy establishes a local framework for decision making when considering applications for relevant permissions, or variations to existing terms and conditions. The Policy is of significant importance as the Licensing Committee and Sub-Committee are required to have due regard to it when determining an opposed application.
- 10.3 The current Policy is due for review and it is necessary for the Council to undertake a consultation process. In accordance with the statutory timescales the revised policy must be in place to take effect from January 2014.
- 10.4 When the Statement of Licensing Policy has been confirmed and published, subject to any further reviews and necessary consultation, it shall remain in force for a further period of five years (i.e. to January 2019).
- 10.5 It is proposed that the following timescales be applied to allow for the proper consideration of the draft statement of policy:
- Approved for consultation by relevant Cabinet Member
 - Period for consultation – 6 weeks
 - Licensing Committee – 16th July 2013
 - **End of Consultation**
 - Corporate Scrutiny– 10th September 2013
 - Licensing Committee – September/October 2013
 - Confirmed by Cabinet – 11th November 2013
 - To be adopted by Council – 12th December 2013
 - Publication of Policy in January 2014
 - Policy effective from January 2014
- 10.5 Members should note that the consultation period has been approved, following a decision of the Communities and Regulatory Services Portfolio Holder on the 15th July 2013. Consequently, a letter will be sent to the consultees and the Policy placed on the Council's consultation pages on the website.
- 10.6 The changes made to the currently policy include:
- i. Providing updated and additional information on how the Licensing Authority will promote the Licensing Objectives
 - ii. Taking into consideration recent changes in legislation. Such as the Live Music Act 2012, Late Night Levy, and Early Morning Restriction Orders.
- 10.7 The outcome of the consultation exercise and any proposals to amend the content of the Policy, will be presented to Members of this Committee in September 2013. The Policy will then follow the path laid out in 10.5.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Designation: Licensing Team Leader

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CHESHIRE EAST COUNCIL
STATEMENT OF LICENSING POLICY
(LICENSING ACT 2003)
POLICY DATED JANUARY 2014 TO JANUARY 2019

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APPENDIX 1 – TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

APPENDIX 2 – PROCEDURE AT HEARINGS

1. INTRODUCTION

- 1.1 Cheshire East Council (**the Council**) is the Licensing Authority for the area of Cheshire East under the provisions of the Licensing Act 2003 (**the Act**).
- 1.2 The Council's current Statement of Licensing Policy was published on 24th February 2009. A review of that policy is due by January 2014. This Statement of Licensing Policy (**the Policy**) is the result of the review and is published by the Council in accordance with section 5 of the Act. The Policy provides information and guidance to applicants and persons who are likely to be affected by an application (e.g residents and businesses) and Responsible Authorities or anyone interested in these matters. It will clarify the manner in which the Council will approach matters relating to licensing. Whilst the policy provides framework guidance regarding the considerations it will take into account when determining any licence application, the Council, as the Licensing Authority, will ultimately determine each individual application on its own merits.
- 1.3 Cheshire East's mission is for 'Cheshire East to be a great place to live, work, visit and enjoy'. The mission statement complements the aims of this Policy. There are a number of Corporate Objectives some of which link with this Policy. They include:
- To grow and develop a sustainable Cheshire East
 - To improve life opportunities and health for everybody in Cheshire East
- 1.4 The Policy takes into account the guidance issued under section 182 of the Act. The latest guidance was published by the Home Office on 31st October 2012. A copy of the guidance may be accessed via the Home Office website www.homeoffice.gov.uk
- 1.5 In accordance with section 4 of the Act, the Licensing Authority shall have regard to the Policy in the exercise of its functions in respect of Licensable Activities and qualifying Licensable Activities in accordance with Section 1 and Schedules 1 and 2 of the Act. The following is a summary of what comprises Licensable Activities:
- The sale by retail of alcohol
 - The supply of alcohol by or on behalf of a club to, or to the order of a member of the club
 - The provision of regulated entertainment:
 - performance of a play

- exhibition of a film
- indoor sporting event
- boxing or wrestling entertainment
- performance of live music
- playing of recorded music
- performance of dance
- entertainment of a similar description to the above

There are certain exemptions to this definition, which relate to incidental live and recorded music, and spontaneous music, singing and dancing, which are set out in full in the Act.

- The provision of late night refreshment (supply of hot food or drink from a premises between 23:00 and 05:00 hours)

1.6 In formulating the Policy, the Licensing Authority has consulted all Responsible Authorities, holders of licences under the Act and the public within Cheshire East.

1.7 This policy will be for a 5 year period and a review will take place in accordance with statutory procedures and will take into full account of any relevant information received by way of consultation or otherwise.

2. THE AIM OF THE POLICY AND STATUTORY LICENSING OBJECTIVES

2.1 The aim of the Policy is to secure the safety and amenity of communities within the Cheshire East area, whilst facilitating a sustainable entertainment industry. The Council recognises the need of residents for a safe and desirable environment in which to work and live and the importance of well-run licensed premises in a vibrant and diverse local economy. The Council will promote the safety of residents and visitors whilst out at night and on their journey home.

2.2 In accordance with the guidance issued by the Secretary of State, the Council recognises the need to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre for the wider cultural benefits of our communities. A natural concern to prevent disturbance in the neighbourhood will always be balanced with the wider cultural benefits of our communities

- 2.4 The Council has a duty to protect the amenity of its residents. This extends to the business community, who can expect the Council to ensure that the environment is attractive and sustainable for the conduct of their business.
- 2.5 It is the Council's duty to exercise its licensing functions with a view to promoting **with equal importance** the four Licensing Objectives set out in section 4 of the Act:
- **The prevention of crime and disorder**
 - **Public Safety**
 - **The prevention of public nuisance**
 - **The protection of children from harm**
- 2.6 This policy does not prejudice the requirement for the Licensing Authority to consider each application on its own merits.
- 2.7 The Licensing Authority will have proper regard to amongst other issues:
- Location and environmental impact of the proposed activity
 - Suitability of the applicant
 - Suitability of the premises to the application
 - Operation and management of the premises
 - Monitoring, review and enforcement
- 2.8 Nothing in the policy will
- Undermine the rights of any individual to apply under the terms of the Act for a variety of permissions and have the application considered on its individual merits; or
 - Override the right of a person or a body or a Responsible Authority (as defined in the Act) to make representations on an application or to seek a review of a licence or certificate in accordance with the provisions of the Act.
- 2.9 Following Relevant Representations the Licensing Authority will only depart from this Policy if the applicant provides satisfactory evidence/information that the Licensing Objectives will be met in full. In cases where a departure occurs, the Licensing Authority shall provide reasons for the departure.
- 2.10 If an application for a licence or certificate has been made lawfully and there have been no Relevant Representations from Responsible Authorities or

other persons, the Licensing Authority will grant the application, subject only to conditions consistent with the operating schedule and any relevant mandatory conditions.

- 2.11 To achieve its aims the Council is committed to working in partnership with Cheshire Constabulary, Cheshire Fire and Rescue Service, local businesses, residents and others towards ensuring the continued success of this Policy in achieving the statutory objectives of the Act. In considering these issues the Council will focus on the four statutory Licensing Objectives.

3. MATTERS WITHIN THE CONTROL OF THE PREMISES LICENCE HOLDER

- 3.1 The Licensing Authority recognises that licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises, and therefore away from the direct control of the premises licence holder. Accordingly, in exercising its licensing functions the Licensing Authority will focus on matters which are within the control of the individual licensee and others who are granted relevant permissions. Nevertheless licensees should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises, e.g. on the pavement, in a beer garden or in a smoking shelter, where and to the extent these matters are within their control.
- 3.2 The Licensing Authority will expect applicants to consider and make appropriate provisions to ensure that harm is not caused to the Licensing Objectives as a result of activity in, or in the vicinity of, the licensed premises.
- 3.6 It will normally be the responsibility of the premises licence holder to ensure that the managers, designated premises supervisor and door supervisors are competent and appropriately trained.

4. PLANNING AND NEED FOR LICENSED PREMISES

- 4.1 When exercising its licensing functions the Licensing Authority will not be influenced by questions of need. The issue of whether or not there is a need for a particular premises is a commercial matter, which is not relevant to the Licensing Authority's considerations.
- 4.2 The Planning Regulation and Licensing Regulation functions are separate statutory regimes. The Licensing Authority recognises that there should be a clear separation of the planning, building control and licensing regimes in order to avoid duplication. The Licensing Authority when exercising its licensing functions will not consider whether there has been any alleged breach of planning conditions. Planning Permission will usually be required prior to the use of premises for Licensable Activities.

- 4.3 The Licensing Authority is not bound by decisions made by the Planning Authority and vice versa.
- 4.4 There may be circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensed hours, the earlier closing time must be observed. Premises operating in breach of their planning permission would be liable to enforcement action under planning law.
- 4.5 It should be noted that Building Regulations govern a variety of issues, which directly contribute to the Licensing Objectives, including means of escape, structural integrity, accessibility and public safety. Building Regulation Approval and Completion Certificates may be required prior to the use of the premises for licensable activities.

5. INTEGRATING STRATEGIES

- 5.1 The Licensing Authority will consider the Local Authority's approved strategies and policies where they are relevant to the exercise of its function as the Licensing Authority.
- 5.2 The Council recognises that Licensed Premises are a major contributor to the local economy. Any licence application will be considered by taking certain factors into account. These include:
- Employment opportunities
 - The enhancement the proposal might have on the attractiveness of the wider area
 - The general impact in attracting visitors to the area
- 5.3 In undertaking its statutory licensing function the Licensing Authority may have regard to:
- Section 17 of the Crime and Disorder Act 1998 and requirement that the local authority do all that it reasonably can to prevent crime and disorder in its locality
 - The European Convention on Human Rights (which is given effect by the Human Rights Act 1998), which places a duty on public authorities to protect the rights of individuals in a variety of circumstances
 - Any other relevant legislation drawn to its attention
- 5.4 The Licensing Authority will seek to discharge its responsibilities identified by other Government Strategies, so far as they impact on the objectives of the Licensing Act. Examples of these strategies are:

- In accordance with Guidance the Licensing Authority will seek to establish a Safe Scheme so that proper liaison and partnership working with all relevant stakeholders will ensure that appropriate Action Plans for Tackling Alcohol Related Crime, Disorder and Nuisance are in place
- Safer Clubbing
- Local Authorities Coordinators of Regulatory Services and Trading Standards Institute Code of Best Practice on Test Purchasing
- Alcohol Harm and Reduction Strategy
- Crime and Disorder Reduction Strategy
- Enforcement Concordat, under which the Council has developed an Enforcement Strategy

6. ANTI-SOCIAL BEHAVIOUR

- 6.1 The Licensing Authority recognises that in addition to the requirements for it to promote the Licensing Objectives, the Local Authority has a duty under section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder within its area.
- 6.2 The objective of the licensing process is to allow the retail sale of alcohol and the provision of other Licensable Activities in a manner that ensures the public's safety and which is neither to the detriment of residents, nor gives rise to loss of amenity. It is the Licensing Authority's aim to facilitate well run and managed premises with premises licence holders displaying sensitivity to the impact of their premises on local residents.
- 6.3 In accordance with Guidance, the Licensing Authority does not regard this policy as a mechanism for the general control of anti-social behaviour by individuals once they have left the immediate vicinity of the licensed premises.
- 6.4 Recurring problems of alcohol-related anti-social behaviour, crime and disorder or serious public nuisance can occur in an area, which are not directly attributable to specific premises. In such cases, particularly if supported by the Police, the Licensing Authority may consider whether an Early Morning Alcohol Restriction Order (EMROs) might address the problems. These Orders are considered later in this Policy.

7. PREVENTION OF CRIME AND DISORDER

- 7.1 The Licensing Authority will have regard to the Crime and Disorder Act 1998 (See Section 6.1 above). Any conditions attached to the premises licence

should reflect any local crime prevention strategy. Including, the Safer Cheshire East Partnership Plan or a subsequent replacement plan.

7.2 The Licensing Authority will consider whether the premises make or will make a significant contribution to levels of crime and disorder, and whether the Operating Schedule is based on an adequate risk assessment, undertaken by the applicant, of the likelihood of crime and disorder occurring as a result of the application.

7.3 In order to meet its duty to prevent and reduce crime this Policy will have regard to the likely impact of licensing on related crime and disorder in the area. The Licensing Authority will consider the location of the premises and the impact, operation and management of the Licensable Activities. In particular these issues may include:

- Whether the layout, lighting and fittings of the premises have been designed so as to minimise conflict and opportunities for crime and disorder
- Whether the Operating Schedule includes appropriate management measures to prevent crime and disorder
- Door supervision together with the maintenance of an incident book
- Use of toughened glass or plastic glasses
- Mechanisms for combating drug dealing and use
- Use of CCTV cameras
- Membership of any Pubwatch or similar scheme
- Use of ID scan equipment

7.4 The Licensing Authority may impose conditions on licences or certificates. These may include the following conditions (although the list is not exhaustive). The decision to impose conditions and their extent will depend upon the risks of crime and disorder at the particular premises

- Appropriate ratio of tables to chairs to customers and for areas to be allocated for seated customers
- A requirement for Security Industry Authority door supervisors to control numbers and to deny entry to individuals who appear drunk, disorderly or intent on crime
- A requirement that drinking vessels do not form a sharp edge when broken

- Restrictions on drinking in areas within and outside the premises
- Procedures for checking the ages of young people who appear under the age of 21 or 25 to ensure alcohol is not sold to those under 18 and that those under 16 are accompanied in alcohol-led premises
- Appropriate 'early warning' communication systems with the Police and with other licensed premises
- The installation of CCTV
- Clear policies and measures to prevent illegal drugs being brought onto and used on the premises
- Searching of customers and staff

7.5 The Licensing Authority will carefully consider Police representations and other conditions relating to the deterrence and prevention of crime and disorder and initiatives to reduce crime will be drawn up in liaison with the police to deal with particular premises or types of premises where concerns may arise.

Safer Clubbing

7.6 The Licensing Authority wishes to promote the principles of 'Safer Clubbing'. The current Home Office Guidance on the subject is recommended to relevant Premises Licence and Club Premises Certificate holders. Following relevant representations appropriate licensing conditions may be imposed to control the environment at relevant premises in support of the 'Safer Clubbing' objectives.

Drugs

7.7 Following Relevant Representations, conditions may need to be imposed for certain types of venues to reduce the possibility of sale and consumption of drugs and to create a safer environment for those who may have taken them. These conditions will take into account the above-mentioned 'Safer Clubbing' advice issued by the Home Office. In all cases where conditions are to be imposed advice will be sought from the Drug and Alcohol Action Team and the Police.

7.8 The Licensing Authority, Police and Licence Holders need to be aware that power is available under the Anti-Social Behaviour Act 2003 that allows for the closure of a licensed premises by the Police where there is production, supply or use of Class A drugs and/or serious nuisance or crime and disorder. This provides an extra tool to the Police in enabling instant action with regards to premises where there is a Class A drug problem.

Door Supervisors

7.9 Following Relevant Representations the Licensing Authority may consider that certain premises require supervision for the purpose of promoting the reduction of crime and disorder, and to generally provide a safer operation of the premises. In such cases licensed door supervisors (registered by the SIA) must be employed at the premises either at all times or at such times as certain licensable activities are taking place, at a number and ratio to be determined by the Licensing Authority. (This excludes stewards/glass collectors who are not involved in the security of the premises and do not therefore require registration with the SIA).

CCTV

7.10 Licence holders may wish to install cameras for the protection of staff, customers and for the prevention of crime on or in the vicinity of the premises. In exercising its licensing functions, the Licensing Authority may for the purpose of promoting any of the Licensing Objectives, impose as a condition of the licence the installation of a CCTV system. It should be noted that in such cases the Licensing Authority may take into account the type and quality of recordings, the location of cameras, storage and the availability of recordings to the Licensing Authority and Police.

Cinema Exhibitions (see also under Protection of Children from Harm)

7.11 No film shall be exhibited at a licensed premises which is likely to:

- Lead to disorder
- Incite hatred or violence towards any section of the public on grounds of colour, race or ethnic or national origin, disability, religious beliefs, sexual orientation or gender

8. PUBLIC SAFETY

8.1 The Licensing Authority wishes to promote high standards of public safety in relation to premises and activities within the scope of the Act.

8.2 The Licensing Authority recognises that the Public Safety Objective is concerned with the physical safety of the customers using the relevant premises and not with Public Health, which is dealt with by other legislation.

8.3 Where activities are organised by volunteers or a committee of a club or a society the Licensing Authority considers it good practice that the same level of Health and Safety protection is provided as if an employer/employee relationship existed, irrespective of whether there are strict legal duties applicable under Health and Safety legislation.

- 8.4 Following Relevant Representations, where the Licensing Authority considers that general health and safety duties do not adequately cover certain Licensable Activities, conditions may need to be attached to the licence to ensure public safety.
- 8.5 Organisers of temporary/large scale events will be encouraged to seek advice and information from the Council's Event Safety Advisory Group prior to submitting any application.

Fire Safety

- 8.6 The Licensing Authority will have due regard to the representations of Cheshire Fire and Rescue Service regarding licensing applications.
- 8.7 Following Relevant Representations, the Licensing Authority may impose appropriate conditions in relation to fire safety matters in consultation with Cheshire Fire and Rescue Service.
- 8.8 The Licensing Authority will only include an occupant capacity condition on a Premises Licence or a Club Premises Certificate where there is a genuine fear or a genuine problem with overcrowding and it is considered appropriate for public safety. This figure will be arrived at in consultation with Cheshire Fire and Rescue Service. If an occupant capacity is fixed in accordance with any risk assessment required by The Regulatory Reform (Fire Safety) Order 2005 that figure will be used.
- 8.19 Where the special provisions of Section 177 of the Act (dancing, amplified and unamplified music in premises with a capacity of no more than 200 persons) are utilised, the Licensing Authority reserves the right to confirm with Cheshire Fire and Rescue Service the safe capacity of the premises.

9. PREVENTION OF PUBLIC NUISANCE

- 9.1 If Relevant Representations are received the Licensing Authority, when making an objective judgment about what constitutes a nuisance in respect of an application or review of a premises licence or certificate, will take a broad common law meaning when considering matters such as:
- Noise from premises
 - Waste
 - Litter
 - Car parking
 - Light pollution

- Noxious odours

9.2 In considering the potential impact of licensed premises on the surrounding locality the Licensing Authority, when in receipt of any Relevant Representations will take into account the type of entertainment activity proposed hours of operation, the capacity of the premises, the character of the areas and the proximity to local residents. Consideration will be given to the potential steps which could be taken to reduce the risk of nuisance occurring. This will particularly apply in areas where there is residential accommodation in the proximity of the premises.

Noise and Vibration

9.3 In order to enforce the provisions of the Environmental Protection Act 1990 (which relate to noise nuisance) the Police, Environmental Health Officers and Licensing Officers will liaise to ensure that adequate control measures are properly used to protect the local environment. Any action taken will be conducted in accordance with relevant enforcement policies

9.4 Consideration will be given to whether the operating schedule contains adequate measures to prevent noise and vibration, generated from within the premises, outside it, or from an open site, that may cause disturbance. Stricter conditions will be considered on premises in areas that have denser residential accommodation or have residential accommodation close to them. The noise includes music, noise from ventilation equipment and human voices. Measures in the Operating Schedule may include installation of soundproofing, air conditioning, acoustic lobbies, sound limitation devices or locking doors at specified hours. If the proposed operating schedule fails to address noise nuisance issues, the Environmental Health Department may request that an independent acoustic report is conducted.

9.5 Applicants will be expected to have included measures in their Operating Schedules that make adequate provision to:

- Restrict the generation of noise within the premises and from activities associated with the premises in the vicinity, or from an open air site
- Limit the escape of noise from the premises or open air site
- Restrict noise emissions to below levels that could affect people in the vicinity going about their business, at work and when at home both while relaxing and while sleeping
- Minimise and control noise from customers arriving and departing from the premises

- 9.6 The Licensing Authority will not impose conditions on licensed premises that cannot be directly controlled, or on matters not related to the vicinity of the premises.
- 9.7 If it is considered that the noise emanating from within the curtilage of a licensed premises is causing a public nuisance, under the provisions of the Anti-Social Behaviour Act 2003, an Authorised Officer can require its immediate closure for a period of up to 24 hours. It should be noted that the 'test' is a lesser one than that required to determine a Statutory Noise Nuisance and the statutory defence of 'best practicable means' is not available.

Eating, Drinking and Smoking Outside Premises

- 9.8 The Licensing Authority will take the following into consideration:
- Whether people standing or sitting outside are likely to cause obstruction or other nuisance
 - Whether premises are under or near residential accommodation
 - The hours of sale of alcohol in open containers or food for consumption outside the premises
 - Measures to make sure that customers move away from outside premises when such sales cease
 - Measures to collect drinking vessels and crockery, cutlery and litter
 - The extent and location of areas proposed to be set aside for the consumption of food and alcoholic drink for smoking
 - Whether there is a need for door supervisors to prevent or to control customers congregating in outdoor areas to smoke, consume food or drink (whether supplied by the premises or not), between certain hours or at all times.

Other Environmental Impacts

- 9.9 Consideration will be given to whether Operating Schedules contain adequate measures to prevent:
- Litter, smells, fumes, dust, tobacco or other smoke, or other emissions
 - Street fouling
 - Light pollution
 - Congestion of the pavement or roadway, impeding reasonable access

arising from the proposed licensable activity that may cause nuisance to people in the vicinity.

9.10 If the sale of alcohol in open containers or food for consumption outside the premises has been proposed, the following considerations are relevant:

- Whether measures would be undertaken to prevent nuisance caused by the storage, handling and collection of refuse and recyclable materials
- Whether late night premises are likely to generate litter and whether the sale of take-away food is proposed and the measures planned to prevent littering in the vicinity and to clear up any litter that occurs
- The steps proposed to prevent queuing or, if some queuing is inevitable, to divert queues away from residential properties and entrances to neighbouring premises, and to manage the queue to prevent disturbance and obstruction
- The steps taken to prevent disturbance by patrons arriving at or leaving the premises
- The steps taken to ensure staff leave the premises quietly
- The arrangements made or proposed for parking by patrons and the effect of parking on local residents
- Whether taxis and private hire vehicles serving the premises are likely to disturb local residents
- Whether routes to and from the premises on foot or by car or service or delivery vehicles pass residential premises
- Whether other measures to prevent nuisance such as the use of CCTV or the employment of SIA registered door supervisors are necessary
- The measures proposed to prevent the consumption or supply of illegal drugs, including any search procedures
- The likelihood of any violence, public disorder or policing problem arising if a licence were to be granted
- If the applicant has previously held a licence within the Cheshire East area, the details of any enforcement action arising from that premises
- Whether the premises would result in increased refuse storage or disposal problems, or additional litter in the vicinity of the premises.

10. PROTECTION OF CHILDREN FROM HARM

10.1 Protection of Children from harm includes the protection of children from moral, psychological and physical harm. This includes protection from premature exposure to strong language and sexual expletives. The Act does not prevent children having free access to premises selling alcohol for consumption on those premises, although the Licensing Authority when in receipt of Relevant Representations may impose conditions necessary for the prevention of harm to children. Where there are matters that give rise to serious concerns and the restriction of access may not ensure adequate protection of children from harm, children should be excluded. Examples of what may give rise to these concerns include:

- Where there have been convictions for serving alcohol to minors or where the premises has a reputation/evidence for underage drinking (to include any action undertaken regarding test purchases in relation to the supply of alcohol)
- There is a known association with drug taking or dealing
- There is a strong element of gambling on the premises
- Entertainment of an adult or sexual nature is provided

Note: The Act makes it an offence to permit children under the age of 16 who are not accompanied by an adult to be present on premises used exclusively or primarily for the supply of alcohol for consumption on the premises.

10.2 Matters which the Licensing Authority will take into consideration include:

- Whether there are effective measures to check the age of those young people who appear under 25, to ensure alcohol is not sold to those under 18 and those under 16 are accompanied in alcohol led premises
- Whether the supply of alcohol for consumption on the premises is the exclusive or primary purpose
- The hour to which accompanied children under 16 are proposed to be on the premises where the exclusive or primary purpose of the services provided at the premises is the supply of alcohol for consumption on the premises
- The likelihood of children being attracted to the premises e.g. by the nature of activities or facilities provided, whether or not these are licensed

- Whether there is evidence of heavy, binge or underage drinking on the premises
- 10.3 Where Relevant Representations have been received and it is considered necessary that the access of children should be restricted to protect them from harm then conditions may be attached to the licence. These may include:
- Limitation on the hours when children may be present
 - Restrictions to the age of persons on a premises (e.g. to over 18's only)
 - Restrictions on access to certain parts of the premises
 - Limitations or exclusions when certain activities may take place
 - Require an accompanying adult to be present at all times
- 10.4 Where large numbers of children are likely to be present on any licensed premises, for example, a children's show or pantomime, then the Licensing Authority may require the presence of an appropriate number of adult staff (who will have provided who will have provided a satisfactory Disclosure and Barring Service check) to ensure their safety and protection from harm. The exact ratio is to be assessed in respect of each individual application and is dependent on the type and size of the premises and the control measures in place as outlined within the operating schedule, and importantly the particular group of children likely to visit the premises in question.

Cinema Exhibitions (see also under Prevention of Crime and Disorder)

- 10.5 Where the exhibition of films is permitted the Licensing Authority will expect age restrictions to be complied with in accordance with the British Board of Film Classifications (BBFC) recommendations. Where a film has not been classified by the BBFC the Licensing Authority will consider whether it is appropriate to provide a local classification. When setting a local classification the Licensing Authority will have regard to the BBFC's guidelines.
- 10.6 In considering applications, the Licensing Authority will take into account any evidence that age restrictions for cinema exhibitions have not been adhered to.

11. CUMULATIVE IMPACT

- 11.1 The Licensing Authority does not consider that there are areas where Cumulative Impact occurs presently nor is there a need at this time for the

Licensing Authority to adopt a special policy relative to designating 'Stress Areas'.

- 11.2 Where there is a concentration of licensed premises this can lead to serious problems of nuisance and disorder arising in the area itself and even some distance away from the premises. In such circumstances the impact of those premises when taken as a whole can be far greater than that arising from individual premises and it may not be possible to distinguish individual premises as being the sole cause or even a major contributing factor, of a particular problem. It is the **Cumulative Impact** of all the premises which causes problems for the wider area.
- 11.3 It is clear however, that the vicinity within which licensed premises are or may be located is a major consideration in determining a licence should be granted and what conditions should be attached to it should representation be received. Due consideration will be given to the direct impact of the operation of the premises on members of the public living, working or engaged in normal activity in the vicinity of the premises.
- 11.4 It should be noted that 'Cumulative Impact' should not be confused with the issue of 'need', which relates to commercial demand for licensed premises. 'Need' is not a matter to be taken into account by the Licensing Authority.
- 11.5 Where a particular area becomes saturated with licensed premises making it a focal point for large groups of people to congregate, this might create exceptional problems of disorder, noise and other nuisance and in such circumstances the grant of further Premises Licenses or Club Premises Certificates may undermine the Licensing Objectives.
- 11.6 Notwithstanding these concerns each application has to be considered on its own individual merits. Where an objector is seeking to establish that the grant of a licence or certificate would result in a cumulative impact which undermines one or more Licensing Objectives, the following shall apply:

Objections on the grounds of Cumulative Impact

- 11.7 In cases where objectors seek to establish that an application should be refused on the grounds that it would result in or further contribute to cumulative impact which would undermine one or more of the Licensing Objectives the objector shall:
- Identify the boundaries of the area from which it is alleged problems are arising
 - Provide full details and evidence as to the seriousness of the nuisance and disorder caused in the area

- Identify the licensing objective(s) which it is alleged will be undermined with specific regard to:
 - The occupancy figure for the proposed premises
 - The nature of the licensed activity to be carried on at the premises and its patrons.

Identifying Stress Areas

11.8 Where as a result of an objection under paragraph 11.7 above and the Licensing Authority is satisfied that there is a serious or chronic concern about nuisance and disorder in a particular area and has refused an application on the grounds of Cumulative Impact the area shall be declared as a 'Stress Area'. In doing so the Licensing Authority shall:

- Follow the statutory procedures outlined in the Home Office Guidance issued under Section 182 of the Act
- Identify the boundaries of the area
- Identify the licensable activities causing the nuisance and/or disorder
- Monitor and review the 'Stress Area'

Applications for a New Premises Licence in a Stress Area

11.9 New premises licenses will not be granted for the activities identified as causing nuisance and/or disturbance in Stress Areas except where:

- No objections are received to the application, or
- The grant of the licence will not undermine the Licensing Objectives

11.10 In considering such applications the Licensing Authority will have particular regard to:

- The occupancy figure for the proposed premises
- The proximity of the premises to others in the Area licensed for similar activities and the occupancy figures for those other premises
- Whether the proposed premises will act as a replacement for others in the Area that no longer has a licence
- The proposed methods of management outlined in the applicants' operational plan
- The proposed hours of operation

- Transport provision for the Area

Existing Premises Licenses in Stress Areas

11.11 The above factors cannot be used as a justification for removing an existing licence. If representations are received about existing licensed premises relating to matters other than cumulative impact and which undermine the Licensing Objectives then appropriate action may be taken.

Applications for variations to existing Premises Licenses in Stress Areas

11.12 Applications for variations to existing Premises Licenses in Stress Areas will not be granted unless those modifications directly affect the issue of Cumulative Impact in the Stress Area or otherwise undermine the Licensing Objectives. An example of where a modification may directly affect the issue of cumulative impact would be where an application was received to extend premises and significantly increase the occupancy level of the premises.

12. APPLICATIONS FOR NEW GRANTS AND VARIATION OF EXISTING TERMS AND CONDITIONS

12.1 In the absence of any Relevant Representations in respect of any application made to the Licensing Authority, it is the duty of the Authority to grant the licence or certificate subject only to conditions that are consistent with the Operating Schedule and any Mandatory Conditions prescribed in the Act. This will also apply to any applications made in respect of premises within an identified Stress Area.

12.2 The EU Services Directive (Directive 2006/123/EC) and the Provision of Services Regulations 2009 require the Authority to enable an electronic application facility. This is available through www.GOV.uk for Premises Licence applications, renewals and variations and for Club Premises Certificates, renewals and variations. An automatic grant is not available for these applications since visits to premises are required in order to ensure the Licensing Objectives would be promoted. In addition the consideration of a licence needs to take into account the management of the premises.

12.3 The Licensing Authority will consider the same issues in respect of a variation and a renewal as they do in respect of an application for a new grant.

12.4 The Licensing Authority may take into account any non-compliance of other statutory requirements brought to its attention. Particularly where these undermine the Licensing Objectives, as non-compliance with other statutory requirements may demonstrate that the premises are unsuitable for the activities proposed or that the management of the premises is not adequate to protect the public from harm or nuisance.

12.5 The Licensing Authority will consider whether appropriate measures have been put into effect by the applicant to mitigate any adverse impact.

13. TEMPORARY EVENTS

13.1 Arrangements are made under Part 5 of the Act for the temporary carrying on of licensable activities which are not authorised by a premises licence or a club premises certificate.

13.2 The Licensing Authority will provide advice about, amongst other things, public safety. Organisers of temporary/large scale events will be encouraged to seek advice and information from the Council's Event Safety Advisory Group prior to submitting any application.

13.3 Legislation states that a minimum of ten working days notice should be given to the Licensing Authority of temporary events (or five working days in respect of a late temporary event). In accordance with the Act, 'Working Day' excludes Saturday, Sunday and Bank Holidays. The Licensing Authority cannot and will not accept notification of a Temporary Event Notice or a late Temporary Event Notice outside the statutory time limit. 13.4 The Licensing Authority acknowledges that in exceptional circumstances, some Temporary Events may and do have an impact upon crime and disorder. Therefore, in cases of large scale events, organisers should consider providing as much notice as possible. The Licensing Authority considers two months notice to be advisable in relation to such events.

13.5 The Licensing Authority expects organisers to give due consideration to the four licensing objectives and to consider local residents and those attending events, in areas such as:

- Health and Safety
- Noise Pollution
- Use of Temporary Structures
- Road Closures
- Use of Pyrotechnics or Fireworks
- Controlling Anti-Social Behaviour

13.6 The Licensing Authority may advise applicants to consult with Cheshire Fire and Rescue Service and North West Ambulance Service for guidance with regards to assessing possible risks.

- 13.7 Applicants will also be reminded that giving a Temporary Event Notice does not relieve the premises user from planning law and any requirement to obtain the appropriate planning permission where it is required.

14. OPERATING SCHEDULE

- 14.1 It is recommended that that applicants contact Responsible Authorities when preparing their operating schedules. This is likely to reduce subsequent objections.
- 14.2 This Statement of Licensing Policy sets out criteria and considerations, which relate to the Licensing Objectives, which applicants should have in mind when drawing up their Operating Schedule.

15. HOURS OF OPERATION

- 15.1 The Licensing Authority will determine licensing hours based on the individual merits of each application.
- 15.2 The Licensing Authority recognises that in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of patrons leaving premises simultaneously are avoided. It is acknowledged that this can help reduce the friction at late night fast food outlets, clubs, taxi ranks and bus stops, which can lead to disorder and disturbance. The Licensing Authority will aim by means of longer licensing hours to achieve a gradual dispersal of people leaving licensed premises.
- 15.3 The Licensing Authority recommends that applicant's indicate within the operating schedule that consideration has been given to the impact the licensing hours applied for will impact on local residents and the surrounding area.
- 15.4 The Licensing Authority will consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises at any time when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting the hours. Consideration may be given to restricting the licensing hours of individual shops in circumstances where representations received indicate that the premises is a focus of disorder and disturbance.

16. CONDITIONS

- 16.1 The Licensing Authority may, when considering the content of the Operating Schedule, select appropriate conditions from the Home Office Guidance, pool of Conditions, where it is deemed appropriate to ensure that the Operating Schedule reflects the four Licensing Objectives.

- 16.2 Where appropriate, following receipt of Relevant Representations, the Licensing Authority, may attach conditions to the grant of a licence which seeks to regulate the behaviour of persons as they leave licensed premises.
- 16.3 Where existing law already places statutory obligations on applicants the Licensing Authority will not usually impose the same or similar duties by way of condition.

17. ENFORCEMENT AND REVIEW

- 17.1 It is the intention of the Licensing Authority to work proactively with the Cheshire Police and other enforcement agencies. Proportionate targeting of agreed problem and high-risk licensed activities needing greater attention will be applied. A corresponding lighter touch for well run, lower risk premises will also be applied.
- 17.2 The Review of licences or certificates provides a key protection for the community where the Licensing Objectives are being undermined. The Review system should allow the Licensing Authority to apply a light touch bureaucracy to the grant or variation of a licence or certificate. The Licensing Authority may then take a more robust approach when problems relating to the Licensing Objectives arise later in respect of any premises.
- 17.3 At any stage following the grant of a premises licence or a club premises certificate, a Responsible Authority or any other person, may ask the Licensing Authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives. The Licensing Authority shall refer to Guidance when assessing whether any Relevant Representations are irrelevant, vexatious, frivolous or repetitious.
- 17.4 Although the Act does not require premises inspections to be undertaken, they will take place at the discretion of the Licensing Officers charged with this role and will take place as judged necessary. This will ensure that the Licensing Authority manages resources efficiently and that 'effective enforcement' is directed at 'problem premises'.
- 17.5 Where any conditions have been applied to a Premises Licence or Club Premises Certificate and Authorised Officer of the Council may inspect the premises at any reasonable time for the purpose of checking that the conditions are being complied with.

Door Supervisors

- 17.6 The Security Industry Authority (SIA) plays an important role in preventing crime and disorder by ensuring that door supervisors are properly trained and licensed. Specific enquiries or premises visits may occur in order to ascertain

that SIA Licenses are being executed in the correct manner and not as a tool for crime and disorder such as fronts for serious and organised criminal activity. Intelligence led operations by the SIA, Licensing Authority and/or Police will be conducted without notice

18. EARLY MORNING ALCOHOL RESTRICTION ORDERS (EMROs)

18.1 Under Section 172 A to E of the Act, the Licensing Authority has the power to make an EMRO prohibiting the sale of alcohol for a specified period between the hours of 24:00 and 06:00. They are designed to address recurring problems with licensed premises, serious public nuisance and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.

18.2 The Licensing Authority will consider evidence that such a decision is appropriate for the promotion of the Licensing Objectives. Consideration will be given to evidence provided by partners, Responsible Authorities and the Local Community Safety Partnership as well as evidence the Licensing Authority has gathered to determine whether an EMRO would be appropriate for the promotion of the licensing objectives. The Licensing Authority will consider the problems that have been identified. A range of evidence may be considered, including local crime and disorder statistics, statistics on anti-social behaviour offences, health related statistics (e.g. alcohol related emergency attendances and hospital admissions, environmental health complaints, complaints recorded by the local authority, residents' questionnaires, evidence from local councillors and evidence obtained through local consultation).

18.3 It is acknowledged by the Licensing Authority that an EMRO is restrictive, whilst also being a powerful tool to address recurring problems of alcohol-related crime and disorder, serious public nuisance and alcohol-related anti-social behaviour. Prior to making an EMRO the Licensing Authority will consider whether any other measures (implemented by themselves or with partners) may address the problems that have been identified in particular other measures might include:

- Development of a Cumulative Impact Policy
- Reviewing the licenses of specific problem premises
- Encouraging the creation of business-led practice schemes
- Use of powers of the Local Authority to designate an area where alcohol may not be consumed publicly (Designated Public Places Order)

- The confiscation of alcohol in designated areas
- Police enforcement of the general law concerning disorder and anti-social behaviour
- Prosecution for the offence of selling (or allowing such a sale) alcohol to a person who is drunk
- Use of Police powers to close down any licensed premises instantly for up to 24 hours in respect of which a TEN has effect?

18.4 In taking any decision to make an EMRO, the Licensing Authority will follow the statutory process and will invite representations.

19. LATE NIGHT LEVY

19.1 Under Section 125 of the Police Reform and Social Responsibility Act 2011 the Council can adopt a Late Night Levy, following a consultation process, outlined by the Home Office. It allows the Council to charge an additional fee to any licensed premises that has a licence for the sale of alcohol (on and off sales) after 12 midnight and up to 06:00 in order to cover the additional costs associated with late night alcohol trading. Legislation allows this to start from midnight but it is up to the Council to decide when they wish to apply it.

19.2 The Council cannot implement both a Late Night Levy and an EMRO.

19.3 Any income raised by the Levy must be split with the local Police force; the Police would receive a minimum of 70% of funds raised and the Council's 30% must be used to fund services which make the late night economy a more welcoming place.

20. THE LICENSING PROCESS

20.1 Applications can be made on the prescribe forms that can be found on the Home Office website.

20.2 Applications can also be made via the government website www.gov.uk. In order to fulfil its obligations under the Provision of Services Regulations 2009 (and the EU Services Directive) the Council will continue to enable the application process and payment online. Tacit consent is however not applicable for applications under the Licensing Act 2003 since the suitability of an applicant and the suitability of premises are under consideration.

21. DELEGATION AND DECISION MAKING

21.1 One of the major principles underlying the Licensing Act 2003 is that the licensing functions contained within the Act should be delegated at an appropriate level to ensure an efficient and cost effective service.

- 21.2 The Licensing Authority is committed to the principle of delegating its powers to ensure that these objectives are met and has arranged for its licensing functions to be discharged in accordance with the Home Office Guidance. The table at Appendix 1 sets out the agreed delegation of decisions and functions to the Licensing Committee, Sub-Committees and Officers
- 21.3 The Act itself creates a presumption that applications will be granted unless a Relevant Representation (objection) is raised. Where a function is delegated to an officer, that officer will be responsible for liaising between the applicants, objectors and Responsible Authorities to ensure that any licence granted is subject to any appropriately agreed conditions and relevant mandatory conditions
- 21.4 Where objections are made, an officer of the Licensing Authority may liaise with the Applicant, objectors and the Responsible Authorities to see if a 'settlement' is possible to overcome any objections, without the need for the matter to go before the Committee or Sub-Committee. Only where objections are raised which cannot be reconciled will matters be referred to either the Sub-Committee of the Full Committee for determination.
- 21.5 Contested Licensing Applications and Review Hearings are administrative in nature and the (Sub) Committee will ensure that any meetings are conducted as informally as possible. However, some degree of formality is needed to ensure that all parties receive a fair hearing. Procedural requirements will be established to ensure that all parties are able to express their views openly and fairly. The (Sub) Committee procedure is inquisitorial rather than adversarial and, whilst applicants, objectors and Responsible Authorities are entitled to bring legal representation with them if they wish, this is by no means a requirement or a necessity.
- 21.6 Whilst the (Sub) Committee usually meets in public, it does have the power to hear certain applications in private. The Committee, however, will always reach its decision in private. A public announcement of the decision is normally made at the end of the Hearing together with an outline of the reasons for that decision. However on occasion this may not be possible, due to time constraints and/or the complexity of the issues under consideration, in which case a written decision will be issued as soon as possible after the Hearing.
- 21.7 The procedure which will generally be used by the (Sub) Committee, unless the Chairman of the (Sub) Committee takes the view that natural justice and fairness require a change to be made to the process, is set out at Appendix 2.

22. EXCLUSIONS

- 22.1 In formulating this Statement of Licensing Policy in accordance with Guidance and recognising the need to treat each application on its individual merits the Licensing Authority makes specific exclusions, which are detailed below.

Commercial Demand

- 22.2 The commercial demand for additional premises licenses (as distinct from cumulative impact) will not be a matter for the Licensing Authority, such matters being a specific consideration for the Planning Authority.

Zoning and licensing hours

- 22.3 Fixed predetermined closing times for particular areas will not form part of the Policy and restriction on trading hours will be considered only where appropriate to meet Licensing Objectives.
- 22.4 All persons have equal rights to make representations concerning applications for premises licenses (and hours of trading) and to receive appropriate consideration to their representations. Irrelevant, frivolous and vexatious representations will be disregarded.

Children

- 22.5 Nothing in this Statement of Policy shall limit or require access of children to premises unless there is an overriding necessity to prevent harm to children. Areas that will give rise to particular concern are highlighted elsewhere in this Policy.

Standardised conditions

- 22.6 The Policy does not provide for 'standard conditions' to be imposed so as to avoid the imposition of disproportionate and burdensome requirements. Conditions attached to licenses or certificates if deemed appropriate in particular circumstances will be tailored to reflect the individual operation of the premises in question. Conditions will not be imposed which are beyond the responsibility or control of the premises licence holder.

23. CONSULTATION

- 23.1 In reviewing this Policy the Licensing Authority has consulted widely to ascertain an appropriate licensing framework for its area. Various bodies have been consulted including:
- Cheshire Constabulary
 - Cheshire Fire and Rescue Service
 - Current licence holders

- Representatives of the local licensing trade
- Representatives of local businesses and residents
- Community Safety Partnership and Event Safety Advisory Group
- Borough Councillors
- Parish and Town Councils
- Crewe and Macclesfield Charter Trustees
- Council Officers

24. CHANGES TO LEGISLATION

24.1 This Statement of Licensing Principles reflects the law in force in June 2013. The following are some of the main changes which are currently proposed:

- An authorisation for an indoor sporting event or a performance of a play or dance may be required only when the audience exceeds a specified number (1000 for an indoor sporting event and 500 for the performance of a play or dance) or the entertainment does not take place between 8am and 11 pm on any day
- It is intended that it will be made clear that a contest exhibition or display which combines boxing or wrestling with one or more martial arts (a 'combined fighting sport') is licensable under the Act as a boxing or wrestling entertainment rather than an indoor sporting event

24.1 As changes to legislation occur the Council will implement them using the principles stated in this Statement.

Table of delegations of licensing functions

Functions under the Licensing Act will be dealt with as follows:

Matter to be Dealt with	Full Committee	Sub-Committee	Officers
Application for Personal Licence		If a police objection	If no objections made
Application for Personal Licence with unspent convictions		All Cases	
Application for premises Licence/Club Premises Certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation is made	If no relevant representation is made
Application to vary Premises Licence/Club Premises Certificate		If a relevant representation made	If no relevant representation made
Application to vary designated Personal Licence holder		If a police objection	All other cases
Request to be removed as designated Personal Licence Holder			All cases
Application of transfer of Premises Licence.		If a police objection	All other cases
Application for Interim Authorities		If a police objection	All other cases
Application to review Premises Licence/Club Premises Certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc			All cases

Matter to be Dealt with	Full Committee	Sub-Committee	Officers
Decision to object when Local Authority is a consultee and not a lead authority		All cases	
Determination of a police objection to a Temporary Event Notice		All cases	
Power to issue a Counter Notice in respect of a Temporary Event			All cases
Determination of a minor variation			All cases
Decision to exercise the Licensing Authority's powers as a Responsible Authority			All cases

CHESHIRE EAST COUNCIL

PROCEDURE FOR HEARINGS – LICENSING ACT 2003

The Licensing Committee

The full Licensing Committee consists of fifteen elected Members of the Council. From this full Committee will be drawn sub-committees of three members to deal with licensing functions under the Licensing Act 2003. The Chairman and Vice Chairman of the Licensing Committee shall have the discretion to refer a matter up to a hearing of the full Licensing Committee.

Officers at Hearings

- **The Committee Officer** introduces all parties and records the proceedings
- **The Legal Adviser** provides independent advice to the Members on legal matters and procedure.
- **The Licensing Officer** will introduce the matter and outline the application; the officer will also answer any questions Members may have.

PROCEDURE

NOTE: If the Sub-Committee has not already elected a Chairman, that will be the first item of business.

1	Chairman	The Chairman will: (i) call the matter to be considered (ii) call for any declarations of interest (iii) ask all parties to introduce themselves (iv) summarise the procedure to be followed at the hearing (v) will consider any request made by a party for another person to appear at the hearing (v) will advise the parties of any maximum period of time in which it has to present its case (if a maximum is imposed this shall be equal for all parties)
2	Licensing Officer	Will introduce and summarise the application, highlighting areas of contention or dispute.
3	Committee Members	May ask questions of the Licensing Officer
4	Applicant	Will present his/her case, calling witnesses, as appropriate. <i>(If necessary, applicant will produce any notices required by law. Legal Adviser will draw attention to this if required.)</i>

5	Responsible Authorities (who have made representations)	Each in turn may ask <u>questions</u> of the applicant, by way of clarification.
6	Other Persons (who have made representations)	To be invited to ask <u>questions</u> of the applicant, by way of clarification. <i>It is normal practice for a spokesperson only to speak on behalf of a group of residents.</i>
7	Committee Members	Each in turn may ask <u>questions</u> of the applicant.
8	Applicant	May make a <u>statement</u> or ask his witnesses to clarify any matters which he feels are unclear, or may have been misunderstood.
9	Responsible Authorities	Will make their representations.
10	Applicant	Or his representative or witnesses to ask <u>questions</u> of Responsible Authorities represented at the meeting, by way of clarification.
11	Other Persons (who have made representations)	May ask <u>questions</u> of the Responsible Authorities represented at the meeting, by way of clarification. (Note: This is not the point at which they should be stating their objections.)
12	Committee Members	May ask <u>questions</u> of the Responsible Authorities represented at the meeting
13	Other Persons (who have made representations)	The local residents who are objecting to the application will be invited <u>to make observations on the application</u> and present the bases of their objections.
15	Applicant	Or his representative or witnesses may ask <u>questions</u> of the Local Residents, by way of clarification.
16	Committee Members	May ask <u>questions</u> of the Local Residents.
17	Chairman	To invite both Responsible Authorities and Local Residents to make their closing addresses.
18	Applicant	Or his representative will <u>briefly summarise the application</u> and comment on the observations and any suggested

		conditions.
19	Committee	<u>Will retire</u> to consider the application. The Committee may request the Legal Advisor to advise on legal issues.
20	Committee	<p>Will return to <u>give its decision</u>, with reasons, which will be announced by the Chairman and subsequently confirmed in writing to the applicant and to all the parties that made representations.</p> <p>In cases where a decision cannot be given at the end of the hearing, parties will be advised of the decision within five working days.</p>

Notes

1. The hearing shall normally be held in public. There may be occasions on which the Committee find it necessary to exclude members of the press and public; any such decision will be taken on the basis that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public.
2. The Chairman may require any person behaving in a disruptive manner to leave the hearing and may (a) refuse to permit that person to return, or (b) permit him/her to return only on such conditions as the authority may specify, but any such person may submit in writing any information which they would have been entitled to provide orally if they had not been required to leave.
3. Prior to the hearing each party shall have given notification and served documentation (eg statements of witnesses or reports of experts) as required. Late representations and evidence will only be considered with the agreement of all parties.
4. Anyone entitled to be heard may be represented by any person, whether or not that person is legally qualified.
5. Hearsay will be permitted but the Sub-Committee will be reminded to give it appropriate weight.
6. Due note shall be taken of the provisions of the Hearings Regulations 2005.
7. The Chair may, in the interests of expediency or convenience of the parties, vary the procedure from time to time, provided notice is given to the parties and the rules of natural justice are observed.

SUMMARY OF PROCEDURE

1. Chairman appointed (if this has not been done previously).
2. Chairman to call for declarations of interest and request that all parties introduce themselves.
3. Chairman summarises the procedure for the hearing
4. The Licensing Officer summarises the application
5. Applicant to present his/her case.
6. Applicant to be questioned by all parties (to clarify points only) following which, he/she can clarify any other matters which he/she feels may have been misunderstood when the application was presented.
7. Applicant to be questioned by the Committee.
8. Responsible Authorities to make their representations following which they can be questioned by all parties by way of clarification.
9. Other Persons will be invited to present the bases of their objections, following which they can be questioned by all parties by way of clarification.
10. The applicant will be invited to sum up his/her case
11. Committee/Sub-Committee withdraws to make its decision
12. Committee/Sub-Committee returns to announce its decision to all present.

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