

# LICENSING COMMITTEE

Wednesday, 10th November, 2021  
6.30 pm





# LICENSING COMMITTEE

## COUNCIL CHAMBER, BURNLEY TOWN HALL

Wednesday, 10th November, 2021 at  
6.30 pm

Members are reminded that if they have detailed questions on individual reports, they are advised to contact the report authors in advance of the meeting.

Members of the public may ask a question, make a statement, or present a petition relating to any agenda item or any matter falling within the remit of the committee.

Notice in writing of the subject matter must be given to the Head of Legal & Democracy by 5.00pm three days before the meeting. Forms can be obtained for this purpose from the reception desk at Burnley Town Hall, Manchester Road or at the Contact Centre, Parker Lane, Burnley or from the web at: <http://burnley.moderngov.co.uk/ecCatDisplay.aspx?sch=doc&cat=13234> . You can also register to speak via the online agenda. Requests will be dealt with in the order in which they are received.

Due to Public Health guidance re social distancing there is a limit on the number of members of the public who can attend the meeting. You are advised to contact [democracy@burnley.gov.uk](mailto:democracy@burnley.gov.uk) in advance of the meeting.

### **AGENDA**

#### **1) Apologies**

To receive any apologies for absence.

#### **2) Minutes**

To approve as a correct record the Minutes of the last meeting as enclosed.

5 - 8

#### **3) Additional Items of Business**

To determine whether there are any additional items of business which, by reason of special circumstances, the Chair decides should be considered at the meeting as a matter of urgency

#### **4) Declaration of Interest**

#### **5) Exclusion of the Public**

To determine during which items, if any, the public are to be excluded from the meeting.

**6) Public Question Time**

To consider questions, statements or petitions from members of the public.

**7) Taxi Licence Fees 2022**

9 - 18

To determine the level of taxi licence fees effective from January 2022.

**8) Amendment to Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information**

19 - 46

To consider amending the Council's existing `Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information` (The Convictions Policy) in order to deliver compliance with the Department for Transport (DfT) 'Statutory Taxi and Private Hire Vehicle Standards' Published in July 2020.

**9) Gambling Act 2005 Burnley Borough Council Gambling Policy**

47 - 82

To seek Licensing Committee's endorsement of the draft Gambling Policy Statement.

**MEMBERSHIP OF COMMITTEE**

Councillor Jeff Sumner (Chair)  
Councillor Arif Khan (Vice-Chair)  
Councillor Howard Baker  
Councillor Frank Cant  
Councillor Ivor Emo  
Councillor Beatrice Foster  
Councillor Shah Hussain  
Councillor Karen Ingham

Councillor Anne Kelly  
Councillor Sehrish Lone  
Councillor Lorraine Mehanna  
Councillor Emma Payne  
Councillor Asif Raja  
Councillor Don Whitaker  
Councillor Andy Wight

**PUBLISHED**

Tuesday, 2 November 2021

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## LICENSING COMMITTEE

BURNLEY TOWN HALL

Wednesday, 23rd June, 2021 at 6.30 pm

### PRESENT

### MEMBERS

Councillors J Sumner (Chair), A Khan (Vice-Chair), H Baker, I Emo, B Foster, S Hussain, K Ingham, A Kelly, S Lone, L Mehanna, A Raja, D Whitaker and A Wight

### OFFICERS

Joanne Swift	– Head of Streetscene
Karen Davies	– Environmental Health and Licensing Manager
James Astin	– Workplace Compliance Officer
Howard Culshaw	– Legal Representative (Pendle Borough Council)
Alison McEwan	– Democracy Officer

### Welcome

The Chair welcomed everyone to the meeting, and introduced Mr Howard Culshaw from Pendle Borough Council who was providing legal support.

#### 22. Apologies

Apologies were received from Cllr Shbana Khan.

#### 23. Minutes

The minutes of the last meeting were accepted as a true record and signed by the Chair.

#### 24. Street trading Designation - Rossendale Road, Burnley

This item was withdrawn from the meeting.

#### 25. Gambling Act Policy-Approve for Consultation

The Environmental Health & Licensing Manager introduced the report which set out the requirement in the Gambling Act 2005 for Burnley Borough Council to update its Gambling Policy at least every 3 years – meaning that the policy needs to be revised and published

by 2<sup>nd</sup> January 2021. The report set out the steps that would be taken to meet this deadline.

A minor correction was noted to the Schedule of Consultees at Appendix A – the Head of Planning and Environment to be updated to the Head of Streetscene, Burnley Council.

## **DECISION**

That subject to the minor correction above, the draft policy at Appendix A is sent out to the relevant people and organisations for a formal 6 week consultation.

### **26. National Taxi Standards-Update**

The Licensing and Compliance Officer introduced a report setting out some of the immediate actions to help the Council deliver compliance with the Department for Transport (DfT) Statutory Taxi and Private Hire Vehicle Standards. A review of the convictions policy would also be required and the results of this would be brought back to committee at a future date.

## **DECISION**

The Committee resolved to:

- (i) Require 6 month DBS reviews for all drivers and annual DBS reviews for all operators via mandatory subscription to the DBS Update Service. To be implemented immediately for new applications, and at the first DBS renewal date for all existing licence-holders.
- (ii) Introduce a mandatory requirement of Safeguarding Awareness Refresher Training for driver's licence renewal applications. To be completed within 2 months of renewal.
- (iii) Require applicants for vehicle proprietor licences, who do not hold a Burnley BC driver or operator licence, or another vehicle licence where DBS conditions are met, to submit a basic DBS check with the application, and each year thereafter for as long as they retain a vehicle proprietor licence. To be effective from 1<sup>st</sup> July 2021.
- (iv) Introduce a condition requiring Private Hire Operators to retain a register of all booking/despatch operators, containing dates of annual DBS reviews, for as long as they remain in their employment. To be effective from 1<sup>st</sup> July 2021.
- (v) Consider at a future Licensing Committee any element of the DFT requirements relating to convictions that are more onerous than those contained in the existing convictions policy

### **27. Vehicle Standards Enforcement Options**

The Environmental Health & Licensing Manager introduced the report which contained a number of options in relation to increasing the safety of licensed vehicles within the taxi fleet.

## DECISION

It was resolved that:

1. The period of a vehicle licence be reduced to 4 months, increasing the number of routine inspections from 2 to 3 per annum, and
  - a. The 4 month Private Hire Vehicle licence fee be set at £52, and
  - b. The 4 month Hackney Carriage Vehicle fee be set at £83; and
2. The Committee recommends that Full Council amends the Council's Constitution to add revocation of vehicle licences to the Head of Legal and Democratic Services (HoL&DS) delegations as follows:  
At Part 3 1(b) Licensing Committee HoL&DS para 1(e)  
'To be responsible for the suspension and revocation of Hackney Carriage vehicle licences and Private Hire vehicle licences'; and
3. That the exceptional criteria policy be revised to apply the MOT inspection manual categories of 'dangerous', 'major' and 'minor' defects consistently to both the targeted intervention and exceptional condition criteria (which permits the licensing of hackney carriages up to 15 years).
4. The recommendation of the TTG to take no further action in relation to the request for extension to vehicle licences was noted.

## 28. Review of Interim Driver Licence Requirements

The Environmental Health & Licensing Manager introduced the report which updated members on the interim actions which had been taken to allow the licensing of drivers to continue in a COVID secure way.

## DECISION

It was resolved to:

- permanently introduce the option of Group 2 Medicals (with access to GP records) in the limited circumstances where the applicant's own GP is not offering the service,
- continue with the temporary Online Knowledge Tests (as prescribed by the Council) and Online safeguarding training (as prescribed by the Council) for a further 6 month period, before a further review, or if circumstances permit, resuming full safeguarding requirements.

In each case a 12 month licence will be issued.

## 29. Appointment of Sub Committees

The Democracy Officer introduced the report which set out the requirement to establish and appoint Members to two licensing sub-committees in order to deal with Licensing Act 2003 issues and Taxi Licensing issues.

### DECISION

It was resolved:

- (1) That a Licensing Act 2003 Sub Committee be established for the sub delegation of functions under the Licensing Act 2003 for a final hearing procedure;
- (2) That a Taxi Licensing Sub Committees be established for sub delegation of functions vested in the Licensing Committee relating to taxi licensing functions as set out in Part 3 of the Council's Constitution; and
- (3) That Members be appointed to the sub committees on a rotational basis subject to their availability.



## REPORT TO LICENSING COMMITTEE



DATE	10 <sup>th</sup> November 2021
PORTFOLIO	Community & Environment
REPORT AUTHOR	Joanne Swift
TEL NO	01282 425011
EMAIL	jswift@burnley.gov.uk

## Taxi Licence Fees 2022

### PURPOSE

1. To determine the level of taxi licence fees effective from January 2022.

### RECOMMENDATION

2. To propose the advertisement of fees as per Appendix A for the variation of fees for the following licences:  
Private Hire Operator (>50 vehicles), Private Hire Driver, Private Hire Vehicle, Hackney Carriage Driver and Hackney Carriage Vehicle.

### REASONS FOR RECOMMENDATION

3. To set fees to recover those costs which are permitted by legislation from the holders of taxi licences. The costs include issuing and administering all taxi licences, together with the costs of supervision and control of vehicle and operator licences, and the costs of inspection and provision of hackney ranks.

### SUMMARY OF KEY POINTS

4. Taxi licence fee setting is a function of the Licensing Committee. Sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 permit the Council to set driver, vehicle and operator licence fees to recover certain specified costs. The effect of the legislation is that the service must not generate a profit to the Council. There are some costs which cannot legally be recovered from fees and are borne by the Council's general fund.

5. Whenever it is proposed to vary vehicle and operator fees so that the fees exceed £25, the legislation requires that a 28 day public notice of the proposed fee must be advertised, within which time any person may object to the variations. The variation can be either up or down so that the resulting fee is greater than £25. Where no objections are made, or if all objections are withdrawn, the fees come into effect at the end of the 28 day period. Where objections are not withdrawn, the Council must consider the objections before determining the fee level and setting a further date, not later than two months after the first specified date, on which the new fees shall come into force.

As variations are proposed to vehicle fees, and a new fee is proposed for operators with more than 50 vehicles, the advertisement will be placed following the Committee's decision. Although there is no requirement to advertise variations in driver fees, nor consider objections, they will also be included in the advert.

6. In Burnley the vehicle test element is payable direct to one of the testing stations approved to carry out taxi testing, each testing station sets their own charges within a competitive marketplace. Compulsory safeguarding training (including refresher training) and knowledge tests for new drivers are also paid directly to the provider, as are the costs associated with DBS and medical checks.
7. In 2015 a comprehensive review of fees was carried out. This included agreeing a methodology with the trade to recover appropriate costs from each regime. It was agreed that fees would be revisited each year so that any significant shifts could be accommodated, with a fuller review at three years, to coincide with the length of the driver licences. As this takes into account the nature of the work carried out, it inevitably leads to variation in fees over time. This particularly affects the small number of hackney drivers that have to pick up costs associated with hackney activity. As this year marks the end of the agreed 3 year period a comprehensive review is due. This year's analysis is provided at Appendix B.

The change in fees over time is outlined in the table below.

Licence Type	2015	2016-2019	2020 & 2021	Proposed 2022
Private Hire Operator	£245 - £480 (annual)	5 year: £2660 1 year (special circumstances) :£543	5 year: £2156 1 year (special circumstances) :£477	5 year: £2156 1 year (special circumstances) :£477
Private Hire Operator >50 vehicles	(£480 annual)	N/A	N/A	5 year: £2372 1 year (special circumstances) :£525
Private Hire Operator (Single vehicle at Private Address)	£245 (annual)	5 year: £1250 1 year (special circumstances) : £261	5 year: £1250 1 year (special circumstances) : £261	5 year: £1250 1 year (special circumstances) : £261
Private Hire Driver	£240 (3 year) £82.50 (annual)	3 year: £144 1 year (special circumstances) : £64	3 year: £146 1 year (special circumstances) : £71	3 year: £237 1 year (special circumstances) : £100

Private Hire Vehicle (6 month)	£87	£77	N/A	N/A
Private Hire Vehicle (4 month)	N/A	N/A	£52	£41
Hackney Carriage Driver	£240 (3 year) £82.50 (annual)	3 year: £372 1 year (special circumstances) : £140	3 year: £366 1 year (special circumstances) : £144	3 year: £243 1 year (special circumstances) : £102
Hackney Carriage Vehicle (6 month)	£87	£155	N/A	N/A
Hackney Carriage Vehicle (4 month)	N/A	N/A	£83	£62
Vehicle Transfer of Ownership	£33	No additional charge	No additional charge	No additional charge
Operator change of address	£10.50	No additional charge	No additional charge	No additional charge
Change of Operator	£10.50	No additional charge	No additional charge	No additional charge
Dual Driver Licence Discount	£120	£45 (where both applications submitted together)	£45 (where both applications submitted together)	£45 (where both applications submitted together)

- 8 Fees have been reviewed against the backdrop of the coronavirus pandemic which has significantly changed the way the taxi licensing service has been delivered. Pre-pandemic licences were renewed face-to-face in the contact centre. In April 2020 provision was made for all expiring vehicle and driver licences to be extended or renewed for a period of 4 months. No charges were made at the time for vehicles, and the deficit has been written off. Driver fees were suspended until new processes could be introduced and were reinstated in August 2020. The new application process was by way of a dedicated post drop-box. Temporary arrangements were also agreed and implemented for medicals, safeguarding training and knowledge tests. This allowed taxi licensing functions to continue, albeit differently.
9. Taxi licence holders were able to obtain discretionary business grants through this period recognising the impact on their livelihoods. The pandemic also affected the work of the licensing team who spent more of their time supporting the trade in relation to business restrictions, advising regarding covid secure measures and self-isolation requirements at bases and in vehicles, promoting rapid testing, following up drivers testing positive for covid, acquiring and distributing face-covering signage and the provision of screens. The time spent on these activities was supported by covid funding and is not included in fees.

10. Throughout this same period the Council has been required to implement the 'Statutory taxi and private hire vehicle standards'. This has impacted on all licence types. Other policy matters have included the revision of Private Hire Operator conditions to permit more modern business models via Apps and call centres, and changes to vehicle conditions to promote improved public safety. Future policy reviews are planned in relation to the promotion of cleaner vehicles and accommodating new statutory HMRC checks into the pre-application processes. In addition to policy checks, licences will continue to be administered, compliance monitored and enforcement action taken where appropriate.
11. These workloads are taken into account when setting fees utilising the framework agreed with the trade via Taxi Task Group (TTG). Budgets are built up from zero, with costs taken into account that reflect work-streams over a three year period, and costs being allocated to the relevant regime(s) ie Private Hire driver, Hackney driver, Hackney Vehicle and Private Hire vehicle and Operator. The costs of each licence type are then recovered solely through fees for that particular regime. In order to avoid significant year on year shifts in fees, and provide some consistency with driver licences which have a 3 year duration, fees remain in place for a 3 year period where-ever possible. Various Council costs are not recovered through fees, effectively subsidising the service. This includes democracy costs relating to hearings and policy decision making.
12. Allocated costs reflect the work undertaken over the last couple of years and anticipate the work to come. Staffing cost allocations are informed by timesheets, which will continue to be utilised and feed into future fee setting reviews.
13. As outlined above, previously the relatively small numbers of hackney drivers and vehicles have been disproportionately affected by fees when hackney policies have been reviewed because they have had to bear all of the costs associated with that work. This was for example the case when the Hackney Carriage Bye-laws were amended. Recent policy reviews and work has been more evenly distributed across all regimes. This is reflected in this year's fee proposals which bring private hire & hackney driver fees into greater alignment. This by coincidence is comparable with driver fees in 2015. Vehicle licence costs have reduced across the board which will offset some of the impact of the increase on owner-drivers.
14. Operator costs have increased only slightly, and so fees for the majority will be retained, except for those operating more than 50 vehicles where a new fee with a 10% surcharge is introduced to pick up the additional cost and reflect the increased administrative burden arising from those businesses due to the number of vehicle and driver transfers which are included within the fee. In 20/21 there were 345 such transfers. This new fee recognises that the profile of businesses operating in the Borough has changed significantly in recent times as some of the larger operators have bought out other smaller companies.
15. **Illustrated examples of the proposed variation**  
As highlighted above the 'cost recovery' model is based on activities undertaken across each licence regime to determine a specific cost for each licence type. This provides transparency and is in accordance with our statutory obligations in respect of fee setting. The fee data provided at para 7 compares fees for each regime since 2015. As can be seen, and as expected, there is a fluctuation across all regimes reflecting the actual costs attributed to each regime over time. Whilst private hire operator fees initially increased in 2016, they have since reduced. Likewise Hackney Driver and Hackney Carriage Vehicle fees increased in 2016 and have since reduced. This year's calculations indicate a need to increase Private Hire Driver fees, whilst reducing private hire vehicle fees.

Whilst it is recognised this will have an impact on some licence-holders the example below looks at the comparative cost over 3 years for a private hire owner / driver. The 'like for like' cost for 2021 and the proposed fees for 2022 shows a potential saving;

	<b>2021 Costs (3 year)</b>	<b>2022 Costs (3 year)</b>
Private Hire Owner/Driver	1 PH driver Licence = £146 9 x PH vehicle licence @ £52 Total cost = £614	1 PH driver Licence = £237 9 x PH vehicle licence @ £41 Total cost = £606

16. As required by the legislation fees have been set to reflect the period of the licence as prescribed in law. In order to accommodate special circumstances, eg medical, hardship, temporary online training status etc, annual fees continue to be set so that shorter duration licences are available.
17. The Taxi Reserve is anticipated to be in surplus by approximately £4k at the end of this financial year.

#### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

18. The proposed fees seek to recover permitted costs in accordance with the Council's tax fee policy.

#### **POLICY IMPLICATIONS**

19. None.

#### **DETAILS OF CONSULTATION**

20. Taxi Task Group: The draft report was discussed at TTG on the 27<sup>th</sup> October, and the proposal endorsed. Whilst it was felt that now was not a good time to increase private hire driver fees, there was a recognition that there is a legal requirement to apportion costs and recover fees from each licence type, and that any delay in adjusting fees stores up problems for the future. The rationale was understood. It was noted that the statutory taxi and private hire vehicle standards have introduced additional checks on drivers which must be recovered from fees. The retention of an annual licence for hardship reasons (albeit with an additional admin fee) was welcomed as an alternative to the expense of a 3 year driver licence fee.
21. Trade Consultation: On 25<sup>th</sup> October a draft report was sent to all private hire operators, with a request to share with drivers, and all hackney vehicle drivers. No responses have been received.
22. Councillors Sumner, Khan & Foster

#### **BACKGROUND PAPERS**

DRAFT

23. None

**FURTHER INFORMATION**

**PLEASE CONTACT:**

**Joanne Swift**

**ALSO:**

**Karen Davies**

DRAFT

**TABLE OF FEES**

	<b>PROPOSED Jan 22</b>	<b>CURRENT</b>
Private Hire Operator (>1 & <50 vehicles)	5 year: £2156 1 year (*special circumstances):£477	5 year: £2156 1 year (*special circumstances):£477
Private Hire Operator >50 vehicles	5 year: £2372 1 year (*special circumstances):£525	5 year: £2156 1 year (*special circumstances):£477
Private Hire Operator (Single vehicle at Private Address)	5 year: £1250 1 year (*special circumstances): £261	5 year: £1250 1 year (*special circumstances): £261
Private Hire Driver	3 year: £237 1 year (*special circumstances ): £100	3 year: £146 1 year (*special circumstances ): £71
Private Hire Vehicle (4 month)	£41	£52
Hackney Carriage Driver	3 year: £243 1 year (*special circumstances): £102	3 year: £366 1 year (*special circumstances): £144
Hackney Carriage Vehicle (4 month)	£62	£83
Vehicle Transfer of Ownership	No additional charge	No additional charge
Operator change of address	No additional charge	No additional charge
Change of Operator	No additional charge	No additional charge
Dual Driver Licence Discount	£45 (where both applications submitted together)	£45 (where both applications submitted together)

**\*SPECIAL CIRCUMSTANCES** licences are available where medical, hardship or other special circumstances are put forward by the applicant.



APPENDIX B

**FINANCIAL ANALYSIS (Annual)**

		Detail Code	Annual	Total Included In Licence Fee (annually)		Private Hire Operators	Private Hire Drivers	Private Hire Vehicles	Hackney Carriage Drivers	Hackney Carriage Vehicles
Allocated Costs			£	£		£	£	£	£	£
	Equipment & Materi	1811	£8,566	£8,566						
	Printing & Stationery	1904	£40	£40		£1	£5	£22	£0	£2
	Legal & Professional	1952	£4,349	£4,349			£4,057		£292	
	Software	1979	£5,102	£5,102		£119	£2,749	£1,893	£186	£155
	Advertising	2032	£200	£200		£5	£108	£74	£7	£6
	Other Service Units	2101	£2,658	£2,658		£62	£1,432	£986	£97	£81
	Private Contractors	2106	£0	£0						
	Legal Services	2329	£361	£361						
	Customer Services	2330	£11,500	£11,500		£255	£2,751	£6,384	£198	£544
	Accountancy Service	2333	£3,475	£3,475		£77	£416	£1,929	£30	£164
	Postages	2352	£1,498	£1,498		£35	£808	£556	£55	£45
	Licensing Support	2375		£57,606		£11,147	£31,331	£10,838	£2,169	£2,122
	COMF	2378	-£27,100	-£9,033		-£667	-£4,267	-£3,833	-£133	-£133
	Other Special Items	2702	£1,175	£1,175				£1,083		£92
	<b>TOTAL ANNUAL COST</b>		<b>£11,824</b>	<b>£87,497</b>		<b>£11,033</b>	<b>£39,390</b>	<b>£19,932</b>	<b>£2,900</b>	<b>£3,078</b>
<b>Info from Lalpac</b>										
	No licences in force 22/9/21					23	533	367	36	30
	Total no of Licences issued 2020/21					32	167	775	12	66
	Allocated Cost per licence					£434	£236	£26	£242	£47
<b>Direct Costs</b>										
				Unit Prices £						
	Plate Platform			£6						
	Flexi Plate			£3				£3		£3
	PH Plate			£5				£5		
	HC Plate			£5						£5
	Buttons			£2				£2		£2
	HC Roundels			£5						£5
	PH Roundels			£5				£5		
	Badge			£1			£1		£1	
	Total Direct Costs					£0	£1	£15	£1	£15
	Total direct costs recovered						£167	£11,625	£12	£990
	Licence duration (yrs)					£5	£3		£3	
	<b>Total License Cost</b>					<b>£2,169</b>	<b>£237</b>	<b>£41</b>	<b>£243</b>	<b>£62</b>
<b>Special circs Cases</b>										
	Duration (years)					£5	£3		£3	
	annual proportion					£434	£79		£81	
	plus extra admin					£20	£20		£20	
	plus extra direct costs					£0	£1		£1	
	<b>To Be Paid Annually</b>					<b>£454</b>	<b>£100</b>		<b>£102</b>	

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## REPORT TO LICENSING COMMITTEE



DATE	10 <sup>th</sup> November 2021
PORTFOLIO	Community & Environment
REPORT AUTHOR	James Astin
TEL NO	01143 999 055
EMAIL	jastin@burnley.gov.uk

### Amendment to Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information.

#### PURPOSE

1. To consider amending the Council's existing 'Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information' (The Convictions Policy) in order to deliver compliance with the Department for Transport (DfT) 'Statutory Taxi and Private Hire Vehicle Standards' - Published in July 2020.

#### RECOMMENDATION

2. That Licensing Committee approves the amended 'Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information' set out at Appendix B, with immediate effect.

That the Licensing Committee delegates to the Head of Legal & Democracy, in consultation with the Chair of Licensing, the power to make necessary changes to the Taxi Licensing - Policy Guidelines in response to any national review of road traffic legislation which results in an offence being awarded more or fewer penalty points, by re-categorising such offence as major/ minor or hybrid within the Policy guidelines.

#### REASONS FOR RECOMMENDATION

- 3 To ensure that the Council's Convictions Policy reflects, as a minimum standard, the national statutory standard.

#### SUMMARY OF KEY POINTS

- 4 Overall, implementation of the DfT recommendations has been a significant piece of work requiring a substantial period of time to scrutinise all the information contained within the body of the DfT guidance document.

Following previous reports on the changes to Council policy and licence conditions that have

been necessary to reflect the statutory standards that were approved at a previous Licensing Committee meeting on 23<sup>rd</sup> June 2021, this report considers those parts of the national standards relating to convictions. This was outlined to members at that meeting in Section 8 of the Committee Report under the heading '**NEXT STEPS**' that compliance with the DfT recommendations required a review of the existing 'Conviction Policy'.

In doing so, this completes the Council's implementation of the national standards.

The main focus of the DfT recommendations centres on Safeguarding and the risk of abuse and exploitation of children and vulnerable adults. Whilst these occurrences are rare, links between the trade and sexual abuse, human trafficking, modern day slavery and exploitation have been established. The DfT recognises Taxi workers are in a position of trust when dealing with the public. Appropriate and robust measures are therefore necessary to maintain public safety and public confidence in the valuable services the trade offers across the community.

Although the existing policy is robust in comparison to the framework of the DfT guidance, the recommended amendments will serve as a benchmark and provide strength to our existing Conviction Policy.

The Council's convictions policy guides Members and officers to be consistent when considering whether or not an applicant, or an existing licence holder, is a fit and proper person to hold a licence, by setting tariffs for particular offences and circumstances. The Council's policy has been carefully considered against the national standard, and whilst they are generally either in line, or less strict than the Council's policy, there are a small number of areas when the national standard sets a higher tariff, or identifies offences not included in current policy. Where the Council's policy specifies offences not detailed in the national standard they have been retained, in order to provide improved guidance on those matters already determined by local decision making.

The convictions policy provides guidance to any person with an interest in public and private hire licensing including:

- Applicants for new driver and operator licenses
- Existing licensed holders whose licences are being reviewed or renewed
- Licensing officers
- Lancashire Constabulary
- Members of the licensing committee (or other relevant decision making body)
- Magistrates hearing appeals against local authority decisions

The amended version of the policy reflects the extended scope of the national standard, and extends the convictions policy to include:

- Applicants for Vehicle licences
- Existing Vehicle licence holders whose licences are being renewed

- 5 The DfT guidance document lists offence categories in the ANNEX – Assessment Of Previous Convictions (Page 35).

For ease of reference, a copy of the ANNEX is provided at Appendix A.

A copy of the proposed 'Conviction Policy' is available at Appendix B, with relevant changes highlighted. To assist the following key has been used:

**YELLOW** – Signifies new text that has been added or text that has been amended including relevant offences and the tariff applied to comply with the DfT recommendations. The highlights are to assist members navigating around the conviction policy and will be removed once the recommendations have been agreed.

**GREEN** – Signifies where exemptions apply to specific licence applicants.

**BLUE** - Signifies the correct section of the conviction policy the reader should refer to in respect of the tariff applied to this offence i.e. causing death by dangerous or careless driving and aggravated vehicle taking.

In summary, attention is drawn to the following points:

- i. Applicants for **all** hackney carriage and private hire licences should be subject to a 'fit & proper' test by application of the 'Conviction Policy' unless exemptions apply (see paragraph 6 below).
  - ii. Where any national review of Traffic Legislation leads to an offence being awarded more, or less penalty points, then the offence will be re-categorised accordingly within the body of the 'Conviction Policy' without the need for future consideration and agreement by Licensing Committee.
  - iii. The offence of Using A Mobile Device While Driving (Offence Code CU80) is singled out for a more onerous tariff of 5 years where a licence would not normally be granted. The rationale behind this is not explained in the guidance document. It can possibly be assumed to be due to the regularity of drivers having more cause to use in-car radios and hand held devices for communication purposes whilst driving.
- 6 It is recognised that a small minority of operators and vehicle licence holders/vehicle proprietors are not licenced as drivers. In these circumstances, the DfT guidance document recommends an exemption from the traffic offences in Category E. - Motoring Convictions. This is due to the licence applicant either not driving hackney carriage or private hire vehicles themselves or not directly involved with members of the public requiring the services of a driver of such a vehicle.

However, this exemption does not extend to motoring convictions which have caused death by dangerous or careless driving which are so serious that consideration has been given to their inclusion in offences under Offence Category B. - Violence (Other Than Sexual & Indecency Offences).

This exemption corresponds with the DfT ANNEX – Assessment Of Previous Convictions which states:

***'Crimes resulting in death***

*Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed'.*

## FINANCIAL IMPLICATIONS AND BUDGET PROVISION

7 None

## POLICY IMPLICATIONS

8 Determination of hackney carriage and private hire licences is the responsibility of the Licensing Committee

## DETAILS OF CONSULTATION

9 Chair of Licensing Committee – Cllr Jeff Sumner  
Vice Chair of Licensing Committee – Cllr Arif Khan  
Executive Member For Community & Environmental Services – Cllr Bea Foster  
Taxi Task Group Trade Representatives

## BACKGROUND PAPERS

10 [Statutory & Best Practice Guidance for taxi and PHV licensing authorities \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

## FURTHER INFORMATION

PLEASE CONTACT:

James Astin

ALSO:

Karen Davies

**Annex – Assessment of Previous Convictions**

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is 'fit and proper' to hold a taxi or private hire vehicle licence. The following recommendations to licensing authorities on previous convictions reflect this.

Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial consideration of their application. Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

**Crimes resulting in death**

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

**Exploitation**

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

**Offences involving violence against the person**

Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

**Possession of a weapon**

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

**Sexual offences**

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted. In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

**Dishonesty**

Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

## **Drugs**

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

## **Discrimination**

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

## **Motoring convictions**

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally. Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

## **Drink driving/driving under the influence of drugs**

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

## **Using a hand-held device whilst driving**

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.





## TAXI LICENSING – POLICY GUIDELINES TO FITNESS AND PROPRIETY INCLUDING CONVICTIONS AND OTHER RELEVANT INFORMATION

Key to highlighting:

**YELLOW** – Signifies new text that has been added or text that has been amended including relevant offences and the tariff applied to comply with the DFT recommendations. The highlights are to assist members navigating around the conviction policy and will be removed once the recommendations have been agreed.

**GREEN** – Signifies where exemptions apply to specific licence applicants.

**BLUE** - Signifies the correct section of the conviction policy the reader should refer to in respect of the tariff applied to this offence ie causing death by dangerous or careless driving & aggravated vehicle taking.

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

**This document aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:**

- Applicants for drivers' Licences
- Existing licensed drivers whose Licences are being reviewed
- Applicants for Operator's Licences
- Existing licenced Operator's whose licences are being renewed
- Applicants for Vehicle licences
- Existing Vehicle licence holders whose licences are being renewed
- Licensing Officers
- Members of the Licensing Committee
- Magistrates hearing appeals against local authority decisions
- Lancashire Constabulary

**Where Officers have delegated powers to grant or refuse Licences, they will utilise these guidelines when making a decision to grant a Licence. In other cases Applications for Licences will be referred to the Licensing Committee.**

**Whilst Officers and the Committee will have regard to the guidelines contained in the policy, each case will be considered on its Individual merits and, where the circumstances demand, the Committee/Officer may depart from the guidelines.**

### Background

1. In this Policy the following words have the following meanings:
  - a. "Applicant" means a person applying for a Licence, an existing Licence Holder applying for renewal of a Licence, or an existing Licence Holder whose Licence is subject to a decision by the Council to revoke, suspend or take no further action

- b. "Application" means an Application for a Licence, an Application for renewal of a Licence, or a decision by the Council to revoke, suspend or take no further action in respect of an existing Licence
- c. "Conviction" means a conviction, caution or formal warning and endorsable fixed penalty
- d. "Council" means Burnley Borough Council
- e. "Driver" means a person applying for a Licence or a Licence Holder
- f. "Individual" includes an existing Licence Holder, an applicant for a new Licence, and an Applicant for the renewal of an existing Licence
- g. "Issue" includes any complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal). E.g. incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities)
- h. "Licence" means a Licence to drive a hackney carriage or a private hire vehicle.
- i. "Licence Holder" means the holder of a current valid Licence granted by the Council

2. Where this Policy refers to a period free of Conviction:

- (A) Subject to paragraph (B), that period is to be calculated as commencing on the later of –
  - a) the date of the Conviction (or where the Conviction is appealed, the date on which the appeal is finally disposed of or withdrawn or fails for want of prosecution);
  - b) in the case of a Licence Holder, the date the Conviction was reported to the Council;
  - c) in the case of a Licence Holder, the date the Council became aware of the conviction from any other source;
  - d) the date any custodial sentence was completed; or
  - e) the end date of any period of disqualification from driving

and ending on the date of determination of the Application.

- (B) In the case of:
  - i) a refusal to renew a licence; or
  - ii) a suspension or revocation of a Licence other than a suspension or revocation which has immediate effect by virtue of section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976

where the decision to refuse to renew, suspend or revoke is appealed, the period free of Conviction as calculated in accordance with paragraph (A) shall be extended by the period of time equal to the length of period of time commencing on the date of the decision in respect of which such appeal proceedings are commenced and ending on the date on which that appeal is disposed of or withdrawn or fails for want of prosecution, and the end date of the period free of Conviction shall be calculated accordingly.

3. Licences for drivers of hackney carriages or private hire vehicles may only be granted where the Council is satisfied that the Individual is a fit and proper person to hold such a Licence.
4. The document is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous Convictions and cautions.
5. The Council is concerned to ensure:
  - a. That a person is a fit and proper person.
  - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
  - c. The safeguarding of children and young persons and vulnerable adults.
6. The public are not normally permitted to attend Committee hearings for private hire or hackney carriage drivers Applications however, in determining whether to grant a Licence the committee or officers will take into account the human rights of the wider public and balance these against the human rights of the Applicant.
7. When submitting an Application, Individuals are required to declare all previous Convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all fixed penalties and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution. It is an offence for any person knowingly or recklessly making a false declaration or to omit any material particular in giving information required by the Application for a Licence. Where an Applicant has made a false statement or a false declaration on their Application for the grant or renewal of a Licence, the Licence will normally be refused. Further applications from the same person will not normally be granted within 6 months of the date of the initial refusal.
8. The information given will be treated in confidence and will only be taken into account in relation to the relevant Application to assist the Council in determining whether the Applicant is a fit and proper person to hold a Licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a Licence).
9. Applicants for a Licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the licensing section will where appropriate contact other agencies for any other information which they may hold for instance, the Council's Housing Service, Lancashire County Council Children's Services and Lancashire Constabulary. Information received from the Disclosure Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the Application is determined or any appeal against such determination is decided.

10. The disclosure of a criminal Convictions or other relevant information relating to an Individual's conduct will not necessarily debar an Individual from being granted, retaining or renewing a Licence. It will depend on whether or not the Individual can satisfy the Council that they are a fit and proper person to hold such a Licence.
11. The Council may fail to be satisfied that an Individual is a fit and proper person to hold a Licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a Licence.
12. In considering evidence of an Individual's good character and fitness to hold a Licence, where previous Convictions or other information relating to criminal matters/character is disclosed, the Council will consider the nature of the offence/Issue and penalty. When it was committed/took place, the date of Conviction/Issue and the length of time which has elapsed, the Individuals age when the offence was committed/Issue took place whether or not it is part of a pattern of criminal behaviour, the intent, the harm which was, or could have been caused and any other factors which might be relevant. Where an Individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*]
13. The Council has adopted the following guidelines relating to the relevance of Convictions to which it refers in determining Applications for Licences and when considering whether to take any action against an existing Licence Holder, and references to the grant of a licence in these guidelines shall be construed accordingly.
14. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an Individual. If an Individual has a Conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 12 when deciding whether any action should be taken.
15. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.
16. The guidelines are not an attempt to define what a "fit and proper person" is.
17. Any Individual who is refused a Licence or has such a Licence suspended or revoked has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.

## **GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION**

### **General Policy**

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers are fit and proper persons to hold Licences. One aspect of that is the extent to which previous Convictions, including but not limited to Convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and would not take advantage of passengers or abuse or assault them.
3. The Council has a duty to take into account any complaints made to the Council, Police, licensed Operators or any other agency, breaches of licensing conditions and any intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal, e.g.
  - a) incidents that have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities.
  - b) Incidents that have resulted in the suspension or revocation of a licence which has been issued by another Council.
4. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
5. An Individual with a Conviction for a serious offence need not be automatically barred from obtaining a Licence, but would normally be expected to:
  - a. Remain free of Conviction for an appropriate period; and
  - b. Show adequate evidence that he or she is a fit and proper person to hold a Licence (the onus is on the Applicant to produce such evidence). A person with a Conviction for a single serious offence or a number of separate offences is not barred from applying for a private hire or hackney carriage driver Licence, but would normally be expected to remain free from Conviction for an appropriate period (which will depend on the nature of the offence.)
  - c. Simply remaining free of Conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a Licence.
6. Some discretion may be appropriate if the offence is an isolated one with mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. (In any case which involves certain specified sexual offences, murder or manslaughter a Licence will normally be refused.)

7. In relation to the period that a driver is expected to remain free of Conviction as detailed in paragraphs A-D and F, if an Applicant has more than 1 Conviction for any of the offences listed, the period free of Conviction will increase by 1 year per additional offence.

8. Where the Licensing Committee convene to consider an Application they may do so by:

a. Hearing with notice – Notice of the time and date when a committee will be convened will be given to the Applicant ahead of the date listed in order to allow the person to seek independent legal advice and to attend and be represented at the hearing. The procedure to be followed will be provided to the Applicant with the notice.

b. Ex-parte hearing – which will take place in accordance with the Ex-parte hearings policy. In exceptional circumstances relevant information will be assessed to balance a person's right to a fair hearing against whether or not it is in the public interest to hold the hearing ex-parte.

9. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.

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

## A. OFFENCE OF DISHONESTY

Applicants are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people and children.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing, passengers may include especially vulnerable people. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any Convictions involving dishonesty.

In general, a minimum period of 5 years free of conviction should be required before granting a Licence.

Offences involving dishonesty include (but are not limited to);

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one Conviction for a dishonesty offence.

Applicants that are found to have intentionally misled the council, or lied as part of the Application process, will not be issued with a Licence.

## **B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)**

Licensed drivers have close, regular contact with the public. A firm line is to be taken with those who have Convictions for offences involving violence. An Application will normally be refused if the Applicant has a Conviction for an offence that involved the loss of life.

Unless there are exceptional circumstances a Licence will not normally be granted where the Applicant has a Conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence or similar offence(s) which replace the below offences and the Conviction is less than 10 years prior to the date of Application:

- Arson
- Malicious wounding
- Actual bodily harm which is racially aggravated
- Grievous bodily harm
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Human Trafficking Offences
- Modern Day Slavery Offences
- Possession of Offensive Weapon
- Causing death by dangerous driving
- Causing death by careless driving
- Or any similar offences (including attempted or conspiracy to commit), or offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence or similar offence(s) which replace the below offences and the Conviction is less than 5 years prior to the date of Application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Hate Crime Offences
- Offences of Discrimination
- Possession of a bladed article



- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one Conviction for an offence of a violent nature.

Draft

## C. DRUGS

An Application from an Individual who has a Conviction related to the supply, intent to supply or production of drugs and the Conviction is less than 10 years prior to the date of Application will generally be refused

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class A drugs or permitting premises to be used for drug activity within the last 7 years will generally be refused. A Conviction less than 10 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class B drugs within the last 5 years will generally be refused. A Conviction less than 7 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class C drugs within the last 3 years will generally be refused. A Conviction less than 5 years old will be referred to the Committee for determination. .

An Application will normally be refused where the Individual has more than one Conviction for a drugs related offence

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from substance abuse after detoxification treatment as required by the Council.

## D. SEXUAL AND INDECENCY OFFENCES

As licensed drivers often carry unaccompanied and vulnerable passengers, the licensing authority will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. All sexual and indecency offences will be considered as serious. Applicants with Convictions for sexual or indecency offences that involve a third party will normally be refused a Licence. Such offences include (but are not limited to);

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Offences involving Sexual Exploitation
- Possession of indecent photographs, child pornography etc.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver

Any Individual currently registered on the Sex Offenders' Register or DBS Adult Barred List or DBS Children's Barred List would not normally be granted a Licence.

### **Intelligence and other information which has not resulted in a criminal conviction**

The Council will sometimes be made aware of other intelligence or low level information about an Individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Any additional information gathered through this process may then be taken into account.

## E. MOTORING CONVICTIONS

(Applicants from a vehicle proprietor who does not hold any other hackney carriage or private hire licence issued by Burnley Borough Council will normally be exempt from this conviction category unless otherwise stated)

### I. Major Traffic Offences

- a. Where a major traffic offence Conviction is within 3 years prior to the date of the Application the Application will normally be refused.
- b. However where a Conviction for an offence of Using A Mobile Device While Driving (Offence Code CU80) within 5 years prior to the date of the Application, then the application will normally be refused.
- c. An isolated major traffic offence Conviction, occurring prior to these timescales, without disqualification, for an offence such as dangerous driving will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of drivers.
- d. Applications where there is more than one Conviction for this type of offence within the last 5 years will normally be refused.
- e. Applicants where the conviction relates to causing death by dangerous or careless driving are **not** included in this category. (Refer to Offence Category B – Violence (Other Than Sexual & Indecency Offences))
- f. A list of offences to which this paragraph applies is attached as **Appendix I**.

### II. Minor Traffic Offences

- a. Isolated Convictions for minor traffic offences should not normally prevent an Application from being granted. However, the number, type and frequency of this type of offence will be taken into account and if there is more than 1 offence of this nature the Applicant will normally be expected to show a period free of Conviction of at least 6 months.
- b. In particular, an Application will normally be refused where the Applicant has 12 or more penalty points on his DVLA Licence (whether or not the Applicant was convicted by a court for the offences for which the points were imposed) or where the Applicant has more than one Conviction for this type of offence within the last 6 months.
- c. A list of offences to which this paragraph applies is attached as **Appendix II**.

### III. Hybrid Traffic Offences

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

## **IV. Disqualification**

### **Major Traffic Offence**

An application will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 7 years where the disqualification relates to driving whilst over the prescribed limit or driving whilst unfit through drink or drugs.

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from substance abuse after detoxification treatment as required by the Council.

### **Minor Traffic Offence**

An application will generally be refused unless the individual can show a period free from conviction has elapsed from the restoration of the DVLA licence which is equal to the period of disqualification imposed by the court i.e. 3 month disqualification = 3 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for a minor traffic offence(s).

### **Hybrid Traffic Offence**

An application will generally be refused unless the individual can show a period free from conviction has elapsed from the restoration of the DVLA licence which is twice the period of disqualification imposed by the court. e.g. 3 month disqualification = 6 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for hybrid traffic offence(s).

### **Totting Up**

TT99 Totting up – if the total of penalty points reaches 12 or more within 3 years the driver is liable to disqualification by the Court.

### **Totting up With Disqualification**

An application will generally be refused unless the individual can show a period of at least 12 month free from conviction has elapsed from the restoration of the DVLA licence.

Where any of the offences which contribute to a totting up disqualification are a Major Traffic Offence the Council will consider the application under “Disqualification – major traffic offence”

### **Totting up without Disqualification**

In “totting-up” cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver the Council is likely to refuse driver’s Licence because different criteria apply and an Applicant will normally be expected to show a period of at least 12 months free from Conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

In these circumstances the Council will consider the application as a disqualification for the most serious of the offences contributing to the totting up (e.g. where the offences contributing to the totting up are SP30, SP80 and IN10 the Council would consider IN10 under ‘Disqualification – Major Traffic Offence’).

**F. OFFENCES UNDER THE TOWN POLICE CLAUSES ACTS AND**

**PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

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

In particular, an Applicant will normally be refused a Licence where (s)he has been Convicted of an offence under the Acts at any time during the 2 years preceding the Application or has more than one Conviction within the last 5 years preceding the date of the Application.

Draft

## G. DRUNKENNESS

### **Not in a motor vehicle**

An isolated Conviction for drunkenness need not debar an Applicant from being granted a Licence. In some cases, a warning may be appropriate. However, more than 1 Conviction in the last 2 years will merit a refusal.

In addition the Applicant will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

Draft



## H. SPENT CONVICTIONS

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.

The Council will only consider spent Convictions if it appears to be relevant for deciding whether the Applicant is a fit and proper person to hold a Licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent Conviction. The council will in its consideration the nature of the offence(s), the history or pattern of offending, the lapse of time and whether all the convictions have previously been considered

Draft

**MAJOR TRAFFIC OFFENCES**  
(Paragraph (E,I) refers)

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of court
BA30	Attempting to drive while disqualified by order of court
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
CD71	Causing death by careless driving then failing to provide a specimen for analysis
CD90	Causing death by driving; unlicensed, disqualified or uninsured drivers
CU80	Using a mobile phone whilst driving a motor vehicle
DD10	Causing serious injury by dangerous driving
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive when unfit through drugs
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR61	Failure to provide a specimen for drug analysis in circumstances other than driving or attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability

LC50 Driving after a licence has been revoked or refused on medical grounds

MS50 Motor racing on the highway

MS60 Offences not covered by other codes

MS90 Failure to give information as to identity of driver etc.

**UT50 Aggravated taking of a vehicle**

*Aiding, abetting, counselling or procuring*

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

*Causing or permitting*

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

*Inciting*

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

**NOTE:**

**For CD and DD offences, please refer to Offence Category B – Violence (Other Than Sexual & Indecency Offences)**

**For UT offence, please refer to Offence Category A – Offences of Dishonesty**

## Appendix II

### MINOR TRAFFIC OFFENCES (Paragraph (E,II) refers)

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

#### *Aiding, abetting, counselling or procuring*

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

#### *Causing or permitting*

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

#### *Inciting*

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

**HYBRID TRAFFIC OFFENCES**  
*(Paragraph (E,III) refers)*

- CD10 Driving without due care and attention
- CD20 Driving without reasonable consideration for other road users
- CD30 Driving without due care and attention or without reasonable consideration for other road users
  
- CU10 Using vehicle with defective brakes
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
- CU30 Using a vehicle with defective tyre(s)
- CU40 Using a vehicle with defective steering
- CU50 Causing or likely to cause danger by reason of load or passengers
  
- LC20 Driving otherwise than in accordance with a Licence
  
- SP10 Exceeding goods vehicle speed limit
- SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
- SP30 Exceeding statutory speed limit on a public road
- SP40 Exceeding passenger vehicle speed limit
- SP50 Exceeding speed limit on a motorway
- SP60 Undefined speed limit offence

*Aiding, abetting, counselling or procuring*

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

*Causing or permitting*

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

*Inciting*

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

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## REPORT TO LICENSING COMMITTEE



<b>DATE</b>	<b>November 2021</b>
<b>PORTFOLIO</b>	<b>Community &amp; Environment</b>
<b>REPORT AUTHOR</b>	<b>John Clucas</b>
<b>TEL NO</b>	<b>0114 3999061</b>
<b>EMAIL</b>	<b>jclucas@burnley.gov.uk</b>

### Gambling Act 2005 Burnley Borough Council Gambling Policy

#### PURPOSE

1. To seek Licensing Committee`s endorsement of the draft Gambling Policy Statement.

#### RECOMMENDATION

2. That Licensing Committee recommend that Full Council approve the draft Gambling Polict Statement at Appendix A.

#### REASONS FOR RECOMMENDATION

3. To comply with the 3 year review required by the Gambling Act 2005.

#### SUMMARY OF KEY POINTS

- 6 The Gambling Act 2005 requires Burnley Borough Council to update its Gambling Policy at least every 3 years. In order to meet this requirement the revised policy should be published before the 2<sup>nd</sup> January 2022.

There is a requirement when updating the policy that it is sent out to relevant authorities as part of a statutory consultation process. The Licensing Committee agreed the draft policy prior to consultation, (on the 23<sup>rd</sup> June 2021) which is now complete. A formal 6 week consultation period included distribution to relevant people and organisations, publication on the Councils website inviting comments, and a press release. No comments were received and no changes have been made as a result of the consultation. The policy now needs to be considered by the Licensing Committee and a recommendation made to Full Council.

Scrutiny and the Executive will also be consulted before the policy is placed before Full Council for approval in December 2021.

There is currently a national review of the Gambling Act 2005 which may impact on this

policy, and if that is the case any relevant changes will be incorporated into the Councils Policy at a later date.

There are only minor changes in this policy compared with the current version in place.

To assist Members and consultees the amended parts of the policy have been highlighted.

#### **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

. None

#### **POLICY IMPLICATIONS**

8. The Policy once agreed will replace the Gambling Policy 2019-2021, and become effective from 2<sup>nd</sup> January 2022.

#### **DETAILS OF CONSULTATION**

9. The formal consultation has been completed.

#### **BACKGROUND PAPERS**

10. Burnley Borough Council Gambling Policy (Draft post formal consultation) 2022-2026

#### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**John Clucas ext 249061  
Karen Davies ext 249058**





# Gambling Act 2005

## **POLICY STATEMENT**

**January 2022 to December 2024**

**Burnley Borough Council**  
**Gambling Act 2005**  
**Policy statement Jan 2022 to Dec 2024**

**THE LICENSING OBJECTIVES**

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling

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## 1. Introduction

- 1.1 This **policy statement** has been published as a consequence of:
- It being a requirement under Section 349 of the Gambling Act 2005 that dictates all licensing authorities to prepare and publish a statement of licensing principles that they propose to apply in exercising their functions under the Act, commonly known as a policy statement.
  - The policy statement forms the licensing authority's mandate for managing local gambling provision and sets out how the licensing authority views the local risk environment and therefore its expectations in relation to operators with premises in the locality.
  - The Policy Statement has to be approved by the Executive and the Full Council of Burnley Borough Council and need to be revised and updated at least every three years.
- 1.2 All references to the Gambling Commission's Guidance for local authorities refer to the **Guidance published on the Gambling Commission website**.
- 1.3 The Gambling Act 2005 (the Act) has appointed Burnley Borough Council as a Licensing Authority. We will regulate gambling with integrity in the public interest.
- 1.4 We are committed to avoiding duplication with other legislation and regulatory regimes as far as possible, and will not replicate issues in this **policy statement**, which are already legal requirements under other legislation such as health and safety and fire precautions.
- 1.5 This **policy statement** has been developed after having regard to the statutory guidance from the Gambling Commission and having given appropriate weight to the views of persons and organisations consulted.
- 1.6 The Council will delegate all functions under the Act to the Licensing Committee, except those functions, which by law must be dealt with by the Council as a whole such as fee levels and the approval of this policy statement.
- 1.7 Section 349 of the Act requires the Licensing Authority to publish a **policy statement** that we will apply in exercising our functions under the Act. This statement fulfils that statutory requirement.
- 1.8 This policy statement will be applied during the 3-year period from 3<sup>rd</sup> January **2022** until 31<sup>st</sup> December 2024 and during that time will be kept under review and revised when and if appropriate.
- 1.9 This document should be read in conjunction with the Act, Regulations made under the Act and Guidance issued by the Gambling Commission. This statement is designed to be a strategic gambling policy, not an operational guide to the Act.

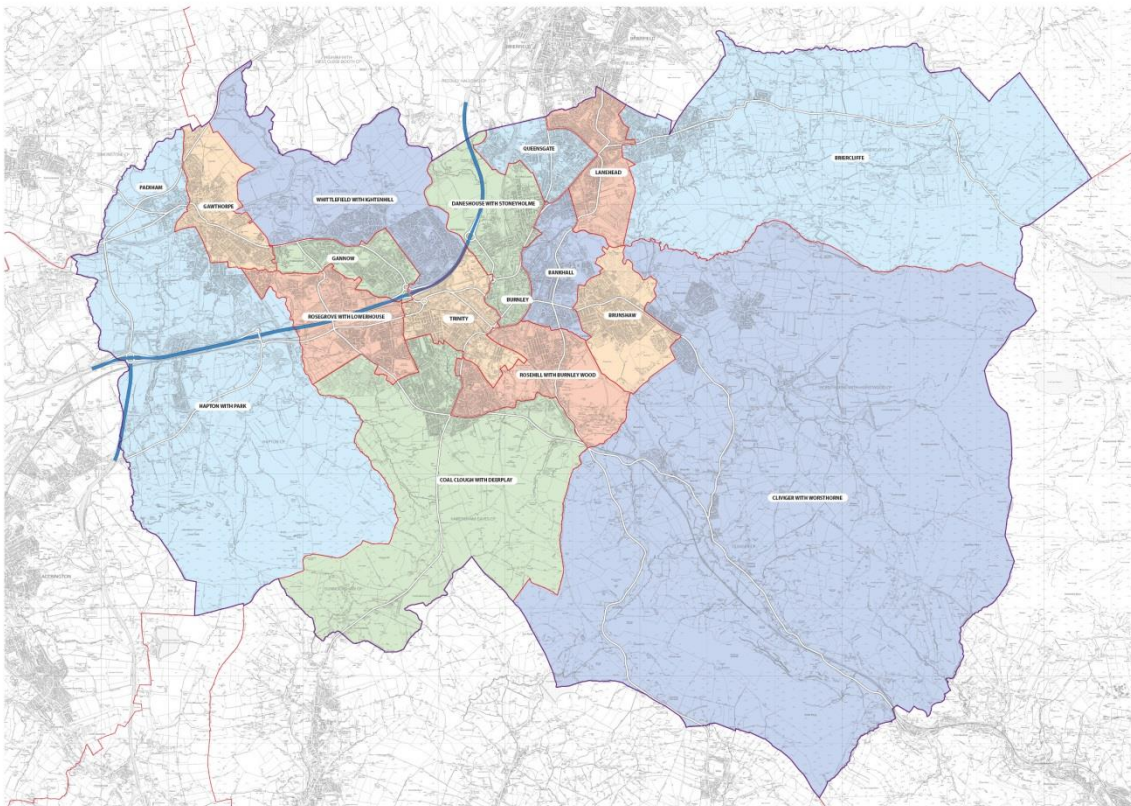
- 1.10 In exercising our functions under the Gambling Act 2005, Burnley Borough Council as a licensing authority will have regard to the statutory licensing objectives, which are;
- **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**
  - **Ensuring that gambling is conducted in a fair and open way**
  - **Protecting children and other vulnerable persons from being harmed or exploited by gambling**
- 1.11 We are aware that Section 153 of the Act requires us, in making decisions concerning premises licences and temporary use notices, to aim to permit the use of premises for gambling in so far as we think it is:
- In accordance with any relevant code of practice issued by the Gambling Commission
  - In accordance with any relevant guidance issued by the Gambling Commission
  - Reasonably consistent with the statutory licensing objectives and
  - In accordance with this **policy statement**
- 1.12 Nothing in this policy will override the right of any person to make an application under the Act and have that application considered on its individual merits. Equally, nothing in this policy will undermine the right of any person to make representations on an application, or seek a review of a licence where there is a legal power to do so.
- 1.13 Previous legislation required that the grant of certain gambling permissions should take account of whether there was an unfulfilled demand for gambling facilities. We acknowledge that under the Act, unmet demand is not a criterion for a Licensing Authority in considering an application.
- 1.14 We appreciate that gambling can be an emotive subject but acknowledge that, in accordance with Gambling Commission Guidance for Local Authorities, “considerations such as moral or ethical nuisance, objections to gambling are not a valid reason to reject applications for premises licences “. Except in respect of a Casino resolution under Section 166 of the Act, and also that unmet demand is not a criterion for a Licensing Authority.
- 1.15 We will therefore consider any application in accordance with the Act, on its individual merits without regard to demand or moral objections to gambling in general.

## 2. A Profile of Burnley

2.1 Burnley Borough Council is situated in the County of Lancashire and is one of 14 Councils within the County. Burnley has an estimated population of 91,000 contained within an area of 43 square miles. (Information from Census 2011)

2.2 The population profile is illustrated below;

Years of Age	0-14	15-24	25-44	45-64	65+
Percentage of Population	18.4%	12.9%	26.1%	26.3%	16.3%



2.3 The lifeblood of the area is its industry, which is concentrated in the urban cores of Burnley and Padiham.

In post-war years there has been a diversification away from textiles to engineering and the newer technology industries. Much of the Borough is rural in character, and there are 7 parish councils.

The M65 motorway provides easy access to the Lancashire coast, the Lake District, as well as the cities of Manchester, Leeds and Liverpool.

2.4 The Council wants to make the borough a place of choice. It will be a place where businesses want to invest, because of its skilled workforce and its competitive, modern economy. It will be a place where people want to live because of its clean and safe neighbourhoods, its reputation as a centre of educational excellence, and its beautiful parks and wild countryside.

### 3. The Policy Statement and Consultation

- 3.1 Burnley Borough Council is required by the Gambling Act 2005 to publish a policy statement, which we propose to apply when exercising our functions. This statement must be published at least every three years. The policy statement must also be reviewed from “time to time” and any amended parts re-consulted upon and the statement must be then re-published.
- 3.2 This policy statement has been published following extensive consultation. A list of the persons we have sent this document to is attached at **Appendix A**.
- 3.3 The Gambling Act requires that the following parties be consulted by Licensing Authorities:
- The Chief Officer of Police
  - One or more persons who appear to the authority represent the interests of persons carrying on gambling businesses in the authority’s area
  - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority’s functions under the Gambling Act 2005
- 3.4 Our consultation took place between July and October 2021 and we have followed best practice as set out by the Department for Business, Innovation and Skills,
- 3.5 The full schedule of comments and amendments consequential to these comments will be available by request in writing to the Licensing Office, Burnley Borough Council.
- 3.6 This policy statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Gambling Act 2005.

#### 4. Declaration

- 4.1 In producing the final **policy statement**, this licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the guidance issued by the Gambling Commission, and any responses from those consulted on the **policy statement**.

#### 5. Responsible Authorities

- 5.1 Burnley Borough Council is required by regulations to state the principles that we will apply in exercising our powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm.

- 5.2 The principles we will use are:

- the need for the body to be responsible for an area covering the whole of the licensing authority's area
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group etc

- 5.3 In accordance with the Gambling Commission's Guidance for Licensing Authorities, we intend to designate the Lancashire Safeguarding Children Board, Lancashire County Council for this purpose.

- 5.4 This body has countywide responsibility, is subject to democratic accountability and is currently the body that has become a responsible authority under the Licensing Act 2003.

- 5.5 The Responsible Authorities under the Gambling Act 2005 are:

- Burnley Borough Council Licensing Authority
- The Gambling Commission;
- The Chief Constable, Lancashire Constabulary
- Lancashire Fire and Rescue Service Authority
- Burnley Borough Council **Development Control and Planning Policy Services**
- Lancashire Safeguarding Children Board, Lancashire County Council
- H.M. Revenue & Customs

Subject to any other person being prescribed in Regulations made by the Secretary of State. The contact addresses for these authorities are attached at Appendix B.



## 6. Interested Parties

6.1 S.158 of the Act defines interested parties. To accept a representation from an interested party, we must take the view that the person:

- lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- has business interests that might be affected by the authorised activities; or
- represents persons in either of these two groups;

We will have regard to anything an interested party says about their status to make representations.

The approach taken by us in determining who is an interested party is dealt with in this statement of policy.

6.2 The following gives further advice on how we can determine whether someone is an interested party.

### **People living close to the premises**

There are a number of factors that we will take into account when determining whether a person 'lives sufficiently close to the premises'. These might include:

- the size of the premises
- the nature of the premises
- the distance of the premises from the location of the person making the representation
- the potential impact of the premises such as the number of customers, routes likely to be taken by those visiting the establishment
- the circumstances of the person who lives close to the premises. This is not their personal characteristics, but their interests which may be relevant to the distance from the premises.

6.3 Relevant factors will depend on the particular application. For example, we believe it is reasonable for us to consider that living sufficiently close to premises to likely be affected could have a different meaning for (a) a private resident, (b) a residential school for children with truanting problems and (c) a residential hostel for vulnerable adults.

### **The nature and scope of business interests that could be affected**

6.4 It could be argued that any gambling business could be affected by another gambling business expanding into any part of Great Britain. But that is unlikely to be enough to satisfy the test of being 'a person with business interests that might be affected by

the premises' under consideration. For example, an operator in a particular sector be it casino, bingo, betting etc, should not be able to lodge representations on every application put in by a rival operator anywhere in the country, simply because they are in competition within the same gambling sector. Specifically, we recognise that the 'demand test' from previous gambling legislation does not apply under the Act

6.5 We should be satisfied that the relevant business is likely to be affected. Factors that are likely to be relevant include:

- the size of the premises
- the 'catchment' area of the premises, so how far people travel to visit the premises

Whether the person making the representation has business interests in that catchment area that might be affected

### **People representing those in the above categories**

6.6 Interested parties can be people who are democratically elected such as councillors and MPs, as persons representing individuals in the other categories. This would include county, parish and town councillors. Other representatives might include bodies such as trade associations and trade unions, and residents' and tenants' associations. A school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to the proposed premises.

6.7 Save for democratically elected persons, We will satisfy ourselves on a case by case basis that a person does represent interested parties, and request written evidence where necessary. A letter from the interested person(s) they are representing would be sufficient.

6.8 If individuals wish to approach Councillors to ask them to represent their views then care should be taken that the Councillors are not part of the Licensing Committee dealing with the licence application. Applicants should contact the Principal Licensing Officer, Burnley Borough Council in the first instance rather than approach their Councillor directly.

## **7. Exchange of Information**

7.1 We are required to include the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between ourselves and the Gambling Commission, and the functions under section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

7.2 The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the data protection legislation (as defined in section 3 of the Data Protection Act 2018) will not be contravened.

7.3 We will also have regard to the Guidance issued by the Gambling Commission to

Licensing Authorities, as well as any future relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

- 7.4 Should any protocol on information exchange be established in the future, such protocols will be publicly available.

## **8. Enforcement**

- 8.1 Licensing authorities are required by regulations under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

- 8.2 This licensing authority's principles are that we will be guided by the Gambling Commission's Guidance for local authorities and our policy will endeavour to be :

- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- Consistent: rules and standards must be joined up and implemented fairly;
- Transparent: regulators should be open, and keep regulations simple and user friendly; and
- Targeted: regulation should be focused on the problem, and minimise side effects

- 8.3 This licensing authority will also, as recommended by the Gambling Commission's Guidance for local authorities, adopt a risk-based approach to the compliance process where the main determinant is the risk posed to the three licensing objectives. The authority will have regard to the 'Regulators Code' in accordance with Section 22 of the Legislative and Regulatory Reform Act 2006.

- 8.4 The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the three licensing objectives, including compliance with general licensing conditions (including mandatory and default conditions), specific licence conditions and any applicable codes of practice.

- 8.5 The Gambling Commission will be the enforcement body for Operator and Personal Licences. Concerns about manufacture, supply or repair of gaming machines will not be dealt with by the licensing authority but will be notified to the Gambling Commission for investigation.

- 8.6 Any prosecution will only be commenced in accordance with the sufficiency of evidence and public interest.

- 8.7 Any such prosecution will be commenced and conducted by the Head of Legal and Democratic Services in accordance with the powers delegated to her by the Council

## **9. Licensing Authority functions**

9.1 Licensing Authorities are required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing Premises Licences
- Issue Provisional Statements
- Regulate members' clubs and miners' welfare institutes who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issue Club Machine Permits to Commercial Clubs
- Grant permits for the use of certain lower stake gaming machines at unlicensed Family Entertainment Centres
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) of the use of two or fewer gaming machines
- Grant Licensed Premises Gaming Machine Permits for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where more than two machines are required
- Register small society lotteries below prescribed thresholds
- Issue Prize Gaming Permits
- Receive and Endorse Temporary Use Notices
- Receive Occasional Use Notices
- Provide information to the Gambling Commission regarding details of licences issued (see Section 7 above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

9.2 We as the licensing authority will not be involved in licensing remote gambling. Regulation of such activity will be the responsibility of the Gambling Commission via Operator Licences.

9.3 In accordance with the Act and Guidance, this authority will:

- Refer the decision whether to make a resolution not to issue casino licences within the Borough to Full Council.
- Refer approval of this three-year licensing policy to Full Council
- Refer any delegated power under forthcoming Regulations to set fees to Executive.

- Delegate all decisions relating to premises licences to the Licensing Committee where representations have been received and not withdrawn.
- Further delegate decision making to officers in accordance with the law and guidance, attached at Appendix C.

## PART B

### 10 Premises Licences

#### General Principles

- 10.1 Premises Licences will be subject to the permissions/restrictions set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions that will be detailed in regulations issued by the Secretary of State.
- 10.2 We, as the licensing authority, will be able to exclude default conditions and also attach other conditions, where we believe it to be appropriate.
- 10.3 This licensing authority is aware that in making decisions about premises licences we should aim to permit the use of premises for gambling in so far as we think it is:
- in accordance with any relevant code of practice issued by the Gambling Commission
  - in accordance with any relevant guidance issued by the Gambling Commission
  - reasonably consistent with the licensing objectives and
  - in accordance with this statement of licensing policy
- 10.4 We appreciate that gambling can be an emotive subject but acknowledge that, in accordance with Gambling Commission Guidance for Local Authorities, “moral or ethical objections to gambling are not a valid reason to reject applications for premises licences.” Except in respect of a Casino resolution and also that unmet demand is not a criterion for a Licensing Authority.
- 10.5 Premises are defined in the Act as “includes any place”. Different premises licences cannot apply in respect of single premises at different times. It is however possible for a single building to be subject to more than one premises licence, providing that each licence is for a different part of the building and such different parts can reasonably be regarded as different premises.
- 10.6 We will judge each case on its individual merits to decide as a matter of fact, whether different parts of a building can be properly regarded as being separate premises.
- 10.7 We note that the Gambling Commission, in their guidance, do not consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises. We support this view.
- 10.8 This licensing authority takes particular note of the Gambling Commission’s Guidance for local authorities which states that:

Licensing Authorities should take particular care in considering applications for multiple premises licences for a building and those relating to a discrete part of a building used for other (non gambling) purposes in particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed or exploited by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close

proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to, or closely observe gambling where they are prohibited from participating.

- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not 'drift' into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- 10.9 We also note that in relation to premises which are still to be constructed, under construction or alteration that following case law operators may apply for a premises licence, albeit they are not ready to be used for gambling. This authority will determine such applications on their own merits.
- 10.10 This licensing authority is aware that demand issues cannot be considered in relation to the location of premises but that considerations made in terms of the licensing objectives can be considered. Operators will be expected to demonstrate in their local risk assessment (LRA) the impact of the provision of gambling facilities in a particular area on the licensing objectives. From 6 April 2016 a new requirement was introduced requiring licensed operators of certain gambling establishments to undertake local risk assessments. This requirement was formalised in the Gambling Commission's Licence Conditions and Codes of Practice (LCCP) which were revised and published in April 2018. <http://www.gamblingcommission.gov.uk/PDF/LCCP/Licence-conditions-and-codes-of-practice.pdf>
- 10.11 We will, in accordance with the Gambling Commission's Guidance for local authorities, pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.
- 10.12 This authority has not adopted any specific policy in relation to areas where gambling premises should not be located. Should any such policy be decided upon, this **policy statement** will be updated. However this authority would expect an operator's local risk assessment (LRA) to consider for example the proximity of their premises in relation to schools, hospitals and centres where children or vulnerable groups may be present.
- 10.13 It should be noted that any such future policy will not preclude any application being made and each application will be decided on its merits, with the onus upon the applicant to show how any potential concerns can be overcome.
- 10.14 This authority will seek to avoid any duplication with other statutory / regulatory systems where possible, including the statutory planning regime.
- 10.15 This Council acting as a licensing authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval in its consideration of an application for a Premises Licence.
- 10.16 We will though, carefully consider any concerns about licensing conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

- 10.17 The Planning Department are a responsible authority under this Act and have the opportunity to make representations should they desire, otherwise the two regimes will be properly separated.
- 10.18 Premises licences granted must be reasonably consistent with the licensing objectives. Having regard to these objectives, we have considered the Gambling Commission's Guidance to local authorities and make the following observations:

**Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**

- 10.19 This licensing authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime. Their guidance does however envisage that the licensing authority should pay attention to the proposed location of gambling premises in terms of this licensing objective.
- 10.20 Therefore, where an area has known high levels of organised crime, we will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable, such as the provision of door supervisors. Responsible authorities would however have the right to make representations with regard to such premises.
- 10.21 We are aware that there is not a clear line between nuisance and disorder and will consider factors such as whether police assistance was required and how threatening the behaviour was to those who could see it, so as to make that distinction. It should be noted that public nuisance is not a Gambling Act licensing objective and issues of nuisance are not relevant considerations under the Gambling Act 2005.
- 10.22 In considering licence applications, the Council will particularly take into account the following:
- The design and layout of the premises;
  - The training given to staff in crime prevention measures appropriate to those premises;
  - Physical security features installed in the premises. This may include matters such as the position of cash registers or the standard of CCTV that is installed;
  - Where premises are subject to age-restrictions, the procedures in place to conduct age verification checks;
  - The likelihood of any violence, public order or policing problem if the licence is granted.
  - The operators local risk assessment (LRA) in relation to known problems in an area such as high levels of crime, drug activity and anti-social behaviour.

**Ensuring that gambling is conducted in a fair and open way**

- 10.25 This licensing authority is aware that the Gambling Commission has stated that it would generally not expect licensing authorities to become concerned frequently with ensuring that gambling is conducted in a fair and open way as this will be addressed by the operator and personal licensing system. It is acknowledged that there is a



greater role for the Licensing Authority in track gambling which is explained in Section 16 below.

### **Protecting children and other vulnerable persons from being harmed or exploited by gambling**

10.26 We note the Gambling Commission Guidance to local authority's states that this objective relates to preventing children from taking part in gambling as well as restriction of advertising so that gambling products are not aimed at, or are particularly attractive, to children.

With regards to children and young persons we recommend that the following matters are considered by operators when making their risk assessment;

- Institutions, places or areas where the presence of children and young persons should be expected such as schools, youth clubs, parks, playgrounds and entertainment venues such as leisure centres, cinemas etc.
- Any premises where children congregate including bus stops, cafes, shops, and any other place where children are attracted
- Any areas that are prone to issues of anti-social behaviour, under-age drinking etc. involving children
- Recorded incidents of attempted under-age gambling

10.27 In reference to the term "vulnerable persons" we note that the Gambling Commission or statute law is not seeking to offer a definition but the Commission states that "it will for regulatory purposes assume that this group includes

- people who gamble more than they want to;
- people who gamble beyond their means;
- and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs.

10.29 With regards to matters relating to vulnerable adults we recommend the following matters, are considered by operators when making their risk assessments:

- Information held by licensees regarding self-exclusions and incidents of under-age gambling
- Gaming trends that may mirror days for financial payments such as pay days or benefit payments
- Arrangement for localised exchange of information regarding self-exclusions and gaming trends
- Proximity of premises which may be frequented by vulnerable people such as hospitals, residential care homes, medical facilities, doctor's surgeries, housing association offices, addiction clinics or help centres, places where alcohol or drug dependent people may congregate etc.

10.30 This licensing authority will consider promotion of this licensing objective on a common sense, case by case basis. We will also take account of the Codes of Practice regarding this objective in relation to specific types of premises.

### **Conditions on Premises Licences**

10.31 Any conditions we attach to licences will be proportionate and will be :

- relevant to the need to make the proposed building suitable as a gambling facility
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises: and
- reasonable in all other respects.

10.32 The Authority is aware that the mandatory and default conditions imposed by the Gambling Commission will normally be sufficient to regulate gambling premises. In exceptional cases where there are specific risks or problems associated with a particular locality, specific premises or class of premises, the authority may consider attaching individual conditions related to the licensing objectives.

10.33 This Authority takes note of the Gambling Commission's guidance in relation to Local Risk Assessments for operators. The Gambling Commission's 'Licence Conditions and Codes of Practice' supplemented by a new 'Social Responsibility Code' formalise the need for operators to consider local risks and have policies, procedures and control measures to mitigate those risks. Account must be taken by operators of relevant matters identified in this Authority's statement of policy.

10.34 This Authority takes note of Gambling Commission's guidance requiring a licence applicant to undertake a local risk assessment when applying for a new premises licence. Their risk assessment must also be updated:

- When applying for a variation of a premises licence
- To take account of significant changes in local circumstances, including those identified in this council's statement of policy
- When there are significant changes at the licensee's premises that may affect their mitigation of local risks

10.35 Applicants may wish to refer to this council's Community Safety Partnership Strategic Assessment to obtain a local profile of the Borough along with highlighted and emerging threats to the Borough when preparing local risk assessments. The Social Responsibility Code supplemented by the ordinary code (LCCP) requires that licensees share their risk assessment with licensing authorities when applying for a premises licence or varying an existing licence. The risk assessment should be kept on the individual premises and made available at the request of the Authority; for example when carrying out inspections.

10.36 We will, where considered necessary, consider specific measures for buildings which are subject to multiple premises licences. Such measures may include the supervision of

entrances, segregation of gambling and non-gambling areas frequented by children and the supervision of gaming machines in non-adult gambling specific premises to promote the licensing objectives, in accordance with Gambling Commission Guidance.

10.37 We will also ensure that where Category A to C gaming machines are on offer in premises to which children are admitted, other than premises licensed for the supply of alcohol under the Licensing Act 2003,

- All such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance
- Only adults are admitted to the area where these machines are located
- Access to the area where these machines are located is supervised
- The area where these machines are located is arranged so that it can be observed by the staff or the licence holder, and
- At the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18 years of age.

10.38 These considerations will apply to premises including buildings where multiple premises licences are applicable.

10.39 We are aware that tracks may be subject to one or more than one premises licence, provided that each licence relates to a specified area of the track.

10.40 We will, in accordance with the Gambling Commission's Guidance, consider the impact upon the third licensing objective and the need to ensure that the entrances to each type of premises are distinct from each other and that children are excluded from gambling areas where they are not permitted by law or condition, to enter

10.41 It is noted that there are conditions which the licensing authority cannot by law attach to premises licences which are:

- any condition on the premises licence which makes it impossible to comply with an operating licence condition
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated) and
- conditions in relation to stakes, fees, winning or prizes

10.42 The Gambling Commission advises in its Guidance that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at authorised access (for example by children and young persons) then it may require that entrances to premises are controlled by a door supervisor, and is entitled to impose conditions to that effect. Where it is decided that supervision of

entrances/machines is appropriate for particular cases, a consideration as whether or not these supervisors need to be licensed by the Security industry Authority will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per guidance)

## **11 Adult Gaming Centres**

- 11.1 Adult gaming centres (AGCs) premises licences allow the holder of the licence to make gaming machines available for use on the premises. Persons operating an AGC must hold a gaming machines general operating licence from the Commission and must seek a premises licence from the licensing authority. Gaming machines are a form of gambling which is attractive to children and AGC's will contain machines of a similar format to the Category D machines on which children are allowed to play. However, no-one under the age of 18 is permitted to enter an AGC and applicants must be aware of the location of and entry to AGC's to minimise the opportunities for children to gain access. This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that persons under 18 years of age do not have access to the premises.
- 11.2 Because gaming machines provides opportunities for solitary play and immediate payouts, they are more likely to engender repetitive and excessive play. The council in considering premises licences and will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds are not attracted to, or gain access to, the premises.

## **12 (Licensed) Family Entertainment Centres**

- 12.1 We will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.
- 12.2 We will pay particular attention to measures proposed by operators to protect children from harm in Adult Gaming Centres and Family Entertainment Centres. For example, such measures may include, but would not be limited to, the following:
- Proof of age schemes
  - CCTV
  - Supervision of entrances/machine areas
  - Physical separation of areas
  - Specific opening hours
  - Self-barring schemes
  - Notices/signage
  - Measures/training for staff on how to deal with suspected truanting school children on the premises and how to recognise signs of potential child sexual

- exploitation (CSE)
  - Clear policies that outline the steps to be taken to protect children from harm.
  - Provision of information leaflets/helpline numbers for organisations such as Gam-Care.
- 12.3 We will, in accordance with the Gambling Commission's guidance, refer to the Commission, and be aware of any conditions that apply to operating licences covering the way in which the area containing the Category C or higher machines, should be delineated.
- 12.4 This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

### **13 Casinos**

- 13.1 This licensing authority does not have an existing licensed casino within the Borough. (Licences granted under the 1968 Act, granted under grandfather arrangements). There are two types of new casino premises licences, large and small casinos. The Borough of Burnley is not an area chosen for the issue of casino licences.

No casino resolution

- 13.2 This licensing authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so.

#### Betting machines

- 13.3 It is desirable that the difference between a gaming machine and betting machine is understood. A machine is not a gaming machine if it is designed or adapted for use to bet on future real events.
- 13.4 Some betting premises may make available machines that accept bets on live events, such as horse racing, as a substitute for placing a bet over the counter. These "betting machines" are not gaming machines and therefore neither count towards the maximum permitted number of gaming machines, nor have to comply with any stake or prize limits.
- 13.5 Such betting machines merely automate the process which can be conducted in person and therefore do not require regulation as a gaming machine.
- 13.6 However, where a machine is made available to take bets on virtual races, that machine is a gaming machine and does count towards the maximum permitted number of gaming machines, and must meet the relevant category limitations for the premises.
- 13.7 Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino).

- 13.8 In accordance with the Gambling Commission's Guidance for local authorities, when considering the number / nature / circumstances of betting machines that a casino operator wishes to offer, we will take into account;
- the size of the premises
  - the number of counter positions available for person-to-person transactions, and,
  - the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable persons."

## **14 Bingo Premises**

- 14.1 This licensing authority notes that that the Gambling Commission Guidance states;
- "Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed. Social Responsibility (SR) code 3.2.5(3) states that 'licensees must ensure that their policies and procedures take account of the structure and layout of their gambling premises' in order to prevent underage gambling.
- 14.2 We note that under the Act, children and young persons (anyone up to the age of 18) cannot be employed in providing any facilities for gambling on bingo premises, and children (under 16) cannot be employed, in any capacity, at a time when facilities for playing bingo are being offered. However, young persons, aged 16 and 17, may be employed in bingo premises (while bingo is being played), provided the activities on which they are employed are not connected with the gaming or gaming machines.
- 14.3 We will consider restrictions that apply to such premises in the current Licence conditions and codes of practice published on the Gambling Commission's website.

## **15 Betting Premises**

- 15.1 We note that the Act contains a single class of licence for betting premises. However, within this single class of licence, there will be different types of premises which require licensing. This Section of our policy discusses off-course betting, that is betting that takes place other than at a track in what is currently known as a licensed betting office. Tracks are discussed in the following Section. It should be noted that there are also betting offices on tracks, that have a separate premises licence from the track licence.
- 15.2 It is noted that the Gambling Commission's Guidance for local authorities states, Section 181 contains an express power for licensing authorities to restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino).

- 15.3 It is noted that the Gambling Commission's Guidance for local authorities states S.235(2)(c) provides that a machine is not a gaming machine by reason only of the fact that it is designed or adapted for use to bet on future real events. Some betting premises may make available for use machines that accept bets on live events, such as a sporting event, as a substitute for placing a bet over the counter. These SSBTs are not gaming machines and therefore neither count towards the maximum permitted number of gaming machines, nor have to comply with any stake or prize limits. Such betting machines merely replicate and automate the process that can be conducted in person, and therefore do not require regulation as gaming machines. S.181 of the Act contains an express power for licensing authorities to restrict the number of SSBTs, their nature and the circumstances in which they are made available, by attaching a licence condition to a betting premises licence or to a casino premises licence (where betting is permitted in the casino). Part 19 of this Guidance provides further details.
- 15.4 This licensing authority will give sympathetic consideration to re-sites within the same locality and extensions in order to enhance the quality of the facility provided for the benefit of the betting public

## **16 Tracks**

- 16.1 Tracks are sites (including horse racecourses and dog tracks) where races or other sporting events take place. Tracks are different from other premises in that they may be subject to one or more Premises Licences, provided that each Licence relates to a specific area of the track.
- 16.2 This licensing authority will have particular regard to the protection of children and other vulnerable persons from being harmed or exploited by gambling and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter. We would expect Premises Licence applicants to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities.
- 16.3 We are aware that tracks are different from other premises in that there may be more than one premises licence in effect, each covering a specified area of the track. In accordance with the Gambling Commission guidance, this authority will especially consider the impact of the third licensing objective.
- 16.4.1 The licensing authority notes the Commission's comments that it "may be considered that it is disproportionate and unnecessary to insist that betting rules are displayed at each distinct betting location; rather the rules should be made available at suitable central locations. The track premises licence holder should make the necessary arrangements to ensure that betting rules are accessible to all customers, regardless of which area of the track they are in" and that the requirement "could also be met by making a copy of the rules available in leaflet form from the main track office, and customers could be given a copy if they request one".

## **17. Travelling Fairs**

- 17.1 We note that we as the licensing authority are required to decide whether, where category D machines and / or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.
- 17.2 The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.
- 17.3 It has been noted that the 27-day statutory maximum for the land being used as a fair, is per calendar year, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with other departments of the Council and its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded.

## **18. Provisional Statements**

- 18.1 Section 204 of the Act provides for a person to make an application to the Authority for a Provisional Statement in respect of premises that s/he:
- Expects to be constructed;
  - Expects to be altered; or
  - Expects to acquire a right to occupy.
- 18.2 Developers may wish to apply for Provisional Statements before they enter into a contract to buy or lease property or land to judge whether or not a development is worth taking forward in light of the need to obtain a Premises Licence. It is also possible for an application for a Provisional Statement to be made for premises that already have a Premises Licence (either for a different type of gambling or for the same type).
- 18.3 This authority has noted the Gambling Commission's Guidance that "A licensing authority must not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with planning or building law.

## **19. Reviews**

- 19.1 A premises licence may be reviewed by the licensing authority of its own volition or following the receipt of an application for a review, which is essentially a request by a third party to the licensing authority to review a particular licence.
- 19.2 Section 200 of the Act provides that licensing authorities may initiate a review in relation to a particular class of premises licence or in relation to particular premises. Officers may be involved in the initial investigations of complaints leading to a review, or may try informal mediation or dispute resolution techniques prior to a full-scale review being conducted, but the review itself, if necessary will be heard by elected members.
- 19.3 Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried-out.



19.4 An application for a review may be (but need not be) rejected if the licensing authority thinks that the grounds on which the review is sought:

- (a) are not relevant to the principles that must be applied by the licensing authority in accordance with section 153.

If the application raises issues that are not relevant to the Commission guidance/codes of practice, this **policy statement**, or the licensing objectives, then we may reject it. In addition, if the application raises general objections to gambling as an activity, that is likely to be irrelevant to the principles in section 153, given that we are required to permit the use of premises for gambling in so far we think that permission is in accordance with the matters set out in that section.

Examples that are likely to be irrelevant include demand for gambling premises, issues relating to planning, public safety, and traffic congestion;

- (b) the grounds are frivolous;
- (c) the grounds are vexatious;
- (d) the grounds “will certainly not” cause the authority to revoke or suspend a licence or to remove, amend or attach conditions on the premises licence;
- (e) are substantially the same as the grounds cited in a previous application for review relating to the same premises. In these circumstances we will take into account how much time has passed since the earlier application in reaching a judgement about whether it is reasonable to rely on this as a reason not to review the licence; or
- (f) are substantially the same as representations made at the time the application for a premises licence was considered. In these circumstances we will take into account the period of time that has passed since the representations were made, but the underlying requirement is that we should not review the licence on the basis of the same arguments considered on the grant of the premises licence.

## PART C

### 20. Unlicensed Family Entertainment Centre gaming machine permits

- 20.1 Family entertainment centres (FECs) will perhaps be most commonly located at seaside resorts, in airports and at motorway service centres, and will cater for families, including unaccompanied children and young persons.
- 20.2 Unlicensed FECs will be able to offer only category D machines in reliance on a gaming machine permit. Any number of category D machines can be made available with such a permit. Permits cannot be issued to vessels or vehicles.
- 20.3 Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use as required by Section 238.
- 20.4 The application for a permit can only be made by a person who occupies or plans to occupy the premises to be used as an unlicensed FEC and, if the applicant is an individual, he must be aged 18 or over. Applications for a permit cannot be made if a premises licence is in effect for the same premises.
- 20.5 The Gambling Act 2005 states that a licensing authority may prepare a **policy statement** that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25.
- 20.6 The Gambling Commission's Guidance for local authorities also states: "In their three year licensing statement of principles, licensing authorities should include a policy statement that they propose to apply when exercising their functions in considering applications for permits licensing authorities will want to give weight to child protection issues."
- 20.7 The Guidance also states: "...An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application....Licensing authorities may also consider asking applications to demonstrate:
- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs;
  - that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and
  - that employees are trained to have a full understanding of the maximum stakes and prizes. (24.7)
- 20.8 We note that a licensing authority can grant or refuse a licence but cannot attach conditions to this type of permit.
- 20.9 This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations.

20.10 The efficiency of such policies and procedures will each be considered on their merits. However, they may include appropriate measures / training for staff as regards suspected truant school children on the premises, measures / training covering how staff would deal with unsupervised very young children being on the premises, or children causing perceived problems on / around the premises

## **21. (Alcohol) Licensed premises gaming machine permits**

21.1 There is provision in the Act for premises licensed under the Licensing Act 2003 for the sale of alcohol for consumption on the premises, that have a bar at which alcohol is served, without a requirement that alcohol is only served with food to automatically have 2 gaming machines, of categories C and/or D. Licence holders merely need to notify the licensing authority.

21.2 The licensing authority can remove the automatic authorisation in respect of any particular premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises.

21.3 If a premises licence holder wishes to have more than 2 machines, then they need to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant.*”

21.4 This licensing authority considers that “such matters” will be decided on a case by case individual basis, but generally there will be regard to the need to protect children and vulnerable persons from being harmed or exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult-only gaming machines.

21.5 Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff who will monitor that the machines are not being used by those under 18. Notices and signage on the machines or in the premises may also be help. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets / helpline numbers for organisations such as GamCare.

21.6 It is recognised that some alcohol licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would normally need to be applied for, and dealt with, as an Adult Gaming Centre premises licence.

- 21.7 It should be noted that we as the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached to a permit.
- 21.8 It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

## **22. Prize Gaming Permits**

- 22.1 The Gambling Act 2005 states that a licensing authority may “prepare a **policy statement** that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”.
- 22.2 This licensing authority has prepared a **Policy statement** which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:
- that they understand the limits to stakes and prizes that are set out in Regulations;
  - and that the gaming offered is within the law.
- 22.3 In making its decision on an application for this permit the licensing authority does not need to have regard to the licensing objectives but must have regard to any Gambling Commission guidance.
- 22.4 It should be noted that there are conditions in the Gambling Act 2005 with which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are :
- The limits on participation fees, as set out in regulations, must be complied with;
  - all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
  - the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
  - participation in the gaming must not entitle the player to take part in any other gambling.

## **23 Club Gaming and Club Machines Permits**

- 23.1 Bona Fide Members Clubs and Miners' welfare institutes (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming machines permit.
- 23.2 The Club Gaming Permit will enable the premises to provide 3 gaming machines of categories B3A or B4 to D, equal chance gaming and games of chance.
- 23.3 The Act states: Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is restricted to bridge and whist.
- 23.4 A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations.
- 23.5 The Commission Guidance also notes that licensing authorities may only refuse an application on the grounds that:
- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
  - (b) the applicant's premises are used wholly or mainly by children and/or young persons;
  - (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
  - (d) a permit held by the applicant has been cancelled in the previous ten years; or
  - (e) an objection has been lodged by the Commission or the police.
- 23.6 There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10).
- 23.7 The Gambling Commission's Guidance for local authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the grounds upon which an authority can refuse a permit are reduced." and "The grounds on which an application under the process may be refused are:
- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
  - (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
  - (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

- 23.8 There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

## **24. Temporary Use Notices**

- 24.1 Part 9 of the Act sets out the position in relation to temporary use notices. These allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a temporary use notice would include hotels, conference centres, and sporting venues.
- 24.2 Regulations state that the only activities permitted under a TUN are the provision of facilities for any form of equal chance gaming where those participating in the gaming are taking part in a competition which is intended to produce a single, overall winner (this does not include providing such facilities in circumstances where any person participating in the gaming does so by means of a gaming machine).
- 24.3 In relation to premises we will apply the Gambling Commission Guidance which states:

“In the Act “premises” is defined as including “any place”. In considering whether a place falls within the definition of “a set of premises”, licensing authorities will need to look at, amongst other things, the ownership/occupation and control of the premises. A large exhibition centre, for example, would be likely to come within the definition as it is properly one premises, and should not be granted a temporary use notice for 21 days in respect of each of its exhibition halls. But in relation to other covered areas, such as shopping centres, the licensing authority will need to consider whether different units are in fact different “sets of premises”, given that they may be occupied and controlled by different people. This is a new permission and licensing authorities should be ready to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises.”

## **25. Occasional Use Notices:**

- 25.1 We have very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will, however, consider the definition of a ‘track’ and whether the applicant is permitted to avail him/herself of the notice. Provided that the Notice will not result in betting facilities being available for more than eight days in a calendar year, there is no provision for counter-notices or objections to be submitted.

**SCHEDULE OF CONSULTEES TO THIS DRAFT **POLICY STATEMENT****

- All Elected Councillors, Burnley Borough Council
- The Head of **Head of Streetscene**, Burnley Borough Council
- The Head of Legal Services, Burnley Borough Council
- The Environment and Licensing Manager, Burnley Borough Council
- The Gambling Commission Headquarters Policy Section
- The Gambling Commission Regional Inspector for Lancashire and Cumbria
- The Chief Constable, Lancashire Constabulary
- Lancashire Fire and Rescue Service Authority
- Lancashire Area Child Protection Committee, Lancashire County Council  
Social Services Section
- H.M. Revenue & Customs
- Blackburn and Darwen Council
- Hyndburn Borough Council
- Ribble Valley Borough Council
- Rossendale Borough Council
- Pendle Borough Council
- Calderdale Borough Council
- British Amusement Catering Trade Association
- British Holiday & Home Parks Association
- Community Trade Union
- Association of British Bookmakers
- All persons who hold Betting Office and Bookmakers Permits in Burnley
- All persons who hold Bingo Licences or Bingo Certificates in Burnley
- Clubs and Institute Union
- Gaming Machine Suppliers who regularly apply for Gaming Permits in Burnley

- Representatives of Premises Licence Holders in Burnley
- Representatives of Club Premises Certificate holders in Burnley
- Lancashire County Council Trading Standards
- GamCare
- Responsibility in Gambling Trust
- Gam – Anon
- Residents Associations and Tenant Groups.



**SCHEDULE OF RESPONSIBLE AUTHORITIES  
GAMBLING ACT 2005**

1. Burnley Borough Council Licensing Authority  
First Floor Parker Lane Offices, Parker Lane, Burnley, BB11 2DT
2. The Gambling Commission, Victoria Square House, Victoria Square  
Birmingham, B2 4BP
3. The Chief Constable, Lancashire Constabulary C/O Divisional Licensing  
Unit, Burnley Police Station, Parker Lane, Burnley, BB11 2BT
4. Lancashire Fire and Rescue Authority C/O Fire Safety Department,  
Burnley Community Fire Station, Ormerod Road, Burnley, BB10 3AA
5. Burnley Borough Council Planning Services, Parker Lane, Burnley, BB11  
2DT
6. Burnley Borough Council Environmental Protection, Parker Lane,  
Burnley, BB11 2DT
7. Lancashire Safeguarding Children Board, Room B52, PO Box 61,  
County Hall, Preston, PR1 8RJ
8. H.M. Revenue and Customs, National Registration Unit (Betting &  
Gaming) Portcullis House, 21 India Street, Glasgow, G2 4PZ

**SUMMARY OF THE DELEGATION OF POWERS UNDER THE  
GAMBLING ACT 2005**

All to licensing committee except these to officers:

To undertake the following functions in relation to the Gambling Act 2005:

- To determine applications for premises licences where no representations received or representation have been withdrawn
- To determine applications for a variation to a licence where no representations received or representations have been withdrawn
- To determine applications for the transfer of licences where no representations have been received from the Commission or responsible authority
- To determine applications for provisional statements where no representations received or representation have been withdrawn
- To determine applications for club gaming/club machine permits where no representations have been made
- To determine applications for other permits
- To determine the cancellation of licensed premises gaming machine permits
- To determine requests for temporary use notices