

**Notice of a public meeting of  
Licensing and Regulatory Committee**

- To:** Councillors Mason (Chair), Wells (Vice-Chair), Barker, Cuthbertson, Fitzpatrick, Galvin, Hook, Hunter, Melly, D Myers, Norman, Orrell, Pearson, D Taylor and Warters
- Date:** Wednesday, 4 September 2019
- Time:** 5.30 pm
- Venue:** The George Hudson Board Room - 1st Floor West Offices (F045)

**AGENDA**

**1. Declarations of Interest**

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

**2. Exclusion of Press and Public**

To consider excluding the public and press from the meeting during consideration of Annex 3 to Agenda item 6 on the grounds that it contain information relating in respect of which a claim to legal professional privilege could be maintained in legal proceedings. This information is classed as exempt under Paragraph 5 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

**3. Minutes (Pages 1 - 6)**

To approve and sign the minutes of the meeting held on 15 July 2019.

**4. Public Participation**

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00 pm on Tuesday 3 September 2019.**

**Filming or Recording Meetings**

Please note that, subject to available resources, this meeting will be filmed and webcast, or recorded, including any registered public speakers who have given their permission. This broadcast can be viewed at <http://www.york.gov.uk/webcasts>.

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The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at [http://www.york.gov.uk/download/downloads/id/11406/protocol\\_f\\_or\\_webcasting\\_filming\\_and\\_recording\\_of\\_council\\_meetings\\_20160809.pdf](http://www.york.gov.uk/download/downloads/id/11406/protocol_f_or_webcasting_filming_and_recording_of_council_meetings_20160809.pdf)

**5. Renewal of Sex Establishment Licence for Black Orchid (1st floor Tokyo), 3-5 Toft Green, York, YO1 6JT (Pages 7 - 54)**

This report seeks Members' determination of an application to renew a Sex Establishment Licence for a sexual entertainment venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Black Orchid (1st floor Tokyo), 3-5 Toft Green, York, YO1 6JT.

- 6. Interpretation of Law - 'Out of town' Licences** (Pages 55 - 94)  
This report introduces the report (Appendix A) which is to be considered by Executive Members on 26 September 2019. The Executive report concerns the council's interpretation of the law relating to the ability of private hire operators and drivers to work their vehicles outside of the area within which they are licensed (often referred to as 'out of town' operators/drivers/vehicles).
- 7. Taxi Account up to 31 March 2019** (Pages 95 - 102)  
This is an information report giving Members details of the taxi licensing account as requested at the last Committee meeting.
- 8. Review of Polling Districts, Polling Places and Polling Stations** (Pages 103 - 112)  
This report informs Members of the duty on all local authorities to carry out a review of polling districts, polling places and polling stations in their area within five years, as laid down by the Electoral Registration and Administration Act 2013.
- 9. Work Plan 2019/20** (Pages 113 - 114)
- 10. Urgent Business**  
Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Angela Bielby

Contact Details:

- Telephone – (01904) 552599
- E-mail – [a.bielby@york.gov.uk](mailto:a.bielby@york.gov.uk)

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

**This information can be provided in your own language.**

**我們也用您們的語言提供這個信息 (Cantonese)**

**এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)**

**Ta informacja może być dostarczona w twoim własnym języku. (Polish)**

**Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)**

**یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)**

** (01904) 551550**

City of York Council

Committee Minutes

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Meeting	Licensing and Regulatory Committee
Date	15 July 2019
Present	Councillors Mason (Chair), Wells (Vice-Chair), Barker, Fitzpatrick, Galvin, Hook, Hunter, Melly, D Myers, Norman, Orrell, Pearson, D Taylor and Warters
Apologies	Councillor Cuthbertson

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## 1. **Declarations of Interest**

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests that they may have in respect of business on the agenda. None were declared.

In response to a question from a Member, the Licensing Manager clarified that it the recommendation/best practice that a Ward Member should not sit on a Licensing Act 2003 hearing for an application in their Ward, it could be seen that the Member was biased.

## 2. **Minutes**

Resolved: That the minutes of the meeting held on 18 March be approved subject to the following amendments:

- The name of the Chair signing the minutes to change to Cllr Lisle
- On page 2, third paragraph to change to the 1976 Act
- Agreement on the resolution included in Agenda Item 5 (Update Report - Private Hire Licensing), to reflect that the Executive was asked to consider all evidence and make a decision on the future policy, in regard to the legality of out of town vehicles operating in York, given the two differing legal opinions.

### **3. Public Participation**

It was reported that there had been three registrations to speak at the meeting under the Council's Public Participation Scheme. All three speakers spoke on Agenda Items 5 and 6.

Michael Dunn spoke on behalf of York Cars Private Hire Association. He noted his concerns regarding the suitability tests for applicants as drivers in taxi and private hire licensing noting the high failure rate in the tests. He asked Members to consider whether the measures and the training in place directly or indirectly limit the number of taxi drivers and reduces the ability for taxi operators to compete.

Gwen Swinburn raised three administrative concerns relating to the lack of information on the Forward Plan and she suggested that a report on the expenditure on taxi fees be brought to the next committee meeting. She expressed concern regarding staff delegation in the report and suggested this should be kept within the remit of the committee. She further expressed concern regarding driver DBS checks and implementation.

Wendy Loveday spoke on behalf of York Private Hire Association. She welcomed new and returning Members to the Committee on behalf of the York United Trade, which represented around 90% of York hackney and private hire drivers. The York United Trade asked that for benefit of public safety she asked Members to approve Option 1 in agenda item 5 and Option 2 in agenda item 6. She thanked officers for their hard work noted that the new administration was supportive of the taxi trade in York. She was asked and clarified what taxi associations the United Trade represented.

### **4. Taxi Licensing Policy - Amendments in relation to Driver Training**

This report sought Members' recommendation to the Council's Executive for approval to amend the Taxi Licensing Policy in relation to driver training. The report advised the Committee of the consultation undertaken and the amendments made to the proposed policy following the consultation and asked for Officers (Licensing Manager level and above) to set the implementation date for the new training requirements once adequate training providers have been sourced.

The Licensing Manager outlined the report and options available to the Committee, noting that the main concern was public safety. In response to Member questions, she confirmed that:

- North Yorkshire licensing authorities were not included as they were not a part of the West Yorkshire and City of York licensing authorities group. It was noted that the Licensing Manager was the Chair of the North Yorkshire licensing practitioners meetings;
- Drivers would have to sit a local knowledge test if they were licensed through the York licensing authority;
- The liaison meetings with the taxi trade usually went well, consensus was not always reached on some items. At the meetings, information and updates were shared with the trade. The meeting held the previous week had gone well;
- The minutes of the liaison meetings were available on the council website. The Chair of the liaison meetings had requested that updates on licensing matters be brought to Committee;
- The driver applicant requirements do differ between different licensing authorities;
- The training would be monitored by Officers and the pass rates monitored across each authority; and
- The appointment of the training provider would be discussed with the council Workforce Development Unit. She explained the training support available to drivers.

Resolved:

- a) That Members approve Option 1 to take into consideration the responses received from the consultation and recommend to the Councils Executive to approve the new taxi licensing policy in relation to driver training. The implementation date will be set by officers once a training provider is in place. New driver applicants will be expected to undertake and pass the training prior to being licensed and existing drivers will be expected to attend refresher training at least once every three years. The training will be provided by a trainer approved and appointed by the West Yorkshire and City of York licensing authorities, each authority will appoint a trainer(s).

- b) That information of the fees and training provider be brought back to Committee.

Reason: This will allow the Council to make amendments to the Taxi Licensing Policy in relation to driver training requirements, aligning the Councils Policy with that of the West Yorkshire Authorities. This will ensure the travelling public within West Yorkshire and York can be confident that drivers licensed by each authority have been trained to the high standard which is consistent across the six authorities.

**5. Taxi Licensing Policy - Amendments in relation to determining the suitability of applicants and licensees as Drivers in Taxi and Private Hire Licensing**

This report sought Members' recommendation to the Council's Executive for approval to amend the Taxi Licensing Policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing. The report advised the Committee of the consultation undertaken and the amendments made to the proposed policy following the consultation. The report asked for the Licensing Manager, in consultation with the Licensing and Regulatory Committee Chair and Senior Officers (Licensing Manager level and above), to make any minor changes that may be necessary to the policy, so that it remained consistent with the standards applied by the West Yorkshire Authorities.

The Licensing Manager gave an overview of the report, noting that the policy included Institute of Licensing Guidance and proposed statutory guidance from the Department for Transport. She added that the implementation date was 1 October 2019. The Licensing Manager went on to clarify that with regard to individual convictions, consideration was on a case by case basis with each taken on its own merits. The decision and right of appeal process was explained to Members. The Licensing Manager was asked and explained that the definition of a 'minor' change to the policy included minor changes to the wording of the policy itself and any major changes would come back to the committee.

Resolved: That;

- a) Members approve Option 1 of the report to recommend to the Council's Executive to approve the new taxi licensing policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing.
- b) To recommend to the Council's Executive that any changes made to the new taxi licensing policy come back to the Committee for consideration.

Reason: This will allow the Council to make amendments to the Taxi Licensing Policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing, aligning the Council's Policy with that of the West Yorkshire Authorities. Adopting this policy will help to ensure that people across the six authority areas are transported safely and protected from harm to standards applied consistently across the area.

## **6. Renewal of Sex Establishment Licence for The Adult Shop**

Members considered a report which sought the determination of an application to renew a Sex Establishment Licence for a sex shop which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of The Adult Shop, 70B Gillygate, York, YO31 7EQ.

The Licensing Manager outlined the report and added that the premises had operated without complaint.

By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee had the following options available to them in making their decision:

Option 1: Grant a renewal of the licence as requested.

Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.

Option 3: Refuse the application for renewal on one of the mandatory grounds or on one or more of the discretionary

grounds within paragraph 12 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

In reaching the decision the Committee noted that the shop had operated without complaint.

Resolved: That, in accordance with Option 1, Members grant a renewal of the licence as requested.

Reason: To consider renewal of the sex establishment licence as required by the legislation.

**7. Draft Work Plan 2019-20**

Members considered the draft Work Plan 2019-20 and work planning for the new municipal year. During discussion regarding potential items for the work plan, it was agreed that an update on taxi fees would be given at the next meeting which would be held before the meeting of the Executive in September.

Resolved: That the work plan be updated to include an update on taxi fees at the next meeting in September.

Reason: To keep the Committee's work plan updated.

Cllr A Mason, Chair

[The meeting started at 5.30 pm and finished at 6.35 pm].



## Licensing & Regulatory Committee

4 September 2019

Report of the Assistant Director – Planning and Public Protection

### **Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by Policing and Crime Act 2009**

### **Renewal of Sex Establishment Licence for Black Orchid, 3-5 Toft Green, York, YO1 6JT**

#### **Summary**

1. This report seeks Members determination of an application to renew a Sex Establishment Licence for a sexual entertainment venue which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Black Orchid, 3-5 Toft Green, York, YO1 6JT.
2. Name of applicant: Tokyo Industries (Yorkshire) Ltd
3. Summary of Application: A copy of the application is attached at Annex 1 of this report and is summarised as follows. This is an application for the renewal of a Sex Establishment Licence which authorised hours of opening Monday to Sunday 21:00 hours to 03:30 hours and 18:00 hours to 04:30 hours on York Racecourse Race Days only.
4. A sex establishment licence is valid for 12 months, the licence holder must submit an application to renew the licence to the licensing authority before the existing licence expires if they wish to continue running a sexual entertainment venue. A copy of the licence to be renewed is attached at Annex 2.
5. The premises currently has a premises licence issued under the Licensing Act 2003. A copy of the premises licence is attached at Annex 3 and is summarised as follows:

<b>Licensable Activity</b>	<b>Permitted Days &amp; Hours</b>
Films	Monday to Sunday 11:00 – 03:30
Boxing or Wrestling	Monday to Sunday 11:00 – 02:00
Live Music	Monday to Sunday 11:00 – 03:30
Recorded Music	Monday to Sunday 11:00 – 03:45
Performance of Dance	Monday to Sunday 11:00 – 03:30
Late Night Refreshment	Monday to Sunday 23:00 – 03:45
Supply of Alcohol (on and off sales)	Monday to Sunday 11:00 – 03:30
Opening Hours	Monday to Sunday 11:00 – 04:00
Non Standard Timings – All licensable activities	From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day.  An additional hour on the morning clocks go forward.

## Recommendations

- Members are asked to determine the application for the grant of the licence in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by the Policing and Crime Act 2009.

Reason: To consider renewal of the sexual entertainment licence as required by the legislation.

## Background

- On 6 April 2010, section 27 of the Policing and Crime Act 2009 was introduced. This legislation reclassified lap dancing clubs and other similar venues as 'sexual entertainment venues'; for which a sex establishment licence is required under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This allows Local Authorities who have adopted the provisions of the legislation to regulate lap dancing clubs and similar venues under the same regime as sex shops.
- Sexual entertainment venues are defined in the legislation as 'any premises at which relevant entertainment is provided for a live audience for the financial gain of the organiser or the entertainer'. The meaning

of relevant entertainment is 'any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)'.

9. This Authority adopted the provisions of the legislation on 7 October 2010 when the resolution was approved by full council.
10. City of York Council's Licensing of Sex Establishments Licensing Policy was reviewed and a revised policy was adopted on 27 April 2017 with immediate effect. A copy of this policy can be found at [https://www.york.gov.uk/downloads/file/2964/sexual\\_entertainment\\_venues\\_-\\_policy\\_and\\_procedurepdf](https://www.york.gov.uk/downloads/file/2964/sexual_entertainment_venues_-_policy_and_procedurepdf).
11. A copy of City of York Council's Standard Conditions for Sexual Entertainment Venues is attached at Annex 4.

### **Consultation**

12. Consultation was carried out by the applicant and the Licensing Authority in accordance with paragraph 10 of Schedule 3 of the 1982 Act relating to the process which the applicant must follow for the application for renewal to be considered valid.
13. No objections to the application to renew the licence have been received
14. A map showing the location of the premises is attached at Annex 6.

### **Relevant Legislation – Grounds for Refusal**

15. When considering the renewal application, the Authority does not have an unfettered discretion as to whether to refuse an application or grant a renewal. The grounds on which an application could be refused are set out in paragraph 12 to Schedule 3 of the 1982 Act.

### **Mandatory grounds for the refusal of an application**

16. The mandatory grounds for the refusal of an application for a sex establishment licence are that the applicant:
  - a) is under the age of 18;

- b) is for the time being disqualified from holding a sex establishment licence;
- c) is not a body corporate, and is not in resident or has been resident in an EEA state for six months immediately preceding the date of the application;
- d) is a body corporate which is not incorporated in an EEA state;
- e) has in the period of twelve months preceding the date of application been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the reversal has been reversed on appeal.

17. There are no mandatory grounds for refusing this application.

### **Discretionary grounds for the refusal of an application**

18. Discretionary grounds for the refusal of an application for a sex establishment licence are that:

- a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or any other reason;
- b) if the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he made the application himself;
- c) the number of sex establishments, or sex establishment of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
- d) the grant would be inappropriate, having regard –
  - to the character of the relevant locality;
  - to the use to which any premises in the vicinity are put;
  - to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

19. When considering the suitability of the applicant to hold a licence the council will take into account such matters it considers to be relevant.

20. Guidance on relevant locality can be found at Annex 7, paragraphs 3.32 to 3.38.

21. Within the licensing policy the council has determined a suitable locality for sexual entertainment venues, an area within the city centre. A limit on the number of sexual entertainment venues permitted within this locality has also been determined; the appropriate number of sexual entertainment venues in the city centre area is a maximum of two, providing those premises are not too near and/or do not impact properties with sensitive uses or in sensitive locations.

## **Options**

22. By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee have the following options available to them in making their decision:
23. Option 1: Grant a renewal of the licence as requested.
24. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.
25. Option 3: Refuse the application for renewal on one of the mandatory grounds or on one or more of the discretionary grounds within paragraph 12 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

## Analysis

26. The following could be the result of any decision made by this Committee:
27. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. Objectors could judicially review the decision.
28. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
29. Option 3: With the exception of a decision to refuse an application on a ground specified in paragraph 12(3) (c) or (d) of Schedule 3 to the 1982 Act, the licence applicant may appeal against the decision made to the Magistrates' Court.

## Council Plan

30. The approved City of York Council Policy will support the Council's Plan for a prosperous city for all and a council that listens to residents.

## Implications

31. The implications arising directly from this report are:
  - **Financial** - N/A
  - **Human Resources (HR)** – N/A
  - **Equalities** – N/A
  - **Legal** – The Council has the ability to control the licensing of sexual entertainment venues having adopted Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

Paragraph 8 of Schedule 3 to the 1982 Act provides that where it determines to grant a sex establishment licence, the Council is empowered to impose such conditions or restrictions as it deems appropriate.

Paragraph 12 of Schedule 3 to the 1982 Act sets out a number of mandatory grounds for refusal of a sex establishment licence and also discretionary grounds for refusal of a sex establishment licence.

In considering this application the Committee should have regard to:

- Schedule 3 to the 1982 Act, as amended by Policing and Crime Act 2009.
- The Council's Policy for the Determination of Applications for Sexual Entertainment Venues.
- The Home Office – Sexual Entertainment Licence – Guidance for England and Wales which states that “Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12” [of Schedule 3 to the 1982 Act].

In addition when making their decision Members must give consideration to the rights the applicant has under the European Convention on Human Rights. Article 1 (entitles every person to peaceful enjoyment of their possessions) and Article 10 (freedom of expression) are particular rights that may be relevant. Members should consider whether interference with these rights is necessary and proportionate for the prevention of crime or disorder, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, whether interference can be justified in the general interest.

Members of the Committee should not allow themselves to predetermine the application or to be prejudiced in favour or opposed to the licence and shall only determine the application on its own merit.

- **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

## **Risk Management**

32. All Members are aware that any decision which is unreasonable or unlawful could be open to legal challenge resulting in loss of reputation and potential financial penalty.

33. The report details the options available to the panel in determining the application and recommends that a decision be reached. Provided the decision complies with the proper grounds for considering the application as set out within this report, there are no known risks involved with this recommendation.

### Contact Details

<b>Author:</b>		<b>Chief Officer Responsible for the report:</b>	
Lesley Cooke Licensing Manager Ext 1515		Michael Slater Assistant Director Planning & Public Protection Ext 1300	
<b>Report Approved</b>	✓	<b>Date</b>	23 August 2019

**Wards Affected:** Micklegate

### Annexes

- Annex 1** - Renewal Application
- Annex 2** - Current Sex Establishment Licence
- Annex 3** - Premises Licence issued under the Licensing Act 2003
- Annex 4** - Standard Conditions for Sexual Entertainment Venues
- Annex 5** - Legislation and Policy Considerations
- Annex 6** - Map showing location of premises



**CITY OF YORK COUNCIL**  
Licensing Services, Hazel Court EcoDepot, James Street, York, YO10 3DS

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED**  
**SCHEDULE 3 – CONTROL OF SEX ESTABLISHMENTS**  
**Application for the Grant / Renewal / Transfer of a Sex Establishment Licence**

**TYPE OF VENUE**

- Sexual Entertainment Venue**                       **Sex Shop**                       **Sex Cinema**

**TYPE OF APPLICATION**

- Grant**     **Renewal**     **Transfer**

**APPLICANT DETAILS**

1. Is the applicant:

- An individual (please answer questions 2, 5 to 9)
- A company or other corporate body (please answer questions 3, 5 to 9)
- A partnership or other unincorporated body (please answer questions 4, 5 to 9)

2. Full name of applicant (individual):

Former or previous names: None

Home address:

Post town:

Post code:

Telephone numbers:

Date of birth:

3. Name of applicant (company name): Tokyo Industries (Yorkshire) Ltd

Address of registered or principal office: 1 City Road East,

Post town: Manchester Post code: M15 4PN

Registration number: UK 8171028

4. Name and address of applicant:

Names and addressed of applicant's partners (please use additional sheet):

5. Are there any other persons responsible for the management of the premises/business other than the partners? Please state their names and addresses:

Paul Sinclair  
Charlie Kershaw  
Harriet Rhodes

6. a. Has the applicant ever been known by any other name? NO
- b. Has the applicant ever been convicted of a criminal offence? NO
- c. Has the applicant ever been refused a sex establishment licence? NO
- d. Has the applicant ever had a sex establishment licence revoked? NO
- e. Has the applicant ever been served with a winding up petition? NO

If the answer to any of these questions is yes, please provide details:

7. Applicants' trading address or head office (other than the premises)

The trading address is restricted to just the application premises.

The Company holds a Registered office at:

· Tokyo Industries (Yorkshire) Ltd, 1 City Road East, Manchester. M15 4PN

and an Accounts Office at

· Tokyo Industries (Yorkshire) Ltd, UCB House, 3 George Street, Watford, WD18 0BX

8. Will the business for which this licence is sought be carried on for the benefit of a person other than the applicant? NO

If the answer is yes, state the name, address, place of registration, registered number and the identity of all directors, company secretary and those with a greater than 10% shareholding (use separate sheet if necessary).

b. Name and address of the superior landlord: As Above

c. Total annual rental: £8,000

d. Length of unexpired term: less than 12 months (Rolling lease)

e. Notice required to terminate tenancy: no termination

18. Please provide details of the building management company (if appropriate):

19. State the current use of the premises: Same as application

20. Has planning permission, or a certificate of lawful use, been obtained for the use of the proposed premises? YES

21. Can members of the public access the premises:

a. Directly from the street? YES

b. From other premises? NO

c. Not at all? (internet sales only)

22. Are the premises currently being used as a sex establishment?  
Please provide details of the business currently operating the business: Same as application

**OPERATING SCHEDULE**

23. Opening hours: (If internet sales only please tick here  and continue to Q 26)

Monday 9pm till <del>4am</del> 3:30	Tuesday 9pm till <del>4am</del> 3:30	Wednesday 9pm till <del>4am</del> 3:30	Thursday 9pm till <del>4am</del> 3:30	Friday 9pm till <del>4am</del> 3:30
Saturday 9pm till <del>4am</del> 3:30	Sunday 9pm till <del>4am</del> 3:30			

Any non-standard timings: Amended hours on York race days to open from 6pm till ~~5am~~ 4:30

24. Has the applicant entered into any written or oral agreement in connection with the business, for example a management agreement, partnership agreement or profit share arrangement? Please provide details.

a. Please provide details of any lender, mortgage or others providing finance:

b. Please provide details of any merchandising agreements:

9. Does the applicant operate any other sex establishments, licensed or otherwise? Please state name, address, and type of sex establishment of each.

Whiskey Down, The Townhouse, Leeds.  
 Whiskey Down, 22 Lloyd Street, Manchester. M2 5WA  
 City Vaults / Bier Keller, 13-15 Bigg Market, Newcastle upon Tyne. NE1

**PREMISES DETAILS**

10. Please state the name the business will be known as: Black Orchid

11. Is the premises a  Building  Vehicle  Vessel  Stall

12. Where is it proposed to use the vehicle, vessel or stall?

13. Does the company propose to only operate on the internet? No  
 (f yes answer Q14 to 19 only)

14. Premises address 3-5 Toft Green

Post town York

Post code YO1 6JT

Telephone number at premises

15. Which part of the premises is to be used as a sex establishment? The second floor

16. Is the applicant  owner  lessee  sub-lessee  other

17. If the applicant rents the property state:

a. Name and address of landlord: Aaron Mellor, 38 Union Street, Oldham. OL1 1DJ (the landlord is also the Managing Director of the incorporated applicant Tokyo Industries (Lincoln York Hull) Ltd

**PREMISES MANAGEMENT**

25. Please state the name of the person who will be in day to day control of the premises (the manager).  
Paul Sinclair / Charlie Kershaw / Harriet Rhodes

- a. Will the manager be based at the premises YES
- b. Will the management of the premises be the manager's sole occupation YES

26. Who will be in control of the premises in the manager's absence (relief manager)? Harriett Rhodes

- a. Will the relief manager be based at the premises in the absence of the manager? YES

If you have ticked no to any of the above please provide details.

**EXTERNAL APPEARANCE AND ADVERTISING – DO NOT COMPLETE FOR RENEWAL APPLICATION**

27. Please describe the proposed exterior signage and advertising. Please include nature, content and size of each sign and any images to be used:

Please note that a drawing of the front elevation is required to be submitted with this application.

28. Please describe how the interior of the premises is obscured to passersby:

29. Please describe any proposed window displays:

30. Please describe how the business is to be advertised, ie business cards, billboard advertising, personal solicitation, advertising on motor vehicles, radio or television advertising:

**APPLICATIONS FOR SEXUAL ENTERTAINMENT VENUES ONLY**

31. Is the proposal for full nudity? YES

32. Describe the nature of the entertainment eg lap-dancing, pole dancing, stage strip tease:

Lap dancing

33. State measures to ensure employees age and right to work in the UK:

Passport and NI number are taken and copied and kept on file for each employee.

34. Describe training and welfare policies:

Please enclose a copy of the welfare policy for performers (or equivalent document).

35. Please set out any further information you wish the authority to take into account.

The premises have traded without issue or problem for almost 12mths since trade began. The management team and operational standards were regarded as the 'Best in the West Yorkshire' by inspecting SEV officials.

36. Is there any information on this form you do not wish to be seen by members of the public?  
If so state which information and the reasons why you do not wish it to be seen.

**CHECKLIST & ENCLOSURES**

Enclosures

- I have made or enclosed payment of the fee
- I have enclosed three sets of plans of the premises
- I have enclosed a drawing of the street elevation of the premises
- In the case of an application to transfer the licence, include the completed Consent to Transfer form

**DECLARATION**

I declare that I have served notice of this application on North Yorkshire Police.

I declare that a public notice advertising this application has today been displayed upon the proposed premises where it may be conveniently read by the public and will remain thereon for a period of 21 days. A copy of the notice and the standard declaration is enclosed.

I declare that within seven days of the date of this application a public notice advertising this application will be publicised in the legal notices column of the local press.

A copy of the relevant press edition will be forwarded to the City of York Council Licensing Section.

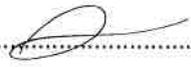
I understand that if I do not comply with the above requirements my application will be rejected.

Any person who, in connection with an application for a grant, renewal or transfer of a sex establishment

licence, makes a false statement which he knows to be false in any material respect of which he does not believe to be true is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000.

**SIGNATURES**

Signature of applicant or applicant's solicitor or other duly authorised agent, If signing on behalf of the applicant please state in what capacity.

Signature .....  ..... Signature .....

Name (print) ..... Aaron Mellor (MD) ..... Name (print) .....

Date ..... 8<sup>th</sup> July 2018 ..... Date .....

Capacity ..... Managing Director ..... Capacity .....

Contact name (where not previously given) and address for correspondence associated with this application:

Post town ..... Post code .....

Telephone number (if any) .....

If you would prefer us to correspond with you by email, your email address (optional)

**Guidance Notes**

1. Please return this completed application form to:  
 City of York Council  
 Licensing Section  
 Hazel Court EcoDepot  
 James Street  
 York  
 YO10 3DS
2. Please make cheques/postal orders payable to City of York Council.
3. The applicant is responsible for serving notice of this application on North Yorkshire Police, Licensing Section, Fulford Road, York, YO10 4BY
4. Requirements for layout plan (**NB plan not required for renewal applications**)  
 The plan must show:
  1. The layout of the premises including eg stage, bars, cloakroom, WCs, performance area, booths, dressing rooms.
  2. The extent of the boundary of the premises.
  3. The extent of the public areas.
  4. Uses of different areas in the premises eg performance areas, reception, staff facilities.
  5. Structures or objects (including furniture) which may impact on the ability of individuals to use exits or escape routes without impediment.
  6. Location of points of access to and egress from the premises.
  7. Any points used in common with other premises.
  8. Position of CCTV cameras.

9. Where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor.
10. The location of any steps, stairs, elevators or lifts.
11. The location of any public conveniences, including disabled WCs.
12. The location and type of any fire safety and other safety equipment.
13. The location of the kitchen (if applicable).
14. The location of emergency exits.

Unless agreed with City of York Council, the plan should be drawn to a standard scale with a key showing the items mentioned above. The standard scale is 1:100.

**Please note City of York Council is under a duty to protect the public funds it administers and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.**



**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**  
**SCHEDULE 3 AS AMENDED BY POLICING AND CRIME ACT 2009**

**SEX ESTABLISHMENT LICENCE**

The City of York Council hereby grant renewal of a Sex Establishment Licence to:

Tokyo Industries (Lincoln York Hull) Ltd  
201 Chapel Street  
Manchester  
M3 5EQ

to use the premises known as:

Black Orchid  
(First Floor Tokyo York only)  
3-5 Toft Green  
York  
YO1 6JT

for the purposes of a sex establishment comprising a sexual entertainment venue as defined in Schedule 3 to the above Act.

This Licence is granted subject to the City of York Council Standard Conditions Applicable to Sex Establishment Licences and to the additional conditions set out in the schedule below.

This licence shall continue in force from 21 July 2018 until 20 July 2019 unless previously revoked.

Signed  
For and on behalf of the Director of  
Economy & Place

Dated: 25 September 2018

Licensing Services  
Hazel Court EcoDepot  
James Street  
York  
YO10 3DS

Phone: 01904 552512  
Fax: 01904 551590  
Email: [licensing.unit@york.gov.uk](mailto:licensing.unit@york.gov.uk)  
Website: [www.york.gov.uk/licensing](http://www.york.gov.uk/licensing)

ANNEX 2

## **Special Conditions**

1. Any external indication of the nature of the business is prohibited.
2. The creation of any new windows or other openings in the external structure of the building is prohibited.
3. This licence only covers the premises known as Black Orchid (First Floor of Tokyo York), 3-5 Toft Green, York, YO1 6JT.
4. That the hours of opening be limited to:  
Monday to Sunday 21:00 hours to 03:30 hours.

Non-standard hours of opening to be extended on York Racecourse Race Days only;  
18:00 hours to 04:30 hours.

ANNEX 2

**Extract from the Local Government (Miscellaneous Provisions) Act 1982**

**APPEALS** (*Sched.3, para.27*)

27. - (1) Subject to sub-paragraphs (2) and (3) below, any of the following persons, that is to say -
- (a) an applicant for the grant, renewal or transfer of a licence under this Schedule whose application is refused;
  - (b) an applicant for the variation of terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
  - (c) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
  - (d) a holder of any such licence whose licence is revoked.

may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates' court acting for the relevant area.

(2) An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in paragraph 12(1) above shall not have a right to appeal under this paragraph unless the applicant seeks to show that the ground did not apply to him.

(3) An applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 12(3) or (d) above shall not have the right to appeal under the paragraph.

(4) In this paragraph -

'the relevant area' means-

- (a) in relation to premises, the petty sessions area in which they are situated; and
- (b) in relation to a vehicle, vessel or stall, the petty sessions area in which it is used or, as the case may be, desired to be used as a sex establishment;

and

'the relevant date' means the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation of his licence, as the case may be.

(5) An appeal against the decision of a magistrates' court under this paragraph may be brought to the Crown Court.

(6) Where an appeal is brought to the Crown Court under sub-paragraph (5) above, the decision of the Crown Court shall be final; and accordingly in section 28(2)(b) of the Supreme Court Act 1981 for the words 'or the Gaming Act 1968' there shall be substituted the words 'the Gaming Act 1968 or the Local Government (Miscellaneous Provisions) Act 1982'.

(7) On an appeal to the magistrates' court or the Crown Court under this paragraph the court may make such order as it thinks fit.

(8) Subject to sub-paragraph (9) to (12) below, it shall be the duty of the appropriate authority to give effect to an order of the magistrates' court or the Crown Court.

(9) The appropriate authority need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (5) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

(10) Where a licence is revoked or an application for the renewal of a licence is refused, the licence shall be deemed to remain in force -

- (a) until the time of bringing an appeal under this paragraph has expired and, if such an appeal is brought, until the determination or abandonment of the appeal; and
- (b) where an appeal relating to the refusal of an application for such a renewal is successful and no further appeal is available, until the licence is renewed by the appropriate authority.

(11) Where -

- (a) the holder of a licence makes an application under paragraph 18 above; and
- (b) the appropriate authority impose any term, condition or restriction other than one specified in the application, the licence shall be deemed to be free of it until the time for bringing an appeal under this paragraph has expired.

(12) Where an appeal is brought under this paragraph against the imposition of any such term, condition or restriction, the licence shall be deemed to be free of it until the determination or abandonment of the appeal.

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**LICENSING ACT 2003**

**PREMISES LICENCE**

**Schedule 12**

**Part A**

**Part 1 Premises details**

Premises licence number  
CYC - 009396

Postal address of premises:

**3-5 Toft Green**

Post town: **York**

Post code: **YO1 6JT**

Telephone number: 01904 620203

**Expiry date:** This licence has no expiry date.

**Licensable activities authorised by the licence:**

Films  
Boxing or Wrestling  
Live Music  
Recorded Music  
Performances of Dance  
Late Night Refreshment  
Supply of Alcohol

**The times the licence authorises the carrying out of licensable activities:**

## FILMS

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

## BOXING OR WRESTLING

Indoors

Monday 11:00 - 02:00	Tuesday 11:00 - 02:00	Wednesday 11:00 - 02:00	Thursday 11:00 - 02:00
Friday 11:00 - 02:00	Saturday 11:00 - 02:00	Sunday 11:00 - 02:00	

## LIVE MUSIC

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

## RECORDED MUSIC

Indoors

Monday 11:00 - 03:45	Tuesday 11:00 - 03:45	Wednesday 11:00 - 03:45	Thursday 11:00 - 03:45
Friday 11:00 - 03:45	Saturday 11:00 - 03:45	Sunday 11:00 - 03:45	

## PERFORMANCES OF DANCE

Indoors

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

## LATE NIGHT REFRESHMENT

Indoors

Monday 23:00 - 03:45	Tuesday 23:00 - 03:45	Wednesday 23:00 - 03:45	Thursday 23:00 - 03:45
Friday 23:00 - 03:45	Saturday 23:00 - 03:45	Sunday 23:00 - 03:45	

SUPPLY OF ALCOHOL

Monday 11:00 - 03:30	Tuesday 11:00 - 03:30	Wednesday 11:00 - 03:30	Thursday 11:00 - 03:30
Friday 11:00 - 03:30	Saturday 11:00 - 03:30	Sunday 11:00 - 03:30	

Non Standard Timings for Films, Boxing or Wrestling, Live Music, Recorded Music, Performances of Dance, Late Night Refreshment and Supply of Alcohol:

From the end of permitted hours New Years Eve to the start of permitted hours New Years Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

**The Opening Hours of the Premises**

Monday 11:00 - 04:00	Tuesday 11:00 - 04:00	Wednesday 11:00 - 04:00	Thursday 11:00 - 04:00
Friday 11:00 - 04:00	Saturday 11:00 - 04:00	Sunday 11:00 - 04:00	

Non Standard Timings:

From the end of permitted hours New Years Eve to the start of permitted hours New Years Day.

An additional hour to the standard and non-standard times on the day when British Summertime commences.

**Where the licence authorises supplies of alcohol whether these are on and/or off supplies:**

On the premises

**Part 2**

**Name, (registered) address, telephone number and email (where relevant) of holder of premise licence:**

Name: Tokyo Industries (Lincoln York Hull) Ltd

Address: 201 Chapel Street  
Manchester  
M3 5EQ

Telephone number: None

Email address: None

**Registered number of holder, for example company number, charity number (where applicable):**

08171028

## **Annex 1 – Mandatory conditions**

### MANDATORY CONDITIONS IN RELATION TO THE SUPPLY OF ALCOHOL

1. In accordance with section 19 of the Licensing Act 2003, where a premises licence authorises the supply of alcohol, the licence must include the following conditions.
2. The first condition is that no supply of alcohol may be made under the premises licence -
  - (a) at a time where there is no designated premises supervisor in respect of the premises licence, or
  - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
3. The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.  
(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises -
  - (a) games or other activities which require or encourage, or are designed to require or encourage individuals to -
    - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
    - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
  - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
  - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
  - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
  - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either –

- (a) a holographic mark, or
- (b) an ultraviolet feature.

7. The responsible person must ensure that –

- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures –
  - (i) beer or cider: ½ pint;
  - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
  - (iii) still wine in a glass: 125ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

#### MANDATORY CONDITION - ALCOHOL PRICING

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1 –

- (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) “permitted price” is the price found by applying the formula –

$$P = D + (D \times V)$$

where –

- (i) P is the permitted price,
- (ii) D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence –
  - (i) the holder of the premises licence,
  - (ii) the designated premises supervisor (if any) in respect of such a licence, or
  - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

**MANDATORY CONDITION: DOOR SUPERVISION**

1. In accordance with section 21 of the Licensing Act 2003 (as amended by section 25 Violent Crime Reduction Act 2006), where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must -
  - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
  - (b) be entitled to carry out that activity by virtue of section 4 of that Act.
2. But nothing in subsection (1) requires such a condition to be imposed -
  - (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or
  - (b) in respect of premises in relation to -
    - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence, or
    - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).
3. For the purposes of this section -
  - (a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and which is licensable conduct for the purposes of that Act (see section 3(2) of that Act), and
  - (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

**MANDATORY CONDITION: EXHIBITION OF FILMS**

1. In accordance with section 20 of the Licensing Act 2003, where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.
2. Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.
3. Where -
  - (a) the film classification body is not specified in the licence, or
  - (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question, admission of children must be restricted in accordance with any recommendation made by that licensing authority.
4. In this section - 'children' means persons aged under 18; and 'film classification body' means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

## **Annex 2 – Conditions consistent with the operating schedule**

### **Licensing Objectives**

#### Prevention of Crime & Disorder

1. Digital CCTV will be installed to cover the premises and will include all areas to where public have access to consume alcohol and where licensable activities are undertaken.
2. CCTV will be maintained, working and recording at all times when the premises are open.
3. The recordings will be of evidential quality in all lighting conditions and will be of sufficient quality to be produced in court or other such hearing.
4. Copies of the recordings will be kept available for any responsible authority for 28 days.
5. Copies of the recordings will display the correct time and date of the recording.
6. A member of staff trained to use the CCTV system shall be on duty at all times so as to ensure the recorded images are made available for inspection and downloading immediately upon request to any responsible authority.
7. All images downloaded from the CCTV system must be provided in a format that can be viewed on readily available equipment without the need for specialist software.
8. Clear notices shall be prominently displayed requesting customers to leave the premises and the area in a quiet and orderly manner.
9. The only acceptable proof of age identification shall be a current passport, photocard driving licence or identification carrying the PASS logo.
10. Drinking vessels of any type shall not be allowed to enter or leave the premises whilst under the customers care; save for movement into the outside drinking area attached to the venue.
11. Documented staff training will be given regarding the retail sale of alcohol; the conditions attached to the premises licence; and the opening times of the venue.
12. Such records (referred to in condition 11) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.
13. A Refusals Register and Incident Report Register will be kept. Such documents will record incidents of staff refusals to under-age or drunk people as well as incidents of any anti-social behaviour and ejections from the premises.
14. Both documents (referred to in condition 13) shall be kept for at least one year and they will be made available immediately upon a reasonable request from any responsible authority.
15. The venue shall partake in the York night-time economy radio system.
16. There shall be no consumption of alcohol by patrons queuing to enter the premises.

17. When any entrance is being used by members of the public door supervisors shall be positioned at every entrance to the premises in accordance with conditions 18, 19 and 20. For the purpose of clarity the entrances to the venue are the door leading to the main club; the door leading to the bar area (ie the middle entrance); the door leading to the Sexual Entertainment Venue; (the total number of door supervisors is applicable across the licensed area not necessarily two per door at all times unless customer numbers dictate such deployment).

18. An adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue from 21:00hrs until the venue closes for business on the following occasions:-

- i) every Friday and Saturday evening
- ii) the evening before a Bank Holiday
- iii) the evening of race meetings held at York Racecourse (save for the family meeting held in September and the first meeting held in May).

19. Save for occasions when the audience is less than one hundred customers an adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue whenever live music (that does not fall under the definition laid out in the Live Music Act) is being undertaken at the venue; their deployment being at least one hour prior to the start of any concert until the venue closes for business.

20. An adequate number of door supervisors (at least one plus one per hundred customers ie a minimum of two at any time) shall be provided at the venue from 23:00hrs until the venue closes for business on all other occasions.

21. So as to ensure the licensing objective the prevention of crime and disorder is not undermined, there shall be a total capacity limit of 860 people.

22. If a DJ is used on any night they will ask customers to leave quietly.

23. Any person who appears to be intoxicated or who is behaving disorderly will not be allowed entry to the venue. Any person within this venue who appears to be intoxicated or who is behaving disorderly will be given care and consideration in leaving the venue.

24. Text/radio pagers are used within the venue, they are monitored by a responsible member of staff.

25. Toughened glass is used in the venue.

26. Music and dancing will be a prominent feature of trading.

27. For the purpose of clarity the licensable area of the venue shall be restricted to the building only. There shall be no licensable activities undertaken on the footpath directly outside the venue.

The following conditions apply to the outside drinking area:-

28. The boundary of the outside area shall be clearly defined by a barrier at all times the area is being used.

29. Customers shall remain seated when consuming alcohol in the outside smoking area.

30. There shall be no sale of alcohol in the outside area.

31. The outside area shall not be used for the consumption of alcohol after 21:30hrs. For the purpose of clarity, after 21:30hrs the outside area shall only be used by people who wish to smoke

32. The outside area shall be cleared of drinking vessels by 21:45hrs.

#### Public Safety

33. A person trained in first aid will be at the venue who will have received training in any problems associated with alcohol and drug misuse.

34. A qualified first aider shall be present throughout any sporting entertainment involving boxing, wrestling, judo, karate or sport of a similar nature.

35. Where a ring is used it will be constructed by a competent person and shall be inspected by a competent authority before use and any material used to form the skirt of the ring shall be flame retardant.

36. The seating layout shall be agreed with the appropriate authorities.

#### Public Nuisance

37. No amplified music or regulated entertainment shall be provided in the entrance, reception or lobby areas of the premises.

38. The internal lobby doors to the main entrance and the doors from the reception to the main dance floor and the cafe bar shall be kept closed except when being used for entry or exit.

39. Access to the smoking area after 23:00hrs, shall be via the main entrance door only.

40. During provision of live or recorded music, the emergency exit doors in the centre of the Toft Green facade leading from the Beer Keller area shall be kept shut after 23:00hrs and prior to that the doors shall only be opened for ingress or egress.

41. Any patrons waiting outside the premises for entry into the venue, and those using the smoking area shall be managed by premises staff to ensure noise arising from these patrons, such as shouting, singing and chanting is kept to a minimum.

42. Documented patrols shall be carried out by members of staff at no less than hourly intervals during the hours of opening to the public. These patrols shall monitor the noise arising from within the premises and created by patrons within the vicinity of the premises. These checks shall be undertaken outside the building each hour at three locations: to the left hand side of the facade, adjacent to 1 Toft Green; to the right hand side of the building, adjacent to the rear of 92 Micklegate and on Barker Lane, adjacent to Lawrance House. The checks shall be completed and recorded in accordance with a procedure to be agreed with City of York Council within 1 month of issue of the varied licence granted 24 September 2014.

43. The internal double doors between the Beer Keller and the Fibbers club shall be kept closed after 23:00hrs.

44. A direct contact number for the duty manager shall be made available to residents living in the vicinity of the premises on request.

45. Staff training shall be given and documented regarding all matters relating to the licence and its conditions. Records of training shall be kept for 3 years.

Protection of Children from Harm

46. A person under the age of 18 years will only visit the venue with a responsible adult usually for the purpose of dining unless there is an event especially organised for the youth market. Unaccompanied persons under the age of 18 are not welcome in the venue except at events especially organised for the youth market.

47. The venue intends to have specially organised events for the youth market when the venue will adhere to the following Company Policies:

- a) Admission Policy
- b) General Policies Statement
- c) Code of Conduct for Staff Statement and
- d) Child Protection Policy

48. For Regulated Entertainment consisting of Music and Dancing:

a) The licence holder shall attach a copy of the City Council's Rules for the Management of Places of Public Entertainment to the valid licence. This document shall form part of the licence.

b) The licence holder shall ensure prompt compliance with any written report received from the City Council.

c) The licence holder shall ensure prompt compliance with any written report received from North Yorkshire Fire and Rescue Service.

d) The noise generated from the use of these premises shall not exceed a Noise Rating 25 (ISO.R=1966: 1971) when measured at a distance of one metre from the nearest noise sensitive facade and be of such a level so as not to constitute a nuisance to inhabitants of the neighbourhood.

e) In accordance with Condition 1.11 of the Rules of Management of Places of Public Entertainment licensed by the City of York Council, written consent is hereby given for these premises to be used for entertainment attended wholly or mainly by children subject to the attached conditions being complied with. This consent is limited to Tuesday evenings between the hours of 18:30 - 21:00 when the premises may remain open for disco and dancing from 14 to 17 year olds.

**Schedule of additional conditions to be complied with when entertainments attended wholly or mainly by children are given.**

49. A sufficient number of competent and adequately trained adult attendants shall be on duty during events which are to be attended wholly or mainly by children. The minimum number of attendants on duty must be as follows:

- One attendant for every 100 or part there of accommodated on the ground floor.
- One attendant for every 50 or part there of accommodated on the first floor.

Persons whose normal duties are other than the assistance of persons entering the entertainment area, should not be included in calculating the number of attendants.

50. Attendants must be specifically instructed as to their essential duties and responsibilities in the event of fire or other emergency.

51. Attendants should be easily identifiable by means of some conspicuous clothing or marking system which is visible under all lighting conditions.

52. Training of attendants must include instruction in the following areas:

- a) the action to be taken upon discovering a fire;
- b) the action to be taken upon hearing the fire alarm;
- c) raising the alarm, including the location of the alarm call points and alarm indicator panels;
- d) the correct method of calling the fire brigade;
- e) the location and use of fire fighting equipment;
- f) knowledge of escape routes;
- g) knowledge of the method of operation of any special escape door fastenings;
- h) appreciation of the importance of fire doors and the need to close all doors at the time of a fire and on hearing the fire alarm;
- i) the operating of all escape doors not in regular use, to ensure that they function satisfactorily; and
- j) evacuation of the building to an assembly point at a place of safety (to include reassuring persons attending the entertainment and escorting them out of the premises).

53. Attendants must have attended at least one practice fire drill following completion of training.

54. Notices must be prominently displayed where parents deposit children, saying that in the event of an emergency children will be escorted by a member of staff to a named collection point outside the building.

55. Account should be taken of the additional responsibility caused by the attendance of disabled children. Further attendants will need to be on duty, the number of which will depend on the number of disabled children attending and the nature of their disabilities.

### **Annex 3 – Conditions attached after a hearing by the licensing authority**

1. There shall be no admissions to the premise after 03:00hrs, except for patrons using the smoking terrace.
2. The sale of alcohol shall cease 30 minutes before closing time.
3. The sale of late night refreshment shall cease 15 minutes before closing time.
4. Recorded music shall cease 15 minutes before closing time.
5. All licensable activities, namely; Films, Live Music and Performance of Dance, shall cease 30 minutes before closing time.
6. The licensable activity, Boxing and Wrestling, shall cease by 02:00hrs.
7. A dispersal policy agreed with the Licensing Authority and North Yorkshire Police shall be adhered to at all times.
8. One marshal will control the access and egress from the internal door in the premises leading to the smoking area and the second marshal shall monitor the behaviour of those patrons using the smoking area.

**Annex 4 – Approved Plan**

Plan Number TO/Y0/322/01 & 02

For and on behalf of  
The Director of Communities  
& Neighbourhoods

Date: 15/08/2005  
21/05/2015 (Transfer)

Licensing Services  
Hazel Court EcoDepot  
James Street  
York  
YO10 3DS

Phone: 01904 552512  
Fax: 01904 551590  
Email: [licensing.unit@york.gov.uk](mailto:licensing.unit@york.gov.uk)  
Website: [www.york.gov.uk/licensing](http://www.york.gov.uk/licensing)

## Standard Conditions

### Sexual Entertainment Venues

#### General

1. In accordance with Home Office guidance, where a condition conflicts with a condition in a Licensing Act 2003 premises licence, the more onerous applies.
2. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the council.
3. The licence may be revoked by the council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
4. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
5. The name of the premises must be approved by the council in writing. Any change to the name of the premises must be approved by the Council in writing.

#### Exhibition of the licence

6. The licence or a certified copy must be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence must be kept on the premises and be available for inspection by an authorised officer of the Council.

#### Hours of opening

7. Except with the written consent of the council, the premises will only open to the public during the following hours:

Monday	21:00 – 03:30	Friday	21:00 – 04:30
Tuesday	21:00 – 03:30	Saturday	21:00 – 04:30
Wednesday	21:00 – 03:30	Sunday	21:00 – 03:30
Thursday	21:00 – 03:30		

#### Conduct of the premises

8. Relevant entertainment will only be performed by the dancer. There must be no audience participation.
9. Dancers will only perform on the stage area, or in booths/areas for VIPs as identified on the plan attached.

10. There must be no physical contact (touching) by a customer of a dancer while a performance is taking place, except for the placing of gratuities into the hand of the dancer at the beginning or conclusion of the performance. A dancer may have physical contact with the customers while the performance is taking place, this is restricted to touching the customers knees (including sitting on their knee), lower legs, upper chest, arms, face and head. There will be no physical contact of the pubic area or genitals.
11. Any performance will be restricted to dancing and the removal of clothes. There will not be any other form of sexual activity or stimulation which, for the avoidance of doubt, includes kissing.
12. Sex toys must not be used and penetration of the genital area by any means must not take place.
13. Dancers shall re-dress at the conclusion of the performance.
14. Customers will not be permitted to throw money at the dancers.
15. No customers shall be admitted to the premises or allowed to remain on the premises if they appear to be intoxicated or unruly.
16. No person shall take any photographs, videos or other similar recordings (including mobile phones and video streaming) of the authorised relevant entertainment.

#### **External appearance**

17. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

**STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE**

This premises operates a Challenge 25 policy.

Persons who appear to be under the age of 25 will be required to show proof of age.

18. The external appearance of the premises must be approved by the council in writing. Any change to the external appearance must be approved by the council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the council in writing before work is undertaken.
19. Access to the licensed area of the premises should be through a lobby area which is constructed in such a way that the inside of the licensed premises where relevant entertainment takes place is not visible to passing members of the public when the doors of the premises are opened.
20. Windows and opening to the premises, other than entrances, shall be obscured in a manner and with such material approved by the council. Door entrances shall also be obscured by blinds or material approved by the council so as to prevent any member of the public from seeing through to the premises whilst relevant entertainment is taking place.

21. External signage will only be illuminated between 9.00pm and 5.00am, and movable signs placed outside the premises will be removed between 4.30am and 9.00pm.

### **Advertising**

22. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the council in writing.
23. Staff employed or subcontracted by the premises will not verbally or otherwise promote, tout or advertise the premises, except by way of flyers. Staff employed or subcontracted by the premises will not direct potential customers to transport connected with the premises.
24. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Therefore, the distribution of flyers is only permitted between the hours of 9.00pm and 3.30am. The licensee will remove any leaflets/flyers from the highway within a 100 metre radius of the premises by 5.00am. Flyers must not be distributed by and to persons Under the age of 18 years.

### **Layout of the premises**

25. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
26. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
27. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the council.
28. Where works necessitate the premises being closed for a long period of time, the premises shall not reopen for the purpose of the licence, until the licensee has been notified in writing by the council of the satisfactory completion of the work.
29. All parts of the premises shall be well maintained and kept in a clean condition to the satisfaction of the council.

### **Management of the premises**

30. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the council within 14 days of such change. Such details as the council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the council.

31. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst relevant entertainment is being performed. Any such nomination will be produced on demand to an authorised officer of the council or the police.
32. The licensee will ensure that any person nominated by him/her under the above:
  - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
  - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
33. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue ("the manager"), is convicted of an offence, they must, as soon as practicable after the conviction, inform the council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.
34. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee's control of the premises.
35. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the council.
36. No person under the age of 18 will be admitted to the premises.
37. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
38. The licence holder will not employ any person under the age of 18 in any capacity.
39. The licensee will comply with all statutory provisions and any regulations made hereunder.
40. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of practice for the dancers. This code must be given to all dancers and displayed in staff areas. This code must be made available upon request to both the police and Authorised officers.
41. The licensee will provide, for approval in writing of both the police and the licensing authority, a code of conduct for customers, this must be printed in a manner which is clear and easy to read during normal operation of the premises. This code must be prominently displayed at each entrance to the premises, at the entrance to any private dance areas and in suitable locations within the licensed premises, such locations to be agreed with the council, such as at bars.
42. Price lists for both drinks and sexual entertainment will be clearly displayed at each entrance to the premises, at each bar and at each table.
43. Suitable and sufficient training will be provided to all staff including the nominated responsible person. The training will be recorded and the training records must be made available upon request to both the police and authorised officers.

44. The name of the person responsible for the management of the premises, whether the licensee or manager, shall be displayed in a conspicuous position within the premises throughout the period during which he/she is responsible for its conduct.

### **Safety and security**

45. A colour digital CCTV system will be maintained and operational at the premises at all times when licensable activities are being carried out and at any other times when member of the public are present on the premises.
46. The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors, stairways, each dance booth and VIP areas (excluding within toilets and changing rooms). The CCTV system will cover the main entrances and external areas of the premises occupied by the public, for example queuing areas, beer gardens, smoking areas and car parks.
47. The locations of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with North Yorkshire Police and the council.
48. The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.
49. Recorded CCTV images will be maintained and stored for a continuous period of 28 days. The CCTV equipment shall have constant time/date generation which must be checked on a daily basis for accuracy.
50. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard DVD player.
51. The nominated person ("the manager") must be trained in the use of any such CCTV equipment and be able to produce CCTV images to the police or Licensing Authority.
52. CCTV footage will be controlled and kept in a secure environment to prevent tampering and unauthorised viewing.
53. The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images captured on cameras on the premises will, on the lawful request of the police or an authorised officer of the council, cause any required footage to be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that they are secured to prevent any overwriting.
54. A minimum of two Security Industry Authority registered door staff (numbers to be subject to police and licensing authority approval) will be present on the premises during the performance of relevant entertainment.
55. A refusals/incident/accident register will be maintained and shall record all refusals relating to alcohol, access to the premises and all incidents or accidents.

56. The licensee will ensure that a fire safety risk assessment is carried out in connection with the premises, and is retained on the premises at all times and available for inspection by an authorised officer or a member of the Fire Authority.
57. The licensee will maintain good order in the premises at all times, and ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents in the vicinity and persons passing by.

### **Staff welfare**

58. Dancers will be aged 18 years or over.
59. Before a dancer is permitted to work on the premises the licensee will ensure that the dancer:
  - a) has not been convicted of theft, drug offences or prostitution
  - b) has the right to work in the UKThe licensee will keep records of the checks, including copies of any documentation such as a basic disclosure, passport, visa, driving licence or national insurance number provided by the dancer.
60. All premises that provide relevant entertainment will provide dancers with copies of the following documents:
  - a) A copy of the conditions attached to the Sex Establishment Licence;
  - b) Details of any other conditions applied by management of the premises;
  - c) A copy of the code of practice for dancers;
  - d) A copy of the code of conduct for customers;
  - e) Price lists for drinks and sexual entertainment.
61. Dancers will be provided with separate secure dressing rooms, facilities to secure valuables and proper sanitation facilities. No person other than performers and authorised staff will be allowed in or near the dressing rooms, therefore safe and controlled access will be maintained at all times. The documents detailed in condition 60 will be displayed in the dressing rooms.
62. There will be at least one female member of staff authorised to be responsible for the safety and welfare of the dancers. This staff member must be on the premises at all times when licensable activities are taking place.
63. All booths and VIP areas used for private dances must be visible to supervision and must not have closing doors, any curtains used must be approved by the council in writing.
64. All booths and VIP areas used for private dances must be directly supervised by either a SIA registered door supervisor, or a member of staff who has direct contact with a SIA registered door supervisor working on the premises at all times the booths/areas are in use. Direct supervision does not include remote supervision by CCTV.
65. Dancers will only be present in the licensed area in a state of nudity when they are performing on stage or providing a private dance.
66. Any person on the premises who can be observed from outside the premises will be properly and decently dressed.

67. The practice of fining is prohibited.
68. Customers and staff must not be allowed to interact while using the smoking area, and where possible a separate smoking area should be provided for staff. Dancers must be covered up at all times with knee length robes or coats whilst using the smoking areas.
69. Throughout the lap or table dance customers will remain seated and fully clothed, with their hands clearly visible, either resting on the arms of the chair/sofa or on the seat cushion, or customers must be asked to sit on their hands.
70. If a dancer is invited to have a drink with a customer, the dancer will remain fully clothed during this period. Dancers will not be paid commission on the sale of beverages.
71. On leaving the premises dancers will be escorted to their transport by a SIA registered door supervisor.

### **Vessels, vehicles and stalls**

72. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the council of such intended removal. The council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
73. The requirements of condition 72 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
74. Vehicles must not be used for personal solicitation, touting or advertising.

### **Variation of conditions**

75. The council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
76. The licensee may apply to the council to vary any of the terms of the licence.
77. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.

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## Legislation and Policy Considerations

1. The following provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) apply to this application:
  - Paragraph 10 (Grant, renewal and transfer of licences for sex establishments) relates to the process which the applicant must have followed for the application to be considered valid.
  - Paragraph 12 (Refusal of licences) relates to the grounds under which an application shall not be granted and also describes the powers by which the licensing authority has a discretion to refuse the licence.
  - Paragraph 13 (Power to prescribe standard conditions).
  
2. The following provisions of the Home Office Guidance apply to this application:
  - Paragraphs 3.23 – 3.24 (Objections) explain who can object and how this is done and that the applicant must be made aware of the general grounds for the objection before the application is determined.
  - Paragraphs 3.25 – 3.26 (Hearings) explain that the applicant must be given the opportunity to appear and be heard in front of the sub-committee considering the application. Schedule 3 does not make any explicit provision for objectors to be heard, this is left to the discretion of the appropriate authority.
  - Paragraphs 3.27 – 3.31 (Grounds for refusal).
  - Paragraphs 3.32 – 3.38 (Relevant locality) define the meaning of “relevant locality” and the powers of the appropriate authority to decide the maximum number of premises allowed in a particular locality.
  - Paragraphs 3.39 – 3.42 (Licence conditions) explain that once the decision is made to grant, the appropriate authority can attach conditions specific to the individual premises and/or standard conditions for the particular type of establishment. These conditions should not duplicate conditions placed on a premises licence issued under the Licensing Act 2003 and should be appropriate to the activities authorised by the licence.
  - Paragraphs 4.19 – 4.21 (European Convention on Human Rights) explain whilst applications from existing operators can be refused on one or more grounds set out in paragraph 12 of schedule 3 of the 1982 Act, account must be taken of rights existing operators may have under Article 1 of Protocol 1 to the European Convention

which protects the peaceful enjoyment of their possessions (including licences) and article 10 (freedom of expression).

4. City of York Council's Policy for the Licensing of Sex Establishments Licensing Policy and the Standard Conditions for Sexual Entertainment Venues applies to this application.
5. The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
6. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.
7. The Committee is reminded that it must comply with the Council's Public Sector Equality Duty (as required to do so under s.149 of the Equality Act 2010), and have due regard to the potential impact on gender equality.

## **NOTE FOR MEMBERS**

Extracts from Home Office Guidance for England and Wales relating to Sexual Entertainment Venues.

3.23 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.

3.24 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

### **Hearings**

3.25 Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.

3.26 Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

### **Refusal of a Licence**

3.27 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- a) to a person under the age of 18;

- b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- d) to a body corporate which is not incorporated in an EEA State; or
- e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.28 A licence may be refused where:

- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- d) that the grant or renewal of the licence would be inappropriate, having regard -
  - i. to the character of the relevant locality;
  - ii. to the use to which any premises in the vicinity are put; or
  - iii. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.29 A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

3.31 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it if one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

## Relevant Locality

3.32 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

3.33 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:

- (a) in relation to premises, it is the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

3.34 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.

3.35 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

3.36 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority’s view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding two sex establishments 200 miles away from one another were in the same locality. Case law indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

3.37 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the ‘character’ of the relevant locality

and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.

3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

### **Licence Conditions**

3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.

3.40 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another

3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

3.42 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licence or clubs premises certificates and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.



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**Licensing and Regulatory Committee**

4 September 2019

Report of the Director of Economy and Place

**Interpretation of law - 'Out of town' licences****Summary**

1. This covering report introduces the 'Executive report' (Appendix A) which is a draft report intended to be considered by the Executive on 26<sup>th</sup> September 2019. The Executive report concerns the council's interpretation of the law relating to the ability of private hire operators and drivers to work their vehicles outside of the area within which they are licensed (often referred to as 'out of town' operators/drivers/vehicles).
2. This report is brought further to the request of Members at the last Gambling Licensing and Regulatory Committee (GLRC) meeting and provides an opportunity for comments prior to the Executive Meeting. The comments of the Committee will be added to the report in due course.

**Recommendations**

3. In the Executive report, Members are recommended to follow Option 1, namely that the settled legal position remains with no changes required to the Taxi Licensing Policy.

Reason: To provide clarity for the public in relation to the council's interpretation of the law.

**Background**

4. The council's settled legal position and how it has been derived is set out in the Executive report.

**Consultation**

5. There has been no consultation in relation to this report as it concerns legal opinion.

**Options**

6. The various options are set out in the Executive report.

**Analysis**

7. The Executive report contains an analysis of the options.

**Council Plan**

8. This report helps ensure the council is meeting its statutory duties.

**Implications**

9. The various 'Financial', 'Human Resources', 'Equalities', 'Legal', 'Crime and Disorder', 'Information Technology', 'Property' and 'Other' implications are set out in the Executive report.

**Risk Management**

10. The impact on the risk management score is also provided in the Executive report.

**Contact Details**

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**Chief Officer Responsible for the report:**  
**Neil Ferris**  
Corporate Director of Economy and Place

**Report**  **Date** 22.08.2019  
**Approved**

**Specialist Implications Officer(s)** List information for all

N/A

**Wards Affected:** List wards or tick box to indicate all **All**

**For further information please contact the author of the report**

## **Annexes**

Annex A – The draft Executive Member Report ‘Interpretation of law - ‘Out of town’ licences’ intended to be received at the Executive meeting on 26 September 2019

Annex 1 – Gerald Gouriet QC ‘Opinion’ for the York Private Hire Association, 16.11.18

Annex 2 – Leo Charalambides ‘Advice Note’ for City of York Council, 05.03.19

Annex 3 – Further Opinion (salmon paper)

## **List of Abbreviations Used in this Report**

GLRC - Gambling Licensing and Regulatory Committee

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**Executive**

26 September 2019

Report of the Director of Economy and Place

## **Interpretation of law - 'Out of town' licences**

### **Summary**

1. This report concerns the council's interpretation of the law relating to the ability of private hire operators and drivers to work their vehicles outside of the area within which they are licensed (often referred to as 'out of town' operators/drivers/vehicles).
2. Members are not being asked to make a decision to 'prosecute Uber'. Any decision to take formal enforcement action – of which prosecution is only one option – would only occur following an investigation and proper application of our enforcement policy to the situation. Members are being asked to consider whether they wish to change the Council's current stance and make a statement to the effect that 'out of town operators/drivers/vehicles working in York' are not considered lawful unless certain conditions are met (which would need to be determined) in the Taxi Licensing Policy.
3. In summary, the council's legal position is that provided the three licences required in relation to a private hire vehicle (operator, driver and vehicle) have all been licensed by the same authority then the private hire vehicle can undertake journeys anywhere in England and Wales. That is irrespective of where the journey commences, areas through which the journey passes and, ultimately, the area where the journey ends. This has become known as the 'triple licensing rule' (or similar) and this interpretation has been confirmed in external legal advice.

This is national issue and the situation in York is similar to that in many other towns and cities in the country. For example, Medway Council have a statement on their website in relation to Uber which says 'As the law stands, at present the Council do not believe that Uber is acting unlawfully within the council's area'. Furthermore, Uber are not the only firm who work under the 'triple licensing rule' and it is said that other firms work to this model on race days in York for example.

4. The 'Taxi Licensing Policy' sets out the policy that the Council will apply when making decisions about new applications and licences currently in force' and as such is not currently concerned with 'out of town' operators/vehicles/drivers. Neither is it intended as a comprehensive list of the wider rules that private hire drivers must comply with such as 'plying for hire' and 'parking on ranks'.
5. At the Gambling Licensing and Regulatory Committee (GLRC) meeting on 18 March 2019, it was recommended to Members that 'the conclusions of the Legal Advice at Annex 2 are accepted and that it be recommended to the Executive that there is no requirement for a change in Taxi Licensing Policy as a consequence'.
6. Members resolved that 'it be recommended to the Executive that in order to make an informed decision further investigation be undertaken regarding the requirement for a change in licensing policy'.
7. There was also concern at the GLRC on 18<sup>th</sup> March about the lack of information in the original report presented to them. Members of GLRC considered this, more detailed report, on 4<sup>th</sup> September 2019.

## Recommendations

8. That Executive Members follow Option 1 within this report, namely that the settled legal position remains with no changes required to the Taxi Licensing policy.
9. *Reason: To provide clarity for the public in relation to the council's interpretation of the law.* If the Council changes its position in relation to 'out of town' operators and vehicles it creates a score of 19 (orange risk) on the Council's risk matrix. This is because there would at least be a 'possible' risk of a 'major' impact to our service i.e. national media coverage/action in a national court and which could cost over 10% of the Public Protection budget. Retaining the status quo keeps the likelihood to 'remote' thereby reducing the score to 12 on the risk matrix (yellow risk).

## Background

10. The council's settled legal position is as stated in paragraph 2 above, the principle arising from *Adur District Council v Fry* [1997] RTR 257.

11. In this case, a private hire operator, driver and vehicle were licensed by Hove Borough Council. The situation concerned a booking for a journey that commenced, ended and throughout its entire length was within the district of Adur District Council. The High Court determined that no offence was committed, and it was lawful for the vehicle to undertake a journey that is wholly outside the district in which it is licensed. This is due to the limited meaning of the term “operate” contained in the Local Government (Miscellaneous Provisions) Act 1976, section 80(1), which meant “in the course of business to make *provision* for the invitation or acceptance of booking for a private hire vehicle and could not be construed more widely” [emphasis added]
12. ‘Provision’ has subsequently been held to refer to the ‘antecedent arrangements’ around the invitation/acceptance of a booking.
13. On the 19 November 2018, the Private Hire Association shared a legal opinion it had obtained from Queen’s Counsel that argues operators of ‘out of town vehicles’ and their drivers are illegally operating in York by virtue of displaying their vehicles on the app (Annex 1).
14. The Council instructed separate Counsel (Leo Charalambides) to advise, and a comprehensive advice note is attached at Annex 2. Our Counsel had the benefit of the outcome of a case earlier this year concerning an Uber driver working in Reading who was prosecuted (unsuccessfully) for ‘plying for hire’ simply by virtue of his presence on the Uber app. Although this case concerns a different offence to that which the Private Hire Association’s counsel alleges is occurring in York, it provides a useful insight as to how the courts – in particular the High Court - may interpret the situation as in reaching their decision they had consideration of the Uber business model. Lord Justice Flaux found the app:  
  
*‘is simply the use of modern technology to effect a similar transaction to those which have been carried out by PHV operators over the telephone for many years’.*
15. As a result, our Counsel concludes that the Private Hire Association’s position is ‘untenable and self evidently wrong’.
16. The York Private Hire Association have since circulated a further opinion to Councillors which is attached as Appendix 3 (please note – we have been asked by those who sought this opinion not to put it into the public domain). The opinion says that the Reading case ‘may be significant’ because of ‘its implicit acceptance of Uber’s business model... throughout the judgment’ and that ‘one must take it into account [the

Reading case] when considering if Uber could be successfully prosecuted for operating without a licence’.

17. Finally, a Department of Transport ‘Task Finish Group’ (TFG) was commissioned last year to review current taxi licensing laws. They recommended the following:-

***‘TFG Recommendation 11***

*Government should legislate that all taxi and [Private Hire Vehicle] journeys should start and/or end within the area for which the driver, vehicle and operator... are licensed. Appropriate measures should be in place to allow specialist services such as chauffeur and disability transport services to continue to operate cross border.*

*Operators should not be restricted from applying for and holding licences with multiple authorities, subject to them meeting both national standards and any additional requirements imposed by the relevant licensing authority.’*

18. In their response, the Department for Transport recognise that

*‘Currently, a PHV journey can take place anywhere in England provided that the driver, vehicle and operator are licensed by the same licensing authority.’*

The Department for transport go on to say that they

*‘agree with the principle of this recommendation, and will consider further (with a view to legislation) how it might best work in detail. In particular, Government will need to consider what size of area is appropriate. We will also consider what flexibilities or exemptions might be needed to reduce or avoid negative impacts on any particular business models, types of transport or passenger, and businesses or localities that are close to (perhaps multiple) licensing authority borders.’*

19. That the Department of Transport are considering ‘legislation’ to prevent private hire journeys taking place ‘anywhere in England’ implies that the Government agrees with the City of York Council’s current interpretation.
20. As outlined in the summary above (at paragraph 3), the Council’s Taxi Licensing Policy does not currently deal with ‘out of town’ operators, drivers or vehicles as it is only concerned with those we do licence or those who are seeking to be licensed by the City of York Council.

Licences held in other Authorities will be covered by the licensing policies of those areas. Please also note that the case of R (Uber Britannia Ltd & Delta Merseyside Ltd) v Knowsley Metropolitan Borough Council [2018] EWHC 757 (Admin) prevents other licensing authorities restricting the areas in which drivers can work i.e. it prevents other authorities from introducing licensing conditions which prohibit their drivers from working in York.

## **Consultation**

21. As this matter concerns legal opinion, wider public consultation with the passengers who use taxis including 'out of town' vehicles, the local trade who are in competition with those drivers or the wider public is not appropriate.

## **Options**

### **Option 1**

22. Follow the Council's legal advice and agree the settled legal position as outlined in paragraph 2 with no change to the Taxi Licensing Policy. The situation could be reviewed in the event of a change in the law as a result of new legislation or a binding court judgement.

### **Option 2**

23. Disregard the council's legal advice and adopt the position that 'out of town' operators and/or their drivers work in York illegally (unless certain conditions are met) and make a statement in the Taxi Licensing Policy to this effect. Members would need to advise on what statement is appropriate.
24. Enforcement action would only be taken after an investigation had been conducted and the findings considered in accordance with the Council's enforcement policy. This would include there being a reasonable prospect of a conviction on the evidence obtained and it being considered in the public interest to take such action.

## **Analysis**

25. Option 1 maintains the status quo. It is consistent with the Council's independent legal advice, but enables the council to review its position in light of new legislation or a binding court judgement. It provides certainty

to the public on the council's interpretation of the law. The risk of a *successful* legal challenge to this position by an aggrieved party is low.

26. Option 2 will mean we disregard our own independent legal advice in preference to one of the opinions supplied by the local taxi trade. Any change to the Taxi Licensing Policy which considers 'out of town' operators and drivers to be working in York illegally (unless certain conditions are met – to be determined) risks successful legal challenge and/or simply being ignored. The policy only binds the operators, drivers and vehicles the council licences and not those we don't.
27. Formal enforcement action – particularly a prosecution – would only be possible under our enforcement policy on consideration of the evidence gathered during the investigation and it being in the public interest to take such action. We would need to establish that an operator is 'making provision' for the invitation or acceptance of bookings in York i.e. that 'antecedent arrangements' are taking place here. The Reading case suggests that the High Court is unlikely to consider the image of a vehicle on an app being the 'provision' for invitation/acceptance of booking, since they considered the app to be nothing more than a modern day manifestation of the telephone.
28. What is more, even before we reach court, we may be subject to challenge on the basis that we have been advised by independent Counsel that the situation is unlikely to be considered unlawful. In the event of losing the case we risk having costs awarded against us. It is difficult to estimate the cost of legal action, but discussions with Counsel Chambers suggest that the cost of a successful prosecution could be in the region of £30k (although there could of course be an order made that our costs are repaid). In the event of an unsuccessful prosecution we will incur the estimated £30k cost, plus there is a potential claim for a further £60- £80k if costs were awarded against us. Any such action is likely to be vigorously defended given that it strikes at the heart of the business model of some operators. Legal costs will rise if the case is taken to higher courts. Similar costs are likely to arise in the event of a judicial review. These costs do not include those of council officers and in-house legal services.
29. Officers consider that Option 2 is not a credible option.

## **Council Plan**

30. This report helps ensure the council is meeting its statutory duties.

## Implications

31. **Financial** – As highlighted in paragraph 28, there are significant financial implications to the council in the event that the Members decision to alter the position/policy (and any subsequent formal enforcement action) is successfully challenged. It is important to note that the costs of taking a case to court are by their very nature uncertain.
32. **Human Resources (HR)** - There are no HR implications. An investigation into a breach of the law is likely to be fairly straightforward. There is however likely to take hundreds of officer hours in defending the decision to over-ride our independent legal advice.
33. **Equalities** – Taxis are a preferred method of transport for many residents and visitors to the city with a disability.
34. **Legal** – Legal opinion is the subject of this report. The Council is satisfied that the opinion set out in Annex 2 is accurate and robust. Any decision of the council to act/not to act may be the subject of judicial review.
35. **Crime and Disorder** – The Taxi Licensing team receive complaints about ‘out of town drivers’ and the local trade. Complaints are similar in nature in both areas, the biggest cause of complaints being the standard of driving. Complaints about the behaviour of out of town drivers are dealt with by the local licensing authority. The number of serious complaints about taxi drivers either local drivers or out of town are low, particularly in relation to the number of journeys taken.
36. **Information Technology (IT)** – There are no IT implications.
37. **Property** – There are no property implications.
38. **Other** – There are no other implications.

## Risk Management

39. If the Council changes its position in relation to ‘out of town’ operators and vehicles it creates a score of 19 (orange risk) on the Council’s risk matrix. This is because there would at least be a ‘possible’ risk of a ‘major’ impact to our service i.e. national media coverage/action in a national court and which could cost over 10% of the Public Protection

budget. Retaining the status quo keeps the likelihood to 'remote' thereby reducing the score to 12 on the risk matrix (yellow risk).

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**Report**  **Date** 00.00.2019  
**Approved**

**Specialist Implications Officer(s)** List information for all

N/A

**Wards Affected:** List wards or tick box to indicate all **All**

**For further information please contact the author of the report**

### Annexes

Annex 1 – Gerald Gouriet QC 'Opinion' for the York Private Hire Association, 16.11.18

Annex 2 – Leo Charalambides 'Advice Note' for City of York Council, 05.03.19

Exempt Annex 3 – Further opinion

### List of Abbreviations Used in this Report

GLRC - Gambling Licensing and Regulatory Committee

PHV – Private Hire Vehicle

TFG - Department of Transport 'Task Finish Group'

**RE: UBER BRITANNIA LIMITED****UNLICENSED PROVISION FOR THE INVITATION OF PHV BOOKINGS  
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976****YORK PRIVATE HIRE ASSOCIATION**

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**OPINION**

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***Introduction***

1. On 12 December 2017 York city Council (“the council”) refused to renew the York private hire vehicle operators’ licence held by Uber Britannia Limited (“Uber”).
2. The refusal appears to have made little or no difference: Uber vehicles and drivers continue to present themselves in York and invite potential customers to book their services on their smartphones. Uber encourages and incentivises drivers to do so. The result is that out-of-town private hire drivers, and vehicles not meeting York’s licensing requirements, are undertaking PHV bookings on the City’s streets.
3. I have been asked by the York Private Hire Association whether the continued activities of Uber and its drivers in York is lawful. For the reasons given below, I am strongly of the opinion that Uber and Uber drivers are acting as unlicensed operators, contrary to section 46(1)(d) of the LGMPA 1976.

***The law***

4. It is important to recognise that the statutory provisions applying to PHV drivers and vehicles are materially different from the provisions applicable to PHV operators.

**Vehicles**

5. The owner of a vehicle may not use it as a private hire vehicle in a controlled district unless the vehicle is licensed under section 48 LGMPA 1976: section **46(1)(a)**.

**Drivers**

6. A private hire vehicle may not be driven in a controlled district otherwise than by someone licensed under section 51: section **46(1)(b)**. (It is also an offence for the owner of a vehicle to employ as a driver someone who is not so licensed: **46(1)(c)**).
7. No offence under sections 46(1)(a), (b) or (c) is committed, however, if a driver’s licence and a vehicle licence issued in a different controlled district are in force: section 75(2).

8. The so-called “right to roam” of PHV drivers and vehicles derives from section 75(2). It means that licensed drivers and vehicles may lawfully undertake journeys (not ‘accept bookings’) “which ultimately have no connection with the area in which they are licensed” (per Latham LJ in *Shanks v North Tyneside BC* [2001] LLR 706).
9. The right is not unqualified: PHV drivers and vehicles may not solicit custom, and may only fulfil a booking accepted by an operator licensed by the same authority as licensed them: *Dittah v Birmingham City Council* [1993] RTR 356. Thus all three licences (operator’s, driver’s and vehicle) must be issued by the same authority: *Dittah*.

### Operators

10. Section 80(1) LGMPA 1976 provides:
 

“operate” means in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle.
11. An operator may only make provision for the invitation or acceptance of PHV bookings in the controlled district in which he is licensed: LGMPA section **46(1)(d)**, applying section 80, subsections (1) & (2).
12. **Section 75 of the LGMPA 1976 does not provide an exemption for operators from section 46(1)(d):** (i.e. there is no equivalent exemption to that provided for drivers and vehicles from sections 46(a), (b) & (c)). Thus, whilst drivers and vehicles may lawfully undertake *journeys* “which ultimately have no connection with the area in which they are licensed” (*Shanks*), provision for the invitation or acceptance of bookings may only be made in the controlled district in which the operator is licensed.
13. Whether or not provision has been made in breach of section 46(1)(d) is a question of fact. The following guidance emerges from the cases -
  - “It is simply a question of asking, in common sense terms, whether there has been provision made in the controlled district for invitation or acceptance of bookings”: *Kingston Upon Hull City Council v Wilson* (1995) WL 1082181, per Buxton J.
  - “There could well be provision for invitation of bookings in one place and for acceptance in another”: *East Staffordshire BC v Rendell* (1995) WL 1084118, per Simon Brown LJ.
  - “As the authorities clearly show, the [main] question is not where the act of accepting any particular booking or bookings take place, but where the provision is made”: *idem*
  - “The determining factor is not whether any individual booking was accepted, let alone where it was accepted, but whether the person accused has in the area in question made provision for the invitation or acceptance of bookings in general”: *Windsor and Maidenhead v Khan* [1994] RTR 87, per McCullough J.

### Invitation of bookings

14. Uber customers make bookings using the Uber Rider App on a smartphone. The App is licensed by Uber BV. When customers activate the Uber Rider App, they are immediately presented with a map of their local area, showing the position of each nearby Uber vehicle that is currently available for hire. Each vehicle is continuously advertising its availability for hire and inviting potential customers in the vicinity to commence the process of booking.
15. *Rose v Welbeck* [1962] 1 WLR 1010 was a decision on the prosecution of a driver for plying for hire: but the court's analysis of the facts, and discussion of what amounted to an invitation to book, are relevant. There, a PHV vehicle was parked in a public street, bearing the inscription "Welbeck Motors, Minicabs" on both its sides, together with a telephone number. Winn J said: "At the very lowest, the evidence in the present case discloses behaviour and appearance on the part of this vehicle which amounts to an invitation:

*'Get in touch one way or another with my owner and see whether he is willing for you to take me as a vehicle which you are hiring.'*"

Lord Parker CJ said: "The vehicle was saying:

*'Not only do I, if I may personify the vehicle, recommend you to Welbeck Motors Ltd., where you can hire a minicab, but further I am one of those minicabs and I am for hire.'*"

16. In terms of 'invitation to book' there is no meaningful distinction to be drawn between the invitation made by vehicles displayed on the Uber Rider App, and that made by the parked *Welbeck* vehicle: the former is merely a modern, internet-assisted manifestation of the latter.
17. By exhibiting (on the Rider App) their physical presence in York, and their availability for immediate hire, Uber drivers and vehicles self-evidently invite bookings for their services. Provision for that invitation is made by 'Uber'; and it is made in York, where Uber are unlicensed.

### Uber's 'Regions'

18. On 14 February 2018 Uber announced its unilateral decision to divide the UK into nine 'regions', each of which spans several different licensing districts, with their own standards and local licensing requirements.
19. UBL has told drivers on the Uber platform that if they hold a vehicle/driver's licence from any licensing authority within one of Uber's so-called regions, they will have exclusive rights to work as Uber drivers anywhere within that region.

20. Uber has placed York within its wide “Yorkshire Region” (which includes other local authority areas such as Leeds, Bradford and Kirklees). Uber uses surge pricing to encourage ‘out-of-town’ Uber drivers, including those licenced by Leeds, Bradford and Kirklees, to come to York and activate the Driver App. I have been shown screen shots of a Leeds Driver App showing how Leeds drivers are encouraged to go York where there is surge pricing.
21. The only discernible difference to Uber’s operations in York, since the refusal to renew its licence there, is that York licensed drivers who were working on the Uber platform on 12 December 2017 are no longer eligible to do so: the entirety of Uber’s provision in York is now made by ‘out-of-town’ vehicles and drivers licensed by other authorities.

### Surge Pricing

22. ‘Surge pricing’ (also known as “dynamic pricing”) is a feature of the Uber model. It applies a multiple to its standard rates for journeys that commence in certain areas. These areas, and the applicable multiple, are broadcast to drivers via the Driver App. Drivers who commence journeys in areas where surge pricing is in force receive a multiple of whatever fare they would otherwise have received. Surge pricing therefore provides a strong incentive for drivers to travel to areas where ‘surge’ is in operation, in the expectation of receiving enhanced rewards for their work.

### ***Local Licensing Control***

23. Uber’s conduct is in no way a ‘technical breach’ of the statutory provisions. It goes to the heart of the licensing regime and its purposes. The Courts have said that “*the hallmark of the licensing regulatory regime is localism*”<sup>1</sup>, and that “*that the authorities responsible for granting licences should have the authority to exercise full control*” over “*all vehicles and drivers being operated ... within its area.*”<sup>2</sup>
24. The undermining of local licensing control is a nationwide concern. In its representation to TfL, on the opposed renewal of Uber’s London licence, the Mayoress of Watford wrote:

*“Uber’s method of operation seems inconsistent with the principles of a locally determined licensing regime that allows for each authority area to decide what is best in the interests of public safety for residents and visitors...”*

I understand there to be every bit as great concern in York about the lack of local licensing control as there is in Watford - and as there is in licensing authorities throughout the Country.

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<sup>1</sup> *Blue Line Taxis v Newcastle upon Tyne City Council* [2012] EWHC 2599 (Admin).

<sup>2</sup> *Shanks v North Tyneside Borough Council* [2001] EWHC 533 (Admin).

## ***Conclusions***

25. The licensing requirements of PHV drivers and their vehicles, and the exemptions therefrom, are different from those made of PHV operators. The gross oversimplification - “*cross-border hiring is lawful*” – is a misreading of the relevant case law (*Shanks*) and suggests a failure to recognise that distinction. There is no “loophole” in the law that allows Uber to operate a private hire vehicle in an area in which neither Uber, the vehicle nor the driver are licensed.
26. Uber is not a licensed operator in York.
- a. Uber supplies Uber drivers (who are not licensed in York) with the means (smartphone and App) by which the drivers advertise their presence in York, and their availability for immediate hire there.
  - b. Uber actively encourages and incentivises Uber drivers (not licensed in York) to trade in York.
  - c. Uber drivers, so supplied with the means, and so incentivised, come to York and invite potential passengers to make bookings with Uber, via the Uber App.
27. I have no doubt at all that Uber, together with Uber drivers, are making unlawful provision in York for the invitation of PHV bookings, contrary to section 46(1)(d) of the LGMPA 1976.

Gerald Gouriet QC

Francis Taylor Building  
Inner Temple

Friday, 16 November 2018

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In the matter of  
Section 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976

And in the matter of York City Council

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ADVICE NOTE

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1. Section 46(1)(d) of the Local Government (Miscellaneous Provisions) Act 1976 provides:

*Except as authorised by this Part of this Act – no person shall in a controlled district operate any vehicle as a private hire vehicle without having a current licence under section 55 of this Act’.*

2. A question has arisen in York as to whether the business model of Uber is in breach of this sub-section. This has been brought into focus by an Opinion provided to the York Private Hire Association by Gerald Gouriet QC (16<sup>th</sup> November, 2018).
3. The Editors of *Paterson’s Licensing Acts 2019* provide a detailed footnote to this sub-section (see 2.467 / p 1181):

It is suggested that PHV operators who knowingly send drivers in their fleet expressly to work in areas where they are not licensed will be in breach of this subsection if they are found as a question of fact to be making provision in those areas for the invitation of bookings: see the definition of ‘operate’ in s 80(1). The detailed circumstances of each case will be relevant. Whether or not the display of a waiting PHV on a potential passenger’s Smartphone is an invitation to book that vehicle has yet to be determined by the courts. The operator may in any event be vulnerable to having his operator’s licence revoked or refused renewal under s 62(1)(d) of the 1976 Act on the ground that he undermines local licensing control.’

4. This footnote along with the Gerald Gouriet QC Opinion to the York Private Hire Association (16<sup>th</sup> November, 2018) seem to me to represent, in part, the anxieties and challenges raised by the advent of new technologies on established systems.
5. The recent case of *Reading Borough Council v Ali* [2019] EWHC 200 (Admin) is of assistance. This case is an appeal by way of case stated from the decision of the Chief Magistrate to acquit Mr Ali of two charges of plying for hire contrary to s 45 of the Town Police Clauses Act 1847. The respondent is an Uber driver, he, his vehicle and Uber are licensed by Transport for London (“TfL”) to conduct private hire business pursuant to the “triple lock” licensing-regime under the Private Hire Vehicles (London) Act 1998. On the nights in question, some 60 Uber vehicles were in Reading. In the early hours of 21<sup>st</sup> January, 2017, Mr Ali was parked in Kings Road in the center of Reading waiting for a passenger to make a booking for his vehicle via the Uber smartphone App. Two of the appellant’s Licensing Enforcement Officers who were registered as Uber passengers saw the outline of his vehicle on their App, approached the vehicle and interviewed Mr Ali. He said he was waiting for a booking through the Uber App. A

similar series of events occurred just after midnight the following night when the same Officers interviewed Mr Ali again.

6. Similarly, the Gouriet Opinion summaries the circumstances in York as follows:

‘Uber customers make bookings using the Uber Rider App on a smartphone. The App is licensed by Uber BV. When customers activate the Uber Rider App, they are immediately presented with a map of their local area, showing the position of each nearby Uber vehicle that is currently available for hire. Each vehicle is continuously advertising its availability for hire and inviting potential customers on the vicinity to commence the process of booking’ [14].

7. The question that arises for Mr Gouriet and the York Private Hire Association, is whether this business model is lawful. Gouriet opines that: ‘I am strongly of the opinion that Uber and Uber drivers are acting as unlicensed operators, contrary to section 46(1)(d) of the LGMP 1976’ [3]. And again at [27]: ‘I have no doubt at all that Uber, together with Uber drivers, are making unlawful provision in York for the invitation of PHV booking contrary to section 46(1)(d) of the LGMPA 1976’.

8. The High Court in the *Reading* case gave consideration to the Uber business model and concluded:

33. In my judgment, there was no unlawful plying for hire in this case for a number of reasons. First, the mere depiction of the respondent’s vehicle on the Uber App, without either the vehicle or the driver being specifically identified or the customer using the App being able to select that vehicle, is insufficient to establish exhibition of the vehicle in the sense in which that phrase is used by Lord Parker CJ in formulating the two stage test for plying for hire in *Cogley v Sherwood* and *Rose v Welbeck*. That requires not just exhibition of the vehicle but its exhibition expressly or implicitly soliciting custom, inviting members of the public to hire the vehicle.

34. It seems to me that depiction of the vehicle on the App does not involve any exhibition of that kind, but is for the assistance of the Uber customer using the App, who can see that there are vehicles in the vicinity of the type he or she wishes to hire. I agree with Mr Kolvin QC that the App is simply the use of modern technology to effect a similar transaction to those which have been carried out by PHV operators over the telephone for many years. If I ring a minicab firm and ask for a car to come to my house within five minutes and the operator says “I’ve got five cars round the corner from you. One of them will be with you in five minutes,” there is nothing in that transaction which amounts to plying for hire. As a matter of principle, I do not consider that the position should be different because the use of internet technology avoids the need for the phone call.

9. At para 16 of the Gouriet opinion it is said that ‘[i]n terms of ‘invitation to book’ there is no meaningful distinction drawn between the invitation made by vehicles displayed on the Uber Rider App, and that made by the parked [*Rose v Welbeck*] vehicle: the former is merely a modern, internet-assisted manifestation of the latter’. This analysis is expressly rejected by Lord Justice Flaux and the very opposite position taken, that the use of the app *is simply the use of modern technology to effect a similar transaction to those which have been carried out by PHV operators over the telephone for many years* [34].

10. In *Reading* the court further drills down into the character of waiting – that is the vehicles being physically present in an area that is not in the area the controlled district of which the operator, vehicle and driver are licensed – and the Uber App. In so doing the court further distinguishes the Uber business model from the *Rose v Welbeck* scenario:
38. This leads on to the third reason why this was not plying for hire, which is the character of the waiting. The respondent was waiting in his vehicle until a customer confirmed a booking on the Uber App and he accepted that booking. There was no question of his soliciting custom during the period of waiting. His vehicle did not advertise itself as available for hire nor did he do anything which would have suggested to the public that he was available for hire. Indeed, as the Chief Magistrate found, if a member of the public had approached the vehicle and sought a ride, the respondent would have refused to take such a passenger off the street without a prior booking through the Uber App.
39. The waiting here was of a completely different character to that in *Rose v Welbeck*. Unlike in that case, the respondent was not waiting to solicit custom from passing members of the public, but he was waiting for a private hire booking via the Uber App. Putting the example given by Lord Parker CJ in *Cogley v Sherwood* of what would not be plying for hire into the context of the Uber App, if approached in the street, the respondent would have been saying: ‘You cannot have my vehicle, but if you register for the Uber App and make a booking on it, you will be able to get a vehicle, not necessarily mine.’
11. In effect the Uber business model represents no more than an efficient, speedy and convenient modern manifestation of the private hire regime under the 1976 Act. In *Dittab v Birmingham City Council* [1993] RTR 356 it was held that ‘an accurate statement of the law’ (363) was provided by the Department of Transport letter (dated 25 June, 1993) which read: ‘In our view applying section 80(2) to sections **46(1)(d)** and (e) has the effect that an operator requires a licence from the area in which he intends to operate and may only operate in that area vehicles and drivers licensed by the same district. This has the practical effect that an operator licensed in area A may only use vehicle and drivers licensed in area A but these vehicles and drivers will be able to go anywhere in the course of hiring’ (363) (Emphasis added). Further in *Shanks v North Tynside Borough Council* [2001] EWHC (Admin) Lord Justice Latham came to the firm conclusion that *Dittab* was correctly decided [22].
12. In *Shanks* it was held that ‘[t]he meaning of “operator” in section 80 when taken in conjunction with section 75(2) provides for considerable flexibility. The operator can use the vehicles within his organisation for journeys both inside and outside the area of the local authority in which he is licensed **and, indeed, can use such vehicle and drivers for journeys which have no ultimate connection with the area in which they are licensed.** There is, it seems to me, therefore, no reason to believe that the construction, which I consider to be the right construction of the Act, renders the operation of private hire vehicles in any way so restrictive as to justify the conclusion that the construction that I have reached must be wrong.’ [26]. (Emphasis added).
13. That the drivers and vehicles may be in areas (such as Reading or York) which have no ultimate connection with the area in which they – and the operator – are licensed. This is

both lawful and an accepted part of the *considerable flexibility* of the private hire regime.<sup>1</sup> The key factor for enforcement purposes (and compliance with section 46) is that the vehicle licence, the driver licence and the operators licence are issued by the same local authority how-so-ever the vehicles and drivers may rightly roam.

14. At para 12.99 *Button on Taxis* (4<sup>th</sup> Edn) opines that '[t]he simplest way to establish whether or not an offence has been committed is to inquire whether all three licences have been issued by the same authority? If the answer to that is 'Yes', and the 'happy family of licences' is present, then there is no restriction on the geographical area in which the journey can take place.' These established principles seem to have informed the approach of the High Court in the *Reading* case [2]:

The respondent is an Uber driver, He, his vehicle and Uber are licensed by Transport for London to conduct private hire business pursuant to the "triple lock" system under the Private Hire Vehicles (London) Act 1998. Uber had been refused an operating licence by the appellant. However, if Uber, their vehicles and drivers were conducting a private hire business, they could lawfully operate in Reading with their private hire vehicle ("PHV") licences from Transport for London ("TfL"). What drivers were not permitted to do was ply for hire, which only licensed hackney carriages are permitted to do.

15. It seems to me that the key question informing the *Reading* case and also the Gouriet opinion is whether or not the Uber business model is lawful, in other words is it a genuine private hire operation? In *Reading* the court accepts that the Uber business model is indeed a modern variant of the traditional private hire regime ([33] & [34] above).
16. In *Reading* the court went on to further consider whether the Uber business model in the context of pre-booking (an established feature of the private hire model), here again the court was satisfied that the Uber model was in accord with the principles of private hire:

37. Whatever the correct contractual analysis, in my judgment it has no impact on the question we have to decide. On any view, there is a pre-booking by the customer, which is recorded by Uber as PHV operator, before the specific vehicle which will perform the job is identified. This is all in accordance with the transaction being PHV business, not unlawful plying for hire. There was no soliciting by the respondent without some prior booking, as he only proceeded to the pick-up point after the customer had confirmed the booking and the respondent as driver had accepted the job. Whenever any contract was concluded, I have little doubt that this was not plying for hire, because on the facts found in this case, the customer could not use the respondent's car without making a prior booking through the App. As with the charabanc in *Sales v Lake*, the customer would make a booking to be picked up at a pre-arranged point. On the evidence in this case, all the Uber App did was to facilitate that booking.

17. This reflects existing established principles: In *Britain v ABC Cabs (Camberly) Ltd* [1981] RTR 395 the court was asked to determine whether the collection of a passenger within a controlled district (Rushmoor) in pursuance of a contract of hire made outside of the control district (Surrey Heath) 'was operating' for the purposes of the 1976 Act (403 – 404): 'I am satisfied that when the defendants' vehicle picked up the passenger at

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<sup>1</sup> It seems to me that this 'considerable flexibility' (*Shanks*) is further reflected in the recognition that there are no restrictions upon where a private hire operator may advertise (see *Windsor & Maidenhead Royal Borough Council v Khan* [1994] RTR 87). To my knowledge there has been no consideration given to the Uber app (and similar applications) as being a form of advertisement.

Farnborough Station, the only material act which the defendants did in the borough of Rushmoor controlled district, they were not “making provision for the invitation or acceptance of bookings” at all, whether for a private hire vehicle or for any other vehicle. In my judgment to conclude otherwise would be to strain the language of the definition far beyond breaking point. If they were making provision for the invitation or acceptance of bookings anywhere, they were doing that, it would seem to me, in their office at Camberley, which is not a controlled district. In my judgment therefore no offence was made out under section 46(1)(d) and the justices rightly dismissed that information.’

18. The case of *Milton Keynes Council v Skyline Taxi and Private Hire Ltd* [2017] EWHC 2794 applies *Britain* and also endorses the practice whereby the traditional methods of business practice are replaced by automated computerised systems. In *Milton Keynes* ‘the definition of the word ‘operate’ focuses on the arrangements in pursuant to which the a private hire vehicle is provided and not with the provision of the vehicle itself ... the word ‘operate’ is not to be equated with, or taken as including, the providing of the vehicle, but refers to the antecedent arrangements.’ (per Dyson J in *Bromsgrove v Powers* (1998) cited in *Milton Keynes* [8]). Those *antecedent arrangements* being the triple lock.
  
19. Thus, in *Milton Keynes Hinkinbottom LJ* states [10] that:
 

‘However, because of the limited definition of “operate” [[8], above], he only commits an offence if, in the course of business and in a controlled district, he makes provision for the invitation or acceptance of bookings for a private hire vehicle in circumstances in which the vehicle and/or the driver do not have the required licence(s). That too is firmly established by the cases to which I have referred (see, eg, *Britain* at page 403). Therefore for these purposes, it is irrelevant (eg) where the customer might be picked up, or where the contract for hire might have been made, or where the particular booking might in fact have been accepted.’
  
20. In light of *Reading*, *Milton Keynes* and the established principles to which these cases adhere and apply, the assertion by Gouriet [at para [17]] that ‘[b]y exhibiting (on the Rider App) their physical presence in York, and their availability for immediate hire, Uber drivers and vehicles self-evidently invite bookings for their services. Provision for that invitation is made by ‘Uber’; and it is made in York, where Uber are unlicensed’ is, in my opinion, untenable and *self-evidently* wrong.
  
21. It seems to me that the Gouriet opinion is flawed in that it advances an analysis of the App-based Uber business model that has now been rejected by the High Court in the *Reading* case and secondly, fails to apply the established legal principles in respect of the specific legal definition of ‘operate’ within the 1976 regime.

Leo Charalambides  
 Francis Taylor Building  
 5<sup>th</sup> March, 2019

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By virtue of paragraph(s) 5 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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## Licensing and Regulatory Committee

4 September 2019

Report of the Assistant Director Planning and Public Protection

### Taxi Account up to 31 March 2019

#### Summary

1. This is an information only report giving Members details of the taxi licensing account as requested at the last Committee meeting.

#### Recommendations

2. There are no recommendations as the report is for information.

#### Background

3. The City of York Council holds a separate account for taxi licensing fees which *contribute* towards the running and administration of the taxi licensing service.
4. We collect separate fees for the different licences we administer i.e.
  - i) hackney driver (3 year duration)
  - ii) hackney vehicle (1 year duration)
  - iii) private hire operator (5 year duration)
  - iv) private hire driver (3 year duration) and
  - v) private hire vehicle (1 year duration)
5. Annex 1 shows how these fees compare to other licensing authorities in the area and some further afield. Fees are set on an assessment of the time involved in administering the licences (and other activities that may be recovered as stated within the Local Government Miscellaneous Provisions Act 1976). This is multiplied by a 'cost per hour' which includes staffing and running costs.

6. In addition we charge fees for a variety of other activities such as mandatory training and vehicle testing which are based on the costs set by the services that provide these functions.
7. The fees are approved annually by full council, and are published in the local press prior to implementation as required under the 1976 Act.
8. The table below shows a summary of the taxi account

<b>TAXI LICENSING ACCOUNT</b>		
	<b>2018/19</b>	<b>2017/18</b>
	<b>£'000</b>	<b>£'000</b>
Surplus Brought Forward	-65.3	-54.0
Expenditure	302.6	247.3
Income	-311.8	-258.6
Surplus Carried Forward	74.5	65.3
<b>NET COST OF TAXI LICENSING ACCOUNT</b>	<b>0.0</b>	<b>0.0</b>

9. The table above shows that all income is retained within the Taxi Licensing Account and year end surpluses are 'carried forward' into the next years account.
10. The account currently has a 'surplus' of £74,500. Some 'carry forward' is planned. For example, as some licences last for three to five years we collect income in year one but incur the expenditure in years two, three, four and five and we carry forward a proportionate amount accordingly. However, some surplus has not been 'planned' and has arisen as a result of carrying a staff vacancy as well having licensed more drivers/vehicles than anticipated in some years. Subject to council approval processes, it is proposed to use part of the surplus to help increase management capacity in the team, more information in relation to which is given below.
11. Annex 2 provides a more detailed breakdown of the actual expenditure and income for the last two financial years.
12. Some of the key points to note are as follows:-
  - i) Spending on temporary / agency staff has been high in the last two years. This is due to the fact that we have employed additional

temporary officers to assist in dealing with the 'criminal record check' backlog and covered vacant posts in this way due a recruitment freeze whilst we carried out a restructure.

- ii) In 2018-19 we contributed £5,000 to the cost of an officer to co-ordinate the harmonisation of standards across York and West Yorkshire. This was a one off cost.
- iii) We also contributed £1,800 to the marshalling of the taxi rank at Duncombe Place on a Friday/Saturday evening in support of a project initiated by the York Hackney Carriage Association and delivered by the York Business Improvement District.

13. Also of note:-

- i) We are only permitted to recover the cost of 'enforcement' in relation to our licensed *vehicles* (i.e not drivers or operators). There is therefore an element of recovery for enforcement built into the vehicle licence fees and deals with the process of ensuring *vehicles that we licence* are compliant including the suspension/revocation of vehicle licences.
- ii) 'Day to day' enforcement including dealing with complaints and investigations is financed through the wider the Public Protection budget. This is because it involves the conduct of drivers/operators that we licence, as well as vehicles and drivers which are not licensed by this authority (i.e. vehicles/drivers licensed by other licensing authorities operating in York)
- iii) We also provide an 'out of hours' patrol which is paid for through the Public Protection budget, much of which is concerned with dealing with taxi matters.
- iv) A further advantage of Public Protection meeting the majority of the wider enforcement costs is that it helps demonstrate the independence of enforcement (in that 'day to day' enforcement is not 'paid for' by York licensed drivers/operators).
- v) The taxi account includes a charge of £58k to cover management, central support costs and accommodation. However, the 'cost' of management support to the taxi trade has significantly increased in recent years and has not been reflected in an increase in the re-charge. The current management structure is not set up to deal with existing levels of demand and it is becoming increasingly difficult to

maintain this position particularly as this level of demand looks set to continue into the future. We are therefore considering introducing a specific post of 'Taxi Licensing Manager' to help address the position and bring about further improvements to service delivery. The post could be funded by 'running down' the existing surplus over the next 3 – 5 years as well as re-allocating a vacancy which exists in the team. Please note a small increase in fees may be necessary in future years, but any increase in fees would be reasonable and retain fees line with the licence charges of other licensing authorities.

### **Consultation**

14. No consultation is necessary in relation to this report.

### **Options**

15. There are no options to consider as this report is for information only.

### **Council Plan**

16. This report helps ensure the council is meeting its statutory duties.

### **Implications**

17. **Financial** – The report concerns the finances of the taxi licensing account.
18. **Human Resources (HR)** – Any recruitment, selection and appointment of a Taxi Licensing Manager would follow the Council's HR processes.
19. **Equalities** – There are no equalities issues directly associated with this report.
20. **Legal** – As described above, the income collected from certain taxi licences may only be spent on certain functions.
21. **Crime and Disorder** – There are no crime and disorder implications directly associated with this report.
22. **Information Technology (IT)** – There are no IT implications.
23. **Property** – There are no property implications.
24. **Other** – There are no other implications.

## Risk Management

25. There are no changes in risk to the council arising from this report.

## Contact Details

**Author:**  
**Matt Boxall**  
**Head of Public Protection**  
Tel: (01904) 551528

**Chief Officer Responsible for the report:**  
**Mike Slater**  
Assistant Director Planning and Public  
Protection

**Report**  **Date** 22/08/2019  
**Approved**

**Specialist Implications Officer(s)** List information for all

N/A

**Wards Affected:** List wards or tick box to indicate all **All**

**For further information please contact the author of the report**

## Annexes

Annex 1 – Example fees charged by other licensing authorities

Annex 2 – Summary of accounts

Annex 1 Examples of local authority licence fees (other fees such as DBS checks and training may also be payable as part of the process)

Authority	Operator - 5yr (over 99 cars)	HC driver - 3yr	PH driver - 3 yr	HC vehicle	PH vehicle	Vehicle test
Bradford	£788	£199	£199	£165 / £240 (over 5 yrs old)	£165/ £240 (over 5 yrs old)	The vehicle license fee is inclusive of the vehicle test fee.
Calderdale	£1165	£239	£239	£166	£166	£48
East Riding	£1,110	£200	£200	£200(New) £150(Renew)	£200(New) £150(Renew)	To book a test the driver needs to contact a testing centre, fees on application.
Hambleton	£435 (New) £415 (Renew)	£205 (New) £180 (Renew)	£205 (New) £180 (Renew)	£370 (New) £305 (Renew)	£340(New) £285(Renew)	The vehicle test fee is up to the garage. A form is issued to the driver and they can go to any VOSA testing station in Hambleton
Harrogate	£1111	£370 (New) £245 (Renew)	£370 (New) £245 (Renew)	£290 (New) £226 (Renew)	£290 (New) £226 (Renew)	£42
Kirklees	£1166	£294.50	£294.50	£184.39	£184.39	£48
Leeds	£3,000	£390	£390	£135	£135	£110
Reading	£18,851 (New) £18,730 (Renew)	£328	£319	£400/ £346 (from 2020)	£307	To book a test the driver needs to contact a testing centre, fees on application.
Scarborough	£1,850	£267(New) £240(Renew) Inc DBS	£267(New) £240(Renew) Inc DBS	£270	£237	£54.85
Selby	(Any no. of vehicles) £266.20	£249.86 (New)/ £111.30 3 yr (Renew)	£249.86 (New)/ £111.30 3 yr (Renew)	£206	£192.30	£59.70
Wakefield	£1,450	£429 (New inc DBS)/ £337 (Renew)	£476 (New incl DBS) £384/ (Renew)	£186 (New) £171 (Renew)	£266 (New)/ £245 (Renew)	£55
York	£486	£227	£227	£193	£183	£64

<b>TAXI LICENSING ACCOUNT</b>
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	2018/19		2017/18	
	£	£	£	£
<b>Expenditure</b>				
<b>Employees</b>				
Salary - City of York Council	93.2		86.1	
Temporary - CY Trading	57.9	151.1	24.6	110.7
<b>Indirect Employee Costs</b>		1.0		1.7
<b>Transport</b>		0.3		1.1
<b>Supplies &amp; Services</b>				
Vehicle Inspections, Licence Checks & Signage	28.8		32.4	
DBS Checks	34.1		15.8	
Unmet Demand Survey	0.4		8.3	
Harmonisation Project Consultation Costs	5.0		0.0	
Prosecution/Appeals Solicitor	4.1		3.8	
Barrister	2.8		1.5	
Other	16.9	92.1	15.0	76.8
<b>Management, Central Support Costs &amp; Accommodation</b>		58.1		57.0
<b>TOTAL EXPENDITURE</b>		302.6		247.3
Surplus Brought Forward		-65.3		-54.0
<b>Income</b>				
Multi Year Licence Income Brought Forward	-61.3		-99.4	
Received In Year	-275.6		-220.5	
Multi Year Licence Income Carried Forward	25.1	-311.8	61.3	-258.6
Surplus Carried Forward		74.5		65.3
<b>TOTAL INCOME</b>		-302.6		-247.3
<b>NET COST OF TAXI LICENSING ACCOUNT</b>		0.0		0.0

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**Licensing & Regulatory Committee**

4 September

Report of the Interim Assistant Director of Legal &amp; Governance

**Review of Polling Districts, Polling Places and Polling Stations****1. Summary**

This report informs Members of the duty on all local authorities to carry out a review of polling districts, polling places and polling stations in their area within five years, as laid down by the Electoral Registration and Administration Act 2013.

**2. Background**

The Electoral Registration and Administration Act 2013 introduced a change to the timing of compulsory reviews of UK Parliamentary polling districts and polling places. The next compulsory review must now be started and completed between 1 October 2018 and 31 January 2020 (inclusive).

**3. Aim of the Review**

Local Authorities are required to divide their area into polling districts for the purposes of parliamentary elections and to designate polling places for these polling districts and to keep them under review.

Local Authorities must:

- Seek to ensure that all electors in the constituency have such reasonable facilities for voting as are practicable in the circumstances

- Seek to ensure that so far as is reasonable and practicable the polling places they are responsible for are accessible to all electors, including those who are disabled and when considering the designation of polling places must have regard to the accessibility needs of disabled persons.

#### **4. The Review Process**

A local authority is required to publish notice of the holding of a review and this in York has taken the form of a notice in the local press and on the Council Website. The notice stated that the review commenced on the 1 September 2019 and invites comments and representations from interested parties and bodies.

Consultation has also begun with local political parties, ward councillors, parish councils, disability awareness groups and local community groups.

A period of two months consultation now takes place, which ends on the 1 November 2019.

At the end of this period of consultation any representations received will be brought before Members and Members may decide to make amendments to polling districts, polling places and/or polling stations.

#### **5. Options**

This is a statutory requirement and this report is by way of information only

#### **6. Consultation**

There will be a process of consultation as part of the review

## **7. Corporate Objectives**

- Improve the way the Council and it's partners work together to deliver better services
- Improve our focus on the needs of customers and residents in designing and providing services

There are no financial, human resource, crime and disorder, information technology or property implications

## **8. Equalities**

The review will consider a range of equalities issues

## **9. Legal**

Necessary to meet legal requirements

## **10. Risk management**

Failure to meet statutory requirements would represent an unacceptable risk to the authority.

## **11. Recommendation**

That Members note the report

Reason: To comply with statutory requirements

**Contact Details**

**Author:**

Andrew Flecknor  
Electoral Services Manager  
(01904) 552032

**Chief Officer Responsible for the report:**

Suzan Harrington  
Interim Assistant Director of Legal & Governance

**Report Approved**



**Date** 22 August 2019

**Wards Affected:**

All

**For further information please contact the author of the report**

Annexes

Annex A – Timetable for Review

Annex B - List of Polling Stations

**Background Papers**

Schedule of current polling stations

Electoral Registration and Administration Act 2013

Representation of the People Act 1983

## ANNEX A

**POLLING DISTRICT, POLLING PLACE AND POLLING STATION REVIEW**

City of York Council

**REVIEW TIMETABLE 2019**

Site visits to polling stations for survey	1 July to 30 September
Notice of Review (Commencement)	1 September
Licensing and Regulatory Committee (Report of Commencement)	4 September
End of consultation period	1 November
Licensing and Regulatory Committee (Report of Representations)	27 November
Publication of Register of Electors	1st December
Full Council	19 December

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## ANNEX B

Ward	Station Number	Polling District	Polling Station	Double Station
<b>Acomb</b>	1	AA	Holy Redeemer Church, Boroughbridge Road, York. YO26 6AB	
	2	AB	Lidgett Methodist Church, Wheatlands Grove, York. YO26 5NQ	
	3	AC	Carr Junior School, Ostman Road York. YO26 5QA	Double
	4			
	5	AD	The Gateway Christian Centre, Front St, Acomb, York. YO24 3BN	
<b>Clifton</b>	6	BA	Burton Green Primary School, Burton Green, York. YO30 6JE	
	7	BB	St. Lukes Church Hall, Shipton Street, York. YO30 6DG	
	8	BC	St Joseph Church Hall, Burdyke Avenue, York. YO30 6JX	
	9	BD	Philips Room, St. Philip & St. James Church, Clifton, York. YO30 6BH	
	10	BE	Clifton Methodist Church, Clifton, York. YO30 6AL	
<b>Dringhouses &amp; Woodthorpe</b>	11	CA	Dringhouses Community Hall, St. Edward the Confessor, Tadcaster Road, York. YO24 1QG	Double
	12			
	13	CB	West Thorpe Methodist Church, West Thorpe, York. YO24 2PW	Double
	14			
	15	CC	Moor Lane Youth Centre, Wain's Road, York. YO24 2TX	
	16	CD	Woodthorpe Primary School, Summerfield Road, York. YO24 2RU	Double
	17			
<b>Fishergate</b>	18	DA	St. Lawrence's CE Primary School, Heslington Road, York. YO10 5BW	
	19	DB	Fishergate Room, York Barbican, Paragon Street, York. YO10 4NG	Double
	20			
	21	DC	Pupil Support Centre, Dansegate, York. YO10 4PB	Double
	22			
<b>Guildhall</b>	23	EA	St Thomas with St Maurice, Lowther Street, York. YO31 7ND	Double
	24			
	25	EB	Trinity Methodist Church, 43 Monkgate, York, YO31 7PB	
	26	EC	St Olave's Church Hall, Little Marygate, York. YO30 7BJ	
	27	ED	The Unitarian Chapel, St. Saviourgate, York. YO1 8NQ	
	28	EE	National Centre for Early Music, Walmgate, York. Y01 9TL	Double
	29			

<b>Heworth</b>	<b>30</b>	FA	Bell Farm Social Hall, Bell Farm Avenue, York. YO31 9BB	
	<b>31</b>	FB	The Church Room, St. Paulinus Church, Monkton Road, York. YO31 9AX	
	<b>32</b>	FC	St. Wulstan's Church, Fossway, York. YO31 9LD	
	<b>33</b>	FD	Holy Trinity Church Hall, Melrosegate, Heworth, York. YO1 7LF	
	<b>34</b>	FE	Oak Room, The Avenues, Tang Hall Primary School, Sixth Avenue, York. YO31 0UT	Double
	<b>35</b>			
	<b>36</b>	FF	Explore York Libraries and Archives, The Centre@Burnholme, Mossdale Avenue, York YO31 0HA	
	<b>37</b>	FG	St Aelred's Community Centre, Fifth Avenue, York. YO31 0PN	
<b>Holgate</b>	<b>38</b>	GA	Poppleton Road, Memorial Hall, Oak Street, York. YO26 4SE	Double
	<b>39</b>			
	<b>40</b>	GB	Holgate Methodist Church Hall, Acomb Road, York. YO24 4AE	Double
	<b>41</b>			
	<b>42</b>	GC	Our Lady Queen of Martyrs RC Primary School, Hamilton Drive, York. YO24 4JW	Double
	<b>43</b>			
	<b>44</b>	GD	York Spiritualist Centre, Wilton Rise, York. YO24 4BT	
	<b>45</b>	GE	St. Barnabas CE Primary School, Jubilee Terrace, Leeman Road, York. YO26 4YZ	
<b>Hull Road</b>	<b>46</b>	HA	The Parish Church of St. Hilda, Tang Hall, Lane, York. YO10 3SD	
	<b>47</b>	HB	St. George's Methodist Church Schoolroom, Millfield Lane, York. YO10 3AW	Double
	<b>48</b>			
	<b>49</b>	HC	Childrens Centre, Osbaldwick Primary School, Osbaldwick Lane, York. YO10 3AX	
	<b>50</b>	HD	Archbishop Holgates School, A Church of England Academy, Hull Road, York. YO10 5ZA	
	<b>51</b>	HE	Vanbrugh College, University of York, Heslington, York. YO10 5DD	Double
	<b>52</b>			
	<b>53</b>	HF	Ron Cooke Hub, Deramore Lane, Heslington, York. YO10 5GE	
	<b>54</b>	HG	Heslington Village Meeting Room, Main Street, Heslington, York. YO10 5EB	
<b>Micklegate</b>	<b>55</b>	JA	Priory Street Centre, 15 Priory Street, York. YO1 6ET	
	<b>56</b>	JB	Clements Hall, Nunthorpe Road, York. YO23 1BW	
	<b>57</b>	JC	English Martyrs Church Hall, Dalton Terrace, York. YO24 4DA	
	<b>58</b>	JD	Southlands Methodist Church Schoolroom, Southlands Road, York. YO23 1NX	Double
	<b>59</b>			
	<b>60</b>	JE	St. Chad's Church Hall, Campleshon Road, York. YO23 1EY	Double
	<b>61</b>			

<b>Westfield</b>	<b>62</b>	KA	Sanderson Court Community House, Bramham Road, Chapelfields, York. YO26 5AR	
	<b>63</b>	KB	Acomb Parish Church Hall, Front Street, Acomb, York. YO24 3BR	Double
	<b>64</b>			
	<b>65</b>	KC	Westfield Primary Community School, Askham Lane, York. YO24 3HP	
	<b>66</b>	KD	Community Room, Energise, Cornlands Road. York. YO24 3DX	
	<b>67</b>	KE	Hob Moor Community Primary School, Green Lane, York. YO24 4PS	
	<b>68</b>	KF	Foxwood Community Centre, Cranfield Place, York. YO24 3HY	Double
	<b>69</b>			
<b>Bishopthorpe</b>	<b>70</b>	YAA	Acaster Malbis Memorial Hall, Acaster Malibis, York. YO23 2XE	
	<b>71</b>	YAB	Bishopthorpe Village Hall, 40 Main Street, Bishopthorpe, York. YO23 2RB	Double
	<b>72</b>			
<b>Companthorpe</b>	<b>73</b>	YBA	St. Giles Centre, Church Street, Copmanthorpe, York. YO23 3SA	Double
	<b>74</b>			
<b>Fulford &amp; Heslington</b>	<b>75</b>	YCA	Fulford Social Hall, School Lane, Fulford, York. YO10 4LS	Double
	<b>76</b>			
	<b>77</b>	YCB	Heslington Village Meeting Room, Main Street, Heslington, York. YO10 5EB	
	<b>78</b>	YCC	Pupil Support Centre, Danesgate, York. YO10 4PB	
<b>Haxby &amp; Wigginton</b>	<b>79</b>	YDA	The Old School, Mill Lane, Wigginton, York. YO32 2PU	Double
	<b>80</b>			
	<b>81</b>	YDB	The Memorial Hall, The Village, Haxby, York. YO32 3HT	
	<b>82</b>	YDC	2nd Haxby and Wigginton Scout Hut, York Road, Haxby, York. YO32 3ED	Double
	<b>83</b>			
	<b>84</b>	YDD	St. Margaret Clitherow Church, Holly Tree Lane, Haxby, York. YO32 3YJ	
	<b>85</b>	YDE	St. Margaret Clitherow Church, Holly Tree Lane, Haxby, York. YO32 3YJ	
<b>Heworth Without</b>	<b>86</b>	YFA	Christ Church Centre, Stockton Lane, York. YO31 1JG	
	<b>87</b>	YFB	Heworth Without Community Centre, Applecroft Road, York. YO31 0HG	Double
	<b>88</b>			
	<b>89</b>	YFC	Explore York Libraries and Archives, The Centre@Burnholme, Mossdale Avenue, York YO31 0HA	
<b>Huntington &amp; New Earswick</b>	<b>90</b>	YGA	Huntington Community Centre, 26 Strensall Road, Huntington York. YO32 9RG	Double
	<b>91</b>			
	<b>92</b>	YGB	Orchard Park Community Centre, Huntington, York. YO31 9EH	
	<b>93</b>	YGC	Orchard Park Community Centre, Huntington, York. YO31 9EH	Double
	<b>94</b>			
	<b>95</b>	YGD	New Earswick Folk Hall, Hawthorn Terrace, York, YO32 4AQ	Double
	<b>96</b>			

<b>Osballdwick &amp; Derwent</b>	<b>97</b>	YHA	Osballdwick Sports Club, The Leyes, York. YO10 3PR	Double	
	<b>98</b>				
	<b>99</b>	YHA/1	Super Sustainable Centre, Derwent Way, Derwenthorpe, York. YO10 3BF		
	<b>100</b>	YHA/2	Heworth Without Community Centre, Applecroft Road, York. YO31 0HG		
	<b>101</b>	YHB	York Auction Centre, Murton, York. YO19 5GF		
	<b>102</b>	YHC	Holtby Parish Room, Main Street, Holtby, York. YO19 5UD		
	<b>103</b>	YHD	The Reading Room, Church Street, Dunnington, York. YO19 5PW	Double	
	<b>104</b>				
		<b>104/1</b>	YHE	The Reading Room, Church Street, Dunnington, York. YO19 5PW	No Staff
	<b>Rural West York</b>	<b>105</b>	YJA	Askham Bryan Village Hall, Askham Bryan, York. YO23 3QS	
<b>106</b>		YJB	Askham Richard Church Hall, Askham Richard, York. YO23 3PT		
<b>107</b>		YJC	Mobile Unit, Red Lion Public House, Knapton, York. YO26 6QG		
<b>108</b>		YJD	Rufforth Village Institute, Rufforth York. YO23 3QH		
<b>109</b>		YJE	Hessay Methodist Schoolroom, Hessay, York. YO26 8JR		
<b>110</b>		YJF	All Saints Hall, The Green Upper Poppleton, York. YO26 6DD		
<b>111</b>		YJG	Tithe Barn, Church Lane, Nether Poppleton, York. YO26 1AB		
<b>112</b>		YJH	Skelton Village Hall, Brecksfield, Skelton, York. YO30 1YA		
<b>Rawcliffe &amp; Clifton Without</b>	<b>113</b>	YKA	Clifton Moor Community Centre, Rivelin Way, York. YO30 4WD		
	<b>114</b>	YKB	Clifton With Rawcliffe Primary School, Rawcliffe, York. YO30 5TA	Double	
	<b>115</b>				
	<b>116</b>	YKC	Sea Scout Hall, 1st Clifton Sea Scout Group, Green Lane, York YO30 5QX		
	<b>117</b>	YKD	Explore Clifton Library Learning Centre, Rawcliffe Lane, York. YO30 5SJ	Double	
	<b>118</b>				
	<b>119</b>	YKE	Philips Room, St. Philip & St. James Church, Clifton, York. YO30 6BH		
	<b>119/1</b>	YKF	Philips Room, St. Philip & St. James Church, Clifton, York. YO30 6BH	No Staff	
<b>Strensall</b>	<b>120</b>	YLA	Stockton on the Forest Village Hall, Sandy Lane, Stockton on the Forest, York. YO32 9UR		
	<b>121</b>	YLB	Earswick Village Hall, Earswick Chase, Earswick, York. YO32 9FY		
	<b>122</b>	YLC	Strensall & Towthorpe Village Hall, Northfields, Strensall, York. YO32 5AW		
	<b>123</b>	YLD	Strensall & Towthorpe Village Hall, Northfields, Strensall, York. YO32 5AW	Double	
	<b>124</b>				
<b>Wheldrake</b>	<b>125</b>	YMA	Naburn Village Hall, Vicarage Lane, Naburn, York. YO19 4RS		
	<b>126</b>	YMB	Mobile Polling Station, The White Swan, York Road, Deighton, York. YO19 6HA		
	<b>127</b>	YMC	White Rose House, Main Street, Wheldrake, York. YO19 6AA		
	<b>128</b>	YMD	Elvington Parish Hall, Main Street, Elvington, York. YO41 4AA		

## Licensing and Gambling Committee – Workplan 2019-20

<p>Mon 15 Jul 2019 at 5.30pm</p>	<ul style="list-style-type: none"> <li>• Renewal of Sex Establishment Licence for The Adult Shop</li> <li>• Taxi Licensing Policy – Driver Training</li> <li>• Taxi Licensing Policy – Determining the Suitability of Applicants and Licensees as Drivers in Taxi and Private Hire Licensing</li> <li>• Draft Work Plan 2019-20</li> </ul>
<p>Weds 4 September 2019 at 5.30pm</p>	<ul style="list-style-type: none"> <li>• Renewal of Sex Establishment Licence for Black Orchid</li> <li>• Interpretation of Law - 'Out of town' Licences</li> <li>• Taxi Account up to 31 March 2019</li> <li>• Review of Polling Districts, Polling Places and Polling Stations</li> <li>• Work Plan 2019-20</li> </ul>
<p>Weds 9 Oct 2019 at 5.30pm</p>	<ul style="list-style-type: none"> <li>• KPI report of Licensing Department</li> <li>• Update on the Taxi Licensing Internal Audit report Actions</li> <li>• Hackney Carriage Vehicle Consultation</li> <li>• Taxi and PHV complaints Summery Report</li> <li>• Work Plan 2019-20</li> </ul>
<p>Weds 27 Nov 2019 at 5.30pm</p>	<ul style="list-style-type: none"> <li>• Unmet Demand Update Report</li> <li>• Review of Council's Constitution on Licensing Appeals</li> <li>• Review of scheme of delegated powers to officers</li> </ul>
<p>Weds 22 Jan 2020 at 5.30pm</p>	<ul style="list-style-type: none"> <li>• Annual report on decisions made by officers under delegated powers with regard to applications under the Gambling Act 2005</li> <li>• Annual report on decisions made by officers under delegated powers with regard to applications under the Licensing Act 2003</li> <li>• Annual joint report from North Yorkshire Police and the Licensing Service regarding the effects of the Act and licensing policy in swiftly and safely dispersing concentrations of people from licensed venues, to avoid disorder and disturbance. (Transport focused)</li> <li>• Work Plan 2019-20</li> </ul>

Weds 18 Mar 2020 at 5.30pm	<ul style="list-style-type: none"><li>• 6 Monthly KPI report of Licensing Dept</li><li>• Report outlining policing and other measures in relation to reducing ASB associated to licensable activities</li><li>• Work Plan 2019-20</li></ul>
Weds 6 May 2020 at 5.30pm	<ul style="list-style-type: none"><li>• Annual Taxi Fees Account review</li><li>• Work Plan 2019-20</li></ul>