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NOTICE OF MEETING

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LICENSING PANEL

will meet on

TUESDAY, 8TH JANUARY, 2019

At 6.00 pm

in the

DESBOROUGH 4 - TOWN HALL, MAIDENHEAD

TO: MEMBERS OF THE LICENSING PANEL

COUNCILLORS CARWYN COX (CHAIRMAN), DAVID BURBAGE (VICE-CHAIRMAN), MALCOLM ALEXANDER, HASHIM BHATTI, PHILLIP BICKNELL, JOHN BOWDEN, GEOFF HILL, DAVID HILTON, MAUREEN HUNT, SAYONARA LUXTON, ASGHAR MAJEED, WESLEY RICHARDS, DEREK SHARP, JULIAN SHARPE AND DEREK WILSON

SUBSTITUTE MEMBERS

COUNCILLORS NATASHA AIREY, CHRISTINE BATESON, DR LILLY EVANS, RICHARD KELLAWAY, JOHN LENTON, MARION MILLS, GARY MUIR, NICOLA PRYER, SAMANTHA RAYNER, HARI SHARMA, SHAMSUL SHELM, JOHN STORY, LYNDY YONG, WISDOM DA COSTA AND CHARLES HOLLINGSWORTH

Karen Shepherd – Service Lead-Governance - Democratic Services – Issued: FRIDAY 28 DECEMBER 2018

Members of the Press and Public are welcome to attend Part I of this meeting. The agenda is available on the Council's web site at www.rbwm.gov.uk or contact the Panel Administrator **Shilpa Manek on 01628 796310**

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AGENDA

PART I

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1.	<u>APOLOGIES FOR ABSENCE</u> To receive any apologies for absence.	
2.	<u>DECLARATIONS OF INTEREST</u> To receive any declarations of interest.	5 - 6
3.	<u>MINUTES</u> To confirm the Part I Minutes of the meeting held on 3 July 2018.	7 - 10
4.	<u>REVIEW AND REPUBLISHING OF RBWM'S GAMBLING ACT 2005 STATEMENT OF PRINCIPLES</u> To consider the attached report.	11 - 52
5.	<u>THE USE OF PENALTY POINTS TO DEAL WITH OVERCHARGING</u> To consider the above report.	53 - 62
6.	<u>DATES OF FUTURE MEETINGS</u> Panel to note that the date of the next meeting is Tuesday 2 April 2019.	

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MEMBERS' GUIDE TO DECLARING INTERESTS IN MEETINGS

Disclosure at Meetings

If a Member has not disclosed an interest in their Register of Interests, they **must make** the declaration of interest at the beginning of the meeting, or as soon as they are aware that they have a DPI or Prejudicial Interest. If a Member has already disclosed the interest in their Register of Interests they are still required to disclose this in the meeting if it relates to the matter being discussed.

A member with a DPI or Prejudicial Interest **may make representations at the start of the item but must not take part in the discussion or vote at a meeting.** The speaking time allocated for Members to make representations is at the discretion of the Chairman of the meeting. In order to avoid any accusations of taking part in the discussion or vote, after speaking, Members should move away from the panel table to a public area or, if they wish, leave the room. If the interest declared has not been entered on to a Members' Register of Interests, they must notify the Monitoring Officer in writing within the next 28 days following the meeting.

Disclosable Pecuniary Interests (DPIs) (relating to the Member or their partner) include:

- Any employment, office, trade, profession or vocation carried on for profit or gain.
- Any payment or provision of any other financial benefit made in respect of any expenses occurred in carrying out member duties or election expenses.
- Any contract under which goods and services are to be provided/works to be executed which has not been fully discharged.
- Any beneficial interest in land within the area of the relevant authority.
- Any licence to occupy land in the area of the relevant authority for a month or longer.
- Any tenancy where the landlord is the relevant authority, and the tenant is a body in which the relevant person has a beneficial interest.
- Any beneficial interest in securities of a body where:
 - a) that body has a piece of business or land in the area of the relevant authority, and
 - b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body **or** (ii) the total nominal value of the shares of any one class belonging to the relevant person exceeds one hundredth of the total issued share capital of that class.

Any Member who is unsure if their interest falls within any of the above legal definitions should seek advice from the Monitoring Officer in advance of the meeting.

A Member with a DPI should state in the meeting: ***'I declare a Disclosable Pecuniary Interest in item x because xxx. As soon as we come to that item, I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Or, if making representations on the item: ***'I declare a Disclosable Pecuniary Interest in item x because xxx. As soon as we come to that item, I will make representations, then I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Prejudicial Interests

Any interest which a reasonable, fair minded and informed member of the public would reasonably believe is so significant that it harms or impairs the Member's ability to judge the public interest in the item, i.e. a Member's decision making is influenced by their interest so that they are not able to impartially consider relevant issues.

A Member with a Prejudicial interest should state in the meeting: ***'I declare a Prejudicial Interest in item x because xxx. As soon as we come to that item, I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Or, if making representations in the item: ***'I declare a Prejudicial Interest in item x because xxx. As soon as we come to that item, I will make representations, then I will leave the room/ move to the public area for the entire duration of the discussion and not take part in the vote.'***

Personal interests

Any other connection or association which a member of the public may reasonably think may influence a Member when making a decision on council matters.

Members with a Personal Interest should state at the meeting: ***'I wish to declare a Personal Interest in item x because xxx'. As this is a Personal Interest only, I will take part in the discussion and vote on the matter.***

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Agenda Item 3

LICENSING PANEL

TUESDAY, 3 JULY 2018

PRESENT: Councillors Malcolm Alexander, John Bowden, Maureen Hunt, Sayonara Luxton, Asghar Majeed, Wesley Richards, Julian Sharpe and Derek Wilson

Officers: Shilpa Manek, Greg Nelson and David Scott

Members voted that Councillor Luxton be Chairman for the meeting.

APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Bhatti, Burbage, Cox, Hill and Hilton. Councillor Sharp was going to be attending later.

DECLARATIONS OF INTEREST

No declarations of interest were received.

MINUTES

The Panel Unanimously Agreed that the minutes of the last meeting on 10 April 2018 were a true and accurate record.

THE EQUALITY ACT 2010

David Scott introduced the report and informed the Panel of both recommendations.

Councillor Hunt read out the email sent from Lisa Hughes as Vice Chairman for the Access Advisory Forum:

Dear Councillor Hunt

It was good to see you at Tuesday's Planning Inspector's Hearings and I thought the lady representing the Hurley and Walthams neighbourhood planning group got the salient points across very well.

As you and I discovered, the Local Access Forum and Licensing Panel have a scheduling clash next Tuesday evening. I mentioned to you that I had wanted to sit in the Public Gallery at the Licensing Panel (in my role as vice-chair of the Access Advisory Forum) as one of the agenda items concerns Taxis and People with Disabilities.

The background

Some parts of the Equality Act 2010 did not come into effect until 6th April 2017. The clauses relate to disabled people being treated fairly by taxi/PHV drivers and companies – not refusing a fare because of the passenger's disability, not charging more to a wheelchair user, not refusing to carry a guide dog unless the driver has a valid medical exemption certificate.

For these clauses to come into effect local licensing authorities needed to change their taxi / PHV licensing agreements, which required some preliminary activities. Statutory guidance was produced by central government well before April 2017.

We discovered in January 2018 that RBWM had not made the necessary change to Taxi/ PHV licence agreements and so wrote to the RBWM licensing team on 1st Feb 2018. It took some chasing to get any response and we were told it would be raised at the March 2018 Licensing Panel. It then took

more chasing to find out the panel's response and how changes would be progressed - we were dismayed that there was no timescale for those changes

At the same time we came across a Freedom of Information response from RBWM, dated 21 Apr 2017, about this very matter – the council indicated that licensing changes would be completed by **June 2017.**

More than 15 months after they could have been legally protected, wheelchair users in the borough are still being charged more than other people and we have also been told about occasions where taxi drivers see that the hirer is using a wheelchair and drive off.

We really hope not only that the Licensing Panel will support the necessary changes to bring these clauses into effect for a vulnerable and disadvantaged group of residents, but also that the changes will be made swiftly.

Best regards

Lisa Hughes

vice-chair RBWM Access Advisory Forum
member RBWM Local Access Forum

Greg Nelson informed the Panel that it was the intention of the Licensing Team to enforce this last year but due to operational reasons it wasn't taken forward but has been now. The delay was regretted but wanted to move forward now.

The timetable of the implementation was discussed and the Panel felt that it should be implemented sooner. Greg Nelson informed the Panel that there was a lot of stress on the Licensing Team at present but would try and implement sooner.

Other points discussed included:

- Wheelchairs fitting in to taxi's at taxi ranks and there being a contact telephone number that could be called if no assessable taxi present at rank and to request one.
- A designated list of assessable taxi's would be available on the website.
- It was confirmed that the meter only started to charge once the wheelchair was in the vehicle and the vehicle had started its journey and would stop when the vehicle stopped at the destination. No additional charges should be applied.
- Councillor Bowden asked how many licensed vehicles there were in the borough and was informed by Greg Nelson that there were 1300 licensed vehicles and 1500 licensed drivers. Councillor Bowden suggested that a letter should be Sent to all licensed drivers giving them 28 days to respond, especially as the consultation carried out only received one positive comment. This indicated that there were no real concerns. Councillor Wilson suggested targeting old vehicles first but this was not possible as the borough had no powers to require them to change their vehicle.
- Councillor Wilson informed the Panel that a visually impaired resident with a guide dog had difficulty to get an accessible taxi, was there a facility available or could we prove a number in braille for residents to contact and request an accessible vehicle. The Panel were informed that all vehicles were supposed to take dogs, this was already in our policy and further information was on the website. Councillor Wilson suggested putting the vehicle number on the front of the vehicle as well as the back but was advised that there was no requirement for this.
- The Panel were reminded that there were 176 Hackney Carriage vehicles, of which 107 were accessible vehicles. There were no requirements for public hire vehicles to be accessible. Councillor Bowden suggested targeting the remaining 69 Hackney Carriage vehicles.

The Panel Unanimously Agreed the Officers recommendations.

THE USE AND EFFECTIVENESS OF PENALTY POINTS

Greg Nelson introduced the report. The report consisted of two recommendations that the Panel were to discuss. Greg Nelson informed the Panel that the trial had been very effective and penalty points had not been issued twice to the same driver. Drivers had the right to appeal against the points and currently the appeal would be heard by a panel of three members. To date, there have been two appeals and on both occasions, the appellants did not attend, the appeals were dismissed and the points were upheld. The team seek legal advice and were informed that the driver would have a right to appeal, however, there was no legal statement on what stance the appeal panel could take. Greg Nelson asked the Panel if we should keep it as it was now or delegate to a senior officer in the council to take the decision.

Councillor Sharpe discussed the cost to the community and the cost to the council to implement. Councillor Sharpe highlighted that the penalty was small. Councillor Sharpe asked the Panel should the council spend all the money and time or move to a more efficient way of working. Councillor Sharpe was concerned that we were dealing with our own drivers but there was no guarantee the Uber was dealing with their drivers. Greg Nelson informed the Panel that we passed on all information to Uber. Uber had been very helpful to us. Uber suspended access to the app so the driver could not work until the matter was investigated. Councillor Sharpe suggested we move to the new system unless the driver has twelve points, then it should be heard by a Panel.

Councillor Majeed proposed that we should continue as we were and a panel should hear all appeals or give the driver the choice. Councillor Wilson seconded the suggestion.

A named vote was carried out. Six members (Alexander, Richards, Bowden, Luxton, Sharpe and Hunt) voted against the motion that was proposed by Councillor Majeed and Councillor Majeed and Wilson both voted in favour for the motion.

The Panel Unanimously Agreed that:

i) Members agreed that the penalty point infringements introduced in April 2017 for a one year trial period are added to the respective hackney carriage and private hire policies permanently.

ii) Members agreed to consider amending the RBWM Hackney Carriage Driver and Vehicle Policy & Conditions and the RBWM Private Hire Driver and Vehicle Policy & Conditions respectively such that appeals against the imposition of penalty points are heard by a Senior Officer of RBWM instead of an Appeals Panel made up of elected Members from the Licensing Panel.

iii) Members agreed to delegate the implementation of the above point ii to the Head of Service and the Lead Member for Environmental Services (including Parking and Flooding).

SAFEGUARDING TRAINING FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS AND OPERATORS

Greg Nelson presented the report on Safeguarding Training for Hackney Carriage and Private Hire Drivers and Operators.

The recommended option was to choose Personnel Check Ltd as this was a high quality 'off the shelf' product which was used by a number of Berkshire LAs and other LAs around the country.

Greg Nelson informed the Panel that the trade had already been consulted and the report was mindful of the responses.

Uber drivers were discussed and the Panel wanted to know if they were trained for safeguarding. There were no requirements of the safeguarding training for Uber drivers, the PCO had its own rules. The Panel felt that it should be publicised to our residents, once the training was complete that our drivers were trained for the protection of our residents and drivers.

ACTION: A letter to be sent to Uber from the Lead Member of Environmental Services advising them of what the borough was doing with regards to Safeguarding training.

Councillor Majeed highlighted the need of the training being provided in different languages. Greg Nelson confirmed that this would be addressed by Personal Checks Ltd.

The Panel Unanimously Agreed the recommendations in the report.

DATES OF FUTURE MEETINGS

Members noted the next meeting of the Licensing Panel would be on 2 October 2018.

LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF PUBLIC

The meeting, which began at 6.15 pm, finished at 7.35 pm

CHAIRMAN.....

DATE.....

Report Title:	Review and Republishing of RBWM's Gambling Act 2005 Statement of Principles
Contains Confidential or Exempt Information?	No
Member reporting:	Councillor M. Airey, Lead Member for Environmental Services (including parking, flooding, housing and performance management)
Meeting and Date:	Licensing Panel 08 January 2019
Responsible Officer(s):	Andy Jeffs, Executive Director David Scott, Head of Communities, Enforcement and Partnerships
Wards affected:	All

REPORT SUMMARY

1. RBWM is a "licensing authority" under the Gambling Act 2005. Such authorities are required to publish a Statement of Principles every three years. The current Statement is about to expire and a new RBWM Gambling Act Statement Principles 2019 – 2022 has been produced.
2. This report presents the RBWM Gambling Act Statement Principles 2019 – 2022 for endorsement by the Licensing Panel, and seeks the Panel's support for recommendation to Full Council that the new policy be adopted.

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That the Licensing Panel notes the report and:

i) Recommends to Full Council that the RBWM Gambling Act 2005 Statement of Principles 2019 – 2022 be adopted.

2. REASONS FOR RECOMMENDATIONS AND OPTIONS CONSIDERED

- 2.1 The Gambling Act 2005 requires that licensing authorities produce and publish a Statement of Principles. This policy is required to be reviewed and republished every three years and that time has now arrived.
- 2.2 The Statement is required to demonstrate how the licensing authority will implement the three licensing objectives under the Gambling Act 2005 which are;
 - Preventing gambling being a source of, or associated with, crime and disorder
 - Ensuring gambling is conducted in a fair and open way
 - Protecting children and other vulnerable people from being harmed or exploited by gambling
- 2.3 The 2015 – 2018 RBWM Statement of Principles has been reviewed and updated. No major changes were required but the updated Statement is clearer and easier to use and understand. The changes made are set out in Appendix

A. and the new RBWM Gambling Act 2005 Statement of Principles 2019 – 2022 is found at Appendix B.

- 2.4 Members are invited to endorse the RBWM Gambling Act 2005 Statement of Principles 2019 – 2022 and recommend to Full Council that it be adopted (the RBWM Constitution specifically requires that this policy is endorsed and adopted by Full Council – see Part 2 THE FULL COUNCIL – A Council Terms of Reference – 1.1 Functions of Full Council – 1 (d) Licensing Authority Policy Statement under the Gambling Act 2005).

3. KEY IMPLICATIONS

- 3.1 See Legal Implications, below

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 None arising from the adoption of these refreshed Statement of Principles

5. LEGAL IMPLICATIONS

- 5.1 By endorsing the new Statement of Principles, Members will ensure that RBWM is complying with its statutory duty under section 349 of the Gambling Act 2005 for licensing authorities to review and republish their Statement of Principles every three years. The current RBWM 2015 – 2018 will expire and be replaced by this new 2019 – 2022 policy

6. RISK MANAGEMENT

- 6.1 Theoretically any policy is open to legal challenge. However this Statement of Principles has been consulted on by all relevant parties, including the Gambling Commission, and so no challenge is anticipated.

7. POTENTIAL IMPACTS

- 7.1 No EQIA is anticipated at this stage.

8. CONSULTATION

- 8.1 There is a requirement that licensing authorities consult with the public and interested parties when reviewing and republishing its Gambling Act 2005 Statement Principles. That consultation has taken place by means of a notice published in local newspapers and direct consultation with the following bodies;
- The Gambling Commission
 - Thames Valley Police
 - East Berkshire Fire and Rescue Service
 - The Planning Authority (RBWM)
 - Environmental Protection (RBWM)
 - Local Safeguarding Children (LSCB)
 - HM Revenue and Customs
 - Public Health
- 8.2 There have been no responses to this consultation.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 If Members agree to endorse the RBWM Gambling Act Statement Principles 2019 – 2022 it will go to Full Council on 28 January 2019 and come into force on 31 January 2019

10. APPENDICES

Appendix A – Changes from the Statement of Principles 2015 – 2018

Appendix B – RBWM Gambling Act 2005 Statement of Principles 2019 – 2022

11. BACKGROUND DOCUMENTS

None

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr Airey	Lead Member for Environmental Services (including parking, flooding, housing and performance management)	19/12/18	
Cllr Cox	Chair of the Licensing Panel	19/12/18	
Russell O'Keefe	Acting Managing Director	13/12/18	
Andy Jeffs	Executive Director Communities Directorate	13/12/18	17/12/18
David Scott	Head of Communities, Enforcement and Partnerships	13/12/18	19/12/18

REPORT HISTORY

Decision type: Non-key decision	Urgency item? No
Report Author: Greg Nelson Trading Standards & Licensing Lead 01628 683561	

Appendix A

Changes from the Statement of Principles 2015 – 2018

- Change of layout, headings and subheadings
- A table of contents was added
- A paragraph was added under the heading “Introduction”
- The Royal Borough of Windsor and Maidenhead heading was added
- Borough map and a table with current licences/permits added under the heading “The RBWM”
- Consultees heading was added
- An explanation of the consultation and contact details were added under heading “Consultees”
- A paragraph and bullet points were added under the heading “Declaration”
- Public Health was added under the heading “Responsible Authorities”
- Data Protection Act 2018 was added under the heading “Exchange of Information”
- A paragraph was added under heading “Exchange of Information”
- General Principles heading was added
- A paragraph and bullet points were added under the heading “Premises Licence”
- A paragraph and bullet points were added under the heading “Applications”
- Plans of Premises heading was added
- Notice of the Application heading was added
- Representations heading was added
- Local Risk Assessment heading was added
- Local Area Profile heading was added
- Vulnerable Persons heading was added
- A paragraph was added under the heading “Applications and Plans”
- A note was added under the heading “Travelling Fairs”
- A note was added under the heading “Unlicensed Family Entertainment Centre gaming machine permits”

Appendix B
RBWM Gambling Act Statement Principles 2019 – 2022

See Attached Document

THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

Gambling Act 2005

Statement of Principles 2019 - 2022

Statement of Principles

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PART A

1. General

1.1. Introduction

Under Section 349 of the Gambling Act licensing authorities are required to publish a statement of the principles which they propose to apply when exercising their functions.

The statement must be published at least every three years and this statement will come into effect on 31st January 2019 and continue until 30th January 2022. The statement must also be reviewed from “time to time” and any amended parts re-consulted upon. The statement must be then re-published before any revision is given effect.

It is important to note that this statement of principles will not override the right of any person to make an application, make representation about an application, or apply for a review of a licence, as each application will be considered on its own merit and according to the statutory requirements of the Gambling Act 2005.

1.2. The Borough of Windsor and Maidenhead

The Royal Borough of Windsor and Maidenhead (RBWM) is a Royal of Berkshire, in South East England (Figure 1). It is a unitary authority and home to Windsor Castle, Eton College, LEGOLAND Windsor, Windsor and Ascot Racecourses. Its estimates a population of 150,100 covering 76 square miles.

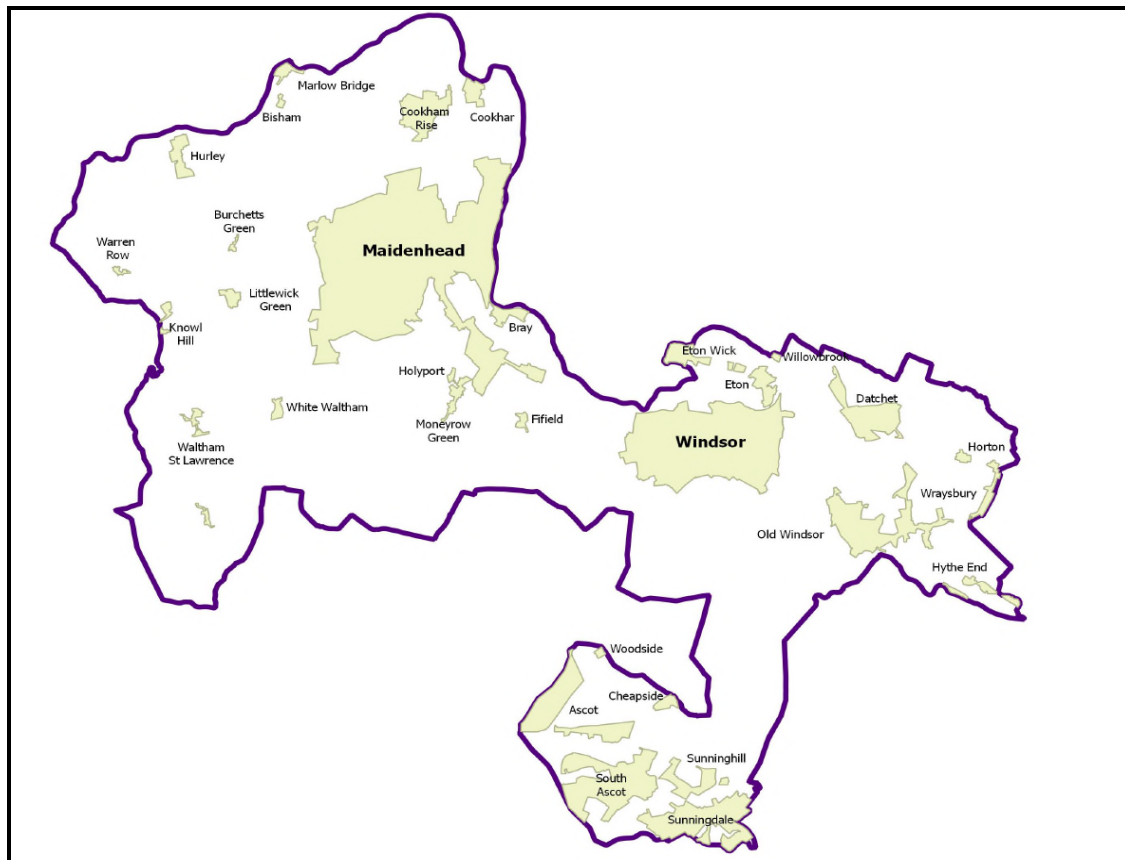


Figure 1: Royal Borough of Windsor and Maidenhead

The current number of licences issued in the borough is 208. The breakdown is as follows:

Type of Licence/Permit	Total number per category
Adult Gaming Centre Premises Licence	1
Betting Premises Licence (track)	2
Betting Premises Licence (No track)	20
Club Machine Permit	9
Family Entertainment Centre Gaming Machine Permit	3
Licensed Premises Gaming Machine Permit	13
Notification of Gaming Machines	79
Small Society Lotteries	81
Total	208

1.3. The Licensing Objectives

In exercising most of their functions under the Gambling Act 2005, licensing authorities must have regard to the licensing objectives as set out in Section 1 of the Act. The licensing objectives are:

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

It should be noted that the Gambling Commission has stated: “The requirement in relation to children is explicitly to protect them from being harmed or exploited by gambling”.

This licensing authority is aware that, as per Section 153, in making decisions about premises licences and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- Reasonably consistent with the licensing objectives and
- in accordance with the authority’s statement of licensing policy

1.4. Declaration

In preparing this Statement of Principles the Licensing Authority is required to:

- Adhere to regulations issued by the Secretary of State under Section 349 (4) of The Act
- Have regard to guidance issued to local authorities by the Gambling Commission Section 25 (2) of the Act
- Recognise the need to be consistent with the licensing objectives where applicable.

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

1.5. Responsible Authorities

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in

writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

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

In accordance with the suggestion in the Gambling Commission's Guidance to Licensing Authorities, this authority designates the Local Safeguarding Children Board for this purpose.

For the purpose of this Act, the following are responsible authorities in relation to premises:

- The Licensing Authority
- The Gambling Commission
- Thames Valley Police
- Royal Berkshire Fire and Rescue Service
- The Planning Authority (RBWM)
- Environmental Protection (RBWM)
- Local Safeguarding Children (LSCB)
- HM Revenue and Customs
- Public Health (As suggested on the Statement of Gambling Licensing Policy – A Councillor's Guide)

You can access the contact details of all the Responsible Authorities at https://www3.rbwm.gov.uk/downloads/file/117/list_of_responsible_authorities

1.6. Interested parties

Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in Section 158 of the Gambling Act 2005 as follows:

“For the purposes of this Part a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the applications is made, the person:

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b)”

The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:

Each case will be decided upon its merits. This authority will not apply a rigid rule to its decision making. It will consider the examples of considerations provided in the Gambling Commission's Guidance to Licensing Authorities at 8.9 to 8.17. It will also consider the Gambling Commission's Guidance that "has business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.

Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these however, this authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation is sufficient.

If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not part of the Licensing Panel dealing with the licence application. If there are any doubts then please contact the licensing team, Town Hall, St Ives Road, Maidenhead, SL6 1RF or by email: licensing@rbwm.gov.uk.

1.7. Exchange of Information

Licensing authorities are required to include in their statements the principles to be applied by the authority in exercising the functions under Sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under Section 350 of the Act with the respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

The principle that this licensing authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 2018 will not be contravened. The licensing authority will also have regard to any Guidance issued by the Gambling Commission on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005.

Full details of those persons making representations will be made available to applicants, in the event of a public hearing being held and will form part of a

public document and it will be published on the RBWM website. Anyone making representations or applying for a review of a premises licence will be informed that their full details will be disclosed.

1.8. General Principles

This “Statement of Principles” set out the principles that the licensing authority will apply when making decisions upon applications or notifications made for:

- Premises Licences
- Temporary Use Notices
- Occasional Use Notices
- Permits as required under the Gambling Act 2005
- Registrations as required under the Gambling Act 2005

Nothing in this Statement of Principles will:

- Undermine the rights of any person to apply under the Gambling Act 2005 for a variety of permissions and have the application considered on its individual merits; or
- Override the right of any person to make a representation on any application or seek a review of a licence or permit where they are permitted to do so under the Gambling Act 2005

Each application will be treated on its own merit.

1.9. Enforcement

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

This licensing authority’s principles are that:

It will be guided by the Gambling Commission’s Guidance to Licensing Authorities and will endeavour to be:

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

As per the Gambling Commission's Guidance to Licensing Authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.

This licensing authority has adopted and implemented a risk-based inspection programme, based on;

- The licensing objectives
- Relevant codes of practice
- Guidance issued by the Gambling Commission, in particular at Part 36
- The principles set out in this statement of licensing policy

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 is to ensure compliance with the premises licences and other permissions which it authorises.

The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines are not dealt with by the licensing authority but should be notified to the Gambling Commission.

This licensing authority also keeps itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

Where the Licensing Authority seeks to bring a prosecution, it will have regard to the principle of the Crown Prosecution Service Code for Crown Prosecutors.

The Licensing Authority will seek to work actively with the Gambling Commission and the Thames Valley Police in enforcing licensing legislation.

1.10. Licensing Authority Functions

Licensing authorities are required under the Act to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing *Premises Licences*
- Issue *Provisional Statements*
- Regulate *members' clubs* and *miners' welfare institutes* who wish to undertake certain gaming activities via issuing Club Gaming Permits and/or Club Machine Permits
- Issue *Club Machine Permits* to *Commercial Clubs*
- Grant permits for the use of certain lower stake gaming machines at *unlicensed Family Entertainment Centres*
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines

- Issue *Licensed Premises Gaming Machine Permits* for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines
- Register *small society lotteries* below prescribed thresholds
- Issue *Prize Gaming Permits*
- Receive and Endorse *Temporary Use Notices*
- Receive *Occasional Use Notices*
- Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

It should be noted that licensing authorities are not be involved in licensing remote gambling, which is regulated by the Gambling Commission via operating licences.

PART B

2. Premises Licence

2.1. Premises Licence

A premises licence can authorise the provision of facilities at the following:

- Casino premises
- Bingo premises
- Betting premises including on course track betting
- Adult gaming centres (AGC) premises (for category B3, B4, C and D machines)
- Family entertainment centres (FEC) premises (for category C and D machines)

Premises licences will be subjected to the requirements set-out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. The Council can exclude default conditions and also attach others, where it is believed to be appropriate.

2.2. Application

An application for premises can only be made by a person (which includes companies or partnership):

- Who are aged 18 or over **and**
- Who have the right to occupy the premises and
- Who have an operating licence which allows them to carry out the proposed activity **or**
- Who have applied for an operating licence to allow them to carry out the proposed activity. It is important noting that the premises licence cannot be determined until an operation licence has been issued.

The exception to this is an applicant for a premises licence to allow a track to be used for betting, as these applicants are not required to hold an operating licence if they are merely providing space for other people betting (and where other persons hold a valid betting operating licence).

2.2.1 Plans of the Premises

All new premises licence and variation applications, must include a plan of the premises. The plan will become part of the premises licence and the authority expects the plans to be available for inspection by an authorised Licensing

Enforcement officers at the premises.

Under the Gambling Act 2005 (Premises Licences and Provisional Statements) Regulation 2007 (amended) the plan of the premises must show:

- The extent of the boundary or perimeter of the premises
- Where the premises include, or consist of, one or more buildings, the location of any external or internal walls of each such buildings
- Where the premises form a part of the building, the location of any external or internal walls of the building which are included in the premises
- Where the premises are a vessel or a part of a vessel, the location of any part of the sides of the vessel, and of any internal walls of the vessel, which are included in the premises
- The location of each point of entry to and exit from the premises, including in each case a description of the place from which entry is made or to which the exit leads

If there are major changes to the layout of a premises a variation must be made and new plans submitted. If there are minor changes to the layout the licence holder should contact the Licensing Authority for advice.

It is important to note that a plan has a number of requirements and these requirements depend on the type of licence or permit application. Please visit our website and download our RBWM Guidance Notes relating to arrangements for Premises under the Act to ascertain the plan requirements for the type of application being applied for.

2.2.2 Notice of the Application

Under The Secretary of States regulations, applicants are required to publish a notice of their application and to notify responsible authorities and other persons about the application. These also apply, with one or two modifications, in relation to applications for provisional statements and some ancillary applications that can be made in relation to a premises licence.

Notice must be given in three ways:

- A notice must be placed outside the premises for 28 days consecutively in a place where it can be read conveniently
- In a newspaper of highest circulation within the Royal Borough of Windsor and Maidenhead, on at least one occasion within 10 (ten) working days of the application being served
- To all responsible authorities, which includes the Gambling Commission, within 7(seven) days of the application being served

An officer will be visiting the premises to verify the notice, if the notice is not

placed or the public notice is not published within the framework days then the Licensing Authority will reject the application.

2.2.3 Representation

Licensing Authorities are obliged to consider representations from two categories of person, referred to in the Gambling Act 2005 as “responsible authorities” and “interested parties”. Representation from other parties are inadmissible.

The licensing authority will consider the relevance of any representation received. It must be related to one or more of the Licensing Objectives or to issues raised under the Licensing Authority’s Statement of Policy, or the Gambling Commission’s Guidance or Code of Practice.

Also, the licensing authority will need to consider if representations are “frivolous” or “vexatious”.

Anyone that wishes to make a representation to an application must do so in writing to The Royal Borough of Windsor and Maidenhead, Licensing Team, Town Hall, St Ives Road, Maidenhead, SL6 1RF or by email: licensing@rbwm.gov.uk.

2.2.4 Local Risk Assessment

It is a requirement of the Gambling Commission’s Licence Conditions and Codes of Practice (LCCP) for licensees to assess the local risk to the licensing objectives posed by the provisions of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their local risk assessments, they must take into account relevant matters identified in this statement of principles.

The LCCP states that licensees must undertake a local risk assessment when applying for a new premises licence. Their risk assessment must also be updated:

- When applying for a variation of a premises licence
- To take account of significant changes in local circumstances
- When there are significant changes at a licensed premises that may affect their mitigation of local risks

2.3. Local Area Profile

It is not a mandatory requirement for licensing authorities to complete their own assessment of the local environment known as the Local Area Profile. In cases

where authorities feel that this is necessary then this will be produced as a separate document to the Statement of Principles and will be circulated to all licensed premises and available on the local authority website.

2.4. Decision-making

This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks fit:

- in accordance with any relevant code of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- reasonably consistent with the licensing objectives; and
- in accordance with this Statement of Principles

It is appreciated that as per the Gambling Commission's Guidance to Licensing Authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos - page 12) and also that unmet demand is not a criterion for a licensing authority.

2.5. Meaning of "Premises"

In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, the Council will pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.

The Gambling Commission states in the fifth edition of its Guidance to Licensing Authorities that: "In most cases the expectation is that a single building / plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing authority. However, the Commission does not consider that areas of a building that are

artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises. If a premises is located within a wider venue, a licensing authority should request a plan of the venue on which the premises should be identified as a separate unit.”

This licensing authority takes particular note of the Gambling Commission’s Guidance to Licensing Authorities which states that: licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not “drift” into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity names on the premises licence.

The Guidance also gives a list of factors which the licensing authority is aware of, which may include:

- Is a separate registration for business rates in place for the premises?
- Is the premises’ neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?

This authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

This authority will take account of the Gambling Commission’s Guidance in Part 7 which details the relevant access provisions for each premises type. These include:

Casinos

At present time, there are no casinos operating within the Royal Borough of Windsor and Maidenhead

- The principal access entrance to the premises must be from a street (as defined at 7.21 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

Adult Gaming Centre

- No customer must be able to access the premises directly from any other licensed gambling premises

Betting Shops

- Access must be from a street (as per para 7.21 Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind unless that shop is itself a licensed betting premises

Tracks

- No customer should be able to access the premises directly from:
 - a casino
 - an adult gaming centre

Bingo Premises

- No customer must be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Family Entertainment Centre

- No customer must be able to access the premises directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Part 7 of the Gambling Commission's Guidance to licensing authorities contains further guidance on this issue, which this authority will also take into account in its decision-making.

Premises “ready for gambling”

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, applying a two stage consideration process:

- first, whether the premises ought to be permitted to be used for gambling
- second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

Applicants should note that this authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.58 - 7.65 of the Guidance.

Location

This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision-making.

As per the Gambling Commission's Guidance to Licensing Authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated.

It should be noted that any such policy does not preclude any application being

made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

Planning

The Gambling Commission Guidance to Licensing Authorities paragraphs 7.58 – 7.65 states:

In determining applications, the licensing authority should not take into consideration matters that are not related to gambling and the licensing objectives. One example would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

This authority will not take into account irrelevant matters as per the above guidance. In addition this authority notes the following excerpt from the Gambling Guidance paragraph 7.65:

When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have to comply with the necessary planning or building consents. Nor should fire or health and safety risks be taken into account. Those matters should be dealt with under relevant planning control, building and other regulations, and must not form part of the consideration for the premises licence. S.210 of the Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally, the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

2.6. Duplication with other regulatory regimes

This licensing authority seeks to avoid any duplication with other statutory / regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will though, listen to, and consider carefully, any concerns about conditions which are not able to be met by licensees due to planning restrictions, should such a situation arise.

When dealing with a premises licence application for finished buildings, this authority will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, buildings and other regulations and must not form part of the consideration for the premises licence.

2.7. Licensing objectives

Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance to Licensing Authorities and some comments are made below.

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

This licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.

2.7.2. Ensuring that gambling is conducted in a fair and open way

This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. *For Local Authorities with tracks:* There is however, more of a role with regard to tracks which is explained in more detail in the 'tracks' section– see page 18).

2.7.3. Protecting children and other vulnerable persons from being harmed or exploited by gambling

This licensing authority has noted the Gambling Commission's Guidance that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). The licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances, machines, segregation of areas etc.

This licensing authority is also aware of the Gambling Commission Codes of Practice as regards this licensing objective, in relation to specific premises.

2.7.3.1 Vulnerable Persons

With regards to the term “vulnerable persons” it is noted that the Gambling Commission does not seek to offer a definition but states that “it will be for regulatory purposes” to assume that this group includes:

- people who gamble more than they want to
- people who gamble beyond their means and
- people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs. In relation to this, Licensing Authorities included people with a mental illness and people with a learning difficulty. The Licensing Authority will consider this licensing objective on a case by case basis.

The licensing authority will expect that an applicant will show that there are policies and procedures in place to protect vulnerable persons.

These may include:

- a training programme for staff to enable them to identify persons who may be vulnerable and where appropriate to take action to protect such vulnerable persons from being harmed or exploited by gambling
- display Gamcare helpline stickers on all gaming machines
- display Gamcare posters in prominent locations on the premises

2.8. Conditions

Any conditions attached to licences will be proportionate and will be:

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

Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This Licensing Authority will also expect the licence applicant to offer his/her own suggestions as to ways in which the licensing objectives can be met effectively.

This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling

from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.

This authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:

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

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

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

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

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

2.9. Door Supervisors

The Gambling Commission advises in its Guidance to Licensing Authorities that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young

persons or vulnerable people) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence to this effect.

Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (as per the Guidance, Part 33).

2.10. Adult Gaming Centres

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to, for example, ensure that under 18 year olds do not have access to the premises.

This licensing authority may consider measures to meet the licensing objectives such as:

- proof of age schemes
- CCTV
- supervision of entrances / machine areas
- physical separation of areas
- location of entry
- notices / signage
- specific opening hours
- self-exclusion schemes
- provision of information leaflets / helpline numbers for organisations such as GamCare.

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

2.11. (Licensed) Family Entertainment Centres:

This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority, for example, that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

This licensing authority may consider measures to meet the licensing objectives such as:

- CCTV

- supervision of entrances / machine areas
- physical separation of areas
- location of entry
- notices / signage
- specific opening hours
- self-exclusion schemes
- provision of information leaflets/helpline numbers for organisations such as GamCare
- measures/training for staff on how to deal with suspected truant school children on the premises

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

This licensing authority will, as per the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated. This licensing authority will also make itself aware of any mandatory or default conditions on these premises licences, when they have been published.

2.12. Casinos

No Casinos resolution - This licensing authority has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this licensing authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution. Any such decision will be made by the Full Council.

Licence considerations / conditions – This licensing authority will attach conditions to casino premises licences according to the principles set out in the Gambling Commission's Guidance at paragraph 9, bearing in mind the mandatory conditions listed in paragraph 17 of the Guidance, and the Licence Conditions and Codes of Practice published by the Gambling Commission.

Betting machines - This licensing authority will, as per the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

2.13. Bingo premises

This licensing authority notes that the Gambling Commission's Guidance paragraph 18.5 states:

Licensing authorities need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. An operator may choose to vary their licence to exclude a previously licensed area of that premises, and then apply for a new premises licence, or multiple new premises licences, with the aim of creating separate premises in that area. Essentially providing multiple licensed premises within a single building or site. Before issuing additional bingo premises licences, licensing authorities need to consider whether bingo can be played at each of those new premises.

This authority also notes the Guidance at paragraph 18.5 regarding the unusual circumstances in which the splitting of a pre-existing premises into two adjacent premises might be permitted, and in particular that it is not permissible to locate eight category B3 gaming machines in one of the resulting premises, as the gaming machine entitlement for that premises would be exceeded.

Guidance at paragraph 18.7 Children and young people are allowed into bingo premises; however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed. Social Responsibility (SR) code 3.2.5(3) states that 'licensees must ensure that their policies and procedures take account of the structure and layout of their gambling premises' in order to prevent underage gambling.

2.14. Betting premises

Betting machines - This licensing authority will, as per the Gambling Commission's Guidance, take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator wants to offer.

2.15. Tracks

This licensing authority is aware that tracks may be subject to one or more than one premises licence, provided each licence relates to a specified area of the track. As per the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (i.e. the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only

gaming facilities and that arrangements will be put in place to ensure as far as is possible that vulnerable adults do access adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

This licensing authority may consider measures to meet the licensing objectives such as:

- proof of age schemes
- CCTV
- supervision of entrances / machine areas
- physical separation of areas
- location of entry
- notices/signage
- specific opening hours
- self-exclusion schemes
- provision of information leaflets / helpline numbers for organisations such as GamCare

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

Gaming machines - Where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, machines (other than category D machines) should be located in areas from which children are excluded.

2.16. Applications and plans

The Gambling Act (s151) requires applicants to submit plans of the premises with their application, in order to ensure that the licensing authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for the licensing authority to plan future premises inspection activity. (See Guidance to Licensing Authorities, para 20.43).

Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations. (See Guidance to Licensing Authorities, para 20.44).

It is important to note that a plan has a number of requirements and these requirements depend on the type of licence or permit application. Please visit our website and download the RBWM Guidance Notes relating to arrangements for Premises under the Act to ascertain the plan requirements for the type of application being applied for.

2.17. Travelling Fairs

This licensing authority is responsible for deciding whether, where category D machines and/or equal chance prize gaming without a permit is to be made available for use at travelling fairs, the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at the fair is met.

The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.

It is noted that the 27 days statutory maximum for the land being used as a fair applies on a per calendar year basis and not in any 12-month period, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land which crosses our boundaries is monitored so that the statutory limits are not exceeded. (See Guidance to Licensing Authorities, para. 30.1-30.6).

2.18. Provisional Statements

Developers may wish to apply to this authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.

S204 of the Gambling Act provides for a person to make an application to the licensing authority for a provisional statement in respect of premises that he or she:

- expects to be constructed
- expects to be altered or
- expects to be acquired a right to occupy

The process for considering an application for a provisional statement is the same as that for a premises licence application other than for tracks. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.

In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission (except in the case of a track) and they do not have to have a right to occupy the premises in respect of which their provisional application is made.

The holder of a provisional statement may then apply for a premises licence once

the premises are constructed, altered or acquired. The licensing authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:

- they concern matters which could not have been addressed at the provisional statement stage, or
- they reflect a change in the applicant's circumstances.

In addition, the authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in the authority's opinion reflect a change in the operator's circumstances; or
- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and this licensing authority notes that it can discuss any concerns it has with the applicant before making a decision.

2.19. Reviews

Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried out. This will be on the basis of whether the request for the review is relevant to the matters listed below:

- in accordance with any relevant Code of Practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives; and
- in accordance with the authority's statement of principles.

The request for the review will also be subject to the consideration by the authority as to whether the request is frivolous, vexatious, or whether it will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether it is substantially the same as previous representations or requests for review.

The licensing authority can also initiate a review of a particular premises licence, or a particular class of premises licence on the basis of any reason which it thinks is appropriate.

Once a valid application for a review has been received by the licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by the licensing authority, who will publish notice of the application within 7 days of receipt.

The licensing authority must carry out the review as soon as possible after the 28 day period for making representations has passed.

The purpose of the review will be to determine whether the licensing authority should take any action in relation to the licence. If action is justified, the options open to the licensing authority are:-

- (a) add, remove or amend a licence condition imposed by the licensing authority;
- (b) exclude a default condition imposed by the Secretary of State (e.g. opening hours) or remove or amend such an exclusion;
- (c) suspend the premises licence for a period not exceeding three months; and
- (d) revoke the premises licence.

In determining what action, if any, should be taken following a review, the licensing authority must have regard to the principles set out in Section 153 of the Act, as well as any relevant representations.

In particular, the licensing authority may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.

Once the review has been completed, the licensing authority must, as soon as possible, notify its decision to:

- the licence holder
- the applicant for review (if any)
- the Commission
- any person who made representations
- the chief officer of police or chief constable; and
- Her Majesty's Commissioners for Revenue and Customs

PART C

3. Permits / Temporary & Occasional Use Notice

3.1. Unlicensed Family Entertainment Centre gaming machine permits (Statement of Principles on Permits - Schedule 10 paragraph 7)

Where a premises does not hold a premises licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238).

The Gambling Act 2005 states that a licensing authority may prepare a *statement of principles* that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under Section 24. The Gambling Commission's Guidance to Licensing Authorities also states: "In its statement of policy, a licensing authority may include a statement of principles that it proposes to apply when exercising its functions in considering applications for permits. In particular it may want to set out the matters that it will take into account in determining the suitability of the applicant. Given that the premises is likely to appeal particularly to children and young persons, licensing authorities may wish to give weight to matters relating to protection of children from being harmed or exploited by gambling and to ensure that staff supervision adequately reflects the level of risk to this group. Licensing authorities are also encouraged to also specify in their statement of policy that a plan for the uFEC must be submitted." (See Guidance to Licensing Authorities, para. 24.8)

Guidance also states: "An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed FEC, and if the chief officer of police has been consulted on the application.

Licensing authorities might wish to consider asking applicants to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs
- that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); and
- that employees are trained to have a full understanding of the maximum stakes and prizes. (See Guidance to Licensing Authorities, para. 24.9))

It should be noted that a licensing authority cannot attach conditions to this type of permit.

Statement of Principles

This licensing authority will expect the applicant to show that there are policies and procedures in place to protect children and vulnerable adults from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The efficiency of such policies and procedures will each be considered on their merits, however, they may include appropriate measures/training for staff as regards suspected truant school children on the premises, measures/training covering how staff would deal with unsupervised very young children and vulnerable adults being on the premises, or children causing perceived problems on/around the premises. This licensing authority will also expect, as per Gambling Commission Guidance, that applicants demonstrate a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed FECs; that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act); a scaled plan of the premises (See Guidance notes relating to arrangements for Premises under the Act – plan requirement for uFECs), original copy of Public Liability Insurance documentation and that staff are trained to have a full understanding of the maximum stakes and prizes.

3.2. (Alcohol) Licensed premises gaming machine permits - (Schedule 13 paragraph 4(1)) Automatic entitlement: 2 machines

There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority.

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

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

3.3. Permit: 3 or more machines

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued

under Section 25 of the Gambling Act 2005, and “*such matters as they think relevant.*”

This licensing authority considers that “such matters” will be decided on a case by case basis but generally there will be regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include Staff training and supervision of the machines. Notices and signage may also be helpful.

As regards the protection of vulnerable adults, applicants may wish to consider providing the telephone number of GamCare on the machines.

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

It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

It should also be noted that the holder of a permit must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

3.4. Prize Gaming Permits

The Gambling Act 2005 states that a licensing authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority proposes to consider in determining the suitability of the applicant for a permit”.

This licensing authority has prepared a Statement of Principles which is that the applicant should set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:

- that they understand the limits to stakes and prizes that are set out in Regulations;
- that the gaming offered is within the law
- Clear policies that outline the steps to be taken to protect children from harm.

In making its decision on an application for this permit the licensing authority does not need to (but may) have regard to the licensing objectives but must have regard to any Gambling Commission guidance. (Gambling Act 2005, Schedule 14 paragraph 8(3)).

It should be noted that there are conditions in the Gambling Act 2005 by which the permit holder must comply, but that the licensing authority cannot attach conditions. The conditions in the Act are:

- the limits on participation fees, as set out in regulations, must be complied with;
- all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
- the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
- participation in the gaming must not entitle the player to take part in any other gambling.

3.5. Club Gaming and Club Machines Permits

Members Clubs (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming machines permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set-out in forthcoming regulations. A Club Gaming machine permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).

Gambling Commission Guidance states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulations and these cover bridge and whist clubs, which replicates the position under the Gambling Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations."

The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:

- a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied

- b) the applicant's premises are used wholly or mainly by children and/or young persons
- c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
- d) a permit held by the applicant has been cancelled in the previous ten years; or
- e) an objection has been lodged by the Commission or the police.

There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission's Guidance to Licensing Authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced." and "The grounds on which an application under the process may be refused are:

- a) the club is established primarily for gaming, other than gaming prescribed by regulation under s.266 of the Act;
- b) in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
- c) a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."

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

3.6. Temporary Use Notices

Temporary Use Notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a Temporary Use Notice, according to the Gambling Commission, would include hotels, conference centres and sporting venues.

The licensing authority can only grant a Temporary Use Notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.

The Secretary of State has the power to determine what form of gambling can be authorised by Temporary Use Notices, and at the time of writing this Statement the relevant regulations (SI no 3157: The Gambling Act 2005 (Temporary Use Notices) Regulations 2007) state that Temporary Use Notices can only be used to permit the provision of facilities or equal chance gaming, where the gaming is

intended to produce a single winner, which in practice means poker tournaments.

There are a number of statutory limits as regards Temporary Use Notices. The meaning of "premises" in Part 8 of the Act is discussed in Part 7 of the Gambling Commission Guidance to Licensing Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place".

In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.

This licensing authority expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

3.7. Occasional Use Notices

The licensing authority has very little discretion as regards these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will though consider the definition of a 'track' and whether the applicant is permitted to avail him/herself of the notice.

PART D

4. Further Information

ANNEX 'A'

TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

Matter to be dealt with	Full Council	Sub-Committee	Licensing Officers
Three year licensing policy	All cases		
Policy not to permit casinos	All cases		
Fee setting – when appropriate		If delegated by Full Council	
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises' licence		All cases	
Application for club gaming / club machine permits		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Cancellation of a club gaming/club machine permits		All cases	
Applications for other permits			All cases
Cancellation of licensed premises gaming machine permits			All cases
Consideration of temporary use notice			All cases
Decision to give a counter notice to a temporary use notice		All cases	
Consideration of an Occasional Use Notice			All cases
Prosecution of offences under Gambling Act 2005			Community Protection & Enforcement Services Lead in conjunction with the Head of Legal Services
The appointment of Authorised Persons in accordance with Section 304 Gambling Act 2005			Community Protection & Enforcement Services Lead
Applications for Licensed Premises Gaming Machine Permits		Over 4 machines	Up to 4 machines

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Report Title:	The Use of Penalty Points to deal with Overcharging
Contains Confidential or Exempt Information?	No
Member reporting:	Councillor M. Airey, Lead Member for Environmental Services (including parking, flooding, housing and performance management)
Meeting and Date:	Licensing Panel 08 January 2019
Responsible Officer(s):	Andy Jeffs, Executive Director David Scott, Head of Communities, Enforcement and Partnerships
Wards affected:	All

REPORT SUMMARY

1. Following a test purchase operation in September a Briefing Note was provided for the Lead Member and Cabinet on 4 October 2018 about overcharging by hackney carriage and private hire drivers. The Briefing Note set out options to address the problem identified.
2. Some of these options will require changes to RBWM Policy & Conditions, this report sets out these options for Panel to agree on so that the necessary consultation can be carried out and changes to Policy made.

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That the Licensing Panel notes the report and:

- i) **Authorises the Head of Communities, Enforcement and Partnerships to consult with the trade about adding the infringements listed in Appendix B and Appendix C to the Penalty Points System in the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions and the Private Hire Driver and Vehicle Policy & Conditions respectively**
- ii) **Delegates authority to the Head of Communities, Enforcement and Partnerships in consultation with the Lead Member and the Chair of the Licensing Panel to implement the changes set out subject to a review of the outcomes of the consultation process.**

2. REASONS FOR RECOMMENDATIONS AND OPTIONS CONSIDERED

- 2.1 A Briefing Note to the Lead Member and Cabinet on 4 October 2018 set out how evidence from complaints received and test purchasing operations carried out suggested that some hackney carriage drivers were overcharging their customers. This was done either by charging more than the set tariff for journeys wholly within the Borough or by using the wrong tariff. Complaints had also been received that private hire drivers were charging more than had initially been quoted for a fare.

- 2.2 A report to the Licensing Panel was requested with options on how to deal with these matters
- 2.3 Where a complaint is in connection with a RBWM licenced hackney carriage the vehicle is likely to bear RBWM livery. This means that, even though the drivers are not RBWM employees, they are often seen by the public at large as “our” drivers in “our” taxis, rather than the independent individuals or businesses they actually are. This creates an immediate, negative association with RBWM.
- 2.4 The operation of RBWM licenced hackney carriage and private hire vehicles and drivers is governed by statute, bye-laws and by the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions and the RBWM Private Hire Driver and Vehicle Policy and Conditions respectively. The two RBWM policy and conditions documents can be found at https://www3.rbwm.gov.uk/info/200491/taxi_and_minicab_licensing/141/hackney_carriage_taxi_and_private_hire_licences
- 2.5 The law in this area is complex and different legislation applies to hackney carriages and private hire vehicles. A brief guide to the key differences is set out in Table 1

Table 1 Rules that relate to Hackney Carriages and Private Hire Vehicles

Vehicle Type	Applicable Rules
Hackney Carriage (taxi)	<p>Can ply for hire and be hailed on the street but the driver cannot tout for business, for example by calling out to members of the public</p> <p>The method of charging is primarily by use of a taximeter using rates set by the RBWM Licensing Panel</p> <p>Taximeters are not a requirement by law, the legal requirement is that the rate set by RBWM is adhered to for journeys within RBWM</p> <p>The rates set by the RBWM Licensing Panel are Tariff 1 for use during the day, and Tariff 2 (50% higher) for use between 23.00 and 06.00 and on bank holidays (see Appendix A)</p> <p>For journeys wholly within RBWM the driver cannot charge more than the set tariff which is primarily determined by the use of a taximeter. To do so is a criminal offence</p> <p>For journeys that begin within RBWM and end outside the Borough the driver can charge a fare higher than the set tariff as long as this fare is agreed at the outset of the journey (in such cases, as the fare is agreed at the outset the meter would not be used)</p> <p>For journeys wholly within RBWM the driver cannot, without reasonable excuse, refuse to take a fare</p> <p>For journeys that begin within RBWM and end outside the Borough, there is no legal obligation on the driver to take the fare</p>

Vehicle Type	Applicable Rules
Private Hire Vehicle (minicab)	<p>Cannot be hailed on the street, must be pre-booked. The driver cannot tout for business, for example by calling out to members of the public</p> <p>The booking must be made by a licenced operator and cannot be taken directly by the driver. The fares charged by private hire operators / drivers are not regulated.</p>

2.6 Action that can currently be taken against hackney carriage drivers in relation to overcharging is set out in Table 2

Table 2 Offences and consequences

Activity / Offence	Consequences
Within the Borough, a hackney driver charging more than the fare based on the set tariff	<p>this is a criminal offence under s58 of the Town Police Clauses Act 1847 punishable by a Level 3 fine (£1000)</p> <p>six penalty points can be imposed on the driver by virtue of the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions</p> <p>the licence may be suspended or revoked, depending on the circumstances</p>
Within the Borough, a hackney driver using an incorrect tariff	<p>this is a criminal offence under s58 of the Town Police Clauses Act 1847 punishable by a Level 3 fine (£1000)</p> <p>the licence may be suspended or revoked, depending on the circumstances</p>
Within the Borough, a hackney driver refusing to take a fare without reasonable cause	<p>this is a criminal offence under s53 of the Town Police Clauses Act 1847 punishable by a Level 2 fine (£500)</p> <p>the licence may be suspended or revoked, depending on the circumstances</p>
A hackney carriage driver failing to comply with the bye-laws contained in the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions	<p>this is a criminal offence under the RBWM Hackney Carriage Bye-laws and Requirements, made under s68 of the Town Police Clauses Act 1847, punishable by a Level 2 fine (£500)</p> <p>the Licensing officer may suspend, revoke or refuse to renew a licence if any of the conditions in the RBWM Hackney Carriage Driver and Vehicle Policy and Conditions are not complied with</p> <p>the Licensing officer may suspend, revoke or refuse to renew a licence for "Any other reasonable cause" as defined in the Local Government (Miscellaneous Provisions) Act of 1976,</p>

- 2.7 There are no conditions relating to fares in the RBWM Private Hire Driver and Vehicle Policy and Conditions. There is a general requirement to comply with the Policy and Conditions and failure to do so can result in the suspension, revocation or refusal to renew of the licence.
- 2.8 A private hire licence can be suspended, revoked or refused for renewal for “any other reasonable cause” as defined in the Local Government (Miscellaneous Provisions) Act 1976
- 2.9 As can be seen from Table 2, six penalty points can be imposed on a hackney carriage driver for the infringement “Within the Borough, a hackney driver charging more than the metered fare”. None of the other infringements listed in Table 2 currently attract penalty points
- 2.10 As explained in the Briefing Note for the Lead Member and Cabinet the costs of mounting a prosecution for any of the offences listed in Table 2 would be so disproportionate to the sums involved in any overcharge that it is unlikely that it would be in the public interest to proceed unless all other options had been exhausted, or unless there were contributing factors such as a repeat offender.
- 2.11 The use of a Simple Caution for such offences can and will be used in appropriate circumstances in the future but another way of dealing with these issues is to amend the RBWM Hackney Carriage Driver & Vehicle Policy & Conditions to make the use of penalty points consistent across this range of infringements, and to consider increasing the number of points issued per offence to reflect the seriousness of the infringement
- 2.12 The options for amending the Policy in relation to hackney carriages are set out in Appendix B. Essentially these amount to;
- Making the fitting of a taximeter compulsory in all motor hackney carriages
 - Making the use of the taximeter compulsory for all hackney carriage journeys wholly within RBWM
 - Adding a penalty point infringement in relation to using the incorrect tariff so as to overcharge
 - Adding a penalty point infringement in relation to refusing to take a fare without reasonable cause
 - Looking at the number of points that are imposed for certain infringements to ensure that they are consistent and reflect the seriousness of the breach
- 2.13 To deal with the issue of a private hire driver charging more than the fare originally quoted, without reasonable cause (such as an agreed change to the journey once underway), an addition to the list of infringements could be added to the RBWM Private Hire Driver & Vehicle Policy and Conditions, as set out in Appendix C
- 2.14 All changes to Policy are required to be consulted on with the trade. If the options set out in Appendix B or Appendix C are accepted by Panel then that consultation can be carried out and final decisions can be reviewed by the Head of Communities, Enforcement and Partnerships in conjunction the Lead Member and Chair of the Panel, and then be implemented unless serious and valid reasons are raised.

- 2.15 The Panel is asked to consider the options set out in Appendices B and C to go out to consultation with a view to implementing them.

3. KEY IMPLICATIONS

- 3.1 The adoption of these new penalty point infringements will provide a quick, efficient and proportionate enforcement tool for dealing with illegal practices by hackney carriage and private hire driver drivers. It will improve the reputation of RBWM licenced vehicles and protect the good reputation of the vast majority of honest drivers by providing a level playing field.

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 The use of penalty points to deal with the infringements discussed in this report will be substantially cheaper than mounting a prosecution. However prosecuting offenders must remain as an option in appropriate circumstances, such as when dealing with repeat offenders or where there are other contributing factors.

5. LEGAL IMPLICATIONS

- 5.1 Conditions can be attached to vehicle licenses by virtue of sections 47 & 48 of the Local Government (Miscellaneous Provisions) Act 1976.

- 5.2 Legal advice on making the fitting of meters in motor hackney carriages (as against horse drawn hackney carriages), and making the use of the meter compulsory for journeys wholly within the Borough, has been sought.

- 5.3 The advice received is that there is no legal objection to this in principle as under s47 (1) of the Local Government (Miscellaneous Provisions) Act 1976 hackney carriage vehicles' licences can have any condition attached that the council deems reasonably necessary.

- 5.4 The advice goes on to say that the condition may be appealed to the Magistrates as well being open to judicial review. However the advice also states that such a condition is common and so, subject to the results of the consultation (that the legal advice also stresses the importance of), the chances of a judicial review appears remote.

6. RISK MANAGEMENT

- 6.1 The use of penalty point systems by local licensing authorities has been examined by the courts who held that such a system is in principle lawful. The infringements that are the subject of this report are matters of immediate concern to residents and visitors to RBWM and the use of penalty points is a reasonable and proportionate response. Points are only issued when there is the evidence to do so and there is a right of appeal.

- 6.3 Any new condition attached to our policies is in theory subject to challenge or judicial review, see 5.4, above.

7. POTENTIAL IMPACTS

- 7.1 No EQIA is anticipated at this stage.

8. CONSULTATION

- 8.1 Legal advice provided in 2014 recommended that any proposed revisions to Policy should be consulted upon before being adopted as drivers have a reasonable expectation of being asked for their views. This has been reinforced

by the legal advice taken in drawing up the proposals in this paper. Members are therefore asked to give authority for a consultation to be undertaken.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 If Members agree to go out to consultation on these matters, consultation would take place over a four week period, and unless serious and valid reasons were received objecting to the proposals the changes will be implemented under the delegation to the Head of Service. If a follow up report is required, a report will be brought to the next Panel meeting in April 2019. That meeting could then consider the issues raised and make a final decision on the recommended changes to Policy which could then be brought into force immediately

10. APPENDICES

Appendix A – Hackney Carriage Tariff

Appendix B – Options for Amending Policy – Hackney Carriages

Appendix C – Options for Amending Policy – Private Hire Vehicles

11. BACKGROUND DOCUMENTS

None.

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr Airey	Lead Member for Environmental Services, Including Parking	19/12/18	
Cllr Cox	Chair of the Licensing Panel	19/12/18	
Russell O'Keefe	Acting Managing Director	14/12/18	
Andy Jeffs	Executive Director Communities Directorate	14/12/18	17/12/18
David Scott	Head of Communities, Enforcement and Partnerships	14/12/18	14/12/18

REPORT HISTORY

Decision type: Non-key decision	Urgency item? No
Report Author: Greg Nelson, Trading Standards & Licensing Lead 01628 683561	

Appendix A

Hackney Carriage Tariff

Royal Borough of Windsor and Maidenhead Hackney Carriage Tariff			
Tariff One 6am to 11 pm		Tariff Two 11pm to 6am and Bank Holidays (50% above the normal rate or fare)	
For the first 927 yards (847m) or part thereof	£2.80	For the first 927 yards (847m) or part therefore	£4.20
For each additional 174 yards (159m), 40 seconds or part thereof	20p	For each additional 174 yards (159m), 40 seconds or part thereof	30p
WAITING TIME		Soiling Interior of Vehicle £80.00	
For each period of 40 seconds or uncompleted part thereof provided that where a hiring by distance terminates at the place at which it commenced, the rate of fare for which the proprietor or driver shall be entitled to demand and take for the hiring shall be three quarters of the rate or fare prescribed by the foregoing table.		Soiling Exterior of Vehicle £20.00	
		<i>None of the stated fares will apply if the hirer at the commencement of the hiring expresses his desire to engage by time.</i>	
EXTRA CHARGES		<i>Where a Hackney Carriage furnished with a taximeter is hired by distance the driver is not entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for extra charges authorised by the above table which may not be recorded on the face of the taximeter.</i>	
Booking Fee			
For each hiring under Section 67 of the Local Government (Miscellaneous Provisions) Act 1976	£1.00		
LUGGAGE		Any complaints or other communications should be sent to Licensing, Town Hall, St Ives Road, Maidenhead, SL6 1RF	
For each package carried outside the vehicle	20p		
EXTRA PASSENGERS			
Extra Passengers for Each Person Carried Above the Number of Two for the Whole or Part of the Distance	20p		
NOVEMBER 2016			

Appendix B

Options for Amending Policy – Hackney Carriages

Option	Comments
<p>1. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to make taximeters compulsory for motor hackney carriages.</p> <p>This is a recommended option</p>	<p>This will not add costs to the drivers as all vehicles already have a meter fitted, but it would allow the next Option to be brought into force</p> <p>As with all Policy and Conditions amendments this would need to be consulted on with the trade.</p>
<p>2. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to make the use of the taximeter compulsory for all journeys wholly within RBWM</p> <p>This is a recommended option</p>	<p>As with all Policy and Conditions amendments this would need to be consulted on with the trade who may have some strong views on the subject</p> <p>Making the use of the meter compulsory for journeys wholly within the Borough would make it easier to explain to the public what their rights are when using a RBWM licenced hackney carriage</p>
<p>3. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to make the failure to comply with Option 2 subject to penalty points in line with Option 4</p> <p>This is a recommended option</p>	<p>This will make sure that consistent penalties are imposed for serious infringements</p>
<p>4. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to increase the number of penalty points for drivers not using their taximeter for a journey wholly within RBWM so as to inflate the cost of the journey.</p> <p>This is a recommended option</p>	<p>The number of points currently imposed for this infringement is 6. This could be increased to 9 or 12.</p> <p>12 points would trigger an immediate referral to the Licensing Panel for them to consider the fitness of the driver to hold a licence and any further penalty that should be imposed.</p>
<p>5. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to add an infringement such that penalty points may be imposed for “using the incorrect tariff so as to inflate the cost of the journey”.</p> <p>This is a recommended option</p>	<p>The points imposed for this infringement should be the same as those imposed for overcharging by not using the meter as the aim and result, ie to deliberately overcharge, is the same for both infringements</p>

Option	Comments
<p>6. Agree to a consultation on amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions so as to add an infringement of “For journeys wholly within RBWM, without reasonable excuse refusing to take a fare”</p> <p>This is a recommended option</p>	<p>Complaints have been received that drivers are refusing to passengers because they think that the fare would be too small to justify losing their place in the rank. It is a fundamental and historical obligation on hackney carriage drivers that they carry local people on local journeys and the refusal to do so can leave passengers without any means of transport.</p> <p>Members will need to consider the number of points to impose if this is added to the list of infringements for which points can be imposed.</p>

Appendix C

Options for Amending Policy – Private Hire Vehicles

<p>1. Agree to a consultation on amending the RBWM Private Hire Driver & Vehicle Policy and Conditions so as to add an infringement of “Without reasonable cause, charging more for a fare than was quoted at or before the outset of the journey”</p> <p>This is a recommended option</p>	<p>This would provide a quick and effective means of dealing with the very small minority of drivers who carry out this practice</p> <p>.</p> <p>Members will need to consider the number of points to impose if this is added to the list of infringements for which points can be imposed.</p>
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