



AGENDA ITEM: 5

SUMMARY

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| Report for: | Licensing Health & Safety Enforcement Committee |
| Date of meeting: | 25 June 2013 |
| PART: | 1 |
| If Part II, reason: | |

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| Title of report: | Changes to DBS Disclosure Service |
| Contact: | Ross Hill – Licensing Team Leader, Legal Governance |
| Purpose of report: | To inform the Committee of changes made by the Disclosure and Barring Service to their disclosure service. |
| Recommendations | That Members note the contents of this report. |
| Corporate objectives: | <p>Safe and Clean Environment</p> <ul style="list-style-type: none"> • Criminal record checks are undertaken on all applications for hackney carriage and private hire driver’s licences, as part of the Council’s duty to ensure that applicants are fit and proper persons. |
| Implications: | No new implications arise. |
| Consultees: | None |
| Background papers: | |
| Glossary of acronyms and any other abbreviations used in this report: | DBS – Disclosure and Barring Service (formerly the Criminal Records Bureau) |

1. BACKGROUND

- 1.1. Dacorum Borough Council requires all applicants for hackney carriage and private hire drivers' licences to obtain enhanced criminal record disclosure certificates prior to the determination of their applications. This certificate, which currently shows all cautions, convictions and police warnings, irrespective of whether they would otherwise be considered 'spent' under the Rehabilitation of Offenders Act, forms a key part of the checks carried out to ensure that an applicant is a 'fit and proper person', and thus suitable for licensing.
- 1.2. Enhanced disclosure certificates are obtained from the Disclosure and Barring Service (DBS), which was formed in 2012 by the merger of the Criminal Records Bureau and the Independent Safeguarding Authority.
- 1.3. Following recent court cases against the DBS and the UK Government, several changes are being made to the service delivered by the DBS, which affect the use of the disclosure service for taxi licensing purposes. The following sections of this report outline the key changes.

2. APPLICANT-ONLY CERTIFICATES

- 2.1. Historically, following completion of the relevant checks by the DBS, two copies of a disclosure certificate have been issued – one to the applicant sent to their home address, and one to the registered body which facilitated the disclosure application (which will usually be the prospective employer, or licensing authority).
- 2.2. With effect from the 17th June 2013, the DBS have amended their procedures and will now only issue a single copy of the disclosure certificate, which is to be sent direct to the applicant. This follows a case pertaining to incorrect information appearing on a disclosure, which through the issue of a certificate directly to a prospective employer resulted in a job offer being withdrawn. By issuing a single certificate, applicants will have the opportunity to review and challenge any incorrect information prior to it becoming known to the prospective employer or licensing authority.
- 2.3. As the licensing authority will no longer receive a copy of the disclosure certificate directly, the onus will now be on applicants for hackney carriage and private hire drivers' licences to submit their copy of the disclosure certificate as soon as possible after receipt to enable determination of their application. Officers have produced instructions which are now being issued to applicants affected by this change, and new handling procedures for the use of the Licensing team are appended at Annex A.
- 2.4. In particular, applicants will be required to submit their certificate no later than 28 days after receipt, to ensure the accuracy of the certificate. Where an applicant fails to submit the certificate within this window, without good reason (e.g. due to a challenge of incorrect data), the certificate will be deemed too old to be considered accurate, and the applicant will be required to apply for a new disclosure certificate.

3. DBS UPDATE SERVICE

- 3.1. Also from the 17th June 2013, a new update service is being introduced by the DBS. Applicants with certificates issued after that date may optionally subscribe to a premium service, for a fee of £13 a year, which will provide them and any prospective employers or licensing authorities access to a web portal, allowing a check to be carried out as to whether there have been any changes to the data listed on the most recent disclosure certificate since it was issued – effectively confirming whether it remains current. The portal provides a single line response, either confirming that the data is current, or advising that there have been changes which invalidate the certificate. In the latter case, a new certificate would need to be obtained, at the full cost of £44. However, use would permit more regular criminal record checks to be carried out.
- 3.2. Use of the service is entirely discretionary, both on the part of applicants and DBS registered bodies – there is no obligation to utilise this service.
- 3.3. It is not currently intended to utilise the service amongst Dacorum's hackney carriage and private hire drivers, for a number of reasons:
- Firstly, over the three-year period of a licence, a total of £39 would need to be paid to the DBS directly by applicants, as opposed to the £44 payable for a new disclosure certificate. In the event of a change to the recorded data, or non-payment of the annual fee in any year, any monies paid previously would be lost and a new disclosure would be required. There is therefore a comparatively small saving available through use of this service, and a number of applicants could have to pay up to £83 per three-year period, were the service to be adopted.
 - Persistent consent is required from applicants, which may be withdrawn at any time. Maintaining such consent records would represent an additional pressure on officers.
 - As the service has not launched at the time of writing, no information is available as to the ease of use, technical suitability, maintenance standards or long term continuation/viability.
 - Subscription to the service and payment of ongoing annual fees is the responsibility of the applicant, rather than the registered body, and could not be ensured without unreasonable intrusion.
 - As part of the enhanced disclosure application process, local police forces are asked for any specific data about the applicant, which may not be recorded on the police national computer, for inclusion on the certificate. It is understood that this may not be kept updated as part of the new service, but will continue to be requested on new applications.
- 3.4. For the above reasons, it is intended to retain the current policy requiring applicants to apply for a new disclosure certificate through the Council every three years on application for a new licence or renewal of a licence, coupled with licence conditions requiring interim declaration of convictions and cautions. Certificates obtained previously or through other registered bodies will not be accepted, irrespective of subscription to the Update service. This will also ensure a consistent approach to all applications and licences.

- 3.5. Officers will review this position later this year, taking into account feedback from other authorities which have opted to use the service.

4. FILTERING OF HISTORIC SINGLE CONVICTIONS

- 4.1. From the 29th May 2013, certain convictions and cautions will not appear on disclosure certificates, if a number of conditions are met. This change has been brought about following a challenge to the Rehabilitation of Offenders Act.
- 4.2. Convictions will no longer appear on disclosure certificates if all of the following statements are true:
- The date of conviction is at least 11 years ago (5.5 years if under 18 at the time of the offence);
 - It is the applicant's only offence;
 - The applicant did not receive a custodial sentence;
 - The offence does not appear on a statutory list of excluded offences.
- 4.3. Cautions will no longer appear on disclosure certificates if the date of the caution was at least 6 years ago (2 years if under 18 at the time of the offence), and the offence does not appear on a statutory list of excluded offences.
- 4.4. New secondary legislation has been introduced containing a list of excluded offence types for which convictions and cautions which will always appear on disclosure certificates. The full list runs to over 750 offences (and does not include equivalent superseded offences; attempts or conspiracy to commit the specified offences; inciting, aiding, abetting, counselling or procuring those offences; or similar offences under other jurisdictions; all of which will also be excluded from filtering), which can broadly be grouped as follows:
- Kidnapping, abduction, false imprisonment, trafficking
 - Murder, manslaughter, violent offences and harassment
 - Harm of children and other vulnerable persons
 - Indecency
 - Firearms
 - Production or supply of drugs
 - Causing death by dangerous/intoxicated driving
 - Sexual offences
 - Terrorism
 - Burglary
- 4.5. The filtering of older convictions and cautions represents a national legislative change, and once enacted licensing authorities will no longer be entitled to obtain details of such offences via disclosures or any other means. The conditions set out above ensure that recent offences, offences receiving the most serious punishments (i.e. imprisonment), repeat offences and offences relating to violent and other safeguarding issues will continue to appear on disclosure certificates. For this reason, no changes are currently proposed to the guidance previously approved by the Committee in respect of the consideration of various offences.

ANNEX A – DBS Certificate Handling Procedures for Licensing

DBS Disclosure Certificates Handling Procedures – DBC Licensing

1. On receipt of the completed DBS application form, applicants are to be issued with a standard 'DBS certificates instruction letter' and a pre-addressed envelope. It should be stressed that the letter contains very important information, and must be read carefully to avoid unnecessary delays to the licence processing time.
2. The DBS will issue one copy of the Disclosure certificate to the applicant. When received, the applicant must check through this to ensure it is accurate (and follow the instructions on the back of the certificate to challenge any incorrect information). When satisfied that it is correct, certificates should be submitted to the Licensing team in accordance with the instructions given in the letter, i.e.:
 - a. Certificate to be sent in the pre-addressed envelope, either hand-delivered to the Civic Centre reception desk during daytime hours, or where this is not possible by tracked delivery service. DBC take no responsibility for losses or delays arising from any other delivery method.
 - b. All pages of the original certificate must be submitted (page numbers are at the top of each page). Applications cannot be processed in reliance on copies (whether photocopies, faxes or emails), or where not all pages have been provided. *(N.B. This is official DBS guidance)*
 - c. To be received by DBC within 28 days of being issued to the applicant. Where applicants have delayed unnecessarily and without good reason, they can be asked to reapply for a new disclosure certificate (and pay the associated fee), and no temporary licences will be issued.
3. If an applicant personally presents a certificate and requests its immediate return, copies should be made of every page/side (on A3 paper), and signed and dated by the receiving officer. The copy should then be sealed in an envelope and processed as normal.
4. Where the applicant misplaces or damages the certificate prior to submitting it, they may obtain a duplicate by contacting the DBS. No temporary licences will be issued where applicants have lost, damaged or misplaced a disclosure certificate.
5. DBS certificate envelopes should be passed, unopened, to the team leader or another approved counter-signatory to review. When opened, details should be recorded on the corporate CRB spreadsheet, as at present, and a summary sent to the taxi administration team.
6. On the determination of the application, certificates are to be returned to the applicant, in a sealed envelope, preferably in person. These should usually accompany the issue of any licence documents or badges.
7. Checks can be made, using the applicant's date of birth and the DBS form reference number, as to whether a DBS check has been completed and the issue date of the certificate, via <https://secure.crbonline.gov.uk/home/home.do>. This service should be used to verify any reported delays in the issue of a certificate.

8. In situations where information on a certificate is being challenged, a temporary licence may be issued at the discretion of the team leader. We must not ask for details of what information is being challenged, but the following details should be obtained from the applicant:
 - a. Date certificate received
 - b. Certificate reference number
 - c. Date challenge made to DBS
 - d. Any acknowledgement or reference number received from DBS

9. Dacorum Licensing will not at the present time accept use of the DBS Update service. All applicants must apply through the Council for a new disclosure certificate on each 3-yearly licence application. This position will be reviewed in December 2013 and then periodically thereafter, once the system is fully up and running and to allow feedback to be taken from other authorities.

DBS Customer Services

Web: www.gov.uk/dbs

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