

TITLE	Guidance On Determining The Suitability Of Applicants And Licensees In The Hackney And Private Hire Trades
FOR CONSIDERATION BY	Licensing and Appeals Committee on 19 March 2019
WARD	Non-specific
LEAD OFFICER	Sean Murphy - Public Protection Manager

OUTCOME / BENEFITS TO THE COMMUNITY

Members of the Committee are asked to review and consider the guidance published by the Institute of Licensing ('IoL') and agree to go out to consultation on the proposed amendments to the Council's existing Criminal Convictions Policy.

Updating the policy will ensure high standards and maintained, as well as a consistent approach across the Public Protection Partnership ('PPP').

RECOMMENDATION

That the Committee agrees that:

- (a) the Guidance published by the IoL is noted.
- (b) a consultation is carried out with the trade on the proposals that:
 - i. the new Guidance is adopted by the Council
 - ii. the time periods in relation to convictions and cautions included within the Guidance are incorporated into the Council's existing Criminal Convictions Policy, to replace those time periods previously agreed
- (c) the results of that consultation be brought back to this Committee for further consideration.

SUMMARY OF REPORT

This report examines the criminal convictions element of the 'fit & proper' test. This test applies to existing licence holders and new applicants for Hackney Carriage driver licences, Private Hire driver licences, and Private Hire Operators licences.

It is proposed to update the Council's existing Hackney Carriage and Private Hire Licensing Criminal Convictions Policy to reflect the recently published 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades', produced and published by the IoL.

Background

The Local Government (Miscellaneous Provisions) Act 1976 provides that a Licensing Authority must satisfy themselves before a licence is granted that the applicant for a driver or operator licence is a fit and proper person. This has not been judicially defined but in the case of a suspension of a driver in Leeds City Council v Hussain it was said by the Judge:

“To prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty and that they are people who would not take advantage of their employment to abuse or assault passengers”

There is no national or statutory guidance to assist local authorities in making a decision on whether a licence holder remains, or a new applicant is, fit and proper. As such, it is left up to individual authorities to make this decision. It is the hope of the IoL that if the standards within their guidance document are widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing.

The guidance has been produced by the IoL in partnership with the Local Government Association, Lawyers in Local Government, and the National Association of Licensing and Enforcement Officers, and following widespread consultation. It is formally endorsed by all of those organisations.

The guidance published by the IoL is attached at **Annex A**. The current Wokingham policy is attached at **Annex B**. A table showing a comparison between the time scales presented in these two documents is attached at **Annex C**.

In each case in the IoL standards, the suggested time periods that should elapse before a licence would be granted are equal to, or longer than the existing periods in the Council’s policy. In some cases, significantly longer periods are suggested, for example all violence offences are 10 years in the IoL guidance, whereas for some violence offences the period is as low as 3 years in the current policy.

Nationally, there have been a number of high profile incidents in recent years in relation to child sexual exploitation (‘CSE’) issues, and therefore it is felt to be very appropriate to specify that anyone who has been convicted of CSE or other exploitation offences (such as modern slavery), will not be licensed.

Both Hackney Carriage and Private Hire drivers are exempt from the Rehabilitation of Offenders Act 1974. This means that there are no ‘spent’ convictions and any and all criminal convictions can be taken into account by a Local Authority in assessing safety and suitability. Enhanced Disclosure and Barring Service (DBS) certificates are obtained by the authority in respect of a new applicant and these are renewed every 3 years.

Taxis are used by a large selection of the public but most regularly they are used by vulnerable groups such as children, the elderly, disabled people and the intoxicated. These groups in particular and lone females are placing themselves, and their personal safety, completely in the hands of a driver. As a passenger they may not have any control of what the driver does, be it drive badly, take them to a remote location, or assault them mentally or physically.

The Local Government Association Taxi and PHV licensing Councillors’ handbook (from page 13, August 2017 edition) recommends that a Council’s criminal convictions policy is reviewed and updated regularly. Councils are also recommended to take a particularly strong stance in relation to indecency, violence and dishonesty offences.

In addition to help in protecting the public, a robust policy will also engender public confidence in the trade, which can ultimately only be of benefit to the trade. This is a point that will be made in the consultation process.

Analysis of Issues

It is suggested that the IoL guidance will help to add greater clarity for both the person making a decision, whether officers or Committee Members at a panel hearing, and for an applicant or licence holder who has criminal convictions or allegations made against them. The recommendation is therefore that a consultation is carried out in relation to the guidance. The results of this consultation shall be presented back to this committee with the suggestion that the IoL guidance is adopted and the current policy is amended to reflect the time frames specified within the guidance.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	No impact	N/A	N/A
Next Financial Year (Year 2)	No impact	N/A	N/A
Following Financial Year (Year 3)	No impact	N/A	N/A

Other financial information relevant to the Recommendation/Decision

None

Cross-Council Implications

There are no implications arising from the recommendation in this report.

List of Background Papers

Local Government Association Taxi and PHV licensing Councillors' handbook (August 2017)

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