

Agenda Item 10.

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 25 June 2019
WARD	Non-specific
LEAD OFFICER	Sean Murphy, Public Protection Manager

OUTCOME / BENEFITS TO THE COMMUNITY

At the meeting of the Licensing and Appeals Committee on 19 March 2019 it was agreed that a consultation should take place on the proposals to adopt the Institute of Licensing ('IoL') guidance document and on updates to the Council's existing Criminal Convictions policy as applied to hackney carriage and private hire applicants and licence holders. This report presents to the Committee the results of that consultation.

Having up to date and robust policies ensures that users of licensed vehicles within the Borough are protected from drivers who are considered unsuitable to hold a licence.

Adopting the most up to date guidance and updating our policy to reflect the guidance 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) Considers the results of the consultation;
- (b) Determines whether the Council should adopt the Institute of Licensing guidance document as a whole , part or amended form as its policy position on the relevance of criminal convictions in determining whether someone is " fit or proper" to hold Taxi or Private Hire Drivers Licence or Private Hire Operators Licence.

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.

The results of the consultation as agreed by the Committee at their last meeting on 19 March 2019 are presented for discussion and consideration.

The Committee are asked, taking into account the consultation responses, to agree to the adoption of the Institute of Licencing ('IoL') guidance document and to the amendments to the Council's Hackney Carriage and Private Hire Licensing Criminal Convictions Policy to reflect the time periods within the guidance document.

If adopted in whole or amended form the draft policy would be used as part of the Council's "fit and proper" test when considering licence applicants or existing licence holders. The policy would be used to inform decision making on the relevance of previous criminal history on applicants suitability.

If the Committee decline to adopt the guidance and new policy, this means that the Council would continue to utilise the existing guidance in Appendix B.

If the Committee decide to establish alternative timescales, other than those within the IoL guidance document, and they will amend the draft policy as they see fit.

Background

The Local Government (Miscellaneous Provisions) Act 1976 section 51 and 55 includes the provision 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 Council includes a criminal records check (DBS) as part of its fit and proper person test.

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.

This is a comprehensive guidance document in relation to determining applicant suitability, specifically in relation to any trace identified within criminal records checks, or other non-conviction information that comes to light.

The guidance published by the IoL is attached at **Annex A**. The current Wokingham Borough 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.

Consultation

A consultation was carried out between 11 April 2019 and 31 May 2019. Details of the consultation were sent by email to all licence holders for whom we have an email address, totalling 213 email addresses, and was available via the Council's online consultation portal for anyone to review and respond.

During the consultation period, a total of 12 responses were submitted, 11 were from the trade and 1 from a resident. The full details of all responses received, with personal information redacted, is attached at **Annex D** of this report.

Officer comments on some of the responses are as follows:

Question 2: Do you have any comments on the Institute of Licensing's 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' (see supporting documents). It is proposed for this guidance to be adopted as a document of reference by the Council.

Three responders were in favour, 1 stated no changes were required and 8 did not answer or did not answer this specific question.

Question 3: Do you have any comments on the changes in the suggested time scales before an individual would be considered for a licence? (see supporting documents). For example, under the current policy, a person convicted of a drugs related offence would be expected to be free of conviction for at least 3-5 years for a possession offence, and at least 5 years for a supply offence. Under the proposal, the time scales would be at least 5 years for a possession offence and at least 10 years for a supply offence.

Two responders were in favour, 2 stated no changes were required and 8 did not answer or did not answer this specific question.

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 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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