

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 1 October 2019
WARD	Non-specific
MANAGER	Sean Murphy - Public Protection Manager

OUTCOME / BENEFITS TO THE COMMUNITY

Having up to date and robust policies ensures that users of licensed vehicles within the Borough are protected from drivers and owners who are considered unsafe and 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:

- 1) The Council should adopt the policy position changes to the Hackney Carriage and Private Hire Licensing Criminal Convictions Policy (dated November 2017) following the consultation exercise, the comments from the Committee meeting on 25 June 2019 and the Institute of Licensing guidance document 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

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. The results of that consultation were presented to the meeting of the Licensing and Appeals Committee on 25 June 2019 and the Committee discussed the Institute of Licensing guidance on determining the suitability of applicants and licensees in the hackney and private hire trades in comparison to the Councils existing policy.

Annex A of this report proposes the changes to be made following the 25 June meeting Which if approved the updated 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.

There are a number of changes compared to the existing November 2017 policy to the period of time in which a licence would be granted, from completion of sentence or from date of conviction or if a fine imposed. This is both an increase in number of years

before a license can be issued and also the incorporation of additional offences to those in the current policy.

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.

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 the IoL guidance is adopted and the current policy is amended to reflect the time frames specified within the guidance.

Within the Public Protection Partnership the three separate Licensing Authorities are considering the update of their Criminal Conviction Policy and each are adopting the higher standards of the IoL 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)

https://www.local.gov.uk/sites/default/files/documents/10.9%20Councillor%20Handbook%20-%20Taxi%20and%20PHV%20Licensing_November_2017.pdf

Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades (April 2018)

[https://www.instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_\(16_May_2018\).pdf](https://www.instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_(16_May_2018).pdf)

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