

TO: LICENSING AND SAFETY COMMITTEE
11 JUNE 2015

LICENSING CRIMINAL CONVICTIONS POLICY
Chief Officer: Environment and Public Protection

1 PURPOSE OF REPORT

- 1.1 This report examines the criminal convictions element of the 'Fit & Proper' test as currently applied for drivers of Hackney Carriages and Private Hire vehicles. It proposes a more focussed stand alone Policy which should be applied when making decisions as to the granting, suspension or revocation of driver licences.
- 1.2 This report enables us to look at the relevance of convictions and the character of the person in more detail. If agreed we would consult on the proposed changes in the determination and application of such matters.

2 RECOMMENDATIONS

2.1 That the Committee agrees that:

(a) a draft Licensing Criminal Convictions Policy based upon the document attached as Annex A be published for the purposes of consultation and

(b) the results of that consultation be brought back to this Committee for further consideration

3 REASONS FOR RECOMMENDATIONS

- 3.1 It is good practice to keep Policies under review and where necessary update them so they better reflect the present need within the local area and national agenda. The present Policy has been considered by members annually as part of the Guidance Notes review and there have been only very small amendments made. The recommendation, if adopted, would see a significantly more comprehensive review of the Policy together with aim to produce a document which sets out clearly the process and options for decision making.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could continue to utilise the existing guidance but there will exist a higher risk of a successful challenge in the Appeal Court directed at the suitability of the process the Council uses in its decision making.

5 SUPPORTING INFORMATION

- 5.1 The Local Government (Miscellaneous Provision) Act 1976 provides that a Licensing Authority must satisfy them selves that the applicant is a fit and proper person to hold a drivers licence. 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"

Unrestricted

- 5.2 There have been a number of high profile incidents in recent years particularly around child protection issues and sexual attacks on women which suggest that we should revisit and review our present policy particularly around the issues of convictions and the character of applicants and licensed drivers. Are the people driving vulnerable people such as your wife, daughter, son or grandparents a 'safe and suitable' person to hold a drivers licence?
- 5.3 The Council at present requires applicants and licenced drivers to provide information on their health, driving record and their criminal record. In addition they must also undertake tests on their knowledge of the relevant law and the local area. There is national guidance in the form of DVLA Group 2 medical standards to be applied to taxi drivers. All these elements are considered within the "fit and proper" test
- 5.4 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 Debaring Service (DBS) certificates are obtained by the authority in respect of a new applicant and these are renewed every 3 years. To assist the Authority to make decisions upon information received we have in our present Guidance Notes, Appendix A, page 40 which is based upon Department of Transport Notes issued over 20 years ago.
- 5.5 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.
- 5.6 I would draw attention to page 15 of the Local Government Authority Taxi and Private Hire Vehicle Councillors Handbook and the suggestion that a Council should review its policy on the application of convictions and also consider what is termed 'soft intelligence'. This is often information contained on Police records particularly around sexual offences where allegations have been made but for a variety of reasons a decision has been taken not to prosecute or pursue the allegation. This will mean there is no conviction recorded, or the person may have been charged with an offence and found not guilty. Such information should be handled very carefully and a balanced and proportionate approach adopted when considering its relevance and importance.
- 5.7 Our present guidance, Appendix A, looks quite robust and there have been a number of discussions by Members over the years as to the relevance and weight of matters presented to them when faced with such decisions. The Local Government Association is in the process of providing a template for a Licensing Criminal Conviction Policy which is attached in a draft form as Annex A to this report. It is suggested that the content within this template will help to add greater clarity for both the person making a decision and for an applicant or licensed driver who has criminal convictions or allegations made against them. The recommendation is therefore that officers use this template to draft a new policy for Bracknell Forest, release it for consultation and bring it back to this committee with the results of that consultation together with a policy document for consideration and adoption.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

6.1 The relevant legal provisions are contained within the main body of the report.

Borough Treasurer

6.2 The Borough Treasurer is satisfied that no significant financial implications arise from this report

Equalities Impact Assessment

6.3 There are no implications arising from this report.

Strategic Risk Management Issues

6.4 If the Council does not have a robust Policy in place then there is an increased risk of successful challenges in the Courts to decisions made by the Council.

Background Papers

Guidance Notes and Conditions for Hackney Carriage and Private Hire Vehicle Owners, Operators and Drivers April 2015
LGA Taxi and Private Hire Vehicle licensing – A Handbook for Councillors – 2015
Draft Taxi and PHV Licensing Criminal Convictions Policy - 2015

Contact for further information

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