

**TO: LICENSING AND SAFETY COMMITTEE
6 JUNE 2019**

**GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES
IN THE HACKNEY AND PRIVATE HIRE TRADES
(Public Protection Manager)**

1 PURPOSE OF REPORT

- 1.1 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.
- 1.2 The results of the consultation as agreed by the Committee at their last meeting on 19 February 2019 are presented for discussion and consideration.
- 1.3 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.

2 RECOMMENDATIONS

2.1 That the Committee agrees that:

- (a) The results of the consultation are noted**
- (b) The IoL guidance document is adopted by the Council as a document of reference**
- (c) The time periods in relation to convictions and cautions included within the IoL guidance are incorporated into the Council's existing Criminal Convictions Policy, to replace those time periods previously agreed**

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 current Criminal Convictions Policy was agreed by the Committee in 2015.
- 3.2 It is also proposed that the IoL guidance shall be adopted across the other Public Protection Partnership (PPP) authorities. It is a stated objective of the PPP to reduce duplication and derive efficiency from economies of scale where possible.
- 3.3 The timescales included within the guidance document are analogous with those published by the Department for Transport in a draft document which is proposed to become National guidance.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Committee could decline to adopt the guidance document and new conviction timescales, meaning the Council would continue to utilise the existing policy.

- 4.2 The Committee could establish alternative timescales, other than those within the IoL guidance document, to replace those within the existing policy.

5 SUPPORTING INFORMATION

- 5.1 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”

- 5.2 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.
- 5.3 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.
- 5.4 The guidance published by the IoL is attached at **Annex A**. The current Bracknell 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**.
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 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.

- 5.9 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.
- 5.10 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.
- 5.11 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.
- 5.12 The recommendation is therefore that the committee agree to adopt the IoL guidance document, and update the convictions policy to reflect the latest guidance on time periods before a licence would be considered following a conviction.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

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

Borough Treasurer

- 6.2 The financial implications are included within the body of the report.

Equalities Impact Assessment

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

Strategic Risk Management Issues

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

7 CONSULTATION

- 7.1 A consultation was carried out for six weeks, between 25 March 2019 and 6 May 2019.
- 7.2 Details of the consultation were sent by email to all licence holders for whom we have an email address, totalling 331 email addresses, and was available via the Council's online consultation portal for anyone to review and respond.
- 7.3 The wording of the consultation can be seen at **Annex D**.
- 7.3 During the consultation period, a total of three responses were submitted. The full details of all responses received, along with officer comments is below:

Unrestricted

Question 1: Details of licences held by responder	
Responder	Consultee response
1	<i>"Private hire driver and private hire operator"</i>
2	<i>"Private hire driver and private hire operator"</i>
3	<i>"Other – chauffeur"</i>

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.		
Responder	Consultee response	Officer comments
1	<i>"No"</i>	n/a
2	<i>"No"</i>	n/a
3	<i>"I do not agree if driver has 6 or less points on his license that he or she would not be granted a hackney license."</i>	<p>Possibly referring to section 4.42 of the IoL guidance, which states:</p> <p><i>Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.</i></p> <p>If this section of the guidance was adopted by the committee, it would not prevent someone with 6 points or less on their DVLA licence being granted a private hire or hackney carriage licence.</p>

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.		
Responder	Consultee response	Officer comments
1	<i>"No"</i>	n/a
2	<i>"It's a good idea"</i>	n/a
3	<i>"No"</i>	n/a

Background Papers

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

Contact for further information

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