

**REPORT TO: LICENSING & COMMUNITY SAFETY COMMITTEE**

Date: 8<sup>th</sup> October 2019

**TOPIC: HACKNEY CARRIAGE AND PRIVATE HIRE POLICY – THE INSTITUTE OF LICENSING ‘GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADE’**

**REPORT BY: LICENSING SERVICE LEAD**

## 1 INTRODUCTION

- 1.1 The purpose of this report is to seek Licensing and Community Safety Committee approval for the Licensing Service to begin a formal public consultation on changing Appendix H of the North Devon Council Hackney Carriage and Private Hire Licensing Policy (the ‘policy’), ‘Guidelines relating to the relevance of convictions’ found at **Appendix A**.

## 2 RECOMMENDATIONS

- 2.1 That Licensing and Community Safety Committee considers the report and instruct the Licensing Service to begin a formal consultation on the necessary amendments to the policy for the adoption of agreed sections of the Institute of Licensing (IOL) ‘Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades’ found at **Appendix B**.
- 2.2 Approve a six week consultation exercise with the ‘taxi trades’, general public, and anybody or person with an interest in ‘taxis’.
- 2.3 Request proposed amendments to the policy resulting from the consultation and review process be presented to this Committee in a further report.

## 3 REASONS FOR RECOMMENDATIONS

- 3.1 To ensure the Council’s policies are regularly reviewed and kept up to date.
- 3.2 To increase the robustness of the Council’s approach and procedure in respect of periodic checks on enhanced disclosures.

## 4 REPORT

- 4.1 North Devon Council approved the policy and associated conditions of licence for the Hackney Carriage and Private Hire trades including Appendix H ‘Guidelines relating to the relevance of convictions’ in August 2016. These guidelines are a modified version of the outdated Department of Transport Circular 2/92 and Home Office Circular 13/92.
- 4.2 In September and October 2017 a formal public consultation process took place to replace Appendix H of the policy with convictions guidelines based on a Local Government Association (LGA) template. Due to the personal circumstances of a North Devon Council officer the findings of the consultation process and request to approve the new convictions guidelines were not presented to the Licensing Committee.
- 4.3 The guidelines in appendix H of the policy need updating to reflect the content of the IOL guidance on determining the suitability of applicants and licensees in the hackney and private hire trades.
- 4.4 The IOL guidance has been produced by the IOL working in partnership with the LGA, Lawyers in Local Government and the National Association of Licensing and Enforcement Officers. It was issued in April 2018 following a widespread consultation.
- 4.5 The IOL guidelines are intended to provide guidance for authorities when carrying out their functions relating to the licensing of hackney carriage and private hire drivers, operators and vehicles, with a view to improving transparency and consistency on licensing decisions.
- 4.6 The IOL guidelines differ from our existing guidelines appended in appendix H of the policy, a summary of the more significant changes which are being proposed for adoption are as follows –

IOL Guidelines Paragraph number	Changes
3.23 Enhanced Criminal Record Disclosure	All applicants and licensees should be required to maintain their certificates through the Disclosure and Barring Service (DBS) Update Service throughout the currency of their licence.  This will be a new requirement, the update service is a means to electronically check a disclosure at any point during the term of a licence in prescribed circumstances.
3.46 Basic DBS check	Basic DBS disclosure for vehicle proprietors.  This will apply to vehicle proprietors who are not also licensed by this authority to drive a licensed vehicle and thereby will have not have obtained an enhanced DBS certificate with barred lists checks. This certificate must be maintained through the DBS Update Service throughout the currency of their licence.
4.11 Classification of a caution	A caution will be regarded in exactly the same way as a conviction.  This will be a new policy.
4.30 Exploitation	Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of

	<p>whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.</p> <p>This is not included in the existing guidelines.</p>
4.32 Possession of a weapon	<p>Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.</p> <p>This is not included in the existing guidelines.</p>
4.33 & 4.34 Sex and indecency offences	<p>Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.</p> <p>In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.</p> <p>The existing policy is the applicant be refused unless a period of 3 to 5 years clear of convictions.</p>
4.35 Dishonesty	<p>Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.</p> <p>The existing policy that an applicant be refused unless a period of 3 years clear of convictions.</p>
4.36 & 4.37 Drugs	<p>Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.</p> <p>Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.</p> <p>The existing policy is that an applicant be refused unless a period of 3 years clear of convictions.</p>
4.38 Discrimination	<p>Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.</p> <p>This is not included in the existing guidelines.</p>

<p>4.40 Drink/drug driving</p>	<p>Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed.</p> <p>The existing policy is that an applicant be refused unless a period of 3 years clear of drink driving convictions.</p> <p>Drug driving is not included in the existing guidelines.</p>
<p>4.41 Use of mobile phone whilst driving</p>	<p>Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.</p> <p>This is not included in the existing guidelines.</p>
<p>4.42 Minor traffic offences</p>	<p>A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). 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.</p> <p>The existing policy is that licensed drivers with more than 6 points are referred the Licensing committee and that an applicant be refused unless a period of 12 months has elapsed since the expiry of the disqualification or from the date of any subsequent conviction.</p>
<p>4.43 Major motoring offence</p>	<p>A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.</p> <p>The existing policy is that a conviction for dangerous driving is likely to lead to the refusal of an application unless at least three years has elapsed since the conviction.</p> <p>An isolated conviction for careless driving will ordinarily merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire drivers. More than one conviction for this type of offence within the last three years should merit refusal.</p>

4.7 The proposal to introduce the mandatory requirement for all licensed drivers to subscribe to the DBS update service will be a significant change.

- 4.8 The DBS is an executive non-departmental public body sponsored by the Home Office. It aids organisations to make safer decisions and prevent unsuitable people from working with vulnerable groups, including children. The Council's current policy requires all drivers to produce an Enhanced DBS certification on application every three years.
- 4.9 The DBS checking process is a credible means of checking on an individual's criminal activity, whether convicted or otherwise. The DBS Update Service is an online service which allows licence holders to keep their DBS Certificates up to date and for the District Council to be able to check a DBS Certificate. The use of the update service means the driver only ever has to apply once for a DBS certificate.
- 4.10 Since the launch of the update service in June 2013 North Devon Council licensed drivers have been encouraged to subscribe to it, giving benefits for licence holders and the Council. However the level of up take has been minimal.
- 4.11 Due to the increased level of robustness that the Council can gain from the service it is proposed that subscription to the DBS Update Service becomes mandatory for all licensed drivers (<https://www.gov.uk/dbs-update-service>).
- 4.12 An Enhanced DBS check for which the fee is £44 currently sought upon first application by an individual for a drivers licence every three years and thereafter (for a fee of £44). There is an annual fee of with the update service which is currently set at £13.00. This represents a reduction in the costs year on year associated with undertaking a full DBS check, which will be realised by the drivers themselves rather than the Council.
- 4.13 Subscription to the update service is quick and simple however it must be done within specified timescales. Subscription lasts for a year and must be renewed annually, before the current subscription ends. In some authorities drivers have fallen foul of the requirements to renew in the specified timescales thereby requiring them to undertake a full enhanced DBS
- 4.14 The benefits for the drivers include saving money, saving time by not having to complete a DBS application form, can take the DBS certificate from role to role within the same workforce and being in control of their certificate.
- 4.15 Officers will be able to undertake a quick on line status check to see if an individuals certificate is up to date. It also enables the Council to see if any relevant information has been identified about the individual since their DBS certificate was issued. This is the most pertinent area and thereby reduces the safeguarding risk to the Council and increases the robustness of the Councils licensing systems.
- 4.16 It is considered that the proposal to mandate the DBS update service is necessary to contribute to the Council's safeguarding responsibilities. The suggested time frame for moving all existing drivers to the DBS update service is a three year cycle, due to the logistical set up of licence renewals.

## 5 RESOURCE IMPLICATIONS

- 5.1 Any financial costs which are reduced or incurred through the approval of a new policy based upon the Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades use will be taken into account when calculating fees for taxi related licences.
- 5.2 Costs for subscription to the DBS update service will be borne by licence holders.

## 6 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?	Key decision?
Part 3 Annexe (4)	Delegated	No

## 7 STATEMENT OF CONFIDENTIALITY

7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

## 8 BACKGROUND PAPERS

8.1 The following background papers were used in the preparation of this report:

- *Local Government (Miscellaneous Provisions) Act 1976*
- *Town Police Clauses Act 1847*
- *North Devon Council Hackney Carriage and Private Hire Licensing Policy*

The background papers are available for inspection and kept by the author of the report.

## 9 STATEMENT OF INTERNAL ADVICE

9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and officers.

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Licensing and Community Safety Committee Chair: Cllr Frederick Tucker

Author: Howard Bee

Date: 27/09/2019