

PART A

Report to: Licensing Committee
Date of meeting: 15th September 2016
Report of: Head of Community and Customer Services
Title: Guidelines for the Grant, Revocation and Refusal of Hackney Carriage and Private Hire Drivers licences and Private Hire Operators Licences

1.0 Summary

- 1.1 The Council are responsible for the issuing of licences for persons wishing to act as hackney carriage or private hire drivers, hackney carriage or private hire vehicle proprietors, or private hire operators.
- 1.2 The power to grant, refuse or revoke a licence is delegated to officers who must be satisfied that the applicant is a 'fit and proper' person.
- 1.3 Guidelines on the issue of licences serve to assist officers when making decisions on an applicants fitness and propriety. Guidelines further assist officers when dealing with matters concerning existing drivers who they have reason to suspect are no longer 'fit and proper'.

2.0 Recommendations

- 2.1 That the Committee adopt the new Guidelines from 1st October 2016

That the Guidelines be reviewed no later than September 2021

Contact Officer:

For further information on this report please contact: Jamie Mackenzie,
(Business Compliance Officer), tel: 01923 278476 email:
jamie.mackenzie@watford.gov.uk

Report approved by: Alan Gough, Head of Community and Customer Services

3.0 Detailed proposal

3.1 **Existing Guidelines**

- 3.2 The council first introduced a policy covering convictions in 1992. The council's existing guidelines were first adopted in 2000. There were subsequent revisions in 2007, 2011 and 2014.

The existing guidelines are at appendix 1.

- 3.3 The existing guidelines are satisfactory however, there have been occasions when the guidelines have not provided the necessary clarity for officers to be confident that their decisions they are making are fully within the spirit of the guidelines. This could leave the council open to challenge.
- 3.4 The existing guidelines list three distinct categories of offence: Violence, Dishonesty and Indecency. These are taken directly from sections 61, 64, etc etc Local Government (Miscellaneous Provisions) Act 1976 which provides the legal basis for a refusal to grant a licence or revocation of an existing licence.(Appendix 2).
- 3.5 The existing guidelines also mention other offences such as drug misuse, insurance offences, driving offences, and relevant licensing offences.

3.6 **Rationale for Change**

- 3.7 The determination of an application on the basis of whether or not a person is fit and proper goes far beyond the categories of offence listed in the current guidelines. The current guidelines allude to this but they do not give clarity and do not help prospective and current licence holders to make informed choices about their application or actions.
- 3.8 The current guidelines do not address the need to ensure improved safeguarding for passengers and drivers as a result of emerging issues over the past few years. This needs addressing to prevent both drivers and passengers being vulnerable and was identified in a recent audit by the Shared Internal Audit Service who commented:

We recommend that the Convictions policy be reviewed to include a specific reference to CSE and indicators / patterns to remove the sole reliance on offences.

- 3.9 In summary, the purpose of the guidelines is to help in making a decision as to the suitability of applicants. To quote from the proposed guidelines:

“In determining whether a person is fit and proper to hold a **driver's** licence, those tasked with determining licences / applications are asking the following

question of themselves:

“Would you allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?”

In determining whether a person is fit and proper to hold an **operator’s** licence, those tasked with determining licences / applications are asking the following question of themselves:

“Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”

- 3.10 The guidelines have served for over sixteen years but are now in need of refreshing to make them fully fit for purpose and reflective of the current issues and opportunities to assess suitability and safety of drivers. It should be noted that in relation to existing drivers who have offences that have already been considered by the Licensing Authority, there is no proposal to reconsider licensing decisions in the light of the proposed new guidelines. They will not be retrospectively applied unless new information on offences or potential offences comes to light.
- 3.11 It is important to note that whilst a number of offences are specifically mentioned, these are given as guidelines only and are not exhaustive. They are given as examples in order that prospective applicants or existing licence holders at renewal can make informed decisions about the likelihood of being granted a licence. The council are entitled to take into account all relevant information including offences not specifically listed in the guidelines.
- 3.12 **Key Changes**
- 3.13 Whilst there is a difference in document length between the existing guidelines and the proposed ones the majority of this extension is down to a much more in depth description of how the consideration of issuing a licence should be undertaken and in terms of specific offences that may lead to a refusal or revocation. The proposed guidelines are at appendix 3. This is to give that clarity and certainty and to help consistency and informed decisions to be made.
- 3.14 The length of time that an applicant should be barred from holding a licence has not significantly altered in the most part. For example, an offence of violence currently carries a recommendation to bar the applicant from holding a licence for 5 years. Under the new guidelines an offence of common assault carries the

same recommendation.

3.15 There is one category of offences for which the recommendation has been significantly increased to 10 years. This is for the following offences:

- Arson
- Actual bodily harm
- Robbery
- Possession of firearm
- Assault Police
- Any racially-aggravated offence against a person or property
- Affray
- Any related offences that are similar in gravity to those above.

These are all very serious offences and the council should be very mindful of the impact on public confidence in the safety of licensed vehicles should an applicant with a conviction for any of these offences be granted a licence outside of this recommendation.

3.16 Further significant changes are as follows:

- That drivers who leave the trade for longer than three years must attend an update course on their return.
- Drivers who leave the trade for six years must attend the update course and re-take the knowledge test upon their return. The Council must be satisfied that drivers understand the legal requirements of the trade. The trade moves at such a pace that six years is considered too long a time without any kind of update.

The current New Driver Training Day has a very high first time pass rate due to the classroom based teaching element. The cost of this training is £97 and includes 3 hours of Disability Awareness training and it is recommended that returning drivers would attend the full day.

- That licence holders or applicants who can be shown to have a record of consistently failing to notify the relevant authorities of concerns they have over safe-guarding issues may have their licence refused or revoked.

This is introduced in light of recent issues highlighted across the country where taxi and private hire drivers and operators were shown to have been in a position to do more to prevent exploitation of children and other vulnerable persons. This is included for use in situations where it is very likely that drivers

are complicit in this type of action, and where action is supported by intelligence shared amongst agencies, but where no conviction has been obtained. Councillors may wish to note that we have just provided free training to drivers on how to spot and report Child Sexual Exploitation and a further session of training is booked for November 2016.

4.0 Policy Consultation

- 4.1 The policy was consulted on between 15th July 2016 and 19th August 2016. It was publicised on the council website, all drivers and operators were notified via text message and/or email and a driver consultation event was held on the 10th August 2016.

Partner Agencies such as other licensing authorities and the police were also consulted directly.

- 4.2 The driver consultation was attended by 34 drivers including representatives of the Hackney Carriage Association.

Responses were generally in support of the proposals.

The majority of drivers raised specific concerns over the original proposed timescales of any bar to application for offences of ABH, aiding and abetting, resist arrest, incidents of domestic violence and handling stolen goods.

As of 19th August 2016 32 written responses had been received from drivers. Many of these came from drivers who had attended the drop-in session.

Of these, the majority shared the same concerns over the timescales for a bar on application for the same above listed offences.

A few drivers raised concerns over the length of time for a bar for licensing offences commenting that 3 years was too long.

A few drivers raised concerns over the length of time for a bar on application following insurance offences stating that this could be a genuine mistake.

Four drivers disagreed with the majority of proposals but did not give reasons why.

- 4.3 There were no responses from partner agencies or other licensing authorities.

- 4.4 Following the analysis of responses, the proposed guidelines were amended:

A bar on applicants for the offence of ABH remained at 10 years to reflect the seriousness of such an offence

Resisting arrest was reduced to a bar on application for 5 years to more accurately reflect the nature of this offence.

Incidents categorised as domestic violence will be dealt with as per the offence committed, e.g. GBH - no licence, ABH – 10 years, Common Assault – 5 years

Major road traffic offences not listed separately in the policy are still referred to non-specifically given the number of possible offences, but would include offences such as:

- dangerous driving
- careless driving
- racing
- driving without due care and consideration
- aggravated vehicle taking
- interfering with a motor vehicle

The proposal to reduce re-test times from 6 years to 3 years for returning drivers was discussed and the resultant proposal is as agreed at consultation.

4.5 Some suggested changes were not made.

This included a reduction in the time of any bar for applicants guilty of licensing offences. Under the current policy this stands at between 3 and 5 years. The new policy proposes 3 years.

No changes were made to suggestions concerning insurance offences since it was not accepted that forgetting to insure a vehicle was a valid excuse.

Many drivers opposed the requirement for those who have been resident overseas for longer than six months to have a full background check on application. For those drivers who attended the consultation session, this was explained more clearly. Drivers were incorrectly assuming this would count against resident UK drivers who wish to visit overseas for a length of time. The proposal is aimed at those who are legally resident overseas and not for anyone, whether existing driver or otherwise, who is simply on an extended holiday but is usually resident in the UK. As a result, no change was made to this proposal.

5.0 Implications

5.1 Financial

5.1.1 As a result of these changes to the guidelines there is potential for a reduction in application numbers or suitable applicants; however, given the general continuing increase in applications for taxi driver licences which are currently exceeding budget predictions, then these changes are not considered significant enough to impact on incomes levels and should not create a pressure in meeting budgets.

5.2.1 It should also be acknowledged that the changes to these guidelines may result in a need for the Council to defend its decisions to refuse, revoke or suspend licences if these are appealed; this can cost significant amounts. However, it is not considered that these changes are significant enough to affect overall budget predictions and every effort will be made to recover costs if an appeal is successfully defended. The safeguarding benefits should take precedence of the likely costs of appeals.

5.2 Legal Issues (Monitoring Officer)

5.2.1 The Head of Democracy and Governance comments that the Guidelines allow for a rational, open and proportionate decision to be made by the Council when determining licensing applications. The Council's decisions may be challenged in court and the existence of the Guidelines will support any decision made.

5.3 Equalities

5.3.1 This policy does not inherently discriminate and applies equally to all applicants/licence holders who are considered within it's scope. Systems of approval, monitoring and review are in place to ensure equality of application of the guidelines.

5.4 Potential Risks

5.4.1

Potential Risk	Likelihood	Impact	Overall score
Legal Challenge in Court	2	3	6
Guidelines deemed unreasonable	1	3	3

Appendices

1. Existing Guidelines on the Grant of licences
2. Extract from Legislation, Local Government (Miscellaneous Provisions) Act 1976
3. Proposed Guidelines on the Grant of Licences

Background Papers

Consultation responses