

## PART A

**Report to:** Licensing Committee  
**Date of meeting:** 11 March 2019  
**Report of:** Business Compliance Officer  
**Title:** Amendment to the Guidelines for the grant of hackney carriage driver, private hire driver and operator licences

### 1.0 Summary

1.1 In July 2018 the Local Government Association (LGA), in partnership with the National Anti-Fraud Network (NAFN), launched a national register of Hackney Carriage and Private Hire drivers who had previously had their licences revoked or refused. The purpose of this register is to reduce the opportunity for drivers to apply in a new licensing authority area and to not declare that they have either had an application for a licence refused or a licence revoked by another Licensing Authority.

1.2 The register allows local authorities to check against a database of names of previously revoked or refused licences. In order to use this database the Council must amend the current 'guidelines' and notify existing and past licence holders that it intends to use the scheme.

### 2.0 Risks

| 2.1 | Nature of Risk   | Consequence                          | Suggested Control Measures   | Response<br><i>(Treat, tolerate, terminate, transfer)</i> | Risk Rating<br>(the combination of severity and likelihood) |
|-----|--|--------------------------------------|--|---|---|
|     | Existing drivers may feel use of the register is disproportionate or raises questions over their suitability | Drivers unhappy at Councils decision | Consultation undertaken. All existing drivers to be written to explaining reasons behind use of register | Treat   | 2   |

|   |                                 |  |       |   |
|---|---------------------------------|--|-------|---|
| Decision to amend policy may be challenged by judicial review | Costly challenge to the Council | Consultation undertaken prior to any recommendations being made. | Treat | 3 |
|---|---------------------------------|--|-------|---|

### 3.0 Recommendations

- 3.1 That the Guidelines to the Grant of Hackney Carriage, Private Hire Driver and Operator Licences be amended to include that the Council will be using the NR3 database to both log drivers who have either had their applications to be a Hackney Carriage/Private Hire Driver refused or revoked on the grounds that they are not a fit and proper person and to check all new applicants for a Hackney Carriage/Private Hire Drivers Licence, and should the check reveal a disclosure from another Licensing Authority that the Council will make all necessary enquiries to that Licensing Authority to enable it to make a decision on whether to grant the applicant a licence.

#### Contact Officer:

For further information on this report please contact:

Jamie Mackenzie (Business Compliance Officer) on telephone extension: 8520,  
email: [jamie.mackenzie@watford.gov.uk](mailto:jamie.mackenzie@watford.gov.uk)

#### Report approved by:

**Justine Hoy, Head of Environmental Health & Licensing**

### 4.0 Introduction

- 4.1 The Council is responsible for the licensing of hackney carriage drivers, private hire drivers and private hire operators. The purpose of this licensing regime is to ensure the safety of the public. The Licensing Authority is required when considering any application to be a Hackney Carriage/Private Hire Driver to determine if they are a 'fit and proper person' to have a licence. In order that the correct decision is reached concerning a licence holder's fitness, the Council has wide ranging powers to seek information from other authorities.
- 4.2 To assist in making this decision council officers rely upon the Guidelines for the grant of hackney carriage driver, private hire driver and operator licences (see appendix 1).

- 4.3 These guidelines were first introduced on 1<sup>st</sup> October 2016. The guidelines allow any existing driver or new applicant to see clearly the impact that any previous behaviour may have on their prospect of successfully applying for a licence. The guidelines are a starting point only and each case must be decided on its own merit.
- 4.4 Upon applying all applicants are asked to declare if they have been licensed elsewhere previously and if this licence was subject to suspension, revocation or refusal. This is a common question on application forms across the country and has been a feature of the Watford licence application for over 10 years. Currently, there is no easy way to verify this information.
- 4.5 Drivers are also required to undergo a Disclosure and Barring Service check and a separate local police intelligence check in order to ensure they have been honest in declaring all information. Any driver who makes a false declaration on an application form will commit a criminal offence. Despite this, the licensing team have issued 22 warning letters to drivers who have failed to fill in the application form correctly since July 2018.
- 4.6 These warnings usually relate to very old convictions or non-conviction issues such as arrests where no further action was taken. The majority have not impacted on the fitness of the driver to hold a licence. However, this number gives some indication of how difficult it can be to gather accurate information from applicants even when they have been drivers in Watford for some time.
- 4.7 Because of this difficulty in cross-referencing information, and due to a general increase in concern over 'cross border' hiring type work, the Local Government Association began to receive an increasing number of complaints from local authorities concerned that applicants who may have had a licence revoked or refused elsewhere were not declaring these previous incidents on any new applications in neighbouring authorities. The concern was that a driver could simply re-apply for a licence in a neighbouring authority and continue to work more or less in the same region (or another region) as if nothing had happened.
- 4.8 The LGA approached NAFN and devised NR3 as a response to this issue. The register was launched in July 2018.
- 4.9 Officers feel that this register is a very useful tool to assist with verifying applicant information and assisting with making determinations of fitness to have a licence. If the Licensing Authority is to adopt the use of this register then a change of the policy Guidelines will be required and any change of policy requires consultation. Therefore between 1<sup>st</sup> February 2019 and 27<sup>th</sup> February 2019 a consultation was open asking for feedback and comments on the proposal to amend our existing

guidelines to use the national register. Current licence holders were notified of the consultation via text message. Emails were sent to private hire operators and trade representatives. No written responses were received. One verbal mention of support was received. One licence holder verbally expressed concern that Watford Borough Council would rely upon 'false reports' against drivers made in other authority areas. This is not how NR3 operates and this was explained to the licence holder at the time.

- 4.10 The proposed amendment to the policy guidelines is taken directly from guidance issued by the Local Government Association and can be found at appendix 2.
- 4.11 Amendments to the driver application form will also be made in accordance with the LGA guidance. The proposed driver application form can be found at appendix 3. A paragraph has also been added prior to the declaration section to ensure applicants are fully aware of the risks of making any false statement.
- 4.12 Examples of the letters to be sent to existing and former licence holders can be found at appendices 4 and 5.
- 4.13 A disclosure register must be maintained and this has been created.
- 4.14 Information will be stored on the National Register for 25 years in line with Local Government Association guidance. The Environmental Health and Licensing Data Retention Schedules will be updated to reflect this.
- 4.15 It will also be necessary to update the Section's Privacy Statement to reflect that we may receive enquiries from other Licensing Authorities regarding information we put on the register or make enquiries of other Licensing Authorities if the register reveals refusals or revocations for an applicant. The Licensing Authority will also need to enter into a Data Processing Agreement with NAFN.
- 4.16 An Equality Impact Analysis was undertaken to ensure that any human right and privacy issues have been considered.
- 4.17 For clarity, this report is not seeking to consult on or amend the existing Guidelines in any other way than as outlined above.

## 5.0 **IMPLICATIONS**

### 5.1 **Financial**

- 5.1.1 There are no direct financial implications arising from this report.

## 5.2 **Legal Issues** (Monitoring Officer)

- 5.2.1 The Head of Democracy and Governance comments that the legal implications are contained within the body of the report.

## 5.3 **Equalities and Human Rights and Data Protection**

- 5.3.1 A full EIA has been prepared and is included in the background papers.
- 5.3.2 Putting details on the register will impact on an individual's Human Rights however the Licensing Authority considers that the public benefit of the register outweighs those rights in that the register should increase confidence in the Licensing system
- 5.3.3 The Licensing Authority will have full regard to the need to comply with the Data Protection Act 2018 and GDPR in its use of the register. A further policy must be written and published detailing how the authority will respond to requests for information from other authorities who use the national register.

## Appendices

Appendix 1 - Guidelines for the grant of hackney carriage driver, private hire driver and operator licences

Appendix 2 – Proposed amendment to guidelines

Appendix 3 – Driver application form 2018 (draft)

Appendix 4 – letter to existing licence holders

Appendix 5 – letter to former licence holders

## Background Papers

LGA Guidance on NR3

Equality Impact Analysis

EH&L Data Retention Schedule

EH&L Privacy Policy

NR3 Public Consultation

## File Reference

None