

Forest Heath District Council

(This report is not a key decision. This report has been subject to appropriate notice of publication under the Council's Access to Information Rules)

Report of the Cabinet Member for Environment and Waste

CABINET

18 FEBRUARY 2014

CAB14/140

GUIDANCE POLICY ON CRIMINAL CONVICTIONS (Decisions Plan Reference: FEB14/16)

1. Summary and reasons for recommendation(s)

1.1 The introduction and adoption of a policy on criminal convictions will provide guidance on the criteria taken into account by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver or operator licence.

1.2 This Policy was considered by the Licensing Committee at its meeting on 20 January 2014, where it was recommended that:-

"The Taxi and Private Hire Vehicle Licensing Criminal Convictions Policy (attached as Appendix 1 of Report No LIC14/367) be adopted by Cabinet and full Council, subject to Paragraph 18.1 being amended to read:

*"If a private hire operator applicant has spent six continuous months or more overseas the licensing authority **will require sight of** evidence of a criminal records check from the country/countries covering the period."*

1.3 The attached Policy (as attached as Appendix 1 to this report) has been amended to reflect this proposed change.

2. Recommendation(s)

2.1 Recommend the adoption of the Taxi and Private Hire Vehicle Licensing Criminal Convictions Policy to full Council (as amended).

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3. How will the recommendations help us meet our strategic priorities?

- 3.1 Whilst each case must be considered on its individual merits, the adoption of the guidance policy will actively support the following priorities: Community Safety, Street Scene and Environment.

4. Key issues

- 4.1 The Council has a statutory obligation to ensure that a hackney carriage and/or private hire driver or operator licence is only granted to or held by someone who is considered to be a "fit and proper" person. There is a balance to be struck, as the Council must provide reasonable protection for the travelling public without establishing unwarranted barriers to those wishing to take up employment in the hackney carriage and private hire trade.

- 4.2 Consideration of criminal convictions is the biggest area of concern for officers. It is therefore vital that clear and up to date guidance exists to encourage consistency and provide information to applicants and existing licence holders on the approach that the Council is likely to take in respect of any convictions or cautions they may have.

- 4.3 The Department for Transport Best Practice Guidance on Taxi and Private Hire Vehicle Licensing published in March 2010 recognises that:

"...In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence..."

- 4.4 Local Government Regulation (LGR) the coordinating body for Local Authority Regulatory Services (part of the Local Government Association) in consultation with local councils, Department for Transport (Dft), Institute of Licensing (IoL), National Association of Licensing Enforcement Officers (NALEO) and Transport for London (TfL) have produced a guidance policy regarding criminal convictions. This has been localised and a proposed draft is included at Appendix 1.

- 4.5 Different types of offences have been broken down and listed, and the relevant period that a person should be free from conviction of a particular crime specified. Officers consider that this document provides a comprehensive and detailed set of guidance criteria to assist both in determining applications and taking further enforcement action during the life of a licence.

- 4.6 The proposed policy is guidance only and Officers/Members may wish to depart from any suggested conditions based on the specific details of each applicant.

4.7 Forest Heath District Council and St. Edmundsbury Borough Council remain two separate and distinct licensing authorities, however for the purposes of efficiency and consistency the proposed policy guidance on convictions is intended to be a joint policy to coincide with a common approach and framework to handling applications and other licensing matters.

5. Other options considered

5.1 Convictions could continue to be considered with poor or insufficient guidance. Were officers are of a mind to refuse an application it is normally referred to a Licensing Committee/Sub Committee for decision, and with the absence of up to date guidance may give rise to an inconsistency in approach.

6. Community impact

6.1 **Crime and disorder impact** *(including Section 17 of the Crime and Disorder Act 1998)*

6.1.1 No impact identified.

6.2 **Diversity and equality impact** *(including the findings of the Equality Impact Assessment)*

6.2.1 No impact identified.

6.3 **Sustainability impact** *(including completing a Sustainability Impact Assessment)*

6.3.1 No impact identified.

6.4.1 **Other impact** *(any other impacts affecting this report)*

6.4.2 The adoption of a guidance policy on convictions will allow for a more open and transparent application/enforcement process, whilst still allowing for each case to be considered on its own merits.

7. Consultation *(what consultation has been undertaken, and what were the outcomes?)*

7.1 Relevant licensees will be advised of the guidance policy, and unless they obtain cautions or convictions in the future, for which they are required to notify the Council of within seven days, they should observe no direct no impact. All new applicants will be made aware of the guidance policy on convictions in the pre-application information.

8. Financial and resource implications *(including asset management implications)*

8.1 In the event of a successful appeal to the Magistrates Court arising from a decision made by the Council, costs may be awarded against the Council. With the adoption of a guidance policy on convictions it is anticipated that the Council will be in a stronger position to justify and defend its decisions, leading to less challenge and potential cost.

9. Risk/opportunity assessment *(potential hazards or opportunities affecting corporate, service or project objectives)*

Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Failure to actively consider an applicant's or existing driver's convictions and make sound justifiable decisions could jeopardise public safety.	Medium	In adopting the guidance policy, Officers and Members will be in a stronger position to make sound decisions whilst still considering each case on its individual merits.	Low

10. Legal and policy implications

- 10.1 There is no formal definition or statutory guidance regarding the application of criteria to be used when determining if an applicant or existing licence holder is a 'fit and proper' person. It is therefore for each Licensing Authority to determine the appropriate policy and guidance to deal with applications and reviews of licences.
- 10.2 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 includes hackney carriage and private hire drivers. Consequently all convictions, irrespective of age, sentence imposed or offence committed remain 'live' and available to the Council for appropriate consideration.
- 10.3 Under the provisions of Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act), the Council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold a licence.
- 10.3 Section 61 of the Act allows the District Council to suspend, revoke or refuse to renew a driver's licence if convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Act; or any other reasonable cause. 14. Section 62 of the Act allows the council to suspend, revoke or refuse to renew an operator's licence for any offence or non compliance with the provisions of Part II of the Act; any conduct on the part of the operator which appears to render him unfit to hold an operator's licence; any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or any other reasonable cause.
- 10.4 The Act gives any person, aggrieved by the refusal of a District Council to grant, suspend or revoke a driver or operator licence, the right to appeal to a magistrates' court within 21 days of the notification of the decision.

11. Ward(s) affected

- 11.1 All.

12. Background papers

- 12.1 Disclosure of Criminal Records: Applicants for Hackney Carriage and Private Hire Vehicle Drivers' Licences. Department of Transport Circular 2/92 and Home Officer Circular 13/92.
- 12.2 Local Government Regulation: Taxi and PHV Licensing Criminal Convictions' Policy.

13. Documents attached

- Appendix 1 Proposed Guidance Policy on Taxi and PHV Licensing Criminal Convictions