

EAST HERTS COUNCIL

LICENSING COMMITTEE – 19 MARCH 2019

REPORT BY HEAD OF HOUSING AND HEALTH

CONSIDERATION OF DRAFT SUITABILITY POLICY IN RELATION TO  
HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING

WARD(S) AFFECTED: ALL

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**Purpose/Summary of Report**

- In August 2016 East Herts Council implemented a convictions policy to be applied to applicants and existing licence holders in the hackney carriage and private hire trade.
- This policy has now been reviewed and amended in light of lessons learned, case law, best practice and updated guidance.
- Members are asked to endorse the wording of the new 'Suitability policy' for an 8 week public consultation.

<b><u>RECOMMENDATION FOR LICENSING COMMITTEE:</u></b>	
<b>(A)</b>	<b>That the Committee endorses the draft 'Suitability Policy' for an 8 week public consultation.</b>

1.0 Background

1.1 East Herts, as an authority that licenses hackney carriage and private hire drivers, vehicle proprietors and operators, can set its own criteria to ensure that applicants are 'fit and proper' to hold a licence.

1.2 Since March 2002, Hackney Carriage and Private Hire drivers have been included within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. The consequence of this is that all convictions, irrespective of age, sentence imposed or

offence committed, remain live for an applicant for a Hackney Carriage or Private Hire drivers licence and will be recorded on an enhanced criminal record check.

- 1.3 East Herts introduced the current convictions policy in August 2016 and decisions regarding revocations have been made referencing the policy. A number of these decisions have been challenged in court by way of appeal at both Magistrates and Crown court, and the authority has successfully defended each of these appeals.
- 1.4 Since that time many authorities dealing with the issuing of hackney carriage and private hire licences have implemented similar policies.
- 1.5 As part of trying to promote County wide standards in taxi licensing a working party was set up to create a joint Suitability Policy based on East Herts current policy. Initially East Herts, Stevenage, Watford, Broxbourne and Three Rivers were represented in this group. All five local authorities have had the opportunity to feed ideas into the proposed draft document being put before Members today.

## 2.0 Report

- 2.1 The revision of the Convictions Policy and it's widening into a broader 'Suitability Policy' has been shaped, in part, by the lesson's learned from the implementation and use of that original policy. It has also been influenced by a number of documents that have been published since the original policy was implemented in 2016.
- 2.2 In April 2018 the Institute of Licensing issued a document entitled 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' and in many ways this document adopted the approach that had been used when formulating East Herts original Convictions Policy. The IOL document has been considered during the

drafting of East Herts 'Suitability Policy' but it was felt that a more bespoke document was required. The main difference between the two documents is the way in which offences are grouped.

- 2.3 In February 2019 the Government issued its response to the report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing. Although the document did not commit the Government to any time line for implementing changes it did include a number of relevant points which can be found at **Essential Reference Paper 'B'**.
- 2.4 As detailed in the above exerts the Department for Transport is currently consulting on draft statutory guidance 'Taxi and Private Hire Vehicle Licensing: Protecting Users'. This document also has a number of relevant sections but particularly 'Annex A – Previous convictions guidance'. All the relevant parts can be found at **Essential Reference Paper 'C'**.
- 2.5 East Herts revised Suitability Policy matches the guidance given in Annex A with regards to how convictions are viewed. The draft attached to this report is stricter in relation to those caught in possession of drugs. The draft DfT Guidance states that at least 5 years must have elapsed since completion of any sentence imposed before a licence is granted. However East Herts draft policy states that 10 years must be have elapsed.
- 2.6 The draft DfT guidance makes it clear at paragraph 2.50 that 'These periods should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance'.
- 2.7 The revised policy sets out our minimum standards. It suggests actions that will normally be taken where a new applicant or existing licence holder have relevant convictions we consider inappropriate for a licensed driver, proprietor or operator.

- 2.8 In addition to dealing with convictions the wider scope of the proposed Suitability Policy will make it clearer to stake holders how we will consider other factors such as non-conviction information. The authority has always been able to consider such information but it has been included in more detail to aid those that may be subject to or use the policy.
- 2.9 The revised policy makes reference to the use of the National Anti-Fraud Network (NAFN) register of drivers who have been refused or revoked. Use of the register is referenced in the Government's response to the Task and Finish Group report. The new section explains to new applicants and existing driver's how this valuable database will be used.
- 2.10 Each application will be considered on its own individual merits and where a valid reason is demonstrated the decision maker can depart from the policy if they wish. Where an application is refused or other sanction imposed there is route of appeal for the individual to magistrate's court.
- 2.11 The purpose and primary concern in taxi licensing is to ensure the safety of the public. The authority must be satisfied that an applicant is a 'fit and proper' person to hold such a licence. The draft Suitability Policy has this principle at its core.
- 2.12 The council's Monitoring Officer has advised that the public consultation should not proceed during the 'Purdah' period in the run-up to the local elections on 2<sup>nd</sup> May. Therefore, officers propose that the public consultation starts on 6<sup>th</sup> May 2019 and lasts for eight weeks closing at midnight on 30<sup>th</sup> June\_2019.
- 2.13 The consultation will be open to the public and all stakeholders in the hackney carriage and private hire trade. Each individual licence holder will be contacted directly notifying them of the consultation and how to respond.

- 2.14 In addition partners such as Hertfordshire Constabulary and Hertfordshire County Council will be contacted directly to ask for their opinions.
- 2.15 The consultation will include groups likely to be the trades' customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (e.g. the Campaign for Better Transport and other transport providers), women's groups, local traders, and the local multi-agency safeguarding arrangements. It will also be helpful to consult with night-time economy groups (such as Pubwatch) as the trade is an important element of dispersal from the local night-time economy's activities.
- 2.16 The consultation will be publicised via direct correspondence, the Taxi, Newsletter and on East Herts website. A press release will be made to local newspapers in an attempt to further publicise the consultation and canvas as many opinions as possible.
- 2.17 Once the consultation closes a report will be bought back to Licensing Committee so that Members can consider all the responses and any proposed amendments before endorsing the final document for approval by Council.

### 3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

#### Background Papers

Institute of Licensing - 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades':

[https://instituteoflicensing.org/documents/Guidance\\_on\\_Suitability\\_Web\\_Version\\_\(16\\_May\\_2018\).pdf](https://instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_(16_May_2018).pdf)

Department for Transport's draft Statutory Guidance 'Taxi and Private Hire Vehicle Licensing: Protecting Users':

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778276/taxi-phv-licensing-protecting-users-draft-stat-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778276/taxi-phv-licensing-protecting-users-draft-stat-guidance.pdf)

Government response to the report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/775983/taxi-task-and-finish-gov-reponse.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775983/taxi-task-and-finish-gov-reponse.pdf)

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