

ITEM 8 Hackney Carriage and Private Hire Vehicle Drivers Policy for applicants that have lived overseas

Report of the Head of Legal and Democratic (Portfolio: Corporate)

Recommended:

- 1. That subject to Recommendation 2 below, the existing policy in respect of applications for hackney carriage and private hire vehicle driver’s licences be amended with effect from 1 October 2016 so that any applicant who has from the age of ten lived overseas for any period of more than six months be required to provide a letter of good conduct or criminal records check covering that period of time.**
- 2. That where the applicant, through seeking asylum, is unable to comply with the requirements set out in Recommendation 1 above, an application may be accepted if the applicant can provide a five year checkable address history.**

SUMMARY:

- The Council adopted with effect from 1 January 2007 a policy in respect of applicants for a driver’s licence who may have lived overseas that they provide a criminal records check or other evidence of their not being convicted of a serious criminal offence whilst residing overseas.
- It is clear that some applicants are unable to meet this requirement and so a revision to the policy is recommended allowing persons to submit an application provided they have a five year checkable address history in the United Kingdom.
- The Committee will need to decide whether this revision conflicts with the Council’s legal responsibilities to only license “fit and proper” persons.

1 Introduction

- 1.1 The Borough Council has a statutory role in licensing hackney carriages (taxis) and private hire vehicles (minicabs). The Head of Legal and Democratic Services has delegated powers to issue, suspend, revoke and refuse hackney carriage and private hire vehicle drivers licences under the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. It is necessary to consider a possible change in the driver licence application procedure and member approval of this change is required as it constitutes a change of policy that falls outside of the delegated powers of the Head of Legal and Democratic.

2 Background

- 2.1 The current procedures for the licensing of hackney carriage and private hire vehicle drivers requires all applicants to undergo an enhanced level criminal records disclosure with the Disclosure and Barring Service (DBS). The purpose of this check is to reveal any criminal convictions which in the view of the Council would make the applicant unsuitable to hold a driver's licence. Applicants must provide their address history for the last five years and for those who have resided in the United Kingdom the disclosure will reveal all convictions, cautions and admissions of guilt imposed since the age of ten, this being the age of criminal responsibility in England and Wales. For those applicants who have at any time since the age of ten resided overseas the current policy states *“a satisfactory letter of good conduct or similar documentation for the country or countries in which they have lived must also be available. Any costs associated in obtaining this documentation must be met by the applicant ... Applicants that have been granted permanent leave to stay in the United Kingdom as a result of seeking asylum should also obtain a letter of good conduct.”*
- 2.2 The reason for asking for this information is that the enhanced criminal records disclosure from the DBS only covers the period when somebody resides in the UK. Therefore an applicant that has lived abroad at any time from the age of ten could have conceivably committed a serious crime of which we would be unaware as it would not appear on the disclosure obtained from the DBS. The Council recognises that for persons such as asylum seekers who are unable to return to their home country or make contact with their embassy, it will not be possible for applicants to obtain such information from the country they previously resided in. In those cases we have asked for Home Office Immigration to provide a letter stating that to the best of their knowledge the applicant has not been convicted of any serious crimes prior to their entering the UK. Officers believe that previously the Home Office have provided such documentation but they have advised that they are now unable to do so. Specifically they comment that *“the checks carried out in relation to asylum claimants do not show if they have committed any crimes in their country of origin”*.
- 2.3 This presents a difficulty as section 51 of the Local Government (Miscellaneous Provisions) Act 1976 states *“that a district council shall not grant a licence – unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence”* and it has been the view of officers that seeking this reassurance from the Home Office is an integral part of the Council meeting its legislative requirements. There are current sensitivities around the whole subject of driver licensing. The Committee will be aware of the Rotherham situation where the Casey report was overly critical of the lax approach taken by the local authority in its licensing of taxi drivers and more recently there has been a situation in South Ribble Council where two licensing officers have been suspended for failing to undertake proper checks on taxi drivers; two children were sexually assaulted by drivers. The Council is left in the situation that it could receive applications from persons who may be

unable to comply with the current requirements for checking their criminal records history and a decision must be taken as to whether such persons could be granted a licence albeit that it potentially could be at the expense of public safety.

3 Corporate Objectives and Priorities

- 3.1 The licensing of hackney carriages and private hire vehicles is a statutory function which does not directly relate to the Council's corporate aims. Licensing of hackney carriages and private hire vehicles provides transport for the public who may not have any safe alternative means of transport available to them. The service provided by taxis plays a key role in the provision of an integrated public transport system.

4 Consultations/Communications

- 4.1 This report has been produced as a result of an enquiry from a potential applicant who was an asylum claimant now granted leave to stay in the United Kingdom. Communications with the Home Office have identified that such persons cannot comply with the Council's current policy. In looking at the policies of other local authorities it is clear there is no consistent approach to this matter. Locally authorities such as New Forest, Portsmouth and Rushmoor all have the same policy as this Council i.e. that a full checkable history covering all periods since the age of ten must be provided. However, Southampton has a policy that an applicant must merely provide a five year checkable address history although even this has proved problematic for potential applicants that have only arrived in the UK in the last few years.

5 Options and Option Appraisal

- 5.1 As already mentioned any person who has resided outside of the UK for any length of time is required to provide evidence that they have not committed any offences outside of the UK as the DBS check only provides information as to offences that have occurred within the UK. The Council has to be satisfied that an applicant for the grant of a driver's licence is "fit and proper". As part of that process the Council needs to undertake a comprehensive check so that it can be satisfied that the travelling public are protected, particularly children and vulnerable adults. This has been of particular prominence nationally especially in respect of concerns surrounding child sexual exploitation in Rotherham and Oxford.
- 5.2 It is appreciated that those who have come to the UK seeking asylum are in the predicament of being unable to furnish the required information. Members of the Committee will need to determine if the protection of the public is the overriding consideration if so then being unable to provide the required information, by default the Council is unable to establish that an individual is "fit and proper" to be working in such a position of trust. Alternatively the Committee may take the view that in sympathy for those potential applicants who find themselves in the situation of being unable to obtain criminal records information from their home country, it will be sufficient for such persons to

have resided in the UK and have a checkable five year address history. Members will need to determine whether this is a sufficient compromise in respect of those persons who have found themselves in unfortunate circumstances. A five year checkable address history is recommended on the basis that if a potential applicant has the propensity to offend they would do so during this time.

6 Resource Implications

- 6.1 There are no direct resource implications for the Council as a result of this report. It is unlikely that any change in policy will significantly impact upon the number of driver applications received.

7 Legal Implications

- 7.1 Article 1 of the first protocol of the European Convention of Human Rights provides that every person is entitled to peaceful enjoyment of their possessions. There is some debate as to whether a driver's licence has been held to be a possession for the purposes of this legislation. This article does not inhibit the right of local authorities to enforce such laws as it deems necessary to control the use of possessions in accordance with the general interest. Arguably, refusing to grant a driver licence based merely upon whether somebody had lived overseas would interfere with this right. However, a license is being granted on the basis of whether the authority is satisfied that an applicant is a "fit and proper" person to hold such a licence. Further support for the approach of applying criteria for any applicant that has lived overseas is that the majority of other local authorities have such a policy.

8 Equality Issues

- 8.1 An Equalities Impact Assessment (EQIA) has not been undertaken as the proposed recommendation does not represent a significant policy change. It has been suggested that requiring persons that have lived outside of the UK to provide a criminal record history is discriminatory but there is no legal basis for such a view. Indeed court cases such as Cherwell District Council v Anwar have shown that the need to only license a person if they are "fit and proper" is of paramount importance and so it can be argued that complying with this must be the foremost priority of the Council.

9 Other Issues

- 9.1 Community Safety – none directly although the proper licensing of hackney carriages and private hire vehicles reduces the opportunity of illegal plying for hire by unlicensed vehicles.
- 9.2 Environmental Health Issues – none.
- 9.3 Sustainability and Addressing a Changing Climate – none.
- 9.4 Property Issues – none.

9.5 Wards/Communities Affected – none directly but indirectly the whole Borough.

10 Conclusion

10.1 The existing licensed driver policy was introduced to ensure that the Council fulfils its legal responsibilities in only granting a licence if it is satisfied that the applicant is “fit and proper”. It is clear that certain applicants – particularly asylum seekers and similar persons – are unable to meet the existing policy as currently worded. Accordingly a revision to the current policy is recommended which would assist those applicants that have sought asylum in the United Kingdom and are unable to comply with the current requirements. Members will need to decide if adopting this revision compromises the Council’s legal responsibilities in the matter.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Report to Licensing Committee 16 November 2006			
Emails with Home Office June 2016			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	None		
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