

Notice of Meeting

Licensing

Date: Thursday 22 November 2018

Time: 5.30 pm

Venue: Annexe, Crosfield Hall, Broadwater Road, Romsey, Hampshire,
SO51 8GL

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Legal and Democratic Service

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The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

PUBLIC PARTICIPATION SCHEME

If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.

Membership of Licensing

MEMBER	WARD
Councillor A Johnston (Chairman)	Romsey Extra
Councillor D Denny (Vice-Chairman)	Andover (St Mary's)
Councillor N Anderdon	Chilworth, Nursling & Rownhams
Councillor I Andersen	Andover (St Mary's)
Councillor A Beesley	Valley Park
Councillor A Brook	Andover (Alamein)
Councillor Z Brooks	Andover (Millway)
Councillor J Budzynski	Andover (Winton)
Councillor C Collier	Romsey (Abbey)
Councillor S Hawke	Andover (Millway)
Councillor A Hope	Over Wallop
Councillor P Hurst	Romsey (Tadburn)
Councillor P Lashbrook	Penton Bellinger
Councillor J Ray	Romsey (Cupernham)
Councillor A Tupper	North Baddesley

Licensing

Thursday 22 November 2018

AGENDA

The order of these items may change as a result of members of the public wishing to speak

- 1 Apologies**
- 2 Public Participation**
- 3 Declarations of Interest**
- 4 Urgent Items**
- 5 Minutes of the meeting held on 13 February 2018**
- 6 National Register of Taxi Licence Refusals and Revocations** **5 - 8**

A report recommending that the Council participate in the new national register of taxi driver licence refusals, suspensions and revocations.
- 7 Taxi and Private Hire Licensing - Convictions Policy** **9 - 25**

A report recommending that the Council undertakes consultation on the adoption of a new taxi licence criminal convictions policy.
- 8 Taxi Licensing Current Enforcement Activity**

Verbal report from the Licensing Manager.

ITEM 6

National Register of Taxi Licence Refusals and Revocations

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

Recommended:

That approval is given for participation in the national database of taxi driver licence refusals, suspensions and revocations.

SUMMARY:

- A new national register of taxi driver licence refusals, suspensions and revocations has been introduced.
- It is recommended that the Council participate in using the register to check if applicants for new taxi driver licences have been refused, revoked or suspended elsewhere thus ensuring only fit and proper persons are licensed.

1 Introduction

- 1.1 Previously there has been no national database of licensed taxi drivers and so no way for Councils to check (other than by disclosure by an applicant as required on the application form) whether they have had a licence refused, revoked or suspended by a Council in another area.
- 1.2 A Private Members Bill tabled by Daniel Zeichner MP and supported by the Local Government Association (LGA) aimed to put a statutory duty on licensing authorities both to share information about licences they have revoked, refused or suspended on a register, and to check the register in respect of every new and renewal application. Unfortunately this Bill was unsuccessful and fell during its second reading in Parliament on 2 February 2018.

2 Background

- 2.1 In the absence of a statutory national register the LGA has proposed a voluntary national database and has commissioned the National Anti-Fraud Network (NAFN) to develop and host the register. NAFN is a shared service, hosted by Tameside Council, which supports public authorities to tackle fraud and share intelligence. NAFN have been working with the LGA to develop the register and it is now set to go live.

- 2.2 Under the scheme licensing authorities will be responsible for adding basic details of drivers who have had applications for a licence refused, or their licence suspended or revoked. The intention is that when a licensing authority receives an application for a licence, the applicant's details will be run through the register to confirm that there is no record of them having been refused or revoked elsewhere. Details contained on the register will be limited to information that will help identify an individual to a certain degree of accuracy, but will not give a reason why actions were taken. It will be up to individual authorities to follow up any searches which come back with a match.

3 Corporate Objectives and Priorities

- 3.1 This matter does not directly align with the Council's Corporate Priorities. However, Hackney Carriage and Private Hire licensing falls within the broader remit of public safety. In deciding whether a licensed driver should be issued with and then retain their licence, the overriding consideration will be the protection of the public.

4 Consultations/Communications

- 4.1 There has been no consultation with the taxi trade on this matter. The Council has been contacted by both the LGA and NAFN in respect of the introduction of the national register.

5 Options and Option Appraisal

- 5.1 The Council has the choice of whether or not to participate in the national register. It is felt that the development of a national register is an important step to tackling the issue of individuals making applications to different licensing authorities following a refusal or revocation. At the moment, if drivers do not disclose information about a previous revocation or refusal of a licence, there is often no way for the Council to find this information out. This means that vital intelligence about an applicant's past behaviour could be missed and an individual might be able to get a new licence in another area, despite having their licence refused or revoked elsewhere.
- 5.2 In light of the ongoing discussions and concerns about safeguarding in the taxi trade it is felt that the only option for the Council is to participate in the national register. This will assist the Council in addressing concerns relating to licensed individuals and those seeking to be licensed with a view to maintaining public safety.
- 5.3 Participation in the new register is also in line with the recommendation of the recently published report of the [Parliamentary] Task and Finish Group on Taxi and Private Hire Vehicle Licensing which states: "All licensing authorities must use the National Anti-Fraud Network (NAFN) register of drivers who have been refused or had revoked taxi or PHV driver licence. All refusals and revocations must be recorded, and the register checked for all licence applications and renewals. Licensing authorities must retain the reasons for any refusal, suspension or revocation and provide those to other authorities as appropriate. The Government must, as a matter of urgency, bring forward legislation to mandate this alongside a national licensing database."

6 Resource Implications

- 6.1 There are no direct resource implications as a result of the recommendation. Participation in the national register requires the Council to become a member of NAFN but membership is already in place through the Revenues Service who subscribe to NAFN in respect of pursuing non-payment of monies owing to the Council. Should that membership be cancelled at some stage in the future then the annual membership fee of £1000 could be paid from the licensing budgets as the LGA advise membership would be a legitimate cost to be recovered from licensing fees.

7 Legal Implications

- 7.1 Access to the national register is conditional upon the Council agreeing to a data processing and data sharing agreement with NAFN to comply with the Data Protection Act and General Data Protection Regulations which came into force in May 2018.

8 Equality Issues

- 8.1 No differential equality impacts have been identified.

9 Other Issues

- 9.1 Community Safety – none other than the general comments in paragraph 3.1 above.
- 9.2 Environmental Health Issues – no implications identified.
- 9.3 Sustainability and Addressing a Changing Climate – no implications identified.
- 9.4 Property Issues – no implications identified.
- 9.5 Wards/Communities Affected – none specific but potentially the whole Borough.

10 Conclusion

- 10.1 There are no risks to the Council from participating in the national register. There are risks to the Council should it be decided not to participate in the register which would include issuing licences to drivers which have been refused or revoked at other authorities. In addition, non-participation may increase driver applications to the Council from those individuals that are listed on the register. On balance, participating in the new national register is considered beneficial in ensuring the Council addresses its responsibilities in achieving public safety.

<p><u>Background Papers (Local Government Act 1972 Section 100D)</u> Guidance on adopting the National Register of Taxi Licence Revocations and Refusals (NR3) issued by the LGA and NAFN</p>			
<p><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.</p>			
No of Annexes:	None		
Author:	Michael White	Ext:	8013
File Ref:			
Report to:	Licensing Committee	Date:	22 November 2018

ITEM 7

Taxi and Private Hire Licensing – Convictions Policy

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

Recommended:

1. That the draft policy statement attached as an Annex to this report be subject to consultation with the public and taxi trade.
2. That the result of the consultation be reported back to this Committee at a future meeting.

SUMMARY:

- The Council's current policy regarding applicants for taxi licences with convictions is outdated and in need of revision.
- It is recommended that the Council consult on adopting a new policy based upon two sets of guidance published by the Institute of Licensing and Local Government Association.

1 Introduction

- 1.1 In considering applications for taxi driver and operator licences the Council must not issue a licence unless it is satisfied that the applicant is 'fit and proper'. In this regard the consideration of an applicant's criminal convictions and other relevant character or behaviour information is a key part of the 'fit and proper' assessment. Test Valley Borough Council, in common with many other licensing authorities, has for many years used a policy based upon Home Office guidance dating from the 1990s. This policy is now outdated and needs a complete revision to reflect the current issues impacting upon the taxi trade nationally.

2 Background

- 2.1 In recent years there have been cases across the country of licensed drivers and operators being involved in criminal activity including the sexual exploitation of children. It is important that all licensing authorities take appropriate steps to prevent future cases by ensuring that licensed drivers are 'fit and proper'. Consideration of a person's criminal convictions and other relevant character or behaviour information is a key part of the 'fit and proper' assessment.

- 2.2 Many licensing authorities nationally are seeking to standardise the information taken into account when determining if someone is 'fit and proper' by adopting the same convictions policy. Whilst there are significant similarities in many convictions policies, there are some differences and these could result in applicants being revoked or refused in one authority and then being granted a licence in another authority area with different standards. Guidance on an appropriate convictions policy has been produced by the Institute of Licensing following extensive research and consultation nationally. This guidance, along with a similar document produced by the Local Government Association, has been used as the basis for a new policy to be consulted upon attached as Annex 1 to this report. The Committee may wish to note that a similar policy has been adopted by all of the licensing authorities in Surrey.

3 Corporate Objectives and Priorities

- 3.1 This matter does not directly align with the Council's Corporate Priorities. However, Hackney Carriage and Private Hire licensing falls within the broader remit of public safety. In deciding whether a licensed driver should be issued with and then retain their licence, the overriding consideration will be the protection of the public.

4 Consultations/Communications

- 4.1 There has not yet been any consultation with the taxi trade on this matter. It is recommended that a six week consultation period be undertaken which will be open to the taxi trade and the wider public. This Committee will receive a further report in early 2019 on the findings of the consultation with a view to adopting the new policy shortly after.

5 Options and Option Appraisal

- 5.1 The adoption of a criminal convictions policy is a matter entirely at the Council's discretion. It could decide to continue with the current policy but as mentioned in paragraph 2.2 above that could lead to a situation where the Council is seen as an easy choice for those potential applicants with criminal convictions who have been refused a licence elsewhere.
- 5.2 The Council could adopt the proposed policy at Annex 1 without any form of consultation. However this is not recommended best practice and could potentially result in an aggrieved applicant challenging the Council's decision to refuse their application.
- 5.3 In light of the ongoing discussions and concerns about safeguarding in the taxi trade and wider issues regarding public safety it is felt that the only option for the Council is to adopt a modern and robust convictions policy which has been subject to public consultation.

6 Resource Implications

- 6.1 There are no direct resource implications as a result of the recommendation. The consultation exercise and the subsequent adoption of a new policy can be undertaken from within existing budgets although it should be noted this will place an additional demand upon an already busy staff team.

7 Legal Implications

- 7.1 There are specific powers contained in legislation, most notably the Local Government (Miscellaneous Provisions) Act 1976, which allow the Council to specify the requirements that vehicles and drivers must meet in order to be licensed, and to refuse a licence to drivers if the Council is not satisfied that the drivers are fit and proper persons to hold a licence.

8 Equality Issues

- 8.1 There are no equality and diversity implications in consulting on the proposed new policy.

9 Other Issues

- 9.1 Community Safety – none other than the general comments in section 2 above.
- 9.2 Environmental Health Issues – no implications identified.
- 9.3 Sustainability and Addressing a Changing Climate – no implications identified.
- 9.4 Property Issues – no implications identified.
- 9.5 Wards/Communities Affected – none specific but potentially the whole Borough.

10 Conclusion

- 10.1 There is no statutory requirement to have a taxi and private hire licensing criminal convictions policy; however, it is good practice to do so. A policy assists with consistent decision-making and sends a clear message to potential applicants (and those already licensed) as to the standards the Council expects persons to meet. However, each case must be considered on its own merits with the decision maker being prepared to make exceptions to the policy in appropriate circumstances.

<p><u>Background Papers (Local Government Act 1972 Section 100D)</u> Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades – the Institute of Licensing, April 2018. Taxi and PHV Licensing Criminal Convictions Policy – Local Government Regulation, September 2010.</p>			
<p><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.</p>			
No of Annexes:	1		
Author:	Michael White	Ext:	8013
File Ref:			
Report to:	Licensing Committee	Date:	22 November 2018



Draft Hackney Carriage & Private Hire Licensing
Policy regarding the relevance of convictions and other related
information

For consultation

October 2018

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1. Introduction

1.1 This policy sets out the criteria to be 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 be granted, have renewed or continue to hold a Hackney Carriage/Private Hire Driver Licence. In addition to criminal convictions the Council will also take into account other factors such as demeanour, attitude, general character, non-criminal behaviour and other police information, etc.

1.2 Whilst this policy primarily applies to the determination of driver licences, however, where a conviction (as defined below) is considered relevant to the fitness and propriety/suitability of an individual to hold or be granted a Private Hire Operator Licence, then this policy must be referred to in the determination of that licence/application.

1.3 The Council is mindful that each case must be considered on its merits and where the circumstances demand, the Council may depart from this policy.

1.4 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:

- Applicants for a driver's, vehicle or private hire operator licence
- Existing licensees whose licences are being reviewed or renewed
- Licensing Officers
- Members of the Licensing Committee
- Magistrates and Judges hearing appeals against local authority decisions

1.5 For renewal applications and current licence holders the guidance will not be applied retrospectively. However the policy will be applied if any additional convictions are incurred or brought to the attention of the Council that would call into question a person's suitability to hold a licence.

1.6 It is the responsibility of Test Valley Borough Council (referred to as the Council) to issue Hackney Carriage and Private Hire licences under the Local Government (Miscellaneous Provisions) Act 1976, the Town Police Clauses Act 1847 and the Hackney Carriage Byelaws. In exercising this duty the Council must consider the need to ensure the safety of the public its primary consideration. Licences cannot be issued unless the person is considered to be 'fit and proper'.

1.7 In seeking to safeguard the safety of the public, the Council will be concerned to ensure:

- That a person is a fit and proper person in accordance with Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II)
- That the person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safety of children, young persons and vulnerable adults

1.8 There is no judicially approved test of fitness and propriety and, accordingly, a number of local tests have developed. These tend to be based on a test similar to the following:

'Would you (as a person charged with the ability to grant a hackney carriage/private hire driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson

or granddaughter or any other person for whom you care, to get in to a vehicle with this person alone?’

If the answer to this question (or a similar test) is an unqualified ‘Yes’ then the test is probably satisfied. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether this person is a fit and proper person to hold a hackney carriage/private hire driver’s licence.

1.9 The Council will undertake whatever checks it considers necessary to ensure that licences are not issued to unsuitable people. In assessing the suitability of an applicant or licence holder, the Council will take into consideration the following factors:

- Criminality
- Number of endorsed DVLA driving licence penalty points
- The conduct of the applicant in making the application (e.g. whether they have acted with integrity during the application process).
- The previous licensing history of existing / former licence holders.

In addition, the Council will also consider further information from sources such as, but not limited to, the Police (including abduction notices), Children and Adult Safeguarding Boards, Multi Agency Safeguarding Hub, Social Services, other licensing authorities, other departments within the Council, and statutory agencies.

1.10 In this policy, the word “applicant” refers to either new applicants, existing licence holders who are seeking renewal and existing licence holders that are the subject of periodic auditing or having their licence reviewed by the Council as part of the policy implementation process. It also includes existing licence holders who are being considered by the Council by virtue of offending activity having recently come to light.

1.11 In this policy, the word “conviction” is to be defined as including convictions, cautions, warnings, reprimands and other relevant information.

1.12 The Council reserves the right to overturn or annul a decision that has previously been made, or refuse a renewal of a licence, where clear errors are discovered.

1.13 As licensed drivers often carry unaccompanied and vulnerable passengers, the Council will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. A licensed hackney carriage/private hire driver is expected to be trustworthy. In the course of their working duties drivers will deal with cash transactions and valuable property may be left in their vehicles. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused. Taking drugs and driving poses an obvious risk to public safety, whilst applicants who have convictions for the supply of drugs should also be treated with considerable concern, the nature and quantity of the drugs, whether for personal use or supply are issues which will be considered carefully. As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public.

2 General Policy

2.1 Whilst the Council may consider that a person with a conviction for a serious offence may not need to be automatically barred from obtaining a licence, it is however to be normally expected that the applicant would be required to:

- a. Remain free of conviction for an appropriate period as detailed below; and
- b. Show adequate evidence that they are a fit and proper person to hold a licence (the onus will be on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

2.2 The standards and criteria set out in paragraphs 4 to 18 below are those that would normally be applied to applications and licences. The Council may depart from these criteria, however it must only do so in exceptional circumstances. The otherwise good character and driving record of the applicant or licence holder will not ordinarily be considered as exceptional circumstances.

3 Powers

3.1 Section 61 of the Local Government Miscellaneous Provisions Act 1976 allows the Council to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence, of failure to comply with the provisions of the Town Police Clauses Act 1847 or of failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976, or if he/she has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty, or for any other reasonable cause.

3.2 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, allows the Council to take into account all convictions recorded against an applicant or the holder of a Private Hire or Hackney Carriage driver's licence, whether spent or not. Therefore the Council will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending. Applicants need to be aware that, in accordance with this Act, all convictions, cautions, warnings and reprimands must be declared.

4 Consideration of disclosed criminal history

4.1 Under the provisions of Sections 51, 55 and 59, Local Government (Miscellaneous Provisions) Act 1976, the Council is required to ensure that an applicant for the grant or renewal of a Hackney Carriage/Private Hire Vehicle driver's licence is a "fit and proper" person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look at:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) were
- When the offence(s) were committed
- The date of the conviction, warning, caution etc.
- Circumstances of the individual concerned
- Any sentence imposed by the court

- The applicant's age at the time of offence / incident leading to the conviction, warning, caution etc.
- Whether they form part of a pattern of offending
- The applicant's attitude
- Any other character check considered reasonable (e.g. personal references if requested by the Council)
- Any other factors that might be relevant, for example:
 - The previous conduct of an existing or former licence holder,
 - Whether the applicant has intentionally misled the Council or lied as part of the application process,
 - Information provided by other agencies/Council departments.

4.2 In this policy 'from date sentence has ended' is taken to be the date which is reached once the whole of the period as sentenced by the court has elapsed and not necessarily the length of time served by the applicant. For example, if a sentence is five years imprisonment then the date that the sentence ends will be five years from the date of sentencing – regardless of the amount of time actually served by the applicant. If the sentence is amended by a court at a later date then this new sentence becomes relevant for the purposes of this policy. The term 'since completion of sentence' is to be construed in a similar way.

4.3 Existing holders of driver's licences are required to notify the Council in writing within five working days of receiving a driving licence endorsement, fixed penalty notice, warning, reprimand, police caution, criminal conviction or other criminal proceedings (including their acquittal as part of a criminal case). In addition, licence holders must inform the Council within 3 working days of their arrest for any matter (whether subsequently charged or not). To fail to do so, will raise serious questions for the Council as to the honesty of the licence holder and will be taken into account as part of any subsequent renewal applications.

4.4 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence (s57 Local Government (Miscellaneous Provisions) Act 1976). Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

4.5 Any offences or behaviour not expressly covered by this Policy may still be taken into account.

5 Options when determining an application/licence

5.1 When determining an application or reviewing an existing licence in relation to convictions or other relevant information the Council have the following options:

- grant the licence or take no further action
- grant the licence with additional conditions
- refuse, revoke, or suspend the licence
- issue a warning.

5.2 If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.

6. Offences involving violence or resulting in death

6.1 Licensed drivers have close regular contact with the public. A licence will not normally be granted if the applicant has a conviction for an offence that involved – or was intended to cause – the loss of life such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Any offences (including attempted or conspiracy to commit offences) that are similar to those above.

6.2 A licence will not normally be granted until at least 10 years have passed since the completion of any sentence and / or licence period following conviction for an offence shown below:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm
- Assault occasioning actual bodily harm
- Grievous bodily harm
- Robbery
- Possession of a firearm
- Riot
- Assault on a Police Officer
- Violent disorder
- Resisting arrest
- Any racially-aggravated offence against a person or property
- Common assault
- Affray
- Any offence that may be categorised as domestic violence
- Harassment, alarm or distress, intentional harassment or fear of provocation of violence
- Any offence (including attempted or conspiracy to commit offences) similar to those above.

6.3 A licence will not normally be granted until at least 5 years have passed since the completion of any sentence and / or licence period following conviction for an offence shown below:

- Obstruction
- Criminal damage
- Any offences (including attempted or conspiracy to commit offences) that are similar to those above.

6.4 A licence will not normally be granted if an applicant has more than one conviction for an offence of a violent nature.

7. Offences involving a weapon

7.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public.

7.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 5 years (or at least 5 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted..

7.3 Two or more convictions for a violent offence will normally result in an application being refused.

8. Sexual and indecency offences

8.1 All sexual and indecency offences will be considered as serious. Applicants with convictions for sexual or indecency offences that involve a third party will normally be refused. Such offences include:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Trafficking, sexual abuse against children and / or vulnerable adults and preparatory offences (as defined within the Sexual Offences Act 2003).
- Making or distributing obscene material
- Possession of indecent photographs depicting child pornography.
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Soliciting (kerb crawling)
- Any sex or indecency offence that was committed in the course of employment as a hackney carriage/private hire driver
- Making obscene / indecent telephone calls
- Indecent exposure
- Any similar offences (including attempted or conspiracy to commit) which replace the above.

8.2 In addition to the above the Council will not normally grant a licence to any applicant who is or has ever been on the Sex Offenders Register or similar register.

9. Dishonesty

9.1 A serious view is taken of any conviction involving dishonesty.

9.2 A minimum period of 5 years free of conviction or at least 5 years since the completion of sentence (whichever is longer) is required to have passed before a licence is granted. Offences involving dishonesty include:

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- false representation
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- fare overcharging
- or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

9.3 A licence will not normally be granted if an applicant has more than one conviction for a dishonesty offence.

9.4 Applicants or existing licence holders that are found to have intentionally misled the Council, or lied as part of the application process, will not be issued with a licence.

10. Alcohol and Drugs

10.1 A serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs or where the driver has been found to be under the influence of psychoactive substances.

10.2 At least 5 years, after the restoration of the DVLA driving licence following a drink drive or driving when under the influence of drugs conviction should elapse before an application will be granted.

10.3 A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 10 years or at least 10 years have passed since the completion of any sentence and/or licence period, whichever is the greater. There will then be full consideration of the nature of the offence and the quantity /type of drugs involved.

10.4 A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs.

10.5 If there is evidence of persistent drugs or alcohol use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) and a satisfactory medical report may be required before the licence is granted. If the applicant was an addict then they would be required to show evidence of 8 years free from drug taking after detoxification treatment.

11. Driving offences involving the loss of life

11.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

11.2 A licence will not normally be granted if an applicant has a conviction for:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by careless driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

12 Other traffic offences

12.1 At least three years should elapse (after the restoration of the DVLA driving licence), before a licence would be granted for a Hackney Carriage/ Private Hire drivers licence.

12.2 Traffic offences such as obstruction, some speeding offences (usually dealt with by means of a fixed penalty), pedestrian crossing offences, traffic light offences, waiting in a restricted area, or offences of a similar nature may not ordinarily merit refusal. However, with existing licensees they may be subject to separate consideration.

12.3 Traffic offences such as driving without due care and attention, reckless driving, more serious speeding offences (usually dealt with by a court), or offences of a similar nature will give rise to serious doubts about the applicant's suitability to be a driving professional. An applicant with any such convictions will be required to show a period of at least 1 year free of such convictions. For applicants with more than one offence this should normally be increased to 3 years.

12.4 In cases where the courts have imposed a disqualification in respect of the DVLA driving licence, the periods stated above should normally commence from the date of the restoration of the licence.

12.5 In this policy, the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

12.6 In "totting up" cases where disqualification is considered by the Court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver, the licensing authority is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply. An applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

12.7 In all cases, any applicant who accumulates 9 or more points on his/her DVLA driving licence will be required to take and pass a driving standards assessment before being granted a hackney carriage/private hire driver licence (or retain their licence in the case of a driver already licensed).

13 Outstanding Charges or Summonses

13.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.

13.2 If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

14 People banned from working with children and vulnerable adults

14.1 A serious view is to be taken of any applicant or licence holder who has been banned from working with children or vulnerable adults. A licence will not be normally be granted if an applicant has been found unfit to work with children or vulnerable adults.

15 Non-conviction information

15.1 The Council will take into account intelligence which has not led to a conviction. This may include but not be limited to information regarding acquittals, circumstances in which convictions were quashed due to misdirection to the jury, circumstances where the decision was taken not to prosecute, situations where the person has been arrested and bailed but not yet charged, and complaints from the public. In considering the most appropriate action to take following the receipt of information, the credibility of both the witness / complainant and the licence holder will be taken into account.

15.2 If an applicant has been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration may be given to refusing the application or revoking an existing licence.

15.3 In assessing the action to take, public safety will be the paramount concern. Decisions will be taken on balance of probability.

16 Licensing Offences

16.1 Offences under taxi and private hire legislation such as plying for hire without a licence, overcharging and refusing to carry disabled persons will prevent a licence being granted or renewed until a period of 5 years has passed since conviction.

17 Insurance Offences

17.1 A serious view will be taken of convictions for driving or being in charge of a vehicle without insurance. A previous isolated incident will not necessarily stop a licence being granted provided an individual has been free of conviction for 3 years. However a strict warning should be given as to future behaviour. More than one conviction for these offences will prevent a licence being granted or renewed.

17.2 An operator found guilty of aiding and abetting the driving of passengers for hire and reward without insurance will have his Operator's Licence reviewed with a view to

immediate revocation and will not be permitted to hold a licence for a period of at least three years from the date of any revocation.

17.3 Where a specific offence is not mentioned, a suitable period will be determined by reference to offences described. The Council reserves the right to refuse a licence where there are aggravating circumstances, even where these guidelines would otherwise indicate that a licence might be granted.

18 Applicants with periods of residency outside the UK

18.1 If an applicant has spent six continuous months or more overseas (since the age of 10) the Council will expect to see evidence of a criminal record check from the country / countries of residence covering the period.

18.2 Because of the potential lifetime relevance for some of the most serious offences mentioned in this policy, the Council will need to ensure that sufficient background checks are conducted for those applicants who have lived overseas. For most EU nationals and residents of many other countries a disclosure that is similar to the UK Disclosure and Barring Service will be required. For those countries for which checks are not available, the Council will require a certificate of good conduct authenticated by the relevant embassy.

18.3 Applicants that have been granted permanent leave to stay in the United Kingdom as a result of seeking asylum will only be able to apply for a Hackney Carriage/Private Hire driver licence once they have resided in the United Kingdom for a minimum of ten years

19 National Register of Refusals and Revocations (NR3)

19.1 The licensing authority provides information to the National Register of Taxi Licence Refusals and Revocations (NR3), a mechanism for licensing authorities to share details of individuals who have had a hackney carriage or Private Hire Vehicle (PHV) licence revoked, or an application for one refused. This is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the licensing authority – that is, assessing whether an individual is a fit and proper person to hold a hackney carriage or PHV licence

Therefore:

- Where a hackney carriage/PHV licence is revoked, or an application for one refused, the authority will automatically record this decision on NR3.
- All applications for a new licence or licence renewal will automatically be checked on NR3. If a search of NR3 indicates a match with an applicant, the authority will seek further information about the entry on the register from the authority which recorded it. Any information received as a result of an NR3 search will only be used in respect of the specific licence application and will not be retained beyond the determination of that application.

19.2 The information recorded on NR3 itself will be limited to:

- name
- date of birth
- address and contact details
- national insurance number
- driving licence number

- decision taken
- date of decision
- date decision effective

Information will be retained on NR3 for a period of 25 years.

19.3 This is a mandatory part of applying for a hackney carriage/PHV driver licence. The authority will respond to requests by other authorities for further information about entries on NR3, and will also make use of any further information provided to it.

19.4 Information will be processed in accordance with the Data Protection Act (DPA) and General Data Protection Regulation (GDPR). Any searches, provision or receipt of information of or under NR3 are necessary to the authority's statutory licensing functions of ensuring that all drivers are fit and proper to hold the applicable licence. It is not intended that any NR3 data will be transferred out of the United Kingdom.

19.5 Any person wishing to raise any issue related to the data protection legislation, including by relying on any of the rights afforded to data subjects under the GDPR, can do so to the authority's Data Protection Officer by email at DPO@testvalley.gov.uk, or by post at Beech Hurst, Weyhill Road, Andover SP10 3AJ. This includes submitting a subject access request.

19.6 There is also right to make a complaint to the Information Commissioner's Office (ICO). Advice on how to raise a concern about handling of data can be found on the ICO's website: <https://ico.org.uk/make-a-complaint/>

20 Summary

20.1 Whilst a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed, in most cases, an applicant would be expected to have remained free from conviction for 3 to 10 years (detailed above), before an application is likely to be successful. If there is any doubt about the suitability of an individual to be licensed, the Council will be mindful of the need to protect the public and caution will be exercised.

20.2 While it is possible that an applicant may have a number of convictions that, individually, do not prevent a licence from being granted, the overall offending history will be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Some discretion may be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

ITEM 9

Licensing Sub-Committee

Report of the Head of Legal and Democratic Services

Recommended:

That the membership of the Licensing Sub-Committee be comprised of three members drawn from the Licensing Committee. Those members will be selected in strict alphabetical order, save when it transpires that a member has an interest in the Members' Code of Conduct or the member is a Member for or lives within the ward within which an application premises is situated. In the event of a member selected becoming unavailable to attend a hearing, then the Head of Legal and Democratic Services will select a replacement in accordance with the above arrangements. Where possible, those members will be selected on a basis of one Liberal Democrat and two other Members.

SUMMARY:

- Various matters relating to the Licensing Act 2003 and Gambling Act 2005 are determined by the Licensing Sub-Committee established in 2005 and re-appointed annually.

1 Background

1.1 At its January 2005 meeting (Minute 466 of 27 January refers) the Committee agreed to establish Licensing Sub-Committees comprising three members. As the Licensing Act was silent on a quorum all three members needed to be present. As a result it was also agreed;

- (a) That a Sub-Committee be established comprising three members, and that the membership be drawn from a pool of members consisting of the membership of the Licensing Committee, subject to:
 - (i) as an alternative arrangement those members being selected on the basis of one Liberal Democrat and two other members, and;
 - (ii) those members be selected from the Licensing Committee membership list in strict alphabetical order save when it transpires that a member has an interest as defined in the Code of Conduct or the member is a member for or lives within the ward within which an application premises is situated then the next member on the list shall be selected, subject to their availability.
- (b) That the Chairman of the Sub-Committee be rotated amongst all members of the Licensing Committee.

- 1.2 At its meeting in April 2006 (Minute 583 of 20 April refers), the Licensing Committee approved revisions to these arrangements, whereby, in the event of a member selected becoming available, the Head of Administration (now Head of Legal and Democratic Services) be authorised to select a replacement in accordance with the existing arrangements and that the agenda for each Sub-Committee meeting should contain a note to this effect.
- 1.3 At its September 2013 meeting (Minute 126 of 19 September refers) the Committee re-considered Licensing Sub-Committee arrangements. Whilst the legislation regarding political proportionality at Council meetings does not apply to Licensing Sub-Committees, it was agreed that where possible members would be selected for a Licensing Sub-Committee on the basis of one Liberal Democrat and two other members.

2 Conclusion

- 2.1 The Licensing Committee is asked to re-appoint the membership of the Sub-Committee on the basis set out above.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<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	File Ref:	N/A
(Portfolio: Corporate) Councillor Flood			
Officer:	Karen Dunn	Ext:	8401
Report to:	Licensing Committee	Date:	22 November 2018

ITEM 10

Scheme of Delegations to Officers

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

Recommended:

That the Scheme of Delegations to Officers annexed to the report to Annual Council, in so far as it applies to the powers and duties of the Licensing Committee, be approved.

SUMMARY:

- The purpose of the report is to approve the Council's Scheme of Delegations to Officers.

1 Background

- 1.1 The Scheme of Delegations to Officers is approved each year in accordance with the Constitution by Annual Council, the Cabinet and relevant Committees.
- 1.2 During the course of the year since the last Annual Council changes have occurred to the Scheme of Delegations to Officers and new delegations to Officers have been made as the need has arisen over time. These changes have been incorporated into the Scheme in the Annex to the report to Annual Council.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<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:	0	File Ref:	N/A
(Portfolio: Corporate) Councillor Flood			
Officer:	Karen Dunn	Ext:	8401
Report to:	Licensing Committee	Date:	22 November 2018