

Crawley Borough Council

Licensing Committee

Supplementary Agenda

Monday, 9 September 2019

Anne Maria Brown

Head of Legal, Democracy and HR

4 Update of Appendix L of the Hackney Carriage and Private Hire Vehicle Policy

Amended Recommendation

That Recommendation 2.3 (a) be amended to read as follows (changes in bold):

2.3 That the Committee agrees that:

- a) if at the close of the consultation there have been no adverse comments or objections, the updated revised Appendix L **shall be adopted and come into effect on the 6th working day following the close of the consultation;** or

Amended Report

Attached is a replacement to Appendix 1 of Agenda item 4 on page 25 – 29 of the original agenda pack (Revised Appendix L of the Hackney Carriage and Private Hire Vehicle Policy).

The wording in bold and italicised in the attachment are the additional sections to the previously published Appendix 1.

Pages

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NOTE: The Chair has agreed that, although this report and information was not available for at least five clear days before the meeting, there are special circumstances justifying its urgent consideration.

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Revised Appendix L Private Hire Vehicle and Hackney Carriage Policy

Enforcement

In most cases where there are reasons to believe that enforcement action against a licence holder may be required the procedure to be followed is that set out in the Council's General Enforcement Policy (available on the Council's website at www.crawley.gov.uk), in particular the procedure relating to enforcement reviews. The following should therefore be read in conjunction with, and is in addition to, the Council's General Enforcement Policy.

Private hire drivers, hackney carriage drivers and private hire operators

The Council has considered the Department of Transport's 2010 Best Practice Guidance and in particular notes that a paragraph 59 councils are encouraged to have a clear policy for the consideration of criminal records. The Council has also considered the Institute of Licensing guidance on the suitability of applicants and licensees in the hackney carriage and private hire trades.

Set out below are the factors, both in relation to criminal activity and other types of unacceptable behaviour and factors of concern, which will be considered when the delegated officer is considering whether or not they are satisfied that a person is a fit and proper person to hold a licence. The Council's overriding consideration will be the protection of public safety based on a balance of probability test concerning information it is made aware of and any subsequent enquiries.

1.0 General matters

1.1 Each case will be decided on its own merits.

1.2 *In determining if a person is fit and proper the Council is entitled to take into account all matters concerning that applicant or licensee. The Council is not simply concerned with that person's behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual's attitude and temperament.*

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- 1.3** *It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the Council. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.*
- 1.4** *Generally, where a person has more than one conviction, this will raise serious questions about whether they are fit and proper. The Council is looking for fit and proper individuals, and once a pattern or trend of repeated offending is apparent, a licence will generally not be granted or renewed.*
- 1.5** *Where an applicant/licensee is convicted of an offence which is not detailed below, the Council will take that conviction into account and use the policies set out in this Appendix as an indication of the approach that should be taken.*
- 1.6** *The Council's Policy does not replace the duty of the Council to refuse to grant a licence where it is not satisfied that the applicant for licensee is a fit and proper person. Where a situation is not covered by this Policy, the Council will consider the matter from first principles and determine the fitness and propriety of the individual.*

2.0 Drivers

- 2.1** As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 2.2** A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.
- 2.3** Where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a fit and proper person.
- 2.4** In relation to single convictions, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.

3.0 Crimes resulting in death

- 3.1** Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

4.0 Exploitation

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4.1 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

5.0 Offences involving violence

5.1 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

6.0 Possession of a weapon

6.1 Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

7.0 Sex and indecency offences

7.1 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

7.2 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

8.0 Dishonesty

8.1 Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

9.0 Drugs

9.1 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

9.2 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

9.3 All new applicants for a drivers licence will have to undergo drugs testing when applying for an initial licence to demonstrate that they are not using controlled drugs.

9.4 Where the Council has suspicion that a driver may be using controlled drugs they will be required to submit to drugs testing which will be undertaken by an authorised Licensing Officer.

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10.0 Discrimination

- 10.1 Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

11.0 Motoring convictions

- 11.1 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a fit and proper person to be granted or retain a licence.
- 11.2 Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving
- 11.3 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 11.4 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

12.0 Other motoring offences

- 12.1 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 12.2 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

13.0 Hackney carriage and private hire offences

- 13.1 Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be

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granted until at least 7 years have elapsed since the completion of any sentence imposed.

14.0 Vehicle use offences

- 14.1 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

15.0 Private Hire Operators

- 15.1 A private hire operator (“an operator”) does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or other unacceptable purposes.
- 15.2 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a fit and proper person.
- 15.3 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be effected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority’s overall criteria, that will lead to the operator’s licence being revoked.
- 15.4 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, which are outlined above.

16.0 Vehicle proprietors

- 16.1 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 16.2 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 16.3 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 16.4 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a fit proper person to be granted or retain a vehicle licence.
- 16.5 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

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17.0 Cautions and Endorsable Fixed Penalties

- 17.1 For the purpose of *this Policy* simple cautions and endorsable fixed penalties shall be treated as though they were convictions.