

Crawley Borough Council

Report to Licensing Committee

9th September 2019

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

Report of the Head of Community Services – HCS/16

1. Purpose

- 1.1 To update and amend Appendix L of the current CBC Policy dealing with Hackney Carriages and Private Hire Vehicles (referred to as "The Policy" in this report) which deals with enforcement for the purpose of improving public safety. This is attached as Appendix 1.

2. Recommendations

- 2.1 That the Committee considers the report and decide what amendments, if any, it wishes to make to the revised Appendix L of the policy.
- 2.2 That the Committee approves the undertaking of a public consultation to be undertaken by the Licensing Team, with those who may be affected by the changes to the policy in line with the Code of Practice on Consultation.
- 2.3 That the Committee agrees that:
 - a) if at the close of the consultation there have been no adverse comments or objections, the revised Appendix L shall be adopted on 19th November 2019; or
 - b) if there have been adverse comments or objections, the proposed revised Appendix L with the comments and objections shall be reported back to the Committee for consideration and a decision as to whether the Appendix be adopted, with or without amendment.

3. Reasons for the Recommendations

- 3.1 To improve, simplify and strengthen the policy for the purpose of public safety.
- 3.2 To adopt the appropriate recommendations of the Institute of Licensing concerning the creation of a shared national standard for Licensing Authorities regarding policies dealing with taxis, enforcement and public safety to build consistency in regulatory practice.
- 3.3 To take notice of research concerning multiple offences and recidivist offenders and ensure the policy is updated accordingly.

4. Background

- 4.1 A licensing authority must not grant a taxi or PHV driver's licence unless it is satisfied that the applicant is a fit and proper person to hold such a licence. This is in stark contrast to the Licensing Act 2003 or Gambling Act 2005, where presumption is to permit a licence application. The licensing authority is also entitled to suspend or revoke a taxi or PHV driver's licence if there is evidence to suggest that the individual is not a fit and proper person, and specifically.
- if s/he has been convicted since the grant of the licence of an offence involving dishonesty, violence or indecency
 - for non-compliance with the licensing requirements of [the 1847 Act or the 1976 Act] and related legislation, or
 - for any other reasonable cause.
- 4.2 Properly applying the 'fit and proper' person test, which includes the consideration of convictions and other matters relating to an applicant's conduct, is essential to ensuring a robust licensing scheme that ensures the safety and commands the confidence of the general public.
- 4.3 Notwithstanding the above Licensing Authorities with responsibility for the enforcement of the law concerning hackney carriages or private hire vehicles are not statutorily required to have a policy dealing with this part of their role again in contrast to the Licensing Act 2003 and Gambling Act 2005. It is nevertheless considered to be good practice as per the findings of the Central Government Taxi Task and Finish Group.
- 4.4 Crawley Borough Council already has a policy which was adopted in 2014 and which has had a number of updates such the inclusion of a penalty point scheme and code of conduct. The document is intended to be a living document and subject to regular review and improvement to ensure it is fit for purpose. The policy is also a highly useful document assisting in the determination whether a person is fit and proper as regards taxi regulation ensuring a transparent and consistent approach is taken at all times. It is therefore important that it is updated as regularly as possible.
- 4.5 A great deal of attention has been given to enforcement matters regarding taxis in recent years due to a number of scandals concerning child sexual exploitation. This has resulted in a lot of interest in this subject and Institute of Licensing was commissioned by the Local Government Association to come up with suggestions for a national standard to ensure public safety is paramount in Local Government considerations regarding taxis. The conclusion of the work has resulted in a new guidance document endorsed by all parties titled Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades. Together with the adoption of the above the council has also included current licensees in the scope of the proposed drugs testing.
- 4.6 The policy currently has at Appendix L a scheme dealing with enforcement and how convictions are to be considered etc. which has evolved from a Department of Transport Circular first issued in 1995. This guidance has been used prior to the policy having been adopted and is the common standard that most Licensing Authorities rely upon in deciding if an applicant is a fit and proper person.
- 4.7 The current policy is quite specific in regards to offence type and does not fully take into account applicants with multiple offences. This often results in debate as to

whether a specific offence type is covered and also impairs judgement about likely recidivist behaviour of the applicant.

- 4.8 The guidance produced by the Institute of Licensing contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This will be a useful addition to the current policy as it prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list'. Furthermore such an approach also helps to address issues such as whether an offence involving firearm is more serious than an offence involving a knife and should lead to differentiation. In each case, appropriate weight will be therefore be able to be given to the evidence provided.

5. Description of Issue to be resolved

- 5.1 The current policy does not specifically deal with persons who have multiple convictions or other matters of concern. The proposed amendment will allow consideration to be taken when deciding the suitability of applicants or dealing with enforcement matters in a more effective and complete manner.
- 5.2 The current policy is very specific in part and this results in certain offences and other matters of concern falling out of scope. Using the offence categorisation suggested by the Institute of Licensing will ensure the policy is wider in scope.
- 5.3 Central Government have recently consulted on draft statutory guidance concerning hackney carriages and private hire vehicles. There is currently no further information on the likely date any new statutory guidance will take effect. As a consequence it is considered sensible to update our controls as soon as possible to avoid unnecessary delays. Should any further amendments to the policy be required this as a result of said draft statutory guidance it will be subject to further report to the Licensing Committee.

6. Information & Analysis Supporting Recommendation

- 6.1 The work undertaken by the Institute of Licensing was conducted on behalf of and in partnership with the leading bodies of expertise in the field of taxi control and had input from the Local Government Association. The document produced and recommended for adoption by this group is therefore considered the most up to date and relevant evidence to base the update and improvement of the Council's regulatory practice in this area of enforcement approach upon.
- 6.2 This is a borough wide matter and not ward specific and will also be subject to wide public consultation Ward Members have therefore not been contacted individually.

7. Implications

- 7.1 An issue that will be of interest to existing licence holders is whether the amended Appendix L will apply to them.
- 7.2 Your officers propose that existing licence holders will be allowed to continue as licence holders provided they do not come to attention of the Council for alleged misconduct and they renew their licences in a timely fashion.
- 7.3 If, however, an existing licence holder:

- a) comes to the notice of the Council for alleged misconduct the new Appendix L will be applied to them at that time;
 - b) if an existing licence holder fails to renew their licence on time and has to apply for a new licence the new Appendix L will be applied.
- 7.4 Your officers propose that all applications for new licences that are determined after the new Appendix L is in place shall be determined in accordance with the new Appendix L whether the application was made before or after the new Appendix L comes into force.
- 7.2 There are no foreseen implications concerning staffing or finance.

8. Background Papers

[CBC Hackney Carriage and Private Hire Policy](#)

[Code of Practice on Consultation](#)

[Findings of the Government's Taxi Task and Finish Group](#)

[IoL Guidance on Suitability](#)

[Taxis and Private Hire Vehicles Protecting Users - Consultation on Statutory Guidance](#)

Tony Baldock
Environmental Health and Licensing Manager
Email: tony.baldock@crawley.gov.uk
Tel: 01293 438220

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.

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

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.

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 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.

17.0 Cautions and Endorsable Fixed Penalties

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