

Licensing Committee

Wednesday, 24th July, 2019
at 10.00 am

PLEASE NOTE TIME OF MEETING Council Chamber - Civic Centre

This meeting is open to the public

Members

Councillor Mrs Blatchford (Chair)
Councillor Galton
Councillor B Harris
Councillor Kataria
Councillor McEwing
Councillor Noon
Councillor Prior
Councillor Renyard
Councillor Spicer
Councillor Streets

Contacts

Democratic Support Officer
Pat Wood
Tel: 023 8083 2302
Email: pat.wood@southampton.gov.uk

PUBLIC INFORMATION

Role of this Committee

The Committee publishes and implements a statement of licensing policy. It appoints Sub-Committees to deal with individual licensing applications and associated matters for which the Council as Licensing Authority is responsible.

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

The Southampton City Council Strategy (2016-2020) is a key document and sets out the four key outcomes that make up our vision.

- Southampton has strong and sustainable economic growth
- Children and young people get a good start in life
- People in Southampton live safe, healthy, independent lives
- Southampton is an attractive modern City, where people are proud to live and work

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones:- Please switch your mobile telephones to silent whilst in the meeting

Use of Social Media:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting. By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or/training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

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Access – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2019/20:

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

TERMS OF REFERENCE

The terms of reference of the Licensing Committee are contained in Part 3 (Schedule 2) of the Council's Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 4.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

- (iv) Any beneficial interest in land which is within the area of Southampton.

- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

1 **APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)**

To note any changes in membership of the Committee made in accordance with Council Procedure Rule 4.3.

2 **ELECTION OF VICE-CHAIR**

To elect a Vice-Chair for the 2019-2020 municipal year.

3 **DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

4 **STATEMENT FROM THE CHAIR**

5 **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

(Pages 1 - 2)

To approve and sign as a correct record the Minutes of the meeting held on 5 December 2018 and to deal with any matters arising.

6 **EXCLUSION OF THE PRESS AND PUBLIC - LEGAL ADVICE**

At a predetermined point during the consideration of all items the Sub-Committee may move into private session in order to receive legal advice when determining issues. The parties to the hearing, press and the public, unless otherwise excluded by the Licensing Act 2003 (Hearings) Regulations 2005, will be invited to return immediately following that private session at which time the matter will be determined and the decision of the Sub-Committee will be announced.

7 **CHANGE OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS – CLEAN AIR** (Pages 3 - 14)

Report of Service Director Transactions and Universal Services seeking to consider changes to vehicle conditions following the Special Cabinet Meeting on the 22nd January 2019 to deliver compliance with the EU limit for nitrogen dioxide.

8 **SAFEGUARDING TRAINING FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS** (Pages 15 - 26)

Report of Service Director Transactions and Universal Services seeking the adoption of a policy requiring all hackney carriage and private hire drivers to undertake approved Safeguarding Training every three years.

9 POLICY TO DETERMINE THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY CARRIAGE AND PRIVATE HIRE TRADES (Pages 27 - 84)

Report of Service Director Transactions and Universal Services proposing the adoption of a new policy on the determination of Licences issued under the Town Police Clauses Act 1847 and the local Government (Miscellaneous Provisions) Act 1976.

Tuesday, 16 July 2019

Service Director - Transactions and Universal Services

SOUTHAMPTON CITY COUNCIL
LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 5 DECEMBER 2018

Present: Councillors Mrs Blatchford (Chair), B Harris, Leggett, Parnell and Streets

Apologies: Councillors J Baillie, Bogle, Furnell, McEwing and T Thomas

11. **APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)**

The apologies of Councillors J Baillie, Bogle, Furnell, McEwing and T Thomas were noted.

12. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meeting held on 20 July 2018 be approved and signed as a correct record.

13. **HACKNEY CARRIAGE LICENCES – UNMET DEMAND SURVEY**

The Committee considered the report of the Service Director Transactions and Universal Services seeking approval to retain the current numerical restriction on hackney carriage licences.

Clive Johnson, Radio Taxis Drivers' Association, Ian Hall, Southampton Hackney Association and GMB Union, Perry McMillan, Unite Union and Phil Bates, Licensing Manager were present and with the consent of the Chair addressed the meeting.

RESOLVED that the current numerical restriction on hackney carriages be retained.

14. **PRIVATE HIRE KNOWLEDGE TEST**

The Committee considered the report of the Service Director Transactions and Universal Services seeking approval to continue with the current content of the test for new private hire drivers.

Clive Johnson, Radio Taxis Drivers' Association, Ian Hall, Southampton Hackney Association and GMB Union, Perry McMillan, Unite Union and Phil Bates, Licensing Manager were present and with the consent of the Chair addressed the meeting.

The current test had been introduced in January 2018 with the agreement that a review would take place after one year. The Committee noted the balance between discouraging drivers (as had happened in the past due to the test being more challenging) and encouraging out of town drivers who do not have cameras in their vehicles and may not know the topography of the area as well as local drivers.

A motion was proposed and it was agreed to amend the Recommendation as follows: To review the process again in another year and to review the test at that time in relation to drivers' location knowledge.

RESOLVED that the current test content continue subject to the process being reviewed again after one year including the element relating to drivers' location knowledge.

Agenda Item 7

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	CHANGE OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS – CLEAN AIR		
DATE OF DECISION:	24 JULY 2019		
REPORT OF:	SERVICE DIRECTOR - TRANSACTIONS AND UNIVERSAL SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Russell Hawkins	Tel: 023 8083 2421
	E-mail:	russell.hawkins@southampton.gov.uk	
Director	Name:	Mitch Sanders	Tel: 023 8083 3613
	E-mail:	mitch.sanders@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY	
NOT APPLICABLE	
BRIEF SUMMARY	
Report of the Licensing Manager to consider changes to vehicle conditions following the Special Cabinet Meeting on the 22 nd January 2019 to deliver compliance with the EU limit for nitrogen dioxide.	
The Sub-Committee is requested to consider and determine this report.	
RECOMMENDATIONS:	
(i)	That the Sub-Committee consider adding conditions to the hackney carriage conditions to restrict and then end the use of Euro 5 category diesel engine vehicles.
(ii)	That the Sub-Committee consider adding conditions to the private hire vehicle conditions to restrict and then end the use of Euro 5 category diesel engine vehicles.
REASONS FOR REPORT RECOMMENDATIONS	
1.	Sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976 provide for Licensing Authorities to attach to the grant of a licence for either a hackney carriage or private hire vehicle such conditions as they may consider reasonably necessary.
2.	Southampton City Council is required to reduce levels of pollution in the city as quickly as possible and has therefore been required by central government to implement changes that will reduce emissions and improve air quality.
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	

3.	Council have considered introducing a charging scheme whereby commercial vehicles including taxis and private hire vehicles that do not meet prescribed emission standards will be charged for each day they enter the city.
DETAIL (Including consultation carried out)	
4.	<p>Southampton City Council is required to reduce levels of pollution in the city as quickly as possible and has therefore been required by central government to implement changes that will reduce emissions and improve air quality. The reason for this is due to the growing evidence that poor air quality is responsible for a range of health issues including cancer, respiratory and heart illnesses.</p> <p>Southampton has identified that road transport is the most significant contributor to poor air quality in the city and therefore action to improve emissions from road vehicles would be a quick and effective way to meet clean air targets.</p>
5.	<p>With regards to the taxi and private hire fleet in Southampton, The Council proposed to ensure we had a clean air compliant fleet by the 1 January 2023 and that the uptake of low emission, hybrid vehicles was incentivised through the ongoing offer of grants.</p> <p>This effectively means that the older euro 5 emission standard diesel vehicles will be phased out during 2022. Additionally from 2020 no new or replacement vehicle that is euro 5 diesel emission standard will be issued a licence. Typically, diesel vehicles manufactured after 1 September 2015 should be euro 6 compliant but it is recommended that owners of such vehicles should check with the manufacturer.</p> <p>To implement this change the following additional conditions are proposed to be added to each licence type:</p> <ul style="list-style-type: none"> • 3.5. No diesel vehicle with an emissions standard of level 5 (Euro 5) or lower will be granted a licence on or after 1st January 2020 other than by way of licence renewal unless the vehicle has been converted with approved CVRAS technology. See 3.5.2 • 3.5.1 No diesel vehicle with an emissions standard of level 5 (Euro 5) or lower will be licensed or relicensed by way of renewal on or after 1st January 2022 unless the vehicle has been converted with approved CVRAS technology. See 3.5.2 • 3.5.2 Any vehicle fitted with approved Clean Vehicle Retrofit Accreditation Scheme (CVRAS) technology (e.g. a CVRAS LPG conversion) may be exempt from condition 3.5 and 3.5.1 subject to the vehicle meeting all other relevant conditions and on production of approved certification
6.	To support the trade in meeting these requirements, Southampton City Council has obtained central government funding to allow grants to be available to upgrade from a non-compliant vehicle to a hybrid, plug-in hybrid

	<p>or full electric vehicle. Grants will also be available to upgrade wheel chair accessible or vehicles that can carry 5-8 passengers from non-compliant to euro 5 or 6 petrol and euro 6 diesel.</p> <p>The council are also currently planning to offer a service to demonstrate the benefits of operating an electric vehicle. This will be done by offering operators/drivers an assessment service and opportunity to trial EV's for free. This will be promoted in the summer and details will be published in the coming months on Southampton City Council webpages.</p>
7.	<p>The Council consulted with the public and stakeholders by writing to each vehicle proprietor notifying them of the proposed changes and inviting representations from them. The public were also consulted via the city council website.</p> <p>Three responses were received as follows:</p>
8.	<p>K&K K&K Hire LTD, KKHireLtd@hotmail.co.uk</p> <p>Hi</p> <p>I do agree that taxis and private hire vehicles in Southampton need to run much more environmentally friendly vehicles, and I do support the council trying to achieve this through adjusting the licencing conditions. I do think that 8 seaters and w/chair accessible vehicles should get a higher amount from the fund because of the extra cost to replace these vehicles. The council can change licensing conditions to achieve their goal of cleaning up Southampton's poor air quality, and the drivers will have no choice but to comply. How are you going to tackle the most polluting lorries that enter Southampton, it would not be fair to tackle pollution issues by targeting the taxi trade because they are an easy target. But good luck in achieving your goals.</p> <p>Kevin May K&K Hire Ltd 28 Parham Drive Boyatt Wood Ind Estate Eastleigh SO50 4NU</p> <p>Tel: 02380 650650</p>
9.	<p>Nick Reeve, ngreeve@ngreeve.plus.com</p> <p>Dear Sir,</p> <p>Given national and international polices on the phasing out of Diesel vehicles completely I do not feel these proposals go far enough.</p> <p>Why not no diesel vehicles will be granted a licence after 2022.</p>

	<p>I support proposals to reduce emissions from public hire vehicles. But can't Southampton lead on this.</p> <p>In addition there seems to be no incentives offered to take up of hybrid and ultra low emission vehicles.</p> <p>Yours faithfully,</p> <p>Nicholas Reeve. 5 Holmwood Court SO16 7PD.</p>
10.	<p>Nik Tarry, nikt33@hotmail.com</p> <p>Hello,</p> <p>I'm totally in favour of this. Personally I think all public transport should be electric. Being stuck behind a diesel bus bellowing smoke out is a health hazard! Especially in the city centre where vehicles are at a standstill for a lot of the time.</p> <p>But there needs to be the infrastructure for charging in place. Fast charging stations and battery banks powered by solar, tidal or wind.</p> <p>Then you have to look at the ships docked with huge diesel engines running. I could go on.</p> <p>It will take a lot of investment, but the benefits will come soon enough.</p> <p>Nicholas Tarry, so157rb.</p>
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
11.	The grant schemes mentioned are funded by central government grant money awarded to the Council to implement its clean air strategy. There is no cost to the general fund or licensing budgets.
<u>Property/Other</u>	
12.	N/A
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
13.	Section 47 (1) of the Local Government (Miscellaneous Provisions) Act 1976 allows a district council to attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.
14.	Section 48 (2) of the Local Government (Miscellaneous Provisions) Act 1976 allows a district council to attach to the grant of a licence.
15.	Any driver aggrieved by the decision not to licence can appeal to a Magistrates' Court.
16.	Any driver aggrieved by the decision can appeal to a Magistrates' Court.

Other Legal Implications:	
17.	Southampton City Council received a ministerial direction in 2017 to develop a plan for local nitrogen dioxide (NO2) compliance (the “Plan”) that would achieve compliance with the EU Ambient Air Quality Directive annual mean limit value for NO2 within the shortest possible time. The Plan that was submitted and approved by the Secretary of State for Environment, Food and Rural Affairs included additional licensing requirements as set out in this paper. Subsequently, the council received a ministerial direction to implement the Plan as soon as possible and at least in time to bring forward compliance to 2019
18.	Human Rights Act 1998 The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person’s Human Rights must be taken having regard to the principle of Proportionality – the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affect another’s rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.
19.	A High Court case (Singh v Cardiff City Council) in 2012 decided there was no power of ‘interim’ suspension under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976. Suspension can only be used as a ‘final’ sanction. This had the effect of preventing authorities suspending drivers pending the outcome of an investigation and then imposing a further sanction such as revocation at a later date when the investigation was complete.
RISK MANAGEMENT IMPLICATIONS	
20.	My assessment of the impact of this decision is HIGH <ul style="list-style-type: none"> • Failure to meet clean air targets could result in substantial fines being imposed on the authority
POLICY FRAMEWORK IMPLICATIONS	
21.	The decision to determine the implementation of these conditions in the manner set out in this report is not contrary to the Council’s policy framework

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	None
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Email representation from K and K Hire

2.	Email representation from Nick Reeve
3.	Email representation from Nik Tarry

Documents In Members' Rooms

1.	None
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
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Privacy Impact Assessment

Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.	No
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Other Background Documents

Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	
2.	

Agenda Item 7

Appendix 1

From: [K&K K&K Hire LTD](#)
To: [Licensing Consultations](#)
Subject: clean air zone
Date: 07 May 2019 13:39:59

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi

I do agree that taxis and private hire vehicles in Southampton need to run much more environmentally friendly vehicles, and I do support the council trying to achieve this through adjusting the licencing conditions. I do think that 8 seaters and w/chair accessible vehicles should get a higher amount from the fund because of the extra cost to replace these vehicles. The council can change licencing conditions to achieve their goal of cleaning up Southampton's poor air quality, and the drivers will have no choice but to comply. How are you going to tackle the most polluting lorries that enter Southampton, it would not be fair to tackle pollution issues by targeting the taxi trade because they are an easy target. But good luck in achieving your goals.

Kevin May

K&K Hire Ltd

28 Parham Drive

Boyatt Wood Ind Estate

Eastleigh

SO50 4NU

Tel: 02380 650650

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From: [Nick Reeve](#)
To: [Licensing Consultations](#)
Subject: Clean air zone
Date: 10 May 2019 12:02:33

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir,

Given national and international polices on the phasing out of Diesel vehicles completely I do not feel these proposals go far enough.

Why not no diesel vehicles will be granted a licence after 2022.

I support proposals to reduce emissions from public hire vehicles. But can't Southampton lead on this.

In addition there seems to be no incentives offered to take up of hybrid and ultra low emission vehicles.

Yours faithfully,

Nicholas Reeve.
5 Holmwood Court
SO16 7PD.

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Agenda Item 7

Appendix 3

From: [Nik Tarry](#)
To: [Licensing Consultations](#)
Subject: Clean Air Zone – Change of Licence Conditions for Licensed Private Hire Vehicles and Hackney Carriages
Date: 06 June 2019 18:05:06

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hello,

I'm totally in favour of this. Personally I think all public transport should be electric. Being stuck behind a diesel bus bellowing smoke out is a health hazard! Especially in the city centre where vehicles are at a standstill for a lot of the time.

But there needs to be the infrastructure for charging in place. Fast charging stations and battery banks powered by solar, tidal or wind.

Then you have to look at the ships docked with huge diesel engines running.

I could go on.

It will take a lot of investment, but the benefits will come soon enough.

Nicholas Tarry, so157rb.

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Agenda Item 8

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	SAFEGUARDING TRAINING FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS		
DATE OF DECISION:	24 JULY 2019		
REPORT OF:	PHIL BATES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
	E-mail:	phil.bates@southampton.gov.uk	
Director	Name:	Mitch Sanders	Tel: 023 8083 3613
	E-mail:	mitch.sanders@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY	
None	
BRIEF SUMMARY	
Report of the Licensing Service Manager proposing an addition to the drivers' policies to require all hackney carriage and private hire drivers to undertake approved Safeguarding training every three years and before the grant of a driver's licence.	
RECOMMENDATIONS:	
(i)	The committee approve amendments to both the Hackney Carriage Driver's policy and the Private Hire Driver's policy requiring drivers to undertake approved in person Safeguarding training every three years.
(ii)	The committee approve a transition period for existing drivers.
REASONS FOR REPORT RECOMMENDATIONS	
1.	The taxi trades have been identified as being in an ideal position to assist in the safeguarding of vulnerable members of the public.
2.	The government's response to the Parliamentary Task and Finish Group welcomes recommendation 25 that authorities use existing powers to require drivers to undertake such training and it should form part of a future national standard.
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
3.	To continue with the current provision of a leaflet for all driver applications, however this does not engage the applicant so can be easily ignored.
4.	An on line training package. This fails to provide confirmation it is the applicant taking the package
5.	A computer package. This would require placing all drivers in front of a computer to undertake the course, logistically this is very difficult and expensive.
DETAIL (Including consultation carried out)	

6.	After incidents in other parts of the country the taxi trades were identified as being ideally placed to identify incidents of safeguarding concern. Nationally Safeguarding boards recommended the taxi trades undertake such training. This was supported by local Safeguarding boards.
7.	In Southampton officers worked with Hampshire Constabulary who ran Operation Makesafe looking at safeguarding issues. Posters and leaflets specific to different areas were produced, including taxi specific leaflets and posters. In 2017 the posters were distributed to the different operators and every driver applicant, both new and renewals, received a leaflet. A copy of the leaflet is attached to this reports as Appendix 1
8.	The leaflet was a quick and easy method of getting the message out to the trade but was never going to provide all details the trade require in order to fulfil their role proficiently.
9.	Across Hampshire the Safeguarding boards have stated they consider all licensed drivers should attend an in person training package. The School Transport commissioning team at Hampshire County Council advise they will follow any guidance from the safeguarding boards.
10.	<p>On 27th November 2018 all taxi licence holders were written to advising the authority was consulting on changing the policy to include the following condition:-</p> <p><i>All applicants for hackney carriage/private hire drivers licences will have successfully completed safeguarding training approved by Southampton City Council within the previous three years.</i></p> <p>This was in addition to other changes proposed and is covered by a separate report.</p> <p>A copy of the template of the letter sent is attached as Appendix 2</p>
11.	There were three responses, two were against the proposal and one was for. A summary of the responses is attached as Appendix 3.
12.	<p>The training can be delivered in various methods:-</p> <ol style="list-style-type: none"> 1. On line package 2. A computer software package 3. Classroom package <p>An online package would provide an applicant with a unique logon however once logged in there is no guarantee it is the applicant undertaking the course. This was a key element for the Safeguarding boards and for this reason an on line package is not considered suitable.</p> <p>New Forest District Council developed a computer package, this requires applicants to attend a set location and use approved computers to undertake the package. The safeguarding boards recommended this package but understood it caused logistical problems for some authorities, especially authorities with large numbers of applicants. Southampton has over 1600 drivers currently licensed, this would require over 500 applicants to take the package each year just for current drivers, any new applicants would be additional. Logistically this is very difficult and would take up a lot of staff time to manage.</p> <p>Officers have now assessed two class room based packages. Outside organisations make the arrangements and deal directly with the applicants. This removes the logistical issues raised above. They carry out identification</p>

	checks to ensure it is the applicant sitting the package to fulfil the requirement of the Safeguarding boards. Additionally officers have seen how the package engages all of the applicants in the discussions.
13.	Across Hampshire the majority of authorities that undertake this training require an in person test. Some authorities are still to introduce a requirement.
14.	If approved officers will have to go through the procurement process to identify an approved provider. Initial enquiries suggest the cost will be in the region of £25 a person. There is sufficient in licensing budgets to cover the cost for drivers that are current drivers as of 1 st July 2019 undertaking this training.
15.	The requirement is for the training to be undertaken every three years, any new applicants after 1 st July 2019 and any refresher training will need to be paid for by the applicant.
16.	Driver licences cannot be granted for a period greater than three years. The majority of licences are issued every three years. It is therefore recommended drivers are required to have undertaken the approved training before the grant of a driver's licence whether on renewal or new applicant. That the applicant be required to provide evidence by means of a certificate of having completed satisfactorily the approved course.
17.	To allow time for the procurement process and set up it is recommended this takes effect from 1 st January 2020. However should there be difficulties in meeting this deadline it is requested the Service Manager for Licensing is granted delegated authority to amend this date.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
18.	On 1 st July 2019 there were 1,739 drivers. At a cost of £25 per driver, this proposal will cost £43,475. Taxi license fees are set at a level that enables the authority to recover costs, and there are sufficient funds in the taxi budgets to cover this cost for current drivers. Any new drivers or refresher training will be paid directly to the provider by the applicant and therefore this does not represent an ongoing cost to the Council.
<u>Property/Other</u>	
19.	The provider will be required to provide all the logistics and package. The impact on staff will be limited to checking drivers have received training prior to the grant of a driver's licence,
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
20.	Town police Clauses Act 1847 (Hackney Carriages) and The Local Government (Miscellaneous Provisions) Act 1976 (Private Hire Vehicles).
<u>Other Legal Implications:</u>	
21.	None
RISK MANAGEMENT IMPLICATIONS	
22.	My assessment of the risk is Low

	<ul style="list-style-type: none"> The finance risk is low, the initial provision can be funded from fees in the licensing holding account. Subsequent training will be paid directly to the provider by the applicants Failure to impose such a condition does pose a risk of reputational damage, this training is recommended in a recent Parliament task and finish group report and is supported by both Safeguarding boards.
POLICY FRAMEWORK IMPLICATIONS	
23.	The decision to determine the application in the manner set out in this report is not contrary to the Council's policy framework

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	All
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Operation Makesafe taxi leaflet.
2.	Template of consultation letter
3.	Summary of the consultation responses

Documents In Members' Rooms

1.	None
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Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
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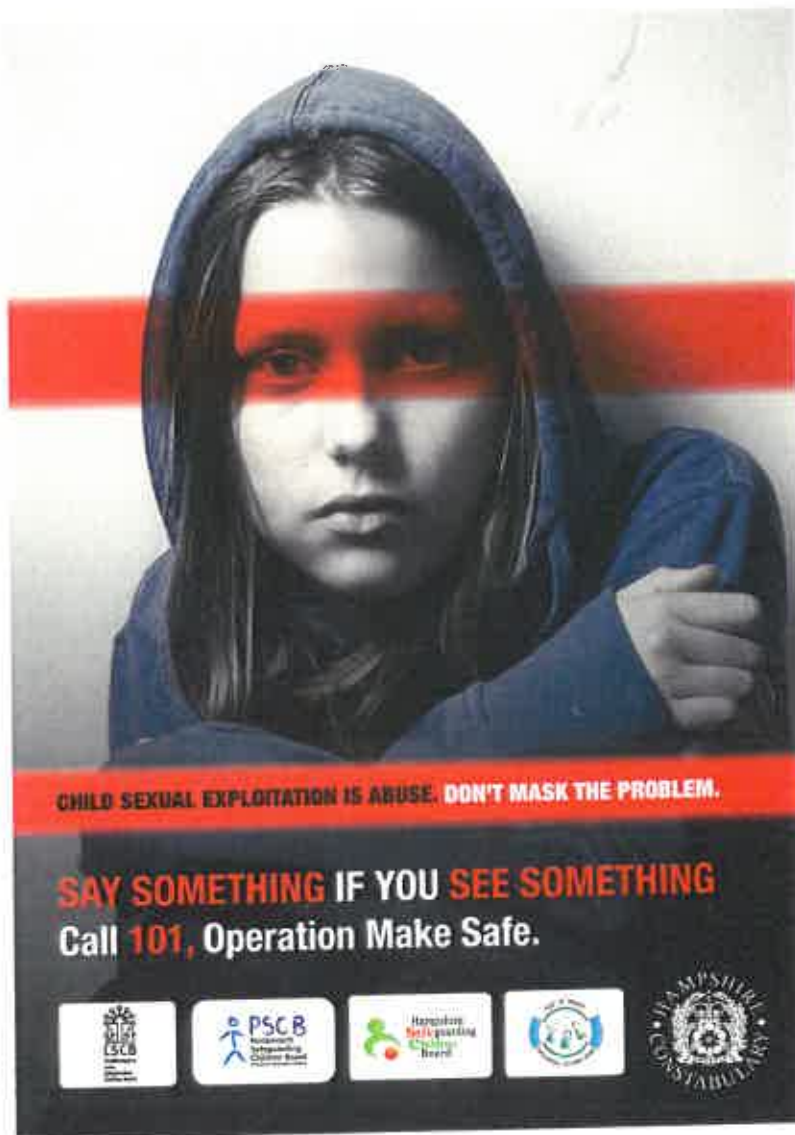
Data Protection Impact Assessment

Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	No
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Other Background Documents

Other Background documents available for inspection at:

Title of Background Paper(s)	Government response to the Parliamentary Task and finish group on Taxi and Private Hire Licensing https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783/taxi-task-and-finish-gov-reponse.pdf	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.		
2.		



TAXIS

What to look out for

- Adults putting a young person, who may be under the influence of alcohol or drugs, into your cab
- Young people who look concerned or frightened in the company of adults
- Young people being picked up and taken to hotels, particularly at odd times of the day and night
- Adults, who appear edgy, in the company of young people

**If you spot these signs call 101
quoting **Operation Make Safe**
www.hampshire.police.uk**

**DON'T IGNORE YOUR GUT FEELING THAT SOMETHING IS NOT RIGHT.
SAY SOMETHING IF YOU SEE SOMETHING.**



Southampton City Council
Civic Centre,
Southampton

Please address all correspondence to:
Licensing – Southampton City Council,
PO Box 1767, Southampton SO18 9LA

Direct dial: 023 8083 3002
Our ref:

E-mail: licensing@southampton.gov.uk
Please ask for: Mr. Bates

Name

27th November 2018

Dear Sir or Madam,

Consultation on changes to policy affecting the hackney and private hire trades.

There are two different policies changes we wish to consult upon.

- Guidance on determining suitability to hold hackney and private hire licences.
- The requirement for drivers to have completed and passed an approved safeguarding training package.

Southampton City Council is reviewing its policy on the application of the fit and proper person test in relation to the taxi and private hire trade. This includes drivers, proprietors and operators. Since the adoption of the current policy the Institute of Licensing has issued national guidance and the proposal is to adopt this national guidance as policy. The council now wishes to consult on this guidance with a view to submitting a report to the Licensing Committee after the consultation period to adopt the guidance in place of the current policy.

A copy of the Institute of Licensing's guidance can be found at:

www.southampton.gov.uk/taxinotices

It has been identified nationally that the hackney carriage and private hire drivers are in an ideal position to identify safeguarding incidents where an individual may be at risk and that all drivers should be trained to identify these incidents and on what action they can take to safeguard the vulnerable members of society. As such Southampton City Council now wishes to consult on adopting an addition to the policy for all drivers requiring them to have undertaken approved training either prior to first application or on renewal of the driver licence after 1st January 2020. This means drivers will need to refresh the training every three years. It is anticipated there will be funding to pay for existing drivers to undertake this training package as long as it is completed within one year of the start of the implementation, after this the cost is estimated to be £18 that applicants will need to pay the provider. This will however have to be submitted through the procurement process.

The new hackney carriage and private hire driver's policies will include the following at 1.10:-

All applicants for hackney carriage/private hire drivers licences will have successfully completed safeguarding training approved by Southampton City Council within the previous three years.

You are invited to respond to these consultations by either letter addressed to:

The Licensing Team,
Civic Centre,
Southampton SO14 7LY

or by e-mail to: **licensing.policy@southampton.gov.uk**

Please title the responses with either “SCC Fit or Proper Consultation” or “SCC Safeguarding training” and please provide separate responses if responding to both rather than a combined response.

The consultation will end on 18th February 2019.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Phil Bates', with a stylized flourish at the end.

Phil Bates
Licensing Manager

Agenda Item 8

Appendix 3

Name
Abdulgani AHMED
Joseph Jones Door2Door
Stephen MARKHAM

Response to consultation

I am actually against this new policy and wouldn't like to see it pass because taxi drivers already pay a lot of money on renewing their licence and maintaining their car. Therefore, I see it as an extra expense to pay. I also think that on our busy schedules taxi drivers may not have the time to complete a new training course every 3 years, it would actually be too bothersome. I believe that taxi drivers are already in a position to call the authorities if they believe a vulnerable person is in danger. Therefore, I don't see the advantage if this

Door2Door cars deal with a number of account customers who insist that all our drivers and employees must be aware of identifying safeguarding and procedures. Zuli and myself have received awareness training so we can pass this information and training to all our drivers and employees along with, identifying issues and the procedures that must be taken. This training will be updated or refreshed to all of our drivers on a yearly to 18 month basis or when first starting with us. I don't see how any further training or courses with a certificate would assist Door2Door drivers in identifying Safeguarding issues beside training which is being done. I personally believe safeguarding should be everyone's personal duty. I have personal experience with safeguarding having 4 adopted children which came from a very volatile background and driving different children to and from courts for video evidence and acting as security. In 2008 when the NVQ and BTEC courses started and being the first to take the courses, i can remember that this was also brought up as a heading of duty of care and was covered within the courses. I am not disagreeing on courses for other companies but safeguarding should still be within the NVQ/BTEC and if not, where has is gone.

Reference the safeguarding training, When will it start commencing so we can book a place to have the training please? **From SCC Licensing " At this time it is a proposal to require the training from January 2020. You will get ample notice if there is a need to book."** That's great news, thank you.

Summary

Cost, time and all ready knows enough

Company already covers it

Great news!

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DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	POLICY TO DETERMINE THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADES		
DATE OF DECISION:	24 JULY 2019		
REPORT OF:	DIRECTOR TRANSACTIONS AND UNIVERSAL SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
	E-mail:	Phil.bates@southampton.gov.uk	
Director	Name:	Mitch Sanders	Tel: 023 8083 3613
	E-mail:	mitch.sanders@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY	
None	
BRIEF SUMMARY	
Report of the Licensing Service Manager proposing a new policy to assist in applying the fit and proper person test with regards to Licences issued under the Town Police Clauses Act 1847 and the local Government (Miscellaneous Provisions) Act 1976.	
RECOMMENDATIONS:	
(i)	<p>That the committee approve the policy as shown in Appendix 1 with the exception that paragraph 4.42 is replaced with</p> <p><i>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 9 or more points on their DVLA licence for minor traffic or similar offences the applicant will be required to undertake driver assessment training as approved by the Council. Where an applicant has or reaches 12 points on their DVLA licence for minor traffic or similar offences a licence will not be granted until the applicant/licence holder is conviction free for at least one year and at least 3 months after the end of any driving ban imposed by the courts and after passing an approved driver assessment.</i></p> <p>to replace the present Policy relating to the fitness and propriety of applicants and licence holders.</p>
REASONS FOR REPORT RECOMMENDATIONS	
1.	The Institute of Licensing (IoL) has issued a guidance document on this matter with the intention to set a national standard across the country and thereby prevent applicants seeking a soft option licensing authority of choice as has been seen in the country.

2.	The Department for Transport (DfT) consultation document on Statutory guidance licensing authorities, Protecting Users, states it draws on the IoL document in publishing its guidance.
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
3.	To retain the current policy – this would leave SCC policy out of kilter with the IoL policy and if it is adopted nationally would leave SCC as the <i>soft option</i> . The IoL document provides better guidance for decision makers and sets a high standard.
4.	To adopt the IoL policy as it is. After hearing the representations of trade members and noting the vast majority of drivers are already compliant with para 4.42 this section does not appear to be necessary in order to protect the public whereas the revised version offers a proportionate alternative.
DETAIL (Including consultation carried out)	
5.	Southampton City Council adopted the current policy on 5 th October 2016. Prior to this the policy was based on the only national guidance produced in 2010, since then there have been numerous high profile failings in the taxi licensing process that required a stronger policy.
6.	The Institute of Licensing (IoL) who is the professional body that represents those who work within the field of Licensing set up a working party in 2015 to look at producing national guidance on the determination of taxi licensing matters.
7.	The working party included James Button who is recognised as the leading solicitor on UK taxi legislation. I was also a member, a full list of contributors is listed within the Guidance produced by the IoL which is Appendix 1 to this report
8.	The IoL guidance was introduced to the Taxi trade representatives at the consultation meeting held on 6 th June 2018. They were invited to provide responses, a summary of these and officer's responses are attached as Appendix 2. Part of the response was a survey conducted by Radio Taxis, a copy is attached as Appendix 3
9.	There was strong opposition from drivers about the proposal to revoke driver licences when they attain 7 DVLA points and to increase longer periods of revocation/suspension than the courts for the same matter. The survey also has a list of comments on the IoL document that mirrored in other responses.
10.	On 27 th November 2018 all taxi licence holders were written to advising the authority was consulting on adopting the IoL guidance as policy for taxi licence matters. This consultation was for a period of 3 months finishing 18 th February 2019. A copy of this letter is attached as Appendix 4
11.	The consultation had 2 response and are attached as Appendix 5 and 6. It should also be noted this has continued to be a prominent area of discussion in the Taxi Trade Consultation meetings with the Trade reps continuing to express the same concerns they raised last year.
12.	The majority of the content and certainly the objectives of the IoL guidance appear to be accepted by the taxi trades. They have expressed concern over the following points:- 1. The application of non-conviction information

	<ol style="list-style-type: none"> 2. The setting of the bar at 7 DVLA points for action to be take a drivers livelihood 3. The length of time to be free from conviction some matters attract in the guidance. 4. Who makes the decision? 5. The tone of the language used
13.	The application of non-conviction material is quite proper and supported with case law
14.	<p>The taxi trade is in the business of driving members of the public around and the public need to have confidence the driver is a safe and suitable person so it is reasonable to have a higher expectation placed on the drivers of these vehicles and should be a bar the trade themselves wish to adhere to to demonstrate they are a safe and professional option for the public. Other driving professions have varying measures to ensure driving skills are at least maintained such as additional frequent training, testing, assessments and tachographs. The taxi trade have none of these, once they have a licence there is no system requiring them to undertake training or assessment on their driving skills. Some drivers will have passed a driving assessment over 20 years ago when road conditions were very different. This measure will encourage drivers to adapt their driving skills accordingly.</p> <p>It has been suggested this goes beyond what is lawful and may result in legal challenges. This is incorrect. The authority is to consider if an applicant is a fit and proper person, it has been given a statutory function under Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 to do this. <i>Leeds v Hussain</i> supports this principle.</p> <p>Pleasingly a check of the records recently found only 1 of the in excess of 1500 Southampton licensed drivers had more than 7 points on their licences so the drivers are already complying with this part of the proposal.</p> <p>This is an important point as it demonstrates that the current approach is working as such the proposed amended paragraph 4.42 is recommended.</p>
15.	The purpose of licensing is to protect the public. The time to be free of conviction is considered necessary for the applicant to demonstrate a change of behaviour and even then may not be sufficient to demonstrate they are a safe and suitable person.
16.	The DfT consultation document agrees Licensing Committees should make decision but adds it is perfectly acceptable for officers to make less contentious decisions, this does not mean less serious but matters that are close to the level to impose a sanction. This is the process that has been in place and adopted by this authority.
17.	The language used is to highlight areas that some authorities have been lacking in historically and have resulted in serious failings of the licensing process. It is designed to make the decision maker consider appropriately the matter before them.
18.	The IoL document introduces into policy requirements on operators and proprietors that are not yet conditioned on their licences. This will assist with any transition period. The policy can be applied appropriately on a case by

	case basis and when time allows the relevant conditions can be amended to reflect the policy as it is adopted.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
	None
<u>Property/Other</u>	
	N/A
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
19	<i>Town Police Clauses Act 1847</i> Licensing of hackney carriages and hackney carriage drivers.
20	<i>Local Government (Miscellaneous Provisions) Act 1976</i> Licensing of private hire vehicles, drivers and operators and provides powers with regards hackney carriages and hackney carriage drivers.
21	<i>Local Government Act 2000 – Functions and Responsibilities Regulations 2000</i> Provides the framework for the discharge of various functions of a local authority.
<u>Other Legal Implications:</u>	
22	<i>Crime and Disorder Act 1998</i> Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
23	<i>Human Rights Act 1998</i> The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of Proportionality – the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affect another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations
RISK MANAGEMENT IMPLICATIONS	
24	My assessment of the impact of this decision is low. <ul style="list-style-type: none"> • The finance risk is low, a section of the trade has threatened to licence elsewhere, however the fees are ring fenced so does not impact on the budget of the council. • The policy is unlikely to impact on the trade as the vast majority are already compliant, it is likely to increase the confidence of the public in the trade so a positive impact overall.

POLICY FRAMEWORK IMPLICATIONS	
25	The decision to determine the application in the manner set out in this report is not contrary to the Council's policy framework

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	All

SUPPORTING DOCUMENTATION

Appendices

1.	Institute of Licensing Guidance on determining the suitability of applicants and licensees – hackney and private hire trades
2.	Summary of taxi trade rep responses to the IoL guidance.
3.	Radio taxi survey of drivers
4.	Template letter advising trade of consultation
5.	Response 1 to formal consultation
6.	Response 2 to formal consultation

Documents In Members' Rooms

1.	None
2.	

Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
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Data Protection Impact Assessment

Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	No
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Other Background Documents

Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)	
1.	DfT consultation document " Taxi and Private Hire Vehicle Licensing: Protecting Users, Statutory Guidance for Licensing Authorities "	Para 2.50 on page 18 and Annexe A
2.		

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Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:



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Foreword

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

Everybody working in this field should acquaint themselves with the facts of the Rotherham case, which stands as a stark testament to what can happen when licensing performs its safeguarding role inadequately. But the extremity of that appalling story should not distract us from the job of protecting the public from more mundane incompetence, carelessness or dishonesty. The standards of safety and suitability do not have to be set as a base minimum. To the contrary, they may be set high, to give the public the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.

Crucially, this is not a field in which the licensing authority has to strike a fair balance between the driver's right to work and the public's right to protection. The public are entitled to be protected, full stop. That means that the licensing authority is entitled and bound to treat the safety of the public as the paramount consideration. It is, after all, the point of the exercise.

Therefore, this guidance is to be welcomed. It rightly emphasises that any circumstance relating to the licensee is potentially relevant, provided of course that it is relevant to their safety and suitability to hold a licence. It provides useful and authoritative guidelines to licensing authorities as to how they ought to approach their important task of making determinations about the safety and suitability of drivers and operators.

While, of course, licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing. Adherence to the guidance may also provide protection to licensing authorities on appeal.

The guidance is therefore commended to licensing authorities. It is hoped that, in due course, it will sit at the elbow of every councillor and officer working in taxi licensing.

Philip Kolvin QC
Cornerstone Barristers

April 2018

Chapter 1: Introduction

- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications¹. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

¹ Except vehicle proprietors. In those cases there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*².

- 1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards.
- 1.11 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.³ With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm⁴. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

³ DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

⁴ Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

- 2.6 Flaud⁵ noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place⁶.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future⁷. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%⁸. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population¹¹. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

⁵ Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁶ Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁷ Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

⁸ Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

⁹ Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

¹⁰ McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

¹¹ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”¹².
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”¹³.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁴. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships¹⁵. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males¹⁶.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist¹⁷. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance¹⁸. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

¹² National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

¹³ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

¹⁴ Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

¹⁵ Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

¹⁶ Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

¹⁷ Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

¹⁸ Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.

ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past”¹⁹.

- 2.16 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual’s previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when making a decision as to whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person’s ability to sustain such change. This can be a long process that can only be achieved over time.

¹⁹ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

Chapter 3: 'Taxi' Licensing Overview

- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in the DfT *"Taxi and Private Hire Licensing – Best Practice Guide"* para 8 which states:
- "The aim of local authority licensing of the taxi and PHV trades is to protect the public."
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage driver; private hire driver and private hire operator.
- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.
- 3.8 In each case, the authority has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

Taxi Drivers

- 3.10 The term "taxi driver" encompasses two different occupations: hackney carriage drivers and private hire drivers. "Taxi driver" is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory

criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*²³. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage 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 into a vehicle with this person alone?’²⁴
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

²⁰ Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

²¹ Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

²² “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1st December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

²³ [2002] EWHC 1145 (Admin), [2003] RTR 199

²⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 10.21

3.18 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers' licence?

3.19 The local authority has the power to require an applicant to provide:

“such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”²⁵

This “information” can include any pre-conditions or tests that they consider necessary

3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:

- Enhanced DBS certificates and sign-up to the update service;
- Knowledge tests;
- Driving tests;
- Disability Awareness;
- Signed Declarations;
- Spoken English tests.

3.21 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.

3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared²⁷) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker²⁸.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks²⁹ and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

²⁵ Local Government (Miscellaneous Provisions) Act 1976 s57(1)

²⁶ See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

²⁷ “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.

²⁸ See *Adamson v Waveney District Council* [1997] 2 All ER 898

²⁹ “For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children’s Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2” DBS email 31st August 2017.

- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability³⁰.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account³¹. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been)

³⁰ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³¹ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

to assault another sexually has demonstrated completely unacceptable standards of behaviour.

- 3.31 Applicants may claim that they have sought employment in other fields and been precluded as a result of their antecedent history particularly if that contains convictions. They therefore seek to become a licensed driver as an occupation of last resort. This is unacceptable as the granting of a licence would place such a person in a unique position of trust. The paramount responsibility of a licensing authority is to protect the public, not provide employment opportunities.
- 3.32 Licensees are expected to demonstrate appropriate professional conduct at all time, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. In no circumstances should Licensees take the law into their own hands. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.
- 3.33 There are those who seek to take advantage of vulnerable people by providing services that they are not entitled to provide; for example, by plying for hire in an area where they are not entitled to do so. Licensees are expected to be vigilant of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers should feel confident to check that the person offering a service is entitled to do so. Licensees should willingly demonstrate that they are entitled to provide the offered service by, for example, showing their badge.
- 3.34 As a society, we need to ask the question “who is driving my taxi?” and be secure in the knowledge that the answer is “a safe and suitable person”. The vast majority of drivers are decent, law abiding people who work very hard to provide a good service to their customers and the community at large. However poor decisions by local authorities and courts serve to undermine the travelling public’s confidence in the trade as a whole. Unless local authorities and the courts are prepared to take robust (and difficult) decisions to maintain the standards the local authority lays down, and in some cases tighten up their own policies, the public cannot have complete confidence in taxi drivers. This is detrimental to all involved.

Private Hire Operators

- 3.35 A private hire operator (“PHO”) is the person who takes a booking for a private hire vehicle (“PHV”), and then dispatches a PHV driven by a licensed private hire driver (“PHD”) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same

authority³². A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person³³.

- 3.36 As with taxi drivers the role of the PHO goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
- 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.39 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.
- 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:
- “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”³⁴
- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they

³² See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³³ Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

³⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 12.35

obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the PHO.

- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation³⁵. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence³⁶ and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.47 A suitable test would be:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be

³⁵ See s57(1)(c) of the 1976 Act.

³⁶ S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?"³⁷

³⁷ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98

Chapter 4: Guidance on Determination

- 4.1 As is clear from the overview of Offenders and Offending above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk reduces over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.2 Many members of our society use, and even rely on, hackney carriages and private hire vehicles to provide transportation services. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.3 Ideally, all those involved in the hackney carriage and private hire trades (hackney carriage and private hire drivers, hackney carriage and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 4.4 The purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

Pre-application requirements

- 4.5 Licensing authorities are entitled to set their own pre-application requirements. These will vary depending upon the type of licence in question but can include some or all of the following (these are not exhaustive lists):

Vehicles:

- Basic DBS checks;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space etc;
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.

Drivers:

- Enhanced DBS checks with update service;
- Checks made to the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);
- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

Operators:

- Basic DBS checks;
- Details of their vetting procedures for their staff;
- Knowledge of the licensing area.

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership³⁸) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are 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.

³⁸ Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction³⁹. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴⁰.
- 4.12 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 licensing authority. 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.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

³⁹ This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

⁴⁰ This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.

- 4.19 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.
- 4.20 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 4.21 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 4.22 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 4.23 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.
- 4.24 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.

Drivers

- 4.25 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.
- 4.26 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.

- 4.27 As stated above, 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 safe and suitable person.
- 4.28 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.

Crimes resulting in death

- 4.29 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.

Exploitation

- 4.30 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.

Offences involving violence

- 4.31 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.

Possession of a weapon

- 4.32 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.

Sex and indecency offences

- 4.33 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.
- 4.34 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.

Dishonesty

- 4.35 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.

Drugs

- 4.36 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.
- 4.37 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.

Discrimination

- 4.38 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.

Motoring convictions

- 4.39 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 safe and suitable person to be granted or retain a licence.

Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving

- 4.40 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.
- 4.41 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.

Other motoring offences

- 4.42 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.
- 4.43 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.

Hackney carriage and private hire offences

- 4.44 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.

Vehicle use offences

- 4.45 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.

Private Hire Operators

- 4.46 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.
- 4.47 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.48 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.

- 4.49 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.

Vehicle proprietors

- 4.50 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 4.51 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.52 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.53 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.
- 4.54 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.

Acknowledgements

In December 2015, the Institute of Licensing established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

The core project group comprised:

- Stephen Turner, Solicitor at Hull City Council, Licensing Lead for Lawyers in Local Government and Vice Chair of the North East Region IoL (Project Group Chair)
- Jim Button, Solicitor at James Button & Co and President of IoL
- Philip Kolvin QC, Cornerstone Barristers and Patron of IoL
- John Miley, Licensing Manager for Broxtowe Borough Council, National Chair for NALEO and Vice Chair of the East Midlands Region IoL
- Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the South East Region IoL
- Phil Bates, Licensing Manager for Southampton City Council
- Sue Nelson, Executive Officer of IoL

This Guidance is the result of the work of the project team and includes consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

The Institute is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

The Institute is also grateful to others who have contributed to the work of the project group, including former probation officer Hannah Jones (now Housing Officer at Flintshire Council) who has assisted the group in providing the chapter on 'Offenders and Offending'.

This project has been further enhanced by invaluable contributions from the following individuals and organisations:

- Ellie Greenwood and Rebecca Johnson, Local Government Association
- Tim Briton, Lawyers in Local Government
- Ben Atrill
- Suzy Lamplugh Trust
- Councillor Richard Wright, North Kesteven District Council
- Professor of Criminology Fiona Measham, Durham University
- Councillor Philip Evans, Conwy County Borough Council
- Councillors Catriona Morris and Mick Legg, Milton Keynes Council
- Louise Scott Garner
- Jenna Parker, Institute of Licensing

Finally, grateful thanks go to all those who responded to the initial fact-finding survey and the subsequent consultation on the draft guidance.

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The Institute of Licensing (IoL) is the professional body for licensing practitioners across the UK.
www.instituteoflicensing.org



The Local Government Association (LGA) is the national voice of local government.
www.local.gov.uk



Lawyers in Local Government (LLG). www.lawyersinlocalgovernment.org



National Association of Licensing and Enforcement Officers (NALEO). www.naleo.org.uk

Name
Ian Hall on behalf of the Southamptont Hackney Association as it was in 2018 but is now the Southampton Hackney and Private Hire Association
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Clive Johnson on behalf of Radio Drivers Association

Clive Johnson on behalf of Radio Drivers Association

Clive Johnson on behalf of Radio Drivers Association

Clive Johnson on behalf of Radio Drivers Association

Clive Johnson on behalf of Radio Drivers Association

Clive Johnson on behalf of Radio Drivers Association

Sean Ridley on behalf of Unite The Union

Mark Paget

Response to consultation

I have read and discussed with others the Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades and feel that we as an association are justified to comment on this document. The process in Southampton to become a hc or ph driver is nowhere as complex as obtaining a badge in London but we still need a DBS certificate, a driving history cheque from DVLA, plus a medical report from the applicants own practitioner, a topography test - albeit a watered down one for a private hire badge. You have an application form to complete and a B-TECH driving skills assessment which must be passed within 6 months. I daresay that a DBS certificate should provide the necessary information as to whether you have a criminal record or not. Sometimes we find out that a driver has managed to cut the red tape because a proper check has not been carried out diligently, which is not necessarily licensing's fault. The Rehabilitation of Offenders Act 1974 as we all know, enables some criminal convictions to be ignored after a rehabilitation period. So we have ample checks and balances connected with the licensing of hackney, private hire drivers and vehicle proprietors and operators.

We objected vigorously to some parts of The Fit and Proper Person Test that was passed by SCC in October 2016 because we did not believe that some clauses were of natural justice? Our concern with this new document has compounded those same fears, the main difference, although similar in some areas, it categorises offences instead of listing them.

The document is what it says - A Guidance - I refer to page four Clause 1.10 - this guidance cannot have the force of legislation, new or amended. It is acknowledged that this cannot be fully achieved without the imposition of National minimum standards. It is a contentious document, and I am perturbed the way it has been written. From my perspective, we go through the tried and tested route of gaining either a hackney carriage or private hire licence and when we have obtained our badges, according to this document we are regarded as common criminals. And I quote - Page 10 Clause 3.6 - would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage drivers 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 into a vehicle with this person alone? I believe the core project group should be ashamed of themselves in the way they have gone about producing some parts of this document and they need to reconsider.

On the subject of The Fit and Proper Test, I, and many others would strongly agree that the prospective candidates who apply for a badge, not only need to speak fluent English but a licensing officer needs to revert back to the 'old system' of facing the applicant and asking questions of routes, places of historical interest, etc, etc., instead of relying on a computer generated yes or no response. You can gain valuable information by adopting this 'old practice' to determine his or her abilities as a professional driver.

I strongly believe this document has gone too far and individuals' Human Rights could come into question.

We have studied in great detail your proposed Institute of Licensing Guidance document. We have also conducted an electronic poll of all of our members; the responses to the survey have been incorporated in our response. (please see attached). The RDA can see the basic intentions of the 'Fit and Proper' policy document are good and true as well as acknowledging that there must be some markers set for a person's suitability for the transportation of members of the public, sometimes from quite vulnerable sectors. However the RDA feels that this document has been ill thought through, rushed in publication and driven by some force in an anti or antagonistic manner at a trade with which the Licensing department should be working with, not preparing to wage war against.

The RDA thought that the Trade had turned a corner now that more representatives from all areas of the Southampton Taxi and Private Hire Trade were involved in licensing committee meetings we had entered a new era of working together in co-operation with the Southampton & Eastleigh Licensing teams. However this document seems to be setting the Council and Trade into a head on crash. The document reads in a manner associated with guidance's on sentencing for Judges, rather than as a 'guidance' document for licensing officials in boroughs and districts up and down the country designed to be used to help determine a person's suitability! So questions need to be asked because it assumes guilt at every turn and does not take into account the law of the land. Indeed it gives powers to override and increase or apply further constraints to sentences already handed down by Queens Council in a Crown Court. That is some power. Power corrupts and absolute power corrupts absolutely. In some ways the document is tyrannical in its wording and in its assumptions. The implications that it makes on a person's character are almost Victorian in the ways it will persecute one's entire family existence for what could be one or two minor traffic infringements.

The RDA would like a full and frank discussion around the central fact that here in Southampton in particular, with a council operating under devolved powers, that these decisions are going to be made by ONE MAN alone. Any recourse will have to be at the driver/owners own expense through the courts, and having just lost ones license/living to then need to finance legal action against the Council is simply unjust and borders on an infringement of one's human rights, as pointed out by SHA. The RDA would like to see a 'Fit and Proper Panel' to make the final decision on 'Fit and Proper' determinations. A panel comprising one Trade body committee member from each official trade body, one or two members of the licencing team and perhaps one licensing councillor.

We would like to echo all of the areas of concern highlighted by our trade colleagues in Eastleigh, who have in no doubt struck the nail firmly on the head as well as those raised by our colleagues at SHA. This along with other more recent contentious decisions from the licensing department are not shedding a good light on the administration that is responsible the safety of the general public. It seems to be responsible for some very strange decisions; i.e. the dubious removal of topography from Private Hire License requirements; The secretive granting of Uber’s operator’s license without consultation; turning a ‘blind eye’ to certain rules & regulations as suits.

So can or even should the Licencing department be allowed to judge and administer its own additional justice at seemingly at will? The RDA says a firm NO to this.

The RDA will insist that the document is discussed properly and in FULL at the next Licensing Committee meeting so that Councillors can hear points of view from across the trade in an open and transparent setting. This should be before any talk of applying changes to our Terms and Conditions is entered into.

I would simply question Para 4.12; *4.12 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 licensing authority. 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.* I am concerned that there is no consideration as to the/a ‘burden of proof’. Whilst I appreciate and accept that where there has been an ‘admission of guilt’, then guilt could be construed. In the absence of an ‘admission of guilt’ or any substantive proof of guilt, then an ‘acquittal’ or a ‘conviction being quashed’, are not ‘convictions’ and therefore I am unsure whether it would be either morally or legally sound for these to be considered. The clear danger is one of Local Authorities becoming “Kangaroo Courts”. Similarly, a ‘decision not to prosecute’, should be examined carefully as I am equally uncomfortable here on the basis of, ‘...innocent until proven guilty...’ The same rationale applies in terms of unproven “complaints”! The “Taxi” trade is, like all walks of life, not immune to malicious complaints. Therefore, extreme care should be taken when considering “complaints” that only proven complaints are taken into account.

I strongly oppose your new fit and proper changes for existing license holders for new license holders these should apply

Summary

Believe the current checks are adequate

Believe it fails natural justice

Believe the document is poorly worded and regards the taxi trade as common criminals

Agree to a spoken English Test and want to revert to an interview system

Breaches human rights
Agree with the intentions of the document but consider the document to be antagonistic
document assumes guilt and exceeds the authority of the courts
Concern over use of delegated authority by one person

Support the concerns of the other trade reps
and concern at other decisions by the
licensing department

Concern how non convictin material will be
used.

Comments

The proposal tightens up on the checking process and is in line with the recent DfT guidance that is out to consultation. It does not alter much for drivers but does require additional checks on vehicle and operator applicants.

The trade reps expressed concern at some of the recommendations on convictions, in particular the recommendation a driver who attains 7 points on his DVLA licence is revoked and not licence for a period 5 years. Research of SCC drivers shows only 1 driver currently breaches this. One of the ambitions of the IoL document is to build public confidence on the taxi trades. As they are driving the public for a living there is an expectation of meeting higher standards. Other driving groups have different mechanisms for ensuring driving skills are continually improved, such as the requirement to be re tested periodically, the taxi trade do not undertake any further tests or development once they attain their badge. This measure will encourage drivers to remain within the law and professional and is clearly something over 99% of drivers are already achieving.

The phrase quoted is widely used as the guide to determine if an applicant is fit and proper. At no point does it refer to or indicate or suggest the trade as being criminals.

New applicants currently have to pass a basic skills assessment test with the Btech provider before they can be licensed. To this end we are reliant on the Btech providers to carry out this function. We have some concerns with this process and are looking at alternative options but wish to do so that keeps the costs to the fee payer to a minimum.

Here he is referring to some of the levels at which suspension or revocation is considered and the length of any such sanction, in particular the 5 year gap after reaching 7 DVLA points. The trade believe as the policy is overstepping the sanctions imposed by a Magistrates court or crown court it is breching their human rights. This is not the case. 3.26 of the guidance explains *3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.*

the intention is to set a high national standard so the public have confidence in the trade.

The document does not assume guilt, *4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.* As above 3.26 explains what can be taken into consideration. It is perfectly reasonable for a policy to set out a higher standard than the courts.

The council's constitution allows for the Licensing Manager to make determinations on all taxi licences. This is rarely used in matter of suspension, revocation or refusal. The vast majority of these decsions are made on consultation with the chair of the licensing committee. It is now only in urgent matters the licensing managers exercises this power and even then notifies the chair at the earliet opportunity. Any contentious matters are brought to the committee. This is also the process recognised in the recent draft guidance document published by the DfT.

Other trade concerns covered in this document, the removal of the local knowledge section of the test was not dubious, it was against the wishes of the trade but was done after consultation where concerns were expressed, it was done to redress the number of out of area vehicles and has been a success, it happened to be a decision against the wishes of the trade, that does not make it dubious. Uber licence was granted in the same manner as all the other private hire operators licence have been granted in this city. recent cases in Brighton and Reading have demonstrated SCC approach was the correct one. The authority has always been able to exercise discretion in how policy and conditions are applied and have always justified any decisions. Setting policy and conditions can never account for circumstances and allows for discretion where appropriate.

The policy provides clear guidance for decision makers to prevent rogue decisions. The necessary safeguards are in place through either the court systems or complaints procedure. The Licensing Team continue to engage in a positive manner with the trade but we have to accept there will be times when we have differing opinions.

Before any policy is adopted it has to be brought before the licensing committee.

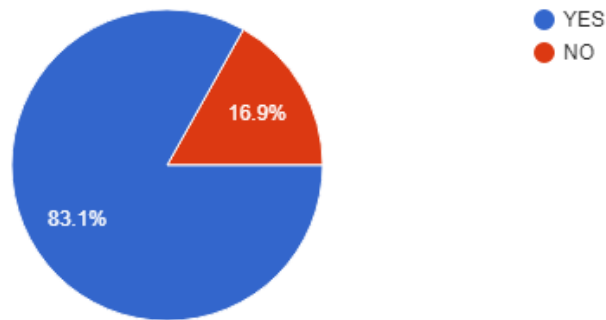
4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines. Local Authorities are entitled and should consider all relevant information in making their determination, the burden of proof is on the balance of probabilities and not the much higher burden in criminal conviction of beyond a reasonable doubt. This allows non conviction material to be considered but with the appropriate weight attached to the evidence.

The determination is if a driver is fit and proper, in law the test is the same for both new applicants and existing drivers

93 responses

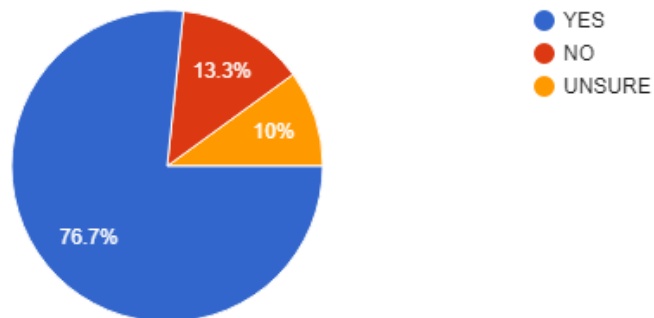
Have you read the guidance of Suitability document?

89 responses



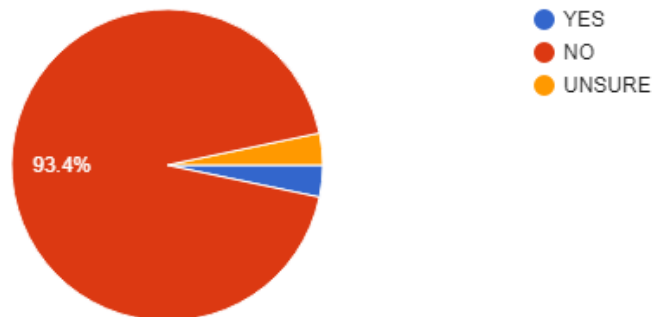
Do you feel that the current DBS check system is enough in determining an applicant's suitability for holding a taxi or private hire licence?

90 responses



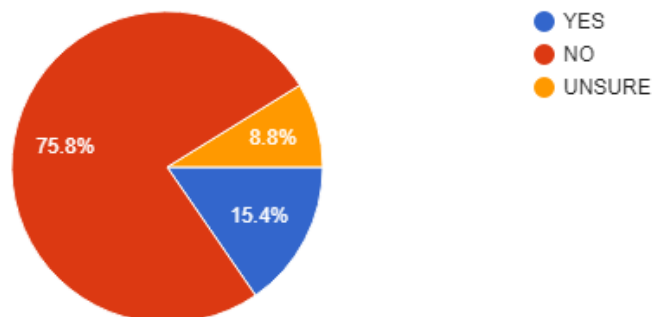
The 'totting up' of points is currently set at a total of 12 points for minor offences before a driver is banned. The... more points. Do you agree with this?

91 responses



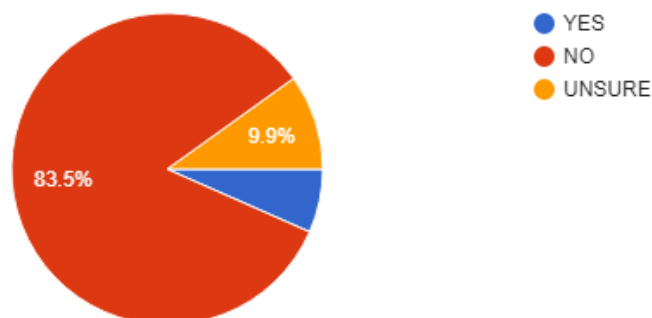
Do you agree that the Council has the right to add additional length to bans on holding a taxi or private hire licenc...y received by a driver from the Courts?

91 responses



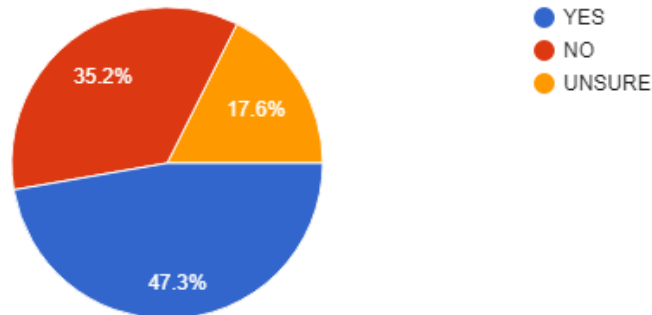
The council want to impose additional bans on drivers of 5 years when they have been convicted of using a mobile telephone. Do you agree with this?

91 responses



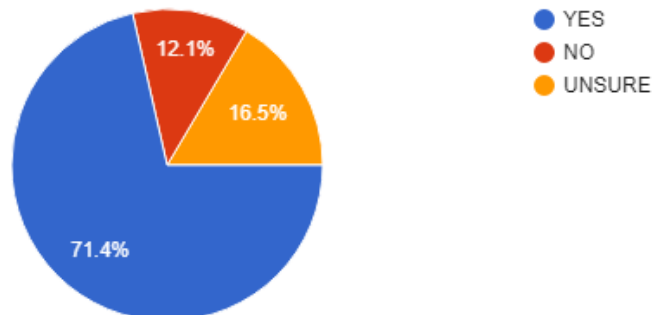
Do you feel that there needs to be some type of 'Fit and Proper' policy put in place by the Council?

91 responses



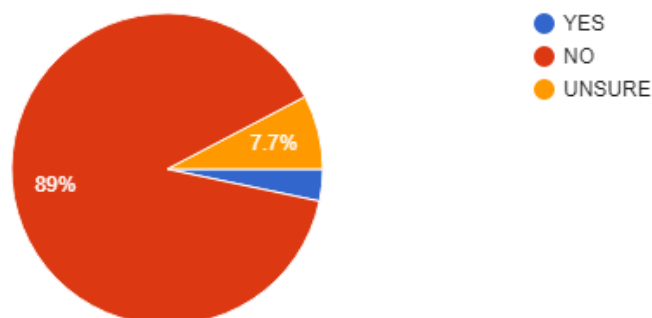
Do you think it more appropriate to see a person's 'fit and proper' status determined by a panel of representati... members of the licensing committee?

91 responses



Do you prefer to have this decision made by one person at the council under delegated powers?

91 responses



OTHER COMMENTS

I think there has been no importance given to drivers safety as myself and others have been attacked. I think drivers are in a bigger danger. There are cameras for passenger safety and I am in favour of continuous voice recording if that helps but punishing someone after they have served their legal punishment is a bit harsh. Some offences are unacceptable in this profession but some of the punishments mentioned for other offenses seems very harsh and can ruin people's lives, families and earnings. Council have a duty towards both drivers and passengers. (2)

I think this shouldn't be in the law at all

If a driver get a ban from the council, they'll just go to another council, get a licence and drive for Uber in Southampton

With reference on using a mobile telephone, there needs to be clear guidance on what constitutes an offence when using the PDA while driving as we are being recorded on CCTV.

One person decisions always proves wrong and one-sided. Power shouldn't be used by one person. Stop targeting driver just because they are individual. All drivers helping to move Southampton transport system smoothly.

I think a medical personnel should determine this not someone with no medical experience

I think if the 'fit and proper' free of charge is good and thinking about health and safety but if you want to charge it's means how to make money and misuses the rules.

Fit and Proper, needs to be determined by Fair and Just and should NOT be decided by one person.

This document appears to be trying to merge criminal convictions (that should be punished with longer bans) with minor driving convictions. As a society we all have to accept that anything over 12 points renders us unfit to drive, but imposing stricter rules for taxi drivers risks us losing our livelihoods for what could be a simple one off mistake. Royston Smith our MP for Itchen would not be a fit and proper person under these guidelines following his "innocent mistake" for driving without insurance.

One person making such an impactful decision on a driver's life, financial status and family circumstances is fearful and tyrannical to say the least.

Whatever the law is that should be applied to punish someone the council should not take the law into their own hands they are not above the law.

I think to decide about a driver to be fit and proper the licensing should need to seek advice from the GP and psychiatric to provide the person's past medical history and mental history and should ask the person to provide these certificates after every three years or at the license Renewal time. 2. The DBS is ok but should be on an annual basis rather than three years or five years.

As a taxi driver we all have a medical report if there is any problem with our health the council will know this driver are not fit so there is no question about our health and also criminal record again we have a DBS check. I do this job for almost 11 years in the past eleven years I never had any issue so that means I know what to do.

I am totally disagreed about the council one man power and police department enough for that.

Thanks

If that's how Mr Bates and his team want to play then let's relocate to the New Forest! Let's be honest he's done us no favours!

The council should bring the topography test back in and any drivers that are working now without completing a test should be made to take one...

Bring back the topography test for new drivers

No one person should be allowed to determine someone's future. It leaves the decision open to biased decision and personal agenda

The Council has become too relaxed in the whole vetting process, they need to reinstate the topography test and add an English speaking test (if the examiner doesn't understand a word that is spoken then the general public won't either.) As to additional 5 year bans on motoring offences the Council should start with warnings, and repeat offenders should be dismissed

outrageous} they are exceeding there powers.

Any extra policies added is for a few peoples gains to make extra cash and will not benefit taxi drivers at all.

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Southampton City Council
Civic Centre,
Southampton

Please address all correspondence to:
Licensing – Southampton City Council,
PO Box 1767, Southampton SO18 9LA

Direct dial: 023 8083 3002
Our ref:

E-mail: licensing@southampton.gov.uk
Please ask for: Mr. Bates

Name

27th November 2018

Dear Sir or Madam,

Consultation on changes to policy affecting the hackney and private hire trades.

There are two different policies changes we wish to consult upon.

- Guidance on determining suitability to hold hackney and private hire licences.
- The requirement for drivers to have completed and passed an approved safeguarding training package.

Southampton City Council is reviewing its policy on the application of the fit and proper person test in relation to the taxi and private hire trade. This includes drivers, proprietors and operators. Since the adoption of the current policy the Institute of Licensing has issued national guidance and the proposal is to adopt this national guidance as policy. The council now wishes to consult on this guidance with a view to submitting a report to the Licensing Committee after the consultation period to adopt the guidance in place of the current policy.

A copy of the Institute of Licensing's guidance can be found at:

www.southampton.gov.uk/taxinotices

It has been identified nationally that the hackney carriage and private hire drivers are in an ideal position to identify safeguarding incidents where an individual may be at risk and that all drivers should be trained to identify these incidents and on what action they can take to safeguard the vulnerable members of society. As such Southampton City Council now wishes to consult on adopting an addition to the policy for all drivers requiring them to have undertaken approved training either prior to first application or on renewal of the driver licence after 1st January 2020. This means drivers will need to refresh the training every three years. It is anticipated there will be funding to pay for existing drivers to undertake this training package as long as it is completed within one year of the start of the implementation, after this the cost is estimated to be £18 that applicants will need to pay the provider. This will however have to be submitted through the procurement process.

The new hackney carriage and private hire driver's policies will include the following at 1.10:-

All applicants for hackney carriage/private hire drivers licences will have successfully completed safeguarding training approved by Southampton City Council within the previous three years.

You are invited to respond to these consultations by either letter addressed to:

The Licensing Team,
Civic Centre,
Southampton SO14 7LY

or by e-mail to: **licensing.policy@southampton.gov.uk**

Please title the responses with either “SCC Fit or Proper Consultation” or “SCC Safeguarding training” and please provide separate responses if responding to both rather than a combined response.

The consultation will end on 18th February 2019.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Phil Bates', written in a cursive style.

Phil Bates
Licensing Manager

Agenda Item 9

Appendix 5

From: [REDACTED]
To: [Licensing Policy](#)
Subject: scc fit or proper consultation
Date: 04 December 2018 18:30:51

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

I strongly oppose your new fit and proper changes for existing license holders for new license holders these should apply
mark paget hackney carriage badge398

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From: Simon May <simon.may@radtax.co.uk>
Sent: 15 February 2019 11:51
To: Bates, Phil
Subject: FW: Radio Taxis Consultation response to Fit and Proper Policy

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Phil

FIT AND PROPER POLICY CONSULTATION RESPONSE FROM RADIO TAXIS

Radio Taxis understands that there should be a fit and proper policy to help protect the public. Overall the policy is fantastic. We feel 7 points to remove a licence is extremely harsh and unfair. We think that at 7 points the driver must go onto Driver Awareness Training at his expense, and the ban should be from 9 points as a professional driver. We understand Taxi & Private hire drivers should be professional drivers but simple mistakes can happen. Prior to a licence being taken away at 9 points the driver should have a meeting with the licensing panel/Phil Bates to discuss reasons etc.

***I think every effort should be taken before taking a licence away. Do not agree with the full ban for 5 years. . I think when points are removed from their licence under the required amount they should be able to reapply.**

Please note the licensing removed the Topography for Private hire to entice them to plate in Southampton. Adding the 7 points proposal may make them plate elsewhere if a neighbouring district don't take up this policy.

Kind Regards

Simon May
Chief Executive Officer
Radio Taxis (Southampton) Ltd

Telephone: (023)80 719 215 (Ext #215)

Address: Radio Taxis (Southampton) Ltd | 158 Millbrook Road East | Southampton | SO15 1JR

Email: simon.may@radtax.co.uk

Website: www.radtax.co.uk

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