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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> | | | |
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| 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. |

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| 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 |

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| | <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 |

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

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| KEY DECISION? | No |
| WARDS/COMMUNITIES AFFECTED: | All |

SUPPORTING DOCUMENTATION

Appendices

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| 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

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| 1. | None |
| 2. | |

Equality Impact Assessment

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| 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

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| 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) | |
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| 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. | | |