

**REPORT TO:** LICENSING COMMITTEE

**DATE:** 10 SEPTEMBER 2019

**TITLE:** INSTITUTE OF LICENSING GUIDANCE ON THE SUITABILITY OF APPLICANTS AND LICENCE HOLDERS IN THE HACKNEY CARRIAGE AND PRIVATE HIRE TRADES

**LEAD OFFICER:** MICHAEL PITT, ENVIRONMENT AND LICENSING MANAGER (01279) 446114

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**RECOMMENDED** that the Licensing Committee recommends to Full Council that:

- A** The Institute of Licensing (IOL) guidance, as set out in Appendix A, be adopted to replace the Harlow Council Taxi and Private Hire Vehicle Licensing Criminal Convictions Policy, as set out in Appendix B, with immediate effect.
- B** Authority be delegated to the Environment and Licensing Manager in consultation with the Chair of Licensing Committee to adopt such revisions to the guidance as may be published from time to time.

## **BACKGROUND**

1. The overriding aim of any Licensing Authority when carrying out its functions in relation to the licensing of hackney carriage and private hire drivers, vehicles and private hire operators is the protection of the public.
2. The Council must be satisfied that an applicant is a 'fit and proper person' before it may grant a licence and licensees must remain 'fit and proper' throughout the period of their licence.
3. Disclosure and Barring Service (DBS) and Driver and Vehicle Licensing Agency (DVLA) checks are made on applicants to establish whether relevant convictions, including any convictions normally deemed 'spent' under the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 exist. Further, licensees must declare convictions while licensed.

4. Where there are relevant convictions, cases are referred to Licensing Sub Committee in a quasi-judicial capacity to determine whether applicants and licensees are 'fit and proper persons' to be licensed.
5. In determining such cases Licensing Sub Committees have regard to the current Harlow Council Taxi and PHV Licensing Criminal Convictions Policy, as set out in Appendix B. The policy was first adopted in September 2006 and most recently reviewed in September 2017.
6. The Guidance also allows prospective applicants with relevant matters in their history to assess their likelihood of success, and may thus reduce the cost and time involved in making and processing applications that are unlikely to succeed.

## **ISSUES / PROPOSALS**

7. The IOL, in conjunction with the Local Government Association (LGA), National Association of Licensing and Enforcement Officers and Lawyers in Local Government, after extensive consultation with stakeholders, have produced comprehensive guidance which considers all aspects of determining the suitability of applicants and licensees in the hackney carriage and private hire trade. The IOL guidance is set out in Appendix A.
8. The IOL Guidance is intended to support determinations of suitability, taking into account the character of the applicant or licensee. 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.' All cases should be determined in the light of their own particular merits, however, appropriate national guidance is invaluable in supporting consistency in decision making.
9. The IOL Guidance, unlike the Council's current convictions policy, contains no detailed list of offences. All offences are allocated to a general category such as 'Drugs' or 'Dishonesty.' This prevents it being argued that a specific offence is not covered by the Policy as it is 'not on the list.' This will also mean that the Policy will not have to be continuously updated as new offences emerge.
10. In each case in the IOL guidance, the specified time periods that should elapse before a licence would be granted are equal to, or longer than the existing periods in the Council's current policy. The IOL guidance takes a simpler approach to motoring offences, treating new and existing drivers in the same way, and using one set of points criteria rather than the current three bandings.

11. In preparing the document the IOL working party, which included leading experts on licensing law and procedures, considered the issues from all perspectives and consulted with a wide range of stakeholders including councillors, licensing officers, lawyers, the hackney carriage and private hire trades, academics, the Probation Service and the Police. The LGA and IOL trust that the new guidance will be as widely adopted as practicable supporting a greater level of consistency and fairness in decision making across the country and it is understood that numerous local authorities have already adopted the guidance since its publication in April 2018.

## **IMPLICATIONS**

### **Environment and Planning (includes Sustainability)**

As set out in the report.

**Author: Andrew Bramidge, Head of Environment and Planning**

### **Finance (Includes ICT)**

None specific.

**Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive**

### **Housing**

None specific.

**Author: Andrew Murray, Head of Housing**

### **Community Wellbeing (includes Equalities and Social Inclusion)**

It is important to ensure that only the 'fit and proper' persons are granted a Licence. Failure to do so could influence or have implications for the wellbeing and safety of the community.

**Author: Jane Greer, Head of Community Wellbeing**

### **Governance (includes HR)**

The Council should have guidance in place that is easily understood and leads to consistent decisions being made that are less open to challenge. The adoption of the Institute of Licensing national guidance will assist the Council make decisions that are consistent. The guidance was developed by noted experts in this field and provides clear guidance to the Council and public on how convictions will be taken into account when making a decision regarding whether an applicant or existing driver is a fit and proper person to carry out that role.

**Author: Simon Hill, Head of Governance**

## **Appendices**

Appendix A - IOL Guidance in determining the suitability of applicants and licensees in the hackney and private hire trades (dated April 2018)

Appendix B - Harlow Council Taxi and PHV Licensing Criminal Convictions Policy

## **Glossary of terms/abbreviations used**

DBS - Disclosure and Barring Service

DVLA - Driver and Vehicle Licensing Agency

IOL - Institute of Licensing

LGA - Local Government Association

PHV - Private Hire Vehicle