

CHESHIRE EAST COUNCIL

REPORT TO: LICENSING COMMITTEE

Date of Meeting: MONDAY, 5th NOVEMBER 2012

Report of: MISS K EVANS, LICENSING TEAM LEADER

Subject/Title: CONSIDERATION OF A REVISED CONVICTIONS POLICY FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS

1.0 Report Summary

1.1 To ask that Members give consideration to the revised convictions policy for joint hackney carriage / private hire drivers.

2.0 Decision Requested

2.1 The Licensing Committee is requested to consider the revised policy and authorise the Licensing Team Leader to undertake formal consultation on the amendments.

2.3 That the results of the consultation are reported to a further meeting of the Licensing Committee for thorough consideration prior to adoption.

3.0 Reasons for Recommendations

3.1 The Licensing Committee has delegated authority determine such matters.

4.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 Not applicable.

6.0 Policy Implications including – Carbon Reduction - Health

6.1 Not applicable

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 There will be 'one-off' printing and postage costs associated with the consultation exercise with an estimated costs of £500.
- 7.2 Whilst it is acknowledged that this expenditure is necessary, it is noted that early projections indicate that the Service area may be in a net overspend position at year end.
- 7.3 There are also other areas within Hackney Carriage and Private Hire Licensing that will be subject to consultation and the Licensing Team will endeavour, so far as possible, to amalgamate all consultation exercises with a view to reducing any cost implications.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 By virtue of section 59 (1) (a) (in relation to hackney carriage drivers licences) and section 51 (1) (a) (in relation to private hire drivers licences) of the Local Government (Miscellaneous Provisions) Act 1976 a Council shall not grant a licence 'unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence'.
- 8.2 What constitutes fit and proper is not defined in the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976. It is for the Licensing Authority to determine whether an applicant or driver is fit and proper based on the information presented and having regard to the following:
- The rules of natural justice
 - The Human Rights Act 1998
 - Section 17 of the Crime and Disorder Act 1998
 - The Council's own Conditions, By-laws and Policies
- 8.3 Members must consider each application on its own merit in light of the Council's policies. However, the Licensing Authority must not apply its policies in such a way as to fetter its discretion.
- 8.4 The overriding concern for any decision-maker must be the protection of the safety of the public.

9.0 Risk Management

- 9.1 Full and thorough consideration of any consultation responses received would be required to reduce any risk of challenge to any subsequent decisions.

10.0 Background and Options

- 10.1 The Licensing regime exists to ensure that the safety of the public is protected. As a result it is necessary for the Council to have a robust convictions policy that adequately deals with any issue that might undermine the safety of the public.
- 10.2 The Council's current convictions policy was adopted in 2009 following Local Government Reorganisation and only minor subsequent amendments have been

made. It is acknowledged as best practice to revise and update such policies every three years or so.

- 10.3 There have been changes in legislation that do need to be taken into consideration in a new policy. In addition, the Licensing Section has seen an increase in certain types of offences appearing on applications that are not dealt with specifically in the current policy.
- 10.4 A review of the current policy has been undertaken and revisions have been deemed necessary. The draft revised policy is attached at appendix A. Some of the more significant changes to the policy include:
- Expanding on the types of convictions dealt with under the policy, including the addition of ASBOs and Restraining Orders
 - Clarifying, for the benefit of applicants and decision-makers, that the Licensing Authority will deal with Cautions and Other Sanctions in a similar way to convictions
 - Dealing specifically with repetitive endorsements on DVLA driving licences
 - Confirming that the Licensing Authority makes its decisions on a balance of probability and that consequently, information concerning offences that did not lead to prosecution may still render the applicant as not fit and proper
- 10.5 Members should also note that the policy sets out the minimum requirements before an application will be considered. This does not mean that an applicant will automatically be suitable once the 3-5 years (or other applicable periods) have elapsed. It merely confirms that their application will be considered and still refused if the Licensing Authority is not satisfied that they are fit and proper to hold a licence.
- 10.6 The Department for Transport's best practice guide to Hackney Carriage and Private Hire Licensing issued in March 2010 states the following in respect of criminal records checks:

'A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable...

An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police, for example, details of minor offences, non-conviction information on the Police National Computer such as Fixed Penalty Notices and, in some cases, allegations...

In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences...'

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Appendix A – Revised Convictions Policy

Current policy on relevant convictions

www.cheshireeast.gov.uk/business/licensing/taxi_and_private_hire/policies.aspx

Taxi and Private Hire Vehicle Licensing: Best Practice Guidance, published 2nd March 2012 by the Department of Transport

www.dft.gov.uk/publications/taxi-private-hire-licensing

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