

# CHESHIRE EAST COUNCIL

## REPORT TO: Licensing Committee

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**Date of Meeting:** 16<sup>th</sup> July 2013  
**Report of:** Miss Kim Evans – Licensing Team Leader  
**Subject/Title:** Revised Convictions Policy for Hackney Carriage and Private Hire Drivers  
**Portfolio Holder:** Cllr Les Gilbert - Communities and Regulatory Services Portfolio Holder

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### **1.0 Report Summary**

1.1 This report seeks Members' approval on the adoption of a Convictions Policy concerning Hackney Carriage and Private Hire Licensing.

### **2.0 Recommendation**

2.1 The Licensing Committee is requested to consider the results of the consultation and adopt the Policy set out at appendix 1 subject to the amendments set out in 10.7 and confirm that the Policy will be applicable to all new applicants and to existing licensed drivers in respect of any convictions/endorsements etc which have not previously been considered.

### **3.0 Reasons for Recommendations**

3.1 In accordance with the Council's Constitution 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**

6.1 Not applicable

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

7.1 None identified

## **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**

- 10.1 On the 5<sup>th</sup> November 2012 the Licensing Committee considered a report concerning a revised policy in relation to the suitability of applicants and licence holders where relevant information may give cause for concern.
- 10.2 Members approved the content of the policy subject to some minor amendments and authorised that consultation be conducted with the Licensed Trade and with the public via the Council's website. The consultation was conducted for a 12 week period and any responses received are attached at appendix 2.
- 10.2 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...’

10.7 Since the publication of the policy there have been some changes that will need to be reflected in our Policy:

i. **Proven Complaints of rude or aggressive Behaviour**

In less serious cases a written warning of future conduct may be given. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety, this may result in the immediate suspension (pending investigation) or revocation of a licence.

In all other cases where an alleged offence has been committed and not listed within this Policy, the Licensing Authority will deal with each case on its own merit.

Replaced with:

**Proven Complaints of rude or aggressive Behaviour**

In less serious cases a written warning of future conduct may be given. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety, this may result in the refusal to renew, suspension, or revocation of a licence.

In all other cases where an alleged offence has been committed and not listed within this Policy, the Licensing Authority will deal with each case on its own merit.

Reasons for the change:

In R (on the application of Singh) v Cardiff City Council the High Court determined that suspensions can only be used as a punitive sanction and not as an interim measure pending an investigation.

ii. **Foreign Offences**

Offences from any jurisdiction outside the United Kingdom of Great Brittan and Northern Ireland must be declared in full. For applicants not of British Nationality a Certificate of Good Conduct/Behavior must be provided from their Country of Origin. The Licensing Authority will deal with foreign offences in a similar way to comparable offences under UK law.

Replaced with:

**Foreign Offences**

Offences from any jurisdiction outside the United Kingdom of Great Britain and Northern Ireland must be declared in full. For applicants not of British Nationality a Certificate of Good Conduct/Behavior must be provided from their Country of Origin. For applicants who have not lived in the UK for any part of the previous 5 years, a Certificate of Good Behavior must be provided from all countries in which they have lived.

The Licensing Authority will deal with foreign offences in a similar way to comparable offences under UK law.

Reasons for the change:

If an applicant were to have lived outside the UK for any period of time, any offences committed during that time might not be reflected in their criminal records disclosure. With such a gap in their history it is likely that the Licensing Authority could not be satisfied that they are a fit and proper person.

## **11.0 Access to Information**

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

Name: Miss Kim Evans

Designation: Licensing Team Leader

Tel No: 0300 123 5015

Email: [kim.evans@cheshireeast.gov.uk](mailto:kim.evans@cheshireeast.gov.uk)