

PUBLIC PROTECTION COMMITTEE: 5 November 2019

Report of the Head of Shared Regulatory Services

REVISED GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADES

1. Background

- 1.1 Members of this committee regularly sit on sub-committee meetings to consider the fitness and propriety of new applicants or current licence holders in the Hackney Carriage and Private Hire trade. It is sometimes the applicant's criminal convictions being considered; however, it may also include other matters such as allegations, charges, complaints or conduct which may be considered in order to determine whether they are 'fit and proper', bearing in mind the overall aim of the licensing authority is to protect the public.
- 1.2 The authority has a policy to provide guidance on the treatment of convictions, cautions and criminal charges in respect of new applicants and existing hackney carriage/private hire drivers and operators. The current policy has been in place since 2015.
- 1.3 At the Public Protection Committee meeting on 9 April, Officers of Shared Regulatory Services presented a report seeking authorisation to consult with the local taxi trade on proposed guidance on determining the suitability of applicants and licensees in the hackney and private hire trades. If implemented, this would replace the current policy. A copy of the proposed guidance is attached at Appendix A.

2. Details

- 2.1 In April 2018, the Institute of Licensing (IoL) published a document titled "Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades" ("the IoL Guidance"). A copy of the IoL Guidance is attached at Appendix B.
- 2.2 The IoL Guidance was produced in conjunction with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO) following widespread consultation.
- 2.3 At a recent meeting of the Wales Licensing Expert Panel this document was considered and endorsed with the recommendation that all Welsh authorities

approve and implement the Institute of Licensing Guidance, replacing their current guidelines/policy. Many authorities in England and Wales have already adopted the new policy and others are in the process of doing so.

2.4 During the consultation period, the Licensing Department received 2 responses from the local hackney carriage and private hire trade, below is summary of the responses:

- Response 1 is from a hackney carriage/private hire driver who considers the proposed motoring conviction suggestions to be unreasonable.
- Response 2 is from the Cardiff Hackney Alliance, calling for a full Equality Impact Assessment to be carried out and the findings discussed before proceeding with any implementation. They also state that given the potential for the recent Welsh Government White Paper to introduce National Standards, any proposed changes would be better suited to that process, due to their being different standards across Wales and licensed vehicles from neighbouring authorities can carry out private hire work in Cardiff.

The full responses are attached at Appendix C.

2.5 The proposed timescales following a conviction contained within Chapter 5 of the proposed guidance have been copied in full from the IoL Guidance. This was produced in partnership with the Local Government Association, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government following widespread consultation.

2.6 If implemented, the proposed guidance would apply equally to all applicants and licence holders within the hackney carriage and private hire trade, irrespective of their background. If the Authority were to favour one group over another, this could give rise to discrimination issues, which would not be conducive to the main aim of the proposed guide, which is the protection of the public.

2.7 Following on from consultations undertaken by the Law Commission from 2011-2014, and a Welsh Government consultation in 2017, the Welsh Government are considering proposals to reform the taxi and private hire licensing regime in Wales. One of their proposals is to confer a power on the Welsh Ministers to create national standards, which the licensing authority will have to have regard to when issuing licences. Whilst National Standards for hackney carriage and private hire drivers are currently being considered, there are no timescales in place at present and no certainty that they will be introduced.

2.8 In February 2019, the Department for Transport (DfT) published a consultation document, titled Taxi and Private Hire Vehicle Licensing: Protecting Users Statutory Guidance for Licensing Authorities (consultation version). Annex A of

the document relates to previous convictions guidance and recommends local authorities adopt the IoL Guidance.

Paragraph 2.50 of the consultation document states:

“In response to concerns raised by stakeholders and to assist in greater consistency in licensing, Annex A provides the Department’s recommendations on this issue. This draws on the work of the Institute of Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and PHV licensees. These periods should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. The Department’s view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain a licence. Authorities are however reminded that each case must be considered on its own merits, and applicants are entitled to a fair and impartial public hearing of their application if required.”

3. Achievability

- 3.1 This report contains no equality personnel or property implications.

4. Legal Implications

- 4.1 The Local Government (Miscellaneous Provisions) Act 1976, allows a Local Authority to determine the suitability of an applicant for the grant of taxi and private hire vehicle Licenses and to request such information as it considers reasonably necessary from the applicant in order to determine if a licence should be granted/revoked.

5. Equality Impact Assessment.

- 5.1 An Equality Impact Assessment was carried out in relation to the proposed guidance. A copy of the assessment is attached at Appendix D

6. Well-being of Future Generations (Wales) Act 2015 implications

- 6.1 The Well-Being of Future Generations (Wales) Act 2015 (‘the Act’) places a ‘well-being duty’ on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2018-21.

When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well-being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

6.2 An assessment has been carried out in consideration of the Cardiff Well-being Objectives. A summary of the implications from the assessment:

- Safe, Confident and Empowered Communities
 - Persons working in the taxi and private hire trade are in a unique position, and it is important that the public can trust that they will be able to travel safely and their belongings are secure;
 - Stakeholders within the taxi trade will have the opportunity to consider the proposals and respond to the consultation.

7. **Financial Implications.**

7.1 There are no immediate financial implications arising directly from this report.

8. Recommendations

- 8.1 To replace the current Taxi and Private Hire Licensing Policy - Fitness Criteria for Drivers and Operators and replace it with the guidance document detailed at Appendix A. This will apply to all transgressions not yet considered with immediate effect.

9. Reasons for Recommendation

- 9.1 The draft policy has been widely consulted on nationally and helps ensure consistency throughout Wales and the UK. It has been produced in conjunction with the standards as prepared by the Institute of Licensing in collaboration with the Local Government Association (LGA), National Association of Licensing and Enforcement Officers (NALEO) and Lawyers in Local Government (LLG).

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HEAD OF SHARED REGULATORY SERVICES

30 September 2019

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers:

- [Taxi and Private Hire Licensing Policy - Fitness Criteria for Drivers and Operators](#)
- [Department for Transport - Taxi and Private Hire Vehicle Licensing: Protecting Users Statutory Guidance for Licensing Authorities \(February 2019 - consultation version\)](#)