

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 12th June 2018

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WARD(S): All

PART I **FOR DECISION**

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

1. **Purpose of Report**

To inform the Committee of the newly published 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' produced and published by the Institute of Licencing, and a recommendation for the current 'Policy and Guidance on Convictions and Cautions for Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators' to be amended to incorporate the recommendations of the time periods as contained within the new Guidance.

2. **Recommendation(s)/Proposed Action**

The Committee is requested to;

- a. Note and comment on the new Guidance published by the Institute of Licensing.
- b. Agree that the new Guidance at **Appendix B** be adopted by the Council.
- c. Agree that the current 'Policy and Guidance on Convictions and Cautions for Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators' to be amended to incorporate the recommended types of offences and time periods in relation to convictions and cautions contained within the Guidance.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

As the report details, the Council, as the licensing authority, is under a duty to have in place a policy and guidance when carrying out its functions relating to the suitability of new applicants for and current licence holders of Hackney Carriage and Private Hire Driver and Operator licences.

The overriding factor is that of the protection and wellbeing of the public using Hackney Carriage and Private Hire Services. Although there is no national or statutory published guidance or standards, as with nearly all other local authorities, Slough Borough Council does have a 'Policy and Guidance on Convictions and

Cautions for Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators'. However guidance on this matter varies greatly from authority to authority throughout England and Wales, with some being far less stringent than others.

The adoption of the new Guidance produced and published by the Institute of Licence will go further to enhance the decision making process by officers and Members on determining the suitability of new applicants for and current licence holders in the Hackney Carriage and Private Hire trade.

3a. **Slough Joint Wellbeing Strategy Priorities**

The proposals will contribute to and support the Slough Joint Wellbeing Strategy priority:

Priority: Protecting vulnerable children.

3b. **Five Year Plan Outcomes**

The proposals will contribute significantly to the Five Year Plan with the specific outcomes of:

1. Slough children will grow up to be happy, healthy and successful.
2. Slough will be an attractive place where people choose to live, work and visit.

4. **Other Implications**

(a) Financial

There are no financial implications of proposed action.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
<p>a. Note and comment on the new Guidance published by the Institute of Licensing.</p> <p>b. Agree that the new Guidance at Appendix B be adopted by the</p>	Adoption of the new Guidance will go further to the enhance the decision making process on determining the suitability of new applicants for and current licence holders in the Hackney	Approved policy already in place.	4	None at this time unless national ministerial guidance is published.

<p>Council.</p> <p>c. Agree that the current 'Policy and Guidance on Convictions and Cautions for Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators' to be amended to incorporate the recommended types of offences and time periods in relation to convictions and cautions contained within the Guidance.</p>	<p>Carriage and Private Hire trade.</p>			
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(c) Human Rights Act and Other Legal Implications

1. Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

2. 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.

(d) Equalities Impact Assessment

On 10th November 2008, an Equalities Impact Assessment Screening on the Licensing of Private Hire and Hackney Carriage drivers was completed. The Assessment highlighted that there is no adverse or negative impact of opportunity for any equality target group for any reasons.

(e) Workforce

None.

5. Supporting Information

- 5.1 The Council, as a licensing authority, is under a duty to have in place a policy and guidance when carrying out its functions relating to the suitability of new applicants for and current licence holders of Hackney Carriage and Private Hire Driver and Operator licences. Currently policies vary greatly from authority to authority with some policies being far less stringent than others.
- 5.2 The principle requirement for the licensing authority is that it must be satisfied that the applicant or current licence holder is a 'Fit and Proper Person' to be granted a licence or continue to hold a licence. The relevant legislation is the Local Government (Miscellaneous Provisions) Act 1976 – Sections 51 and 59 for Hackney Carriage and Private Hire Drivers and Section 55 for Private Hire Operators.
- 5.3 The current approved 'Policy and Guidance on Convictions and Cautions for Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators', attached at **Appendix A**, was originally approved in 2008 and has been subject to various revisions since that date due to either legislative changes or other Council Policy, the main policy being the Enforcement and Regulatory Services Enforcement Policy.

6 The Institute of Licensing

- 6.4 The Institute of Licensing (IoL) of which the Slough Licensing Team is a member, is a professional body for licensing practitioners across the UK. The IoL is also a registered charity (No. 4884548). The IoL membership comprises of practitioners from regulatory, industry and legal fields and Local Authorities. The IoL exists for its members in pursuit of its stated objectives and operates both regionally and nationally across the UK with established regions covering England, Wales and Northern Ireland, and members in Scotland.
- 6.5 The IoL objectives are for the benefit of the public, one of the main objectives being to advance the development, evaluation and recognition of professional skill, technical competency, ethical conduct and practical achievement in the field of licensing and regulatory activity; including their application in the public and private sectors and in the framing and enforcement of laws and regulations in pursuit of prevention of crime disorder and nuisance, the promotion of health and safety, the protection of children and vulnerable people, the protection of the environment and other licensing and regulatory objectives.
- 6.6 On the 26th April 2018 the IoL published a document called 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trade', which is attached at **Appendix B**.
- 6.7 The guidance has been produced in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing Enforcement Officers (NALEO) and has been subject to a wide ranging public consultation including Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.
- 6.8 In light of there being no national or statutory guidance, the IoL have produced this document with the recommendation that it is adopted by local authorities nationally and in doing so will result in a degree of national uniformity and to serve the public

interest in consistency, certainty and confidence in the system of licensing. Adherence to the Guidance may also provide protection to licensing authorities on any appeal.

- 6.9 Although the recommended time periods in the new Guidance are not dissimilar to those in the current Council policy and guidance on convictions and cautions, it is proposed that the current policy should be amended to incorporate the new recommended time periods and for the IoL guidance to be used in conjunction with the current policy, when determining the suitability of new applicants and current licence holders.
- 6.10. Attached at **Appendix C** for the information of the Committee is an article by Mr James Button – Principle of James Button & Co Solicitors and Champion of the IoL published in the March 2018 Edition of the IoL's Journal of Licensing. The Committee may wish to have regard to the last three paragraphs of this article.

6. **Comments of Other Committees**

None.

7. **Conclusion**

That the Committee:

- a. Approve the new Guidance published by the Institute of Licensing.
- b. Agree that the new Guidance at **Appendix B** be adopted by the Council.
- c. Agree that the current 'Policy and Guidance on Convictions and Cautions for Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators' to be amended to incorporate the recommended types of offences and time periods in relation to convictions and cautions contained within the Guidance.

8. **Appendices Attached**

- 'A' - Current 'Policy and Guidance on Convictions and Cautions for Hackney Carriage Drivers, Private Hire Drivers and Private Hire Operators'
- 'B' - 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trade'.
- 'C' - Article from the Journal of Licensing by Mr James Button

9. **Background Papers**

- '1' - Local Government (Miscellaneous Provisions) Act 1976