

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	POLICY ON THE APPLICATION OF THE FIT AND PROPER PERSON TEST FOR THE TAXI AND PRIVATE HIRE TRADES		
DATE OF DECISION:	5 OCTOBER 2016		
REPORT OF:	SERVICE HEAD TRANSACTIONS AND UNIVERSAL SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY

None.

BRIEF SUMMARY

Report of the Licensing Manager proposing a new policy to assist in applying the fit and proper person test with regards to Licences issued under the Town Police Clauses Act 1847 and the local Government (Miscellaneous Provisions) Act 1976.

RECOMMENDATIONS:

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| | (i) | That the Committee consider and approve the policy as shown in Appendix 1 to replace the present General Policy Guidelines Relating to the Relevance of Convictions. |
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REASONS FOR REPORT RECOMMENDATIONS

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| 1. | The present Guidelines are outdated and no longer fit for purpose, referring only to more serious offences and vague in their description leaving the document open to different interpretation. The suggested policy gives clear guidelines that will reassure the public and give licence holders and applicants clear boundaries. As a Policy matter the report is brought before the Licensing Committee to determine. |
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ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

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| 2. | At present the guidelines are weak and do not take into consideration the recent safeguarding principles highlighted in national reports. The Institute of Licensing is working to provide National guidance on this matter, the National guidance is unlikely to be published until at least the end of the year and |
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	possibly much later. A review of the policy could be left until the guidance is published but delaying this report leaves the authority at risk.
DETAIL (Including consultation carried out)	
3.	Presently Southampton City Council apply the General Policy Guidelines Relating to the Relevance of Convictions, a copy is attached as Appendix 2. These guidelines mirror the most recent guidance issued by the Government prior to 2010.
4.	As a result of serious case reviews in other parts of the country safeguarding has become an important weapon in the protection of vulnerable people and it has long been recognised generally and in case law that the taxi and private hire trade are in a unique position of trust with their customers and should therefore face strict scrutiny on their suitability to be so licensed.
5.	From reviewing numerous policies across the country a first draft policy document was constructed (Appendix 3) and sent out to the taxi trade representatives on 25th January 2016 by way of email (Appendix 4) and their views sought.
6.	Unite Union responded advising they could not find fault with it. A copy of their email is at Appendix 5.
7.	The Southampton Hackney Association (SHA) responded advising they did not agree with SCC licences being suspended for periods longer than a DVLA ban and that drivers may be suspended with a conviction of driving without due care and attention. They also expressed concerns regards how SCC process such incidents. A response was sent to the SHA from the Licensing manager. The SHA response and reply from SCC Licensing manager are attached as Appendix 6.
8.	On the 29th April 2016 a 2nd draft policy as at Appendix 7 was formally put out to consultation. A letter and draft policy was sent out by e-mail to all of the private hire operators and the Southampton Hackney Association. A copy of this mail is at Appendix 8. The same mail was sent out via the Stay Connected scheme to excess of 700 individuals signed up to receive messages regards the taxi trade. The consultation was also posted on the SCC consultation and licensing web pages. On 20th May 2016 the Local Children's Safeguarding Board were asked to distribute the consultation to those they felt it appropriate to. The consultation finished on 26th June 2016.
9.	The consultation attracted 4 responses. The first was from the SHA and mirrors their original views with an addition of broadening the definition of Harassment to include defamation. Their response is attached as Appendix 9.
10.	The SHA do not agree that additional penalties should be imposed above those of the courts when a driver reaches 12 points on their licence. The courts can and do take hardship into consideration when considering the penalty they impose. The licensing authority is concerned with protecting the public and case law (Leeds v Hussain) dictates this is not a consideration when determining if someone is a fit and proper person to convey the public, it is for this reason the proposed policy recommends a minimum of a 12

	<p>month suspension. The court, when imposing a penalty, is deciding a suitable punishment for the relevant offence. The Council is deciding a different matter – whether the driver (in light of that offending and any other relevant matters) remains a “fit and proper person” as required by the legislation. The fact that a person has been punished for an offence does not, of itself, render them fit and proper (hence the exclusion of the occupation from the usual application of the Rehabilitation of Offenders Act 1974). It is stressed that each case is always to be dealt with on its own merits.</p>
11.	<p>In addition the SHA are concerned about the possible suspension in cases of careless driving and ask the circumstances are looked at before any determination. Part of the consideration will be any sentence attached to such a conviction. It is reiterated that each case will be determined on its own merits and consideration shall be given to all the relevant facts prior to any decision.</p>
12.	<p>The SHA also make comment on the system leading to determinations, the action taken against private hire drivers plying for hire, including a proposal for the Council to fine offending drivers (for which there is no legal basis), the definition of ‘committed in the course of employment as a taxi driver’ to include defamation in the definition of harassment and checks on drivers from foreign countries.</p>
13.	<p>The next response was from Mr Turkington of the Probation service suggesting a change from using the word Parole to Licence. This appears 4 times in the document and all four are in the table of offences. It makes sense to use the correct term. His response is attached at Appendix 10.</p>
14.	<p>Lyn Chitty of Love 146 who campaign to end child trafficking advised she did not see anything of concern. Her response is attached at Appendix 11.</p>
15.	<p>The final response was from Ashraf Khan and is attached as Appendix 12 but is a view regards the process rather than the policy.</p>
16.	<p>This policy has significant importance as it provides clear guidance on how the authority is to determine the fit and proper person test, this new document provides for a more consistent approach to determinations and introduces more clarity and transparency to decision making. It will enable decisions to be more robust and less susceptible to challenge..</p>
17.	<p>It is important to note that each case needs to be determined on its own merits and this is repeated throughout the document. A policy document should never remove an element of discretion on the part of the decision maker.</p>
18.	<p>The proposed policy at Appendix 1 has been amended from the version sent for consultation. The changes are highlighted and the following is the reasoning for the changes.</p> <ul style="list-style-type: none"> • In paragraph 2 ‘Each case will be decided upon its own merits’. The change is the bold, italic and underlined text, the content is the same. This has been done to highlight the importance of this principal. • In paragraph 4 ‘Unsubstantiated evidence will carry very little weight’. This was added as a result of concerns expressed by some drivers at a meeting recently.

	<ul style="list-style-type: none"> • Under “The Process – current licence holders” amendment has been made as a result of concerns expressed by drivers about the process when an officer makes a decision. It allows for an interview in certain circumstances when an officer is making the determination. • In the table of offences ‘licence’ has replaced ‘parole’ as suggested by Mr Turkington. • Under Non conviction information ‘may’ has replaced ‘will’ as this more accurately reflects the process as it will depend on the strength of the evidence whether a driver is revoked or not.
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RESOURCE IMPLICATIONS

Capital/Revenue

19.	Not applicable

Property/Other

20.	Not applicable

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

21.	Town Police Clauses Act 1847 Licensing of hackney carriages and hackney carriage drivers.
22.	Local Government (Miscellaneous Provisions) Act 1976 Licensing of private hire vehicles, drivers and operators and provides powers and requirements with regards hackney carriages and hackney carriage drivers.
23.	Local Government Act 2000 Local Authorities (Functions and Responsibilities) (England) Regulations 2000 Provides the framework for the discharge of various functions of a local authority.

Other Legal Implications:

24.	Crime and Disorder Act 1998 Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
25.	Human Rights Act 1998 The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that

	could have an effect upon another person's Human Rights must be taken having regard to the principle of Proportionality – the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affect another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.
POLICY FRAMEWORK IMPLICATIONS	
26.	The decision to determine the application in the manner set out in this report is not contrary to the Council's policy framework

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Proposed Policy of the Fit and Proper Person Test
2.	General Policy Guidelines Relating to the Relevance of Convictions
3.	1st Draft policy document
4.	Email to taxi trade reps with 1st draft policy
5.	Unite Union response to draft policy
6.	SHA response to draft policy and response from Licensing
7.	Draft Policy Fit and Proper Person dated 29th April 2016
8.	Formal consultation e-mail to operators and SHA
9.	SHA response to consultation
10.	Response from Mr Turkington
11.	Response from Lyn Chitty
12.	Response form Ashraf Khan
Documents In Members' Rooms	
1.	None.
2.	
Equality Impact Assessment	

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.		No
Privacy Impact Assessment		
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.		No
Other Background Documents		
Equality Impact Assessment and Other Background documents available for inspection at:		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.		
2.		