

**Name**

Ian Hall on behalf of the Southamptont Hackney Association as it was in 2018 but is now the Southampton Hackney and Private Hire Association

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Clive Johnson on behalf of Radio Drivers Association

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Sean Ridley on behalf of Unite The Union

Mark Paget

## Response to consultation

I have read and discussed with others the Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades and feel that we as an association are justified to comment on this document. The process in Southampton to become a hc or ph driver is nowhere as complex as obtaining a badge in London but we still need a DBS certificate, a driving history cheque from DVLA, plus a medical report from the applicants own practitioner, a topography test - albeit a watered down one for a private hire badge. You have an application form to complete and a B-TECH driving skills assessment which must be passed within 6 months. I daresay that a DBS certificate should provide the necessary information as to whether you have a criminal record or not. Sometimes we find out that a driver has managed to cut the red tape because a proper check has not been carried out diligently, which is not necessarily licensing's fault. The Rehabilitation of Offenders Act 1974 as we all know, enables some criminal convictions to be ignored after a rehabilitation period. So we have ample checks and balances connected with the licensing of hackney, private hire drivers and vehicle proprietors and operators.

We objected vigorously to some parts of The Fit and Proper Person Test that was passed by SCC in October 2016 because we did not believe that some clauses were of natural justice? Our concern with this new document has compounded those same fears, the main difference, although similar in some areas, it categorises offences instead of listing them.

The document is what it says - A Guidance - I refer to page four Clause 1.10 - this guidance cannot have the force of legislation, new or amended. It is acknowledged that this cannot be fully achieved without the imposition of National minimum standards. It is a contentious document, and I am perturbed the way it has been written. From my perspective, we go through the tried and tested route of gaining either a hackney carriage or private hire licence and when we have obtained our badges, according to this document we are regarded as common criminals. And I quote - Page 10 Clause 3.6 - would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage drivers licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter, or any other person for whom you care, to get into a vehicle with this person alone? I believe the core project group should be ashamed of themselves in the way they have gone about producing some parts of this document and they need to reconsider.

On the subject of The Fit and Proper Test, I, and many others would strongly agree that the prospective candidates who apply for a badge, not only need to speak fluent English but a licensing officer needs to revert back to the 'old system' of facing the applicant and asking questions of routes, places of historical interest, etc, etc., instead of relying on a computer generated yes or no response. You can gain valuable information by adopting this 'old practice' to determine his or her abilities as a professional driver.

I strongly believe this document has gone too far and individuals' Human Rights could come into question.

We have studied in great detail your proposed Institute of Licensing Guidance document. We have also conducted an electronic poll of all of our members; the responses to the survey have been incorporated in our response. (please see attached). The RDA can see the basic intentions of the 'Fit and Proper' policy document are good and true as well as acknowledging that there must be some markers set for a person's suitability for the transportation of members of the public, sometimes from quite vulnerable sectors. However the RDA feels that this document has been ill thought through, rushed in publication and driven by some force in an anti or antagonistic manner at a trade with which the Licensing department should be working with, not preparing to wage war against.

The RDA thought that the Trade had turned a corner now that more representatives from all areas of the Southampton Taxi and Private Hire Trade were involved in licensing committee meetings we had entered a new era of working together in co-operation with the Southampton & Eastleigh Licensing teams. However this document seems to be setting the Council and Trade into a head on crash. The document reads in a manner associated with guidance's on sentencing for Judges, rather than as a 'guidance' document for licensing officials in boroughs and districts up and down the country designed to be used to help determine a person's suitability! So questions need to be asked because it assumes guilt at every turn and does not take into account the law of the land. Indeed it gives powers to override and increase or apply further constraints to sentences already handed down by Queens Council in a Crown Court. That is some power. Power corrupts and absolute power corrupts absolutely. In some ways the document is tyrannical in its wording and in its assumptions. The implications that it makes on a person's character are almost Victorian in the ways it will persecute one's entire family existence for what could be one or two minor traffic infringements.

The RDA would like a full and frank discussion around the central fact that here in Southampton in particular, with a council operating under devolved powers, that these decisions are going to be made by ONE MAN alone. Any recourse will have to be at the driver/owners own expense through the courts, and having just lost ones license/living to then need to finance legal action against the Council is simply unjust and borders on an infringement of one's human rights, as pointed out by SHA. The RDA would like to see a 'Fit and Proper Panel' to make the final decision on 'Fit and Proper' determinations. A panel comprising one Trade body committee member from each official trade body, one or two members of the licencing team and perhaps one licensing councillor.

We would like to echo all of the areas of concern highlighted by our trade colleagues in Eastleigh, who have in no doubt struck the nail firmly on the head as well as those raised by our colleagues at SHA. This along with other more recent contentious decisions from the licensing department are not shedding a good light on the administration that is responsible the safety of the general public. It seems to be responsible for some very strange decisions; i.e. the dubious removal of topography from Private Hire License requirements; The secretive granting of Uber’s operator’s license without consultation; turning a ‘blind eye’ to certain rules & regulations as suits.

So can or even should the Licencing department be allowed to judge and administer its own additional justice at seemingly at will? The RDA says a firm NO to this.

The RDA will insist that the document is discussed properly and in FULL at the next Licensing Committee meeting so that Councillors can hear points of view from across the trade in an open and transparent setting. This should be before any talk of applying changes to our Terms and Conditions is entered into.

I would simply question Para 4.12; 4.12 *It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to “conviction” will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.* I am concerned that there is no consideration as to the/a ‘burden of proof’. Whilst I appreciate and accept that where there has been an ‘admission of guilt’, then guilt could be construed. In the absence of an ‘admission of guilt’ or any substantive proof of guilt, then an ‘acquittal’ or a ‘conviction being quashed’, are not ‘convictions’ and therefore I am unsure whether it would be either morally or legally sound for these to be considered. The clear danger is one of Local Authorities becoming “Kangaroo Courts”. Similarly, a ‘decision not to prosecute’, should be examined carefully as I am equally uncomfortable here on the basis of, ‘...innocent until proven guilty...’ The same rationale applies in terms of unproven “complaints”! The “Taxi” trade is, like all walks of life, not immune to malicious complaints. Therefore, extreme care should be taken when considering “complaints” that only proven complaints are taken into account.

I strongly oppose your new fit and proper changes for existing license holders for new license holders these should apply

## Summary

Believe the current checks are adequate

Believe it fails natural justice

Believe the document is poorly worded and regards the taxi trade as common criminals

Agree to a spoken English Test and want to revert to an interview system

Breaches human rights

Agree with the intentions of the document  
but consider the document to be  
antagonistic

document assumes guilt and exceeds the  
authority of the courts

Concern over use of delegated authority by  
one person



Support the concerns of the other trade reps  
and concern at other decisions by the  
licensing department

Concern how non convictin material will be  
used.

## Comments

The proposal tightens up on the checking process and is in line with the recent DfT guidance that is out to consultation. It does not alter much for drivers but does require additional checks on vehicle and operator applicants.

The trade reps expressed concern at some of the recommendations on convictions, in particular the recommendation a driver who attains 7 points on his DVLA licence is revoked and not licence for a period 5 years. Research of SCC drivers shows only 1 driver currently breaches this. One of the ambitions of the IoL document is to build public confidence on the taxi trades. As they are driving the public for a living there is an expectation of meeting higher standards. Other driving groups have different mechanisms for ensuring driving skills are continually improved, such as the requirement to be re tested periodically, the taxi trade do not undertake any further tests or development once they attain their badge. This measure will encourage drivers to remain within the law and professional and is clearly something over 99% of drivers are already achieving.

The phrase quoted is widely used as the guide to determine if an applicant is fit and proper. At no point does it refer to or indicate or suggest the trade as being criminals.

New applicants currently have to pass a basic skills assessment test with the Btech provider before they can be licensed. To this end we are reliant on the Btech providers to carry out this function. We have some concerns with this process and are looking at alternative options but wish to do so that keeps the costs to the fee payer to a minimum.

Here he is referring to some of the levels at which suspension or revocation is considered and the length of any such sanction, in particular the 5 year gap after reaching 7 DVLA points. The trade believe as the policy is overstepping the sanctions imposed by a Magistrates court or crown court it is breching their human rights. This is not the case. 3.26 of the guidance explains *3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.*

the intention is to set a high national standard so the public have confidence in the trade.

The document does not assume guilt, *4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.* As above 3.26 explains what can be taken into consideration. It is perfectly reasonable for a policy to set out a higher standard than the courts.

The council's constitution allows for the Licensing Manager to make determinations on all taxi licences. This is rarely used in matter of suspension, revocation or refusal. The vast majority of these decsions are made on consultation with the chair of the licensing committee. It is now only in urgent matters the licensing managers exercises this power and even then notifies the chair at the earliet opportunity. Any contentious matters are brought to the committee. This is also the process recognised in the recent draft guidance document published by the DfT.

Other trade concerns covered in this document, the removal of the local knowledge section of the test was not dubious, it was against the wishes of the trade but was done after consultation where concerns were expressed, it was done to redress the number of out of area vehicles and has been a success, it happened to be a decision against the wishes of the trade, that does not make it dubious. Uber licence was granted in the same manner as all the other private hire operators licence have been granted in this city. recent cases in Brighton and Reading have demonstrated SCC approach was the correct one. The authority has always been able to exercise discretion in how policy and conditions are applied and have always justified any decisions. Setting policy and conditions can never account for circumstances and allows for discretion where appropriate.

The policy provides clear guidance for decision makers to prevent rogue decisions. The necessary safeguards are in place through either the court systems or complaints procedure. The Licensing Team continue to engage in a positive manner with the trade but we have to accept there will be times when we have differing opinions.

Before any policy is adopted it has to be brought before the licensing committee.

*4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.* Local Authorities are entitled and should consider all relevant information in making their determination, the burden of proof is on the balance of probabilities and not the much higher burden in criminal conviction of beyond a reasonable doubt. This allows non conviction material to be considered but with the appropriate weight attached to the evidence.

The determination is if a driver is fit and proper, in law the test is the same for both new applicants and existing drivers