

Name of meeting: Licensing and Safety Committee

Date: 11th June 2019

Title of report: West Yorkshire – Policy on determining the suitability of applicants and licensees as drivers in taxi and private hire licensing

Purpose of report:

The purpose of this report is to seek approval, following consultation, for Members to adopt the West Yorkshire policy on determining the suitability of applicants and licensees as drivers in taxi and private hire licensing.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	No
The Decision - Is it eligible for call in by Scrutiny?	Not applicable
Date signed off by <u>Strategic Director</u> & name	03/06/2019 Karl Battersby – Strategic Director, Economy and Infrastructure
Is it also signed off by the Service Director for Finance IT and Transactional Services?	Eamonn Croston Service Director – Finance
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	David Stickley – Senior Legal Officer (on behalf of Julie Muscroft – Service Director, Legal and Governance)
Cabinet member portfolio	Councillor Rob Walker

Electoral wards affected: All

Ward councillors consulted: All

Public or private: Public

GDPR Implications:

GDPR has been considered and appropriate sections of the report have been amended.

1. **Summary**

- 1.1 It is a function of the Council to issue Hackney Carriage and Private Hire licences under the Local Government Miscellaneous Provisions Act 1976.
- 1.2 The overriding requirement of the Council, in its capacity as licensing authority, is the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The aim of this policy a copy of which is attached at **Appendix A**, is to ensure that public safety is not compromised while at the same time providing guidance to an applicant, existing licence holder or decision maker, on the criteria to be taken into account by the Council when determining whether or not an applicant, or an existing licensee on renewal, is fit & proper to hold a hackney carriage or private hire driver's licence.
- 1.4 When determining whether or not a person is "fit & proper" to become or remain a licensed driver each case will be decided on its own merits and the Council shall only depart from this Policy in exceptional circumstances.

2. **Information required to take a decision**

Background

- 2.1 The Council must ensure that applicants and / or licence holders are and remain fit and proper to hold a private hire / hackney carriage drivers licence, this onerous responsibility involves a detailed examination of the character of the applicant / existing licence holder in order to make a judgement as to their fitness and propriety.
- 2.2 When considering a person's character the overriding aim of the Council, when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 2.3 This policy categorises the types of issues including, crime and driving convictions that form part of the test of a person's "fitness and propriety".
- 2.4 As part of this assessment the Council is concerned to ensure that:-
 - An individual does not pose a threat to the public.
 - The Council's obligations to safeguard children and vulnerable adults are met.
 - The public are protected from dishonest persons.
- 2.5 The standards of safety and suitability are not set as a base minimum. They are set high to give the public the assurance it requires when using taxi services. The Council does **not** have to strike a balance between the driver's right to work and the public's right to protection. The public are entitled to be protected. This means that the Council is entitled and bound to treat the safety of the public as the paramount consideration.
- 2.6 Taxis are used by almost everyone but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated. A taxi driver has significant power over a passenger who places themselves, and their personal safety, in the driver's hands.

- 2.7 In making a decision on whether to grant or renew a licence the Council are in effect holding out the licensee as someone who can be trusted to convey passengers from A to B safely. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink or a vulnerable person.
- 2.8 In order to meet the Council's duties to protect the public, the proposed Policy at **Appendix A** has been developed by working in partnership and considering the existing policies in place across West Yorkshire and York, the Institute of Licensing's Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades. The Driver Suitability policy has been agreed across West Yorkshire and York, and is compliant with this new guidance and, in particular, adopts the strict tariffs. The guidelines have recently (April 2019) been included as a proposal in the draft statutory guidance which has been out for consultation by the Department for Transport.
- 2.9 The proposed policy gives details of the types of issues including crime and driving convictions that form part of the "fit and proper" test to help councils assess the potential risk to the public. The policy includes a table that indicates the length of time that would normally be required to have elapsed between a conviction and an individual being granted a licence.

Consultation

- 2.10 At the 11th October 2018 meeting of the Licensing and Safety Committee, Members gave approval for officers to consult on this policy. Consultation began w/c 5 November 2018 and ended on the 18th January 2019, where 161 responses were received.
- 2.11 A summary of the responses to the consultation are attached at **Appendix B and C**; **Appendix D** contains a summary of the responses received across the other West Yorkshire Authorities (inc. York)
- 2.12 As a result of the consultation responses across the six West Yorkshire Authorities, some minor changes were made to the proposed policy. These changes are highlighted in **Appendix A**.
- 2.13 The final policy will be considered for adoption by Leeds, Calderdale, Wakefield and York between June 2019 and July 2019. Bradford Council adopted the policy, with minor amendments, on 7 February 2019.

3 Implication for the Council

3.1 Working with People

The purpose and vision of the changes is to ensure there is a raising of standards and skills amongst licensed drivers in order to protect the travelling public; and ensure people across West Yorkshire are transported safely and protected from harm; that people in Kirklees experience a high quality, clean, sustainable and green environment, as well as improve the customer experience.

3.2 Working with Partners

In developing its policies the licensing services have worked with a number of partners, including, Kirklees Safe Guarding Children's Board, West Yorkshire

Police, Public Health, Environmental Health, other West Yorkshire Authorities (inc York) and Community Safety Partnership,

3.3 Place Based Working

In developing this policy it is to ensure that the travelling public across the whole of the Kirklees district and within the wider region feel safe and are protected from harm.

3.4 Improving outcomes for children

The Council wants to ensure children have the best start in life and to ensure that the people of Kirklees feel safe and are protected from harm. The Council has a duty to protect the travelling public and safeguard children travelling in licensed vehicles and in particular for the purposes of school transport.

3.5 Other (eg Legal/Financial or Human Resources)

Legal

The principle legislation is the Town and Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

The purpose of taxi licensing is detailed in the Department for Transport “Taxi and Private Hire Licensing Best Practice Guide” paragraph 8 which states: “The aim of local authority licensing of the taxi and Private Hire Vehicle (PHV) trades is to protect the public.”

Taxi and Private hire vehicle licensing in England and Wales is undertaken by licensing authorities, which have the responsibility for ensuring that the public travel in safe, well maintained vehicles driven by competent drivers; as well as providing a fair and reasonable service for the taxi and private hire vehicle trade. Council’s following best practice will meet or communicate regularly with licensing committees and officers in neighbouring councils to ensure critical information is shared and that there is a consistent and robust in decision making.

By working together, local government can make sure that this vital service is safe, respected, and delivering for local communities. The West Yorkshire Leaders are clear that they wish the Councils to work together for the benefit of the traveling public. All or any policies adopted will need to comply with all applicable and relevant taxi legislation, and of course may be subject to a public law challenge. However, the strands of work identified, and the desire for common standards across the West Yorkshire and York area are seen as desirable in enhancing the service for the public, and clarifying the standards for taxi and private hire vehicle owners and operators. This is also supported by current Government responses and consultation documents.

Equality Implications

The Equality Act 2010 creates the Public Sector Equality Duty (PSED) and in order to fulfil the PSED the Council is required to assess the impact of any proposed action on the equality objectives set out above. The way in which the Council approaches this task is to conduct Equality Impact Assessments (EIA).

A stage 1 Equality Impact Assessment has been completed and is available <https://www.kirklees.gov.uk/beta/delivering-services/equality-impact-assessments.aspx>

In summary the assessment is that the level of impact is low although it is acknowledged from day to day contact and interaction with drivers it will impact mainly upon men of Asian ethnic background.

4. **Consultees and their opinions**

4.1 Consultation took place on this policy between w/c 5th November 2018 and 18th January 2019, and a total of 161 responses were received; a summary of those responses can be found at **Appendix B and C**.

4.2 The survey was launched online w/c 5th November 2018 and placed on the Kirklees Involve website with links to the policy and survey.

4.3 We actively engaged with the following groups by writing/emailing:

- All Licensed Private Hire Operators
- All Licensed Drivers
- Trade Representatives
- All Councillors
- Kirklees Safeguarding Children's Board
- Kirklees Safeguarding Adults Board
- West Yorkshire Police
- Public Health Board
- Kirklees Community Safety Board
- NHS North Kirklees
- Greater Huddersfield CCG

4.4 The consultation was highlighted in the local media, Huddersfield Examiner on 24th December 2018.

4.5 In addition, the surveys were highlighted on the Kirklees Council, main licensing webpages.

4.6 A summary of the online consultation response is as follows:-

4.7 There were 157 responses to the consultation –

- 93 (59%)¹ responses from the trade
- 13 (8%)¹ responses from members of the public
- 2 (1%)¹ responses from Ward Councillors
- 60 (38%)¹ responses other (this includes council officers)

⁽¹⁾ The numbers / percentages, added together, are greater than 157 / 100% due to 11 respondents selecting multiple options i.e. licensed driver and operator)

4.8 The majority of people who responded agreed with the tariffs consulted upon apart from the minor traffic or vehicle related offences and hand held telephone / devices, where there was a mixed response.

It is noted that the majority of those responding were of the view the tariff for driving whilst using a hand-held telephone or other device consulted as 5 years and the minor traffic or vehicle related offences also consulted as 5 years were too high.

Having considered the responses, it is proposed minor traffic or vehicle related offences be reduced to 3 years in line with the concerns raised by the respondents. However, notwithstanding the results of the consultation, it is proposed the tariff for driving whilst using a hand-held telephone or other device remain at 5 years. The reason being, it is an endorsable offence and is deemed a significant one that carries a 6 point tariff on your licence whilst most other endorsable offences only carry 3 points and so should not be confused with a minor traffic offence.

4.9 In relation to responses from the following partnering agencies, all agreed with the proposed tariffs and welcomed the review of the policy. In addition, the partnering agencies welcomed the opportunity to work more closely with Licensing and the trade in general to improve standards –

- Kirklees Safeguarding Children's Board
- Kirklees Safeguarding Adults Board
- West Yorkshire Police
- Public Health Board
- Kirklees Community Safety Board
- NHS North Kirklees
- Greater Huddersfield CCG

4.10 A copy of the responses from partnering agencies can be found at **Appendix C**.

4.11 The responses received by Kirklees were broadly in line with the other West Yorkshire Authorities (**Appendix D**).

4.12 Following consideration of the survey results, Kirklees and the other five authorities have amended its proposed policy to reduce the period of ban from 5 years to 3 years for minor traffic and vehicle offences.

5. **Next steps and timelines**

5.1 The next steps are for Members to consider this report and appendices, which include the responses to the consultation, equality impact assessment and the changes made to the policy as a result of that consultation.

5.2 If Members are minded to adopt the policy, including the proposed changes, it is proposed that this new policy on determining the suitability of applicants and licensees as drivers in taxi and private hire licensing be implemented from the 1st August 2019.

6. **Officer recommendations and reasons**

6.3 Members are recommended to adopt the policy on determining the suitability of applicants and licensees as drivers in taxi and private hire licensing, as presented at **Appendix A**, and that this new policy be effective from the 1st August 2019.

6.4 Adopting this policy will ensure people across West Yorkshire are transported safely and protected from harm.

6.4 Authorise the Group Leader of Licensing, in conjunction with their immediate Operational Manager and Head of Service for Public Protection, to make any minor changes necessary to the policy, to remain commensurate with the outcomes of the other West Yorkshire and York Authorities.

7. Cabinet portfolio holder's recommendations

- 7.1 Councillor Rob Walker supports the policy review and development of a stronger and more robust policy

8. Contact officer

Russell Williams
Group Leader - Licensing
01484 221000
russell.williams@kirklees.gov.uk

Samantha Lawton
Operations Manager – Public Protection (Licensing)
01484 221000
samantha.lawton@kirklees.gov.uk

9. Background Papers and History of Decisions

- Report to Licensing and Safety Committee – 11th October 2018
<https://democracy.kirklees.gov.uk/documents/s24810/Item%207%202018-10-11%20Licensing%20Report%2011%20Oct%202018%20002%20002.pdf>
- Report to Licensing and Safety Committee – 18 January 2016
<https://democracy.kirklees.gov.uk/documents/s9165/Licensing%20and%20Safety%20002%2018%20Jan%202016%20-%20Constitution%20Taxi%20and%20Private%20Hire%20Vehicles%20-%20Report%20delegat.pdf>
- Background Papers: Institute of Licensing – Guidance on determining the suitability of applications and licensees in the hackney and private hire trades

10. Strategic Director responsible

Karl Battersby
Strategic Director - Economy and Infrastructure
karl.battersby@kirklees.gov.uk
01484 221000