

Allerdale Borough Council

Licensing Committee – 11 September 2019

**Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades**

---

**The Reason for the Decision**

1. All policies require regular review and after working with the policy relevant to previous convictions over time, a number of issues have been identified.
2. A review of the licence application process has taken place and gaps have been identified in some pre-application requirements which need to be addressed.
3. The Institute of Licensing has issued new guidance and has suggested working practices to help determine suitability in the taxi trade which it is felt would strengthen the public safety objective when assessing applicants for driver and operator licences.

**Summary of options considered**

1. Review of pre application requirements for **private hire operators** to include one or more of the following:
    - a) The provision of a basic Disclosure and Barring Service (DBS) certificate, to be no more than 28 days old at grant/renewal of licence; and
    - b) To provide written details of the Private Hire Operator's vetting procedures for their staff, to be provided at the grant/renewal of licence and to be notified within the licence duration if changes to the procedure are made; or
    - c) Leave the application requirements as existing.
  2. Review of pre-application requirements for **hackney carriage and private hire drivers licences** as follows:
    - a) To amend the current requirement for an
-

enhanced Disclosure and Barring Service (DBS) certificate in the following terms:

- i) An enhanced DBS certificate is required which is no more than 28 days old at grant/renewal of licence which has been carried out for the correct workforce required for taxi driving. Certificates from other Local Authorities are acceptable providing they are no older than 28 days at grant/renewal of licence and show the correct workforce. The exception being that a certificate can be older providing the applicant subscribed to the update service from issue of that certificate; and
  - ii) The applicant/driver must subscribe to the DBS update service throughout the duration of their licence; and
- b) Persons who have not been resident within the United Kingdom for the five years prior to submitting an application, will be required to produce a certificate of good character or equivalent document (at their own cost) issued by the relevant Embassy or High Commission. The certificate must be authenticated, translated and sealed by the Embassy or High Commission. In the event that an applicant is not able to obtain a certificate of good conduct, they may submit a statutory declaration with regard to their conduct, which must be completed in the presence of a practising solicitor. The Council may contact the relevant Embassy, High Commission, solicitor or other appropriate body to verify any documents provided. Contact details for Embassies and High Commissions can be found from the Foreign & Commonwealth Office (FCO) on the GOV.UK website; and
- c) Applicants who have spent six continuous months or more living outside the United Kingdom, during the period of their licence, will be required to produce a certificate of good character or equivalent document at their own cost. This certificate must be issued by the relevant Embassy or High Commission for the country or countries
-

lived in during this period and meet the requirements as set out above; and

- d) Check on the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (as soon as this becomes available); or
  - e) Leave the application requirements as existing.
3. Amendment to the Policy called “Relevance of Criminal Convictions Relating to the Determination of the Application to Grant or Renew a Hackney Carriage or Private Hire Drivers Licence” in the following terms:
- a) To adopt the criteria issued by the Institute of Licensing relating to the suitability for determining whether an individual should be granted or retain a hackney/private hire driver licence or private hire operator licence contained within appendix 1 attached to this report; or
  - b) Leave the policy as existing.

**Recommendation**

As contained in recommendations 6.2 a), b), 6.3 a) i and ii, b), c), d) and 6.4 a)

**Financial / Resource Implications**

Implementing the recommendations will incur more staffing and Member resource in the first year as an increased number of applicants will be referred to Licensing Panels; and  
Drivers will incur an additional cost of £13 per year subscription for the DBS update service. This will be offset eventually by not paying £44 plus admin fee to obtain a new certificate every 3 years unless new content is added; and  
Private Hire Operators will incur an additional £23 every 5 years to obtain a basic DBS certificate; and  
Overseas applicants will incur extra cost to obtain Certificates of Good Character or the equivalent document.

---

<b>Legal / Governance Implications</b>	To ensure that the policies in place to uphold the public safety duty of the Licensing Authority when assessing and determining applications and existing licences remain updated and workable.
<b>Community Safety Implications</b>	To continue to assess the fitness and suitability of licence holders by having updated pre-application criteria and policies.
<b>Health and Safety and Risk Management Implications</b>	To promote public safety and ensure fitness and propriety of the taxi trade
<b>Equality Duty considered / Impact Assessment completed</b>	No
<b>Wards Affected</b>	All
<b>The contribution this decision would make to the Council's priorities</b>	Enhancing our towns – enhancing our taxi licensing requirements would encourage a high quality of taxi service and result in thriving and vibrant towns;  Creating a sustainable business –providing improved services to people and communities .
<b>Is this a Key Decision</b>	No
<b>Portfolio Holder</b>	Councillor J Cook
<b>Lead Officer</b>	Gillian Collinson Senior Licensing and Compliance Officer 0303 123 1702 <a href="mailto:gillian.collinson@allerdale.gov.uk">gillian.collinson@allerdale.gov.uk</a>

---

**Report Implications** (Please delete where applicable)

Community Safety	Y	Employment (external to the Council)	Y
Financial	Y	Employment (internal)	N
Legal	Y	Partnership	N
Social Inclusion	N	Asset Management	N
Equality Duty	N	Health and Safety	N

Background papers: N/A

## **1.0 Introduction**

- 1.1 Over recent years there has been a move by the Licensing Authority to review and implement new policies to assess the suitability of applicants for hackney and private hire driver licences within the borough and to promote the safety of licensed vehicles.
- 1.2 This has largely been successful but policies require continual review to ensure they are working in everyone's best interests and to ensure that the licensing authority is satisfied that public safety is upheld. It is imperative that the Authority continues to only grant and renew licences to individuals who are fit and proper by working within the relevant policies of the council.
- 1.3 Changes in legislation have extended the duration of driver and operator licences and it has been necessary to review the working processes for these licences to ensure records and information are up to date. This report therefore aims to address some gaps in the application process and introduce new pre-application criteria where it is felt necessary.

## **2.0 Background**

- 2.1 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.
- 2.2 The Local Government (Miscellaneous Provisions) Act 1976 ("the Act") enables local authorities to administer licences for hackney carriage and private hire drivers. The Act provides that a local authority shall not grant a licence unless they are satisfied that the applicant is a "fit and proper" person to hold such a licence. There is no definition of the term "fit and proper" and the Council can apply any tests and checks it deems appropriate to establish this.
- 2.3 Section 57 of the Act grants local authorities the power to require applicants to submit information, stating:  
  
"A district council may require any applicant for a licence under the Act of 1847 or under this Part of this Act to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence."

## **3.0 Private Hire Operator Licences**

- 3.1 A private hire operator (PHO) is the person who takes a booking for a private hire vehicle, and then dispatches the vehicle driven by a licensed private hire

driver to fulfil that booking. All three licences (operator, vehicle and driver) must have been granted by the same licensing authority.

Section 55(1) Local Government (Miscellaneous Provisions) Act 1976 states

“A local authority cannot grant a PHO unless the applicant has the right to work in the UK and is a fit and proper person”.

The role of a PHO goes beyond taking bookings and dispatching vehicles. In the course of doing that, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver. To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety and a suggestion from the Institute of Licensing is:

“Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”

Other concerns relate to staff used on the telephone and radios. There is no reason why a PHO cannot be required to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information they obtain would have serious implications on the continuing fitness and propriety of the PHO.

Current pre-application criteria does need strengthened in respect of PHO and it is recommended that the following are imposed as conditions of application and licence for a PHO licence:

- a) The provision of a basic Disclosure and Barring Service (DBS) certificate, to be no more than 28 days old at grant/renewal of licence; and
- b) The provision of written details regarding a Private Hire Operator’s vetting procedures for their staff, to be provided at the grant/renewal of licence and to be notified within the licence duration if changes to the procedure are made; and
- c) Where an application is made in the name of a limited company, partnership or other business structure, the conditions in a) and b) above apply to each director or partner of the applicant organisation.

#### **4.0 Hackney Carriage and Private Hire Drivers**

- 4.1 Work is ongoing to develop the issuing of driving licences for a period of 3 years instead of 1. This is in line with legislation. As all checks are currently

carried out on an annual basis when the applicant applies to renew, changes are required to working practices, to ensure that the Licensing Authority can access up to date information at appropriate times without the need to constantly contact applicants and ask them to produce documents.

The checks currently in place to assess the suitability of applicants are:

- Enhanced Disclosure and Barring Service Certificate (valid for 3 years supported by a Legal Statutory Declaration where necessary);
- Driving Licence check;
- Medical form supplied by applicant's registered GP or GP who has access to patient's medical records;
- Driving assessment;
- Knowledge test; and
- Proof of Right to work in the UK.

Any content on the DBS certificate and driving licence is currently considered in line with the current policy called "The Relevance of Criminal Convictions relating to the determination of the application to grant or renew a hackney carriage or private hire driver's licence" and referred to the Licensing Panel when appropriate. Proposed changes to this policy are contained in paragraph 5 below.

It is suggested that the requirements relating to DBS certificates are changed. There is no official expiry date of DBS certificates but our current regulations require a new one after 3 years in line with common practice. Drivers are subject to a condition that they must inform us if circumstances change. How effective this is is debatable. With licences shortly to be issued for 3 years, there needs to be a more stringent approach so that the licensing authority has access to up to date information. Currently, enhanced DBS certificates are requested including information held on the Adults and Children Barred Lists. The information revealed on certificates depends on the workforce being applied for. Currently we do accept certificates with other workforces stipulated such as foster carer as it contains the same if not higher level of information. However, police will reveal non conviction information depending on the workforce being requested. In line with GDPR and the DBS regulations it is recommended that we only accept certificates with the correct workforce as stipulated by the DBS for taxi drivers.

## **4.2 DBS Update Service**

It is each authority's decision whether to accept a previously issued DBS check. Currently we accept DBS certificates issued for other authorities providing it complies with all requirements. If it is over 3 months old we request that this is supported with a Statutory Declaration. The DBS advise that if the applicant has not joined the Update Service, authorities should consider the following before making a decision:

- the applicant's criminal record or other relevant information may have changed since its issue

- the level of that check may not be right for the position being recruited for
- the original application position and workforce must be correct for the role you're recruiting for (any original certificate issued from June 2013 will show the workforce 'child' or 'adult', 'child and adult' or 'other')
- the police disclose information on an enhanced DBS certificate based on child or adult workforce, for which the criminal record check was originally applied for
- the police disclose information on an enhanced DBS certificate which was submitted for 'other' workforce, in relation to the position for which the criminal record check was originally applied for
- the information revealed was based on the identity of the applicant, which was validated by another Registered Body
- that the identity details on the certificate match those of the applicant

The DBS update service is a subscription service currently costing £13 per year payable by the applicant. It enables applicants to keep their DBS certificate up to date and it can be taken from one job to the next providing it is the correct level required for each purpose for which it is used. To benefit from this service we must be legally entitled to carry out the check and have the worker's permission. The results will be available immediately. Once we have viewed the original certificate, the applicant has no further need to pay to apply for a new one (currently £44 plus admin fee). They would only simply produce the certificate once and give permission for their account to be viewed. If the results show that the certificate has been updated since the original certificate the applicant would be requested to apply for a new certificate. The updated information is not shown, it simply says there is updated content. The applicant can view when their certificate has been checked.

#### **4.3 Checking Offences Committed Overseas/ Overseas applicants**

As the DBS cannot access criminal records overseas, a criminal record check may not provide a complete picture of an individual's criminal record. There is nothing in policy currently which stipulates additional requirements for persons who have not been resident in the UK or lived outside the UK for a period of time. It is good practice for the application process to include criminal checks or to obtain "Certificates of Good Character" for someone from overseas. This varies from country to country and application has to be made as detailed in paragraph 6. It is proposed to introduce a requirement stipulating the relevant documents be a requirement as part of the application process as detailed in paragraph 6 below.



#### **4.4 National Anti Fraud Network**

This organisation has established a database which will contain refusals and revocations of hackney carriage and private hire licences. It is not available yet and will be by subscription service (when available). Due to the increase in cross border hiring, the system has been established to assist local authorities check on the status of individuals who are/have been licensed by other authorities and may be making applications to them. It is recommended that once established and if workable, we introduce this as an extra criteria to check on all drivers/applicants.

#### **5.0 Review of Policy “The Relevance of Criminal Convictions relating to the determination of the application to grant or renew a hackney carriage or private hire drivers licence”**

5.1 The purpose of the policy is to provide a uniform and consistent approach to decision making if applicants or licence holders have content on their DBS certificate or DVLA driving licence or other matters of conduct which concern a person’s safety and suitability to hold a licence. The current policy groups together specific offences under a general heading of type of offence together with guidance regarding the passage of time which is acceptable before a licence should be granted and scheme of delegation. This has worked well in most cases but does leave gaps if an offence is not listed.

5.2 The Institute of Licensing has issued guidance on determining the suitability of applicants and licencees in the hackney and private hire trades. This is for the grant of licences or to retain licences. It includes guidance on time periods which should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted for single convictions. Where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person. The guidance contains no detailed list of offences. All offences are allocated to a general category such as “dishonesty” or “drugs”. This prevents it being argued that a specific offence is not covered by the Policy and prevents arguments that one is more dangerous than another and lead to differentiation. In each case, appropriate weight should be given to the evidence provided. This is attached to the report at Appendix 1.

5.3 Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers there are exceptional circumstances which warrant a different decision. However, this should be in exceptional circumstances and for justifiable reasons which should be recorded.

#### **6.0 Recommendations**

6.1 To consider the range of options and select the following recommendations to implement:

## 6.2 Private Hire Operators

- a) The provision of a basic Disclosure and Barring Service (DBS) certificate, to be no more than 28 days old at grant/renewal of licence; and
- b) To provide written details of the Private Hire Operator's vetting procedures for their staff, to be provided at the grant/renewal of licence and to be notified within the licence duration if changes to the procedure are made;

## 6.3 Hackney Carriage /Private Hire Drivers

- a) To amend the current requirement for an enhanced Disclosure and Barring Service (DBS) certificate in the following terms:
  - i) An enhanced DBS certificate is required which is no more than 28 days old at grant/renewal of licence which has been carried out for the correct workforce required for taxi driving; and
  - ii) The applicant/driver must subscribe to the DBS update service throughout the duration of their licence; and
- b) Persons who have not been resident within the United Kingdom for the five years prior to submitting an application, will be required to produce a certificate of good character or equivalent document (at their own cost) issued by the relevant Embassy or High Commission. The certificate must be authenticated, translated and sealed by the Embassy or High Commission. In the event that an applicant is not able to obtain a certificate of good character, they may submit a statutory declaration with regard to their conduct, which must be completed in the presence of a practising solicitor. Application must be made to the relevant country or the relevant embassy in the UK. The Council may contact the relevant Embassy, High Commission, solicitor or other appropriate body to verify any documents provided. Contact details for Embassies and High Commissions can be found from the Foreign & Commonwealth Office (FCO) on the GOV.UK website; and
- c) Applicants who have spend six continuous months or more living outside the United Kingdom, during the period of their licence, will be required to produce a certificate of good character or equivalent document at their own cost. This certificate must be issued by the relevant Embassy or High Commission for the country or countries lived in during this period and meet the requirements as set out above.
- d) Check on the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);

## 6.4 Review of Previous Conviction Policy

- a) To adopt the criteria issued by the Institute of Licensing relating to the suitability for determining whether an individual should be granted or retain a hackney/private hire driver's licence or private hire operator's licence contained within appendix 1 attached to this report

**Gillian Collinson**  
**Senior Licensing & Compliance Officer**