

REPORT TO: LICENSING COMMITTEE

Date of Hearing: 07 February 2017

Report of: Assistant Director Environment

Type of Application: To seek the introduction of amendments to the policy relating to Practices and Procedures for the control of Hackney Carriage and Private Hire Vehicles, Drivers and Operators

Legislation: Local Government (Miscellaneous Provisions) Act 1976

Is this a Key Decision?

No

Is this an Executive or Council Function?

Licensing is a Council function delegated to the Licensing Committee

1. What is the report about?

1.1 The report seeks to introduce amendments to the current policy relating Practices and Procedures for the control of Hackney Carriage and Private Hire Vehicles, Drivers and Operators.

2. Recommendations:

2.1 It is recommended that the Committee accepts the updated compilation of Practices and Procedures for the control of Hackney Carriage and Private Hire Vehicles, Drivers and Operators

3. Reasons for the recommendation:

3.1 The Licensing Team have been contacted by DigiCAB Media to request permission for them to install passenger facing digital information screens within Licenced vehicles. In-vehicle advertising had not been included in the previous version of the policy, and as such an additional Appendix (Appendix R), has been added to introduce relevant conditions for in-vehicle digital media. DigiCAB have confirmed that they would be happy to include public safety information from ECC/ Community Safety Partnership as part of the advertising feed should this amendment be agreeable to the Committee.

3.2 Appendix E of the Policy (Guidelines relating to the relevance of Convictions), has been amended to clarify that cautions will be treated as per a conviction for the same offence. The reason for this amendment is that following several recent referrals to the Licensing sub-committee for consideration as to the applicants fitness and propriety to obtain a licence (due to relevant convictions and cautions disclosed), it was felt that the status of any cautions disclosed could be clarified further. Taxi driving is listed as one of the professions that are exempt from the Rehabilitation of Offenders Act 1974. Applicants/ Licence holders are therefore required to disclose any cautions, and these would be shown on the Disclosure and Barring Service (DBS) check. The amended Appendix E of the Policy has been attached to this report.

4. What are the resource implications including non financial resources.

- 4.1 The resources required to fund the amendments to the policy detailed above will be provided from the Taxi Licensing budget which is paid for via licence fees. This budget is ring fenced and must be used to fund the costs of taxi licensing/ enforcement.

5. Section 151 Officer comments:

As stated in the report the taxi licence budget is ring-fenced and managed via an earmarked reserve. There are therefore no financial implications for the General Fund from adopting this proposal.

6. What are the legal aspects?

- 6.1 The Licensing Authority has a statutory duty to ensure that public safety is not compromised when considering the issue of licences and to ensure that any vehicle licensed is suitable, safe and fit for the purpose. It is felt that the proposals contained in this report will enhance public safety without significantly increasing the burdens on existing or prospective licenced drivers/ proprietors.

7. Monitoring Officer's comments:

This report raises no issues for the Monitoring Officer.

8. Report details

- 8.1 The Licensing Committee on 22 September 2015 adopted an Updated compilation of Practices and Procedures for the control of Hackney Carriage and Private Hire Vehicles, Drivers and Operators.
- 8.2 It is necessary to seek approval for further revisions of this document in order to enhance standards and safety with respect to this aspect of licensing.
- 8.3 The amendments include a proposed new Appendix (Appendix R) to allow suitable passenger facing digital information screens within Licenced vehicles.
- 8.4 Additional proposed conditions include amendment to Appendix E of the policy to clarify the status cautions.

9. How does the decision contribute to the Council's Corporate Plan?

- 9.1 Approving these amendments will contribute to a healthy and safe city and assist the primary aim of taxi licensing which is to protect public safety.

10. What risks are there and how can they be reduced?

- 10.1 Formulating a hackney carriage vehicle policy that protects public safety should lead to a positive impact on creating a vibrant city to live, work and visit. The higher quality standards were coupled with the decision not to maintain the policy of restriction, in order to prevent any negative impact (if any); the amendment to policy in this report will assist in this prevention.

- 11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**
- 11.1 The proposed amendments should lead to a positive impacts on equality and diversity, and safeguarding.
- 12. Are there any other options?**
- 12.1 Members could maintain the current policy, but this would risk the policy becoming out of date and thereby less effective.

Assistant Director Environment

Local Government (Access to Information) Act 1972 (as amended)
Background papers used in compiling this report:-

None

Contact for enquires: Mark Devin
Democratic Services (Committees)
Room 2.3
01392 265477

Appendix E – Guidelines relating to the relevance of convictions

The following guidelines are used to determine the relevance of criminal convictions in relation to applications for hackney carriage and private hire driver's licenses.

In the context of this Policy

"The Council" means Exeter City Council

"Licence" means a licence to drive an hackney carriage and/or private hire vehicle

"Drivers" means persons applying for or holding hackney carriage and/or private hire vehicle drivers' licences

"Convictions" means all convictions including juvenile convictions, cautions, warnings and reprimands.

"Fit and Proper" means Fit and Proper to hold a Drivers Licence

"ROA" Rehabilitation of Offenders Act 1974

"The Order" means Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended.

E1 General Policies

The Council must satisfy itself as far as possible that all Drivers are Fit and Proper persons to hold a Drivers Licence. In so doing, the Council will have regard to all relevant factors such as Convictions including those that are "spent Convictions" under the ROA.

Issues calling in to question whether a Driver is Fit and Proper are decided by the Licensing Committee on a case by case basis with each case being decided on its own merits. The Licensing Committee always puts the protection of the public first when considering Drivers' Convictions and whether a Licence should be refused or revoked because a Driver is not Fit and Proper.

Where there is evidence, including evidence of Convictions, to question whether a Driver is Fit and Proper the matter will be referred to the Licensing Committee with a report which may make recommendations based on this Policy but the final decision as to whether a Driver is Fit and Proper rests with the Licensing Committee. The onus is on the Driver to demonstrate to the Licensing Committee that he is Fit and Proper.

Persons with Convictions for serious offences are not necessarily prevented permanently from holding a Licence but will be expected to remain free of further Convictions for an appropriate period, before an application for a Licence is considered. However, remaining free of further Convictions for a specified period may not be sufficient to show that a Driver is Fit and Proper and additional evidence may be required.

There may be occasions where it is appropriate to depart from these guidelines when considering whether a Driver is Fit and Proper. For example, where the offence is a one-off and there are mitigating circumstances or where

there are many or continuous offences which may show a pattern of offending and unfitness.

E2 Relevance of Rehabilitation of Offenders Act 1974

ROA section 4(1) provides that where persons are rehabilitated for the purposes of ROA in respect of a conviction they shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence(s) which were the subject of that conviction and:

- a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Great Britain to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and
- b) A person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

Section 4(2) further provides that where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority:

- a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly; and
- b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question.

The Order exempts Drivers from the provisions of section 4(2) ROA where the Driver questioned is informed at the time the question is asked, that by virtue of the Order spent convictions are to be disclosed.

The following sets out the policy of the Council in relation to Drivers' Convictions.

(a) Offences where refusal or revocation will always be recommended (Appendix G1).

Where a Driver has Convictions for any of the offences listed in Appendix G1 the recommendation to the Licensing Committee will be to refuse application for or revoke a Licence. These include offences involving loss of life, serious road traffic offences and sexual offences.

As the driver of hackney carriages and private hire vehicles often carry passengers who are alone or may be vulnerable, applicants who have convictions for rape, indecent assault, any sexual offence involving children

and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a licence.

(b) Offences where refusal or revocation will be recommended within 5 years of the date of conviction or expiry of any custodial sentence imposed whichever is the later date (Appendix G2).

These include offences involving dishonesty, violence and indecency as well as offences involving the supply of drugs.

The public using hackney carriages and private hire vehicles expect drivers to be honest and trustworthy. Moreover, the widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and overseas visitors can be an easy target for unscrupulous drivers.

For these reasons where a Driver has Convictions for offences involving dishonesty the policy of the Council will be to refuse application for or revoke a Licence within 5 years from the date of any Conviction or the end of any custodial sentence imposed or where there are two or more offences in any period involving dishonesty.

Drivers maintain close contact with the public and for this reason where a Driver has Convictions for offences involving violence the recommendation to the Licensing Committee will be to refuse application for or revoke a Licence within 5 years from the date of any Conviction or the end of any custodial sentence imposed or where there are two or more offences in any period involving violence.

Where an applicant has a conviction for a sexual offence such as indecent exposure they will normally be refused a licence until they can show a substantial period usually between 5 and 10 years free of any such convictions from the date of conviction or the date of release where a custodial sentence has been imposed before an application is made.

After a period of 5 years from the date of a conviction or the date of release where a custodial sentence has been imposed, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a Fit and Proper person to hold a licence.

When considering applications, the Licensing Committee may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a Fit and Proper person to hold a licence.

An application will normally be refused where it is made within 5 years from the date of a conviction or the date of release where a custodial sentence has been imposed for an offence relating to the supply of drugs.

(c) Offences where refusal or revocation will be recommended within 3 years of the date of conviction or expiry of any custodial sentence imposed whichever is the later date (Appendix G3).

These includes less serious offences such as the possession of drugs

An application will normally be refused where it is made within 3 years from the date of a conviction or the date of release where a custodial sentence has been imposed for an offence relating to the possession of drugs.

An application will normally be refused where there is more than one conviction for offences related to the possession of drugs and the last conviction or the date of release where a custodial sentence has been imposed, is less than 5 years before the date of the application.

Where evidence is available that an applicant who has convictions for drug related offences has been addicted to drugs, they will have to produce evidence that shows that they have been free of drug taking for at least 5 years after successfully completing a drug treatment programme.

**d) Convictions for Road Traffic Offences (Appendix G4)
Convictions Where Disqualification from Holding a Driver's Licence is Imposed.**

Where you have been disqualified from driving by the Courts, your application will generally be refused unless a period of 5 years free of conviction has passed since the return of the DVLA licence.

Where a disqualification is imposed by a court in a "totting-up" case, you will generally be refused unless a period of 2 years free of conviction has elapsed since the return of the DVLA driver licence.

In "totting-up" cases where a court does not impose a disqualification because of exceptional circumstances, an application will generally be refused unless an applicant can show a period of 2 year free of conviction from the date of the last Court appearance.

Other Convictions for Road Traffic Offences

Normally, convictions for other traffic offences not involving disqualification should not prevent someone obtaining a licence. However, if there are several convictions for these types of offence, an applicant will normally be expected not to have been convicted of an offence in the 6 months before an application is made.

(e) Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 (the Acts) (Appendix G5)

One of the main purposes of the licensing regime set out in the Acts is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under these Acts.

For these offences the recommendation to the Licensing Committee will be to refuse the application within 3 years of the conviction or to revoke the Drivers Licence if the offence arises during the currency of that Licence.

Appendix R – Internal Advertising

ADVERTISING INTERNALLY WITHIN THE VEHICLE VIA TV SCREENS

(DIGITAL MEDIA TECHNOLOGY)

Hackney carriage and private hire vehicles may install in-vehicle digital media technology to be used for advertising purposes and/or live feed material. To use this form of technology for advertising purposes and/or live feed material it must comply with the following conditions:

1. Digital media systems must be approved by the licensing authority before they are installed.
2. All broadcast material must comply with the OFCOM Broadcasting Code.
3. All films/video material must be classified by the BBFC as U or exempt from classification.
4. The only live feed material that can be shown is national/local news and weather.
5. All equipment must comply with any legislative requirements in respect of Construction and Use Regulations and other legislation.
6. All equipment must be designed, constructed and installed in such a way and in such material as to present no danger to passengers or driver, including from impact with the equipment in the event of an accident or damage from the electrical integrity being breached through vandalism, misuse or wear and tear.
7. The equipment must not interfere with any other safety, control, electrical, computer, navigation, satellite or radio system in the vehicle.
8. The intensity of any screen should not be such as to be visually intrusive or dazzling. The position of the screen must not obstruct the passenger's view of the meter and the visibility of the screen to following vehicles should be minimal.
9. Any screen shall be no larger than 15".
10. All equipment must be installed in the driver's compartment and should not be visible from the driver position. The screen may be installed in the driver and front passenger seat headrests, or other suitable location agreed by the licensing authority.
11. The installation must not be such as to weaken the structure or any other component part of the vehicle or interfere with the integrity of the manufacturer's original equipment.
12. The design must be discreet and complement the interior furnishing of the vehicle.
13. Passengers must be able to control the volume level, including turning the sound off. The driver must have overall control of the volume to make sure it does not distract them while driving. The sound should be automatically muted when the intercom is operated.
14. Passengers must be able to turn the screen off.
15. A notice should be displayed within prominent view and physical reach of all passenger seats giving instructions to passengers as to adjusting the volume and turning the screen off. The notice shall be in a suitable format and design for visually impaired people and visible in low light conditions.
16. The mute/volume control must be accessible from the nearside and offside passenger seats.

17. Once activated the mute should continue without further activation by the passenger until the passenger leaves the vehicle.
18. All equipment must be protected from the elements, secure from tampering and located such as to have no impact on the seating and luggage carrying capacity of the vehicle.