



Report of Director of Communities and Environment'

Report to Executive Board

Date: 16 October 2019

Subject: Proposed Suitability (Convictions) Policy for Taxi and Private Hire

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will the decision be open for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. Main issues

The council's Licensing Committee has recommended replacing the council's convictions policy with a new suitability policy broadly aligned with national policy developed by the Institute of Licensing and other bodies, and following consultation in Leeds and West Yorkshire. The report draws attention to the following:

1. The proposed policy sets out the basis for assessing whether a person is a 'fit and proper person' to hold a licence, and states how long applicants and existing taxi and private hire licence holders' licences would be refused following a conviction for a certain type of offence.
2. The five other licensing authorities in West Yorkshire and the City of York have adopted the new suitability policy, with a small number of revisions. In a number of areas, the proposed length of time for a licence to be refused is longer than would be the case following the council's current conviction policy.
3. If adopted as policy by the council, the policy would bring the council into alignment with the other West Yorkshire authorities in refusing to licence people with cautions and convictions.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

1. Keeping people safe from harm, protecting the most vulnerable.
2. Improve access to affordable, safe, and reliable connected transport for young people.

3. Resource Implications

Adopting the new policy would have a number of resource implications for the council's Taxi and Private Hire Licensing service.

1. It is very likely to increase the number of driving licence and Disclosure and Barring Service (DBS) checks which would need to be made.
2. It is likely to increase the number of appeals against the council's licensing decisions, which are heard by Leeds Magistrates Court.

Recommendations

- a) That Executive Board note the contents of this report and approve the Suitability Policy, which is attached as an appendix to this report, to be implemented by Taxi and Private Hire Licensing within two months of the Executive Board meeting.

1. Purpose of this report

- 1.1 This report proposes arrangements for implementation and review of a new Suitability policy (attached at **Appendix A**), with a number of revisions from the national policy developed by the Institute of Licensing and other bodies. If the respective policies can be approved and implemented in all six West Yorkshire and City of York councils, it would mark significant progress towards adopting common minimum standards for taxi and private hire licensing in the region.
- 1.2 The suitability policy would replace the council's previous convictions policy, and form the basis of a common framework for refusing and revoking licences, which could be used for the new national database of refused and revoked licences. Each case would be treated on its own merits, however, the tariffs for refusing a licence would be relevant:
 - When an application is received for a licence;
 - When an existing licence holder applies to renew a licence and new information comes to light (particularly cautions, convictions, penalty points on a driving licence, if they were not declared to the council at the time); and
 - When an existing licence holder discloses new information to the council (particularly cautions, convictions, penalty points on a driving licence).

2. Background information

- 2.1 Under the Local Government (Miscellaneous Provisions) Act 1976, Licensing authorities have responsibility for determining whether an individual is a 'fit and proper' person to hold a licence. The licensing authority must not by law issue a licence to an individual unless it is satisfied that that person is fit and proper, or safe and suitable, to hold a licence, and this applies to both applicants and existing licence holders seeking to renew their licence.

- 2.2 The report follows consultation and subsequent discussion between the authorities on proposed West Yorkshire & York policies for suitability of licence holders, based on the guidance developed by the Institute of Licensing, Local Government Association, National Association of Licensing and Enforcement Officers and Lawyers for Local Government in 2018.
- 2.3 Leeds City Council has been working with the five other authorities in West Yorkshire and York to develop harmonised policies, in order to improve public safety. This policy, which in substance has largely been adopted by the other authorities would reduce significantly the risk of a driver who has been refused a licence in one authority being able to secure a licence in a neighbouring authority.
- 2.4 Recent Department for Transport (DfT) Statutory Guidance consultation in March-April 2019 also recommended that licensing authorities adopt the suitability guidance, or provide information to justify why they depart from the policy, particularly the tariff of proposed minimum “disqualification” periods to refuse a licence in the table at the end of the policy.

3. Main issues

- 3.1 Leeds City Council has responsibility for licensing Hackney Carriage (taxi) vehicles, drivers and proprietors, Private Hire and Executive vehicles, drivers, and operators within the city. The council’s primary focus in licensing over 6300 people to work as taxi and private hire drivers is the safety of the travelling public.
- 3.2 The council has adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1976, which governs the licensing of Private Hire Vehicles, Private Hire Operators and drivers. The adoption of this Act also encompasses the adoption of the Town Police Clauses Act 1847, which governs the licensing of Hackney Carriages.
- 3.3 The council is unusual in the UK in that it had developed in 2013 a detailed policy on how convictions would be treated in determining whether a person applying for a licence could be licenced, or whether an existing licence holder could continue to hold a licence. The majority of UK licensing authorities had not published a conviction policy by 2017, and those policies which were in place in the UK differed significantly between licensing authorities.
- 3.4 The Institute of Licensing, Local Government Association, National Association of Licensing and Enforcement Officers and Lawyers for Local Government developed a proposal for a new suitability, for authorities to use instead of their own convictions policy, or to fill the gap where no policy existed.
- 3.5 Following consultation (considered in section 4.1 below), and discussion with the neighbouring authorities, a slightly revised Suitability Policy was discussed and recommended for approval at Licensing Committee in September.
- 3.6 Following discussion at September Licensing Committee, Leeds has developed a new Suitability and Convictions Policy, attached as **Appendix A**, which includes an additional category of less serious violence offences with a shorter refusal period of 5 years, rather than the period of 10 years for all offences involving violence in the national guidance. The consensus view of members at the committee was that it would be appropriate to draw a distinction between less serious and more serious offences of violence, notwithstanding the concerns about any violence offences contained within the national guidance.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Leeds City Council and four of the five licensing authorities consulted widely on the Institute for Licensing Suitability policy.
- 4.1.2 The council received 250 responses to the survey. 227 responses were from licence holders, and 19 responses were from members of the public. The remaining responses were from other stakeholders, including driver's representatives and trade unions, passenger groups, road safety, and West Yorkshire Combined Authority.
- 4.1.3 Overall, the Leeds responses indicate a high degree of agreement with the proposed length of time to refuse a licence, although some respondents stated that they had not read the suitability guidance in detail before replying. The lowest score of agreement with the tariff is 66% for sex and indecency offences. The chair of Licensing Committee received follow up representation from Leeds Hackney carriage associations, raising concerns that licences would be revoked immediately by revisiting old convictions, which had previously been considered. These concerns were largely addressed during the Licensing Committee meeting, however, the view of some areas of the licensed trade remains that some of the tariffs of refusal are disproportionately long.
- 4.1.4 In total, 695 people responded in West Yorkshire and York to the consultation on suitability. There was a consensus (i.e. a majority in each of the authorities, as well as a majority in favour overall) in favour of the proposed tariffs for the most serious crimes, for example, those involving death, exploitation, sexual offences, and on drug supply, drug use, and drink driving.
- 4.1.5 In a limited number of areas, there was a mixed response or majority against the proposed tariff, with only Leeds results indicating a majority supporting the proposed tariffs. This may indicate that respondents thought the proposed tariffs were not a significant change from tariffs in Leeds.
- 4.1.6 There was a marked difference between the survey results in Leeds and in the other authorities. Leeds was the only authority where a majority of respondents agreed with the tariffs proposed in the suitability policy. In three of the policy areas, a majority (i.e. three or more authorities) of the surveys had a majority of responses disagreeing with the tariffs, and in one of these areas, all authorities carrying out the consultation agreed to reduce the tariff:
- Minor traffic or vehicle related offences (reduced from 5 years to 3 years);

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An equality and diversity / cohesion and integration impact assessment of the new policy has been completed, and is attached as **Appendix B**.
- 4.2.2 The impact assessment takes into account that a significant majority of the licensed drivers in Leeds come from an Asian or Asian British ethnicity, with just over 50% surveyed being of Pakistani and 15% Kashmiri ethnicity.
- 4.2.3 The impact assessment also draws attention to the evidence that people from some protected groups (older people, younger people, women, wheelchair users or people with limited mobility) are much more likely to be users of taxi and private hire vehicles, and drivers can exert a significant level of control over their passengers,

especially if they are unaccompanied. These people are entitled to expect high standards from their drivers as licence holders.

4.3 Council policies and the Best Council Plan

4.3.1 The council's licensing policies contribute towards the following Best Council Plan objectives:

- Keeping people safe from harm, protecting the most vulnerable.
- Improving access to affordable, safe, and reliable connected transport for young people.

Climate Emergency

4.3.2 Taxi and Private Hire Licensing also contributes towards the following Climate Emergency priority in the Council Plan:

- Improving air quality, reducing noise and emissions.

4.4 Resources, procurement and value for money

4.4.1 The Taxi and Private Hire Licensing service is currently cost neutral to the council and by virtue of the Local Government (Miscellaneous Provisions) Act, 1976, raises its own revenue by setting fees to meet the cost of issuing and administering licences.

4.4.2 These arrangements mean that if proposals are associated with additional costs, they will be funded via licence fees and will not place additional pressure on the council's budget.

4.4.3 It is very likely that the new policy will increase the number of licensing decisions, both for new applicants and for existing licence holders. In such cases, the council will ask for additional information, and either impose additional conditions on a licence holder or will refuse a licence, in many cases, based on historical information. In turn, this is likely to increase the number of appeals against the refusal to grant or renew a licence. In the past three years, the council has refused to renew 38 licences, and had six appeals, all successful for the council. Over the same period, the council has questioned around 100 licence holders about information arising on DBS checks.

4.5 Legal implications, access to information, and call-in

4.5.1 There are possible legal implications arising from this review, both concerning the key legislation for taxi and private hire licensing, which is Local Government (Miscellaneous Provisions) Act 1976.

4.5.2 The Local Government (Miscellaneous Provisions) Act 1976 section 51(1) (b) refers to licence holders holding a valid full (i.e. not provisional) driving licence for 12 months or more.

4.5.3 The Local Government (Miscellaneous Provisions) Act 1976 section 61 refers to licensing decisions to refuse to renew a licence on two grounds:

- a) based either on **new** evidence or conviction involving dishonesty, indecency or violence, since the grant of the licence. (Emphasis added)
- b) any other reasonable cause.

- 4.5.4 The council has secured legal advice on how the new policy should be applied at the stage where a current licence holder is applying to renew their licence, for example with an 'old' conviction or caution, where relevant remedial actions were put in place (such as drug testing or additional training). The legal advice suggests that the new policy does give a licensing authority reasonable cause to review previous convictions and cautions, provided that each case is treated on its merits.
- 4.5.5 In some cases, the council may view those actions as having adequately addressed the risk posed by that licence holder with that conviction or caution, and no new period of refusal would be imposed.
- 4.5.6 In other cases, the new tariffs in the suitability policy could lead to the refusal to renew a licence not based on behaviours since the previous grant of the licence, but based on the new suitability policy requiring the council to view previous behaviour, evidence or conviction in a new light.

4.6 Risk management

- 4.6.1 The report to Licensing Committee identified no major risks and mitigating actions. The aim of the new policies is to reduce the risk posed by licence holders to the travelling public, and to increase the confidence of the public that their taxi and private hire drivers can be trusted.
- 4.6.2 The review of the suitability policy has raised a new risk of a significant increase in the number of appeals made against the council's licensing decisions, and the increase in resulting casework. The proposed 12 month review of the suitability policy will give each council the ability to review the effectiveness of the new policy and impact on decisions and appeals.

5 Conclusions

- 5.1 The report has addressed the results of consultation on the suitability of people to hold a licence, linked to a policy harmonisation project in West Yorkshire and York. The report has summarised the findings and recommendations of the consultation, and proposed revised policy.
- 5.2 The report has provided details of discussion where the council's suitability policies and conditions should be revised at the same time as the five other authorities in West Yorkshire and City of York.
- 5.3 The report proposes arrangements for implementation and review of the suitability policies. If the respective policies can be approved and implemented in all six councils, it would mark significant progress towards adopting common minimum standards for taxi and private hire licensing in the region. The suitability policy would replace the council's current convictions policy, and form the basis of a common framework for refusing and revoking licences, which could be used for the new national database of refused and revoked licences.

6 Recommendations

- 6.1 That Executive Board note the contents of this report, and approve the Suitability Policy, attached as an appendix to this report, to be implemented by Taxi and Private Hire Licensing within two months of the Executive Board meeting.

7 Background documents¹

- 7.1 None.

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.