

Report of Taxi & Private Hire Licensing Manager

Report to Licensing Committee

Date: 6 July 2021

Subject: Proposal to Amend Minor Driving Convictions Criteria within the Suitability and Convictions Policy 2020

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" 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 of main issues

- 1 A Suitability and Convictions policy (the Policy) was approved by Executive Board in October 2019, relating to taxi and private hire licence holders, following consultation in Leeds and across West Yorkshire, to commence with effect from 1 February 2020.
- 2 Following numerous representations and protests from drivers' groups and trade unions, the council did not implement the minor traffic or vehicle related offences criteria set out in Table A to the Policy. This related to the provision for a licence being refused where a DVLA drivers licence was endorsed with seven or more penalty points as a result of minor motoring convictions.
- 3 A Working Group of the Licensing Committee (WG) was formed to enable committee members to consult with the Hackney Carriage (HC) trade, the Private Hire (PH) trade, officers and other stakeholders, enabling further consultation and representations to be made with a view to the WG making recommendations to the Licensing Committee.

- 4 National restrictions in place as a result of the Covid-19 pandemic prevented a meeting of a Working Group until March 2021 where ultimately three options were considered. These were:
- Option 1 Retain the previous clause from the Convictions Policy, allowing candidates and licence holders to have up to 12 points for minor offences;
 - Option 2 – to recommend the criteria as adopted be completely rewritten; and
 - Option 3 – to recommend the criteria as adopted be amended to include a sliding scale of actions linked to the number of points on the DLVA licence.

Recommendations:

Licensing Committee is recommended to:

- (i) Note the purpose and content of the information in this report;
- (ii) Support the recommendations of the Working Group (option 3); and
- (iii) Recommend to the Executive Board that it approves formal public consultation of option 3 for a period of 4 weeks with a view to amending the Suitability and Convictions Policy by replacing existing criteria with new criterion set out in paragraph 3.11 of this report.

1. Purpose of this report

- 1.1 To inform the Licensing Committee of the recommendations of a WG formed to examine the revision of the Minor traffic or vehicle related offences criteria within Table A of the Policy, and to recommend that Licensing Committee recommend to Executive Board that it approves Option 3 set out at paragraph 3.11 be subject to formal public consultation.

1. Background information

- 2.1 The function of licensing is the protection of the public. 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 Crucially, this is not a field in which the licensing authority has to strike a fair 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.

- 2.3 The implementation of the Policy followed consultation and subsequent discussion both nationally, and regionally between the West Yorkshire & York authorities. Based on the guidance developed by the Institute of Licensing, Local Government Association, National Association of Licensing and Enforcement Officers, Lawyers for Local Government and more recently advocated in the Statutory Taxi & Private Hire Vehicle Standards 2020, from the Department of Transport.
- 2.4 Leeds City Council worked with the five other authorities in West Yorkshire and York to develop harmonised policies as recommended by the Department of Transport, in order to improve public safety. The policy has largely been adopted by the other authorities and will 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.
- 2.5 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 6100 people to work as taxi and private hire drivers is the safety of the travelling public.
- 2.6 In October 2019, following a consultation process and discussion with neighbouring authorities, the Policy was approved by Executive Board. The Policy criteria retained the recommended period of refusal of 7 years for major motoring offences, but reduced the previous length of refusal for minor offences from 5 years to 3. At the time, the council did not have the information on the number of drivers with points, but as of June 2021, 1177 out of approximately 6100 drivers had disclosed points on their DVLA licence, around a fifth of all drivers.

Points	Private Hire Driver	Hackney Carriage Driver
3	714	112
4	12	2
5	8	0
6	214	36
7	6	2
8	13	2
9	39	4
10	4	0
11	3	1
12	5	0

- 2.7 Notwithstanding its approval, shortly prior to the implementation of the Policy, members of the licensing trade made strong objections to the council in respect of the minor traffic offences criterion.
- 2.8 In response, a delegated decision to pause the implementation of the Minor traffic or vehicle related offences criterion set out in Table A of the Policy was taken. Therefore on 1 February 2020, the Policy came into effect with the exception of that criteria meaning the previous Convictions Policy's criteria on minor licence endorsements, was retained pending a review by a Working Group led by Licensing Committee members, and composed of Taxi and Private Hire Licensing officers, private hire and hackney carriage trade representatives, police, road safety and passenger groups.
- 2.9 The Working Group met on 9 and 23 March 2021, and ultimately considered three options as set out in detail in paragraph 3.11 below following a structured approach with consideration for the Terms of Reference, introductions, and an explanation of the proposal by the Taxi Licensing Manager followed by statements, questions and considerations from trade representatives and passenger groups. The members of the Working Group are listed in Appendix 2.

3. Main issues

Reviewing the Minor traffic or vehicle related offences criteria within Table A of the Policy

- 3.1 As set out above, in October 2019 Executive Board approved a Suitability and Convictions Policy. However, shortly prior to the implementation of the Policy members of the trade strongly objected to the inclusion of the following criteria contained in Table A of the Policy being used to determine the time periods that should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.
- 3.2 Primarily the objections related to the threshold point at which the penalty was to be imposed and concern was expressed that a driver's licence would routinely be revoked for 3 years once 7 points for minor motoring convictions was reached.
- 3.3 The criterion in the current policy is set out below:

Minor Road Traffic Offences:

Convictions for minor traffic offences (identified in Table 1) should not prevent you from proceeding with an application or holding a licence. However, if the number of current points on your DVLA licence exceeds 12 points then your application will be refused or the current licence suspended or revoked. A further application will not be approved until the DVLA licence demonstrates that the number of current points on the licence is below 13 points.

- 3.4 A decision was taken to retain the previous criteria until a working group of the Licencing Committee was set up to discuss further the concerns relating to the criteria. The Licensing Committee were directed to review the criteria with the assistance of a Working Group, drawn from committee members, licensing officers, trade representatives, police officers and representatives of passenger and road safety groups.
- 3.5 During the WG meetings, officers presented a case for reserving the right to include the criteria which in effect permitted licences to be refused, revoked or not renewed where a driver had accrued 7 points or over on their licence, and where necessary use other methods to uphold compliance.
- 3.6 Officers explained how each case would be examined individually, as is currently the case, and alternatives to revocation, such as driver training and/or assessment, would be considered in the process to bring drivers into compliance.
- 3.7 A summary of the questions and comments raised and discussed in both meetings are included in **Appendix 1** to this report.
- 3.8 However, the main substance of debate related to whether 7 points is a reasonable threshold for review and what other alternatives to immediate revocation were appropriate.
- 3.9 As a result, three options were proposed and discussed in the Working Group and these are set out below. There was a majority consensus in respect of Option 3, although this was not unanimous.

Options for revisions to the criteria

- 3.10 The WG discussion focused on the way in which the criteria could be amended from that approved, and clarifying what action would take place and at what level of points that action would be triggered.
- 3.11 **WG** members were asked to consider one of the following three options in conclusion:
- Option 1 Retain the criterion from the previous Convictions Policy, allowing applicants and licence holders to have 12 points or fewer for minor road traffic offence before any penalty was imposed.
- Option 2 Revert to the criterion consulted upon and approved by neighbouring authorities, meaning applicants and licence holders could be subject to penalty once they had 7 points for minor road traffic offences, even if in reality, authorities would apply other measures.
- Option 3 Replace the criterion as approved in the Policy with a new one clarifying that new applicants with 7 or more points would be refused a licence, existing licence holders with 7-8 points would be required to undertake remedial training, and only licence holders with 9 or more points would be considered for revocation or a refusal to renew an existing licence.

3.12 The specific wording of each option is set out below:

Option 1. Insert the existing criterion from the '2016 policy' into the 2020 policy: **Minor Road Traffic Offences:**

"Convictions for minor traffic offences should not prevent you from proceeding with an application or holding a licence. However, if the number of current points on your DVLA licence exceeds 12 points then your application will be refused or the current licence suspended or revoked. A further application will not be approved until the DVLA licence demonstrates that the number of current points on the licence is below 13 points.

Totting Up

When disqualified from driving under the 'totting up' procedures, a compulsory or discretionary period of disqualification, the licence will remain suspended until the driver has achieved a pass in a 'driving life skills' training with a nationally recognised and accredited driving assessment programme.

Where a licence shows 12 points or more but no disqualification was imposed because of 'exceptional hardship'; the requirement to undertake 'driving life skills' development and be successful will apply and must be achieved within 3 months of the Court decision or the private hire driver licence should be suspended and not restored or renewed (in the event of a subsequent new application) until successful in a 'driving life skills' programme with a nationally recognised and accredited driving assessment programme.

NB: This policy applies to all new applications and to those currently licensed since the adoption of the policy".

OR

Option 2: Insert in the 2020 policy the criterion approved by the neighbouring authorities:

"Minor traffic or vehicle related offences – offences which **do not involve** loss of life, driving under the influence of drink or drugs, driving whilst using a hand held telephone or other device and has not resulted in injury to any person or damage to any property (including vehicles) resulting in 7 or more points on a DVLA licence.

An applicant would ordinarily be refused for a period of 3 years.

OR

Option 3: Insert in the approved Policy, the below (new) criterion

"Minor traffic or vehicle related offences – offences which **do not involve** loss of life, driving under the influence of drink or drugs, driving whilst using a hand held telephone or other device and has not resulted in injury to any person or damage to any property (including vehicles) resulting in 7 or more points on a DVLA licence.

An applicant with 7 points or more would ordinarily be refused for a period of 3 years.

An existing licence holder with 7 or 8 points would ordinarily be referred for driver training or assessment.

An existing licence holder with 9 points or more would ordinarily be referred for driver training or assessment. If such warnings or training have previously been undertaken, revocation may be considered”.

- 3.13 The consensus of the majority view of the Working Group is that option 3 is the preferred way forward, as being the recommendation to Licensing Committee, although the view was not unanimous, and some members of the working group have subsequently expressed a preference for Option 1.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Working Group Members met with, and had full engagement with HC and PH trade representatives. They also had an opportunity to listen to and ask questions of a representative from West Yorkshire Police and officers from the councils Influencing Travel Behaviour team (Road Safety). Members also had knowledge of some personal experiences of the issues raised by constituents outside of the WG.
- 4.1.2. Licensing Committee will recall that in addition to this WG there was a public and trade formal consultation period when the Policy was first proposed. This lasted for 2 months between 5 November 2018 and 18 January 2019.
- 4.1.3 The discussion at the second and final Working Group meeting recommended that option 3 be considered by the Licensing Committee as the option they recommend to Executive Board to be subject to public consultation.
- 4.1.4 After the last meeting officers considered it may be appropriate to allow those people who attended the Working Group to have time in consulting with their members and respond in writing with a response. These are contained in Appendix 4.
- 4.1.5 As the recommendation will, if adopted, effectively change the current Policy, it is reasonable and appropriate that the proposed amendment to the criteria is subject to a formal public consultation period of 4 weeks.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Equality and Cohesion Screening Assessments are carried out on the policies agreed at Licensing Committee and policy changes made under the scheme of sub delegation. An Equality Impact Assessment Screening report was undertaken when policy was first proposed. A revised version is attached.

4.3 Council policies and City Priorities

4.3.1 Taxi & Private Hire Licensing policies contribute to the following aims:

Best Council Plan

Towards being an Enterprising Council

Our Ambition and Approach

Our Ambition is for Leeds to be the best city and Leeds City Council to be the best council in the UK – fair, open and welcoming with an economy that is both prosperous and sustainable so all our communities are successful.

Our Approach is to adopt a new leadership style of civic enterprise, where the council becomes more enterprising, business and partners become more civic, and citizens become more actively engaged in the work of the city.

Our Best Council Outcomes.

Make it easier for people to do business with us.

Our Best Council Objectives

Promoting sustainable and inclusive economic growth – Improving the economic wellbeing of local people and businesses. With a focus on:

- Helping people into jobs;
- Boosting the local economy; and
- Generating income for the council.
- Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city. With a focus on;
- Getting services right first time; and
- Improving customer satisfaction.

4.3.2 **Taxi & Private Hire Licensing policies contribute to the following priorities:**

- Reduce crime levels and their impact across Leeds;
- Effectively tackle and reduce anti-social behaviour in communities;
- Safeguarding children and vulnerable adults:

Leeds City Council has both a moral and legal duty of care for both children and adults at risk across all of its services. This cannot be achieved by any single service or agency. Safeguarding is ultimately the responsibility of all of us and depends on the everyday vigilance of staff who play a part in the lives of children or adults at risk.

5. Resources and value for money

- 5.1 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.
- 5.2 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. It is likely that the further consultation will be accompanied by some minor additional costs, including handling telephone and email contact, possible face to face meetings, and survey analysis.

6 Legal Implications, Access to Information and Call In

- 6.1 It is possible for policy changes to have legal implications, depending on the nature of the change. The recommendations in this report relate to an amendment of one criterion in the Policy, which was agreed by the Executive Board in October 2019.

7 Risk Management

- 7.1 The original policy and report to Licensing Committee identified no risks and mitigating actions. The aim of the review of the criteria relating to minor motoring convictions is to continue to safeguard the travelling public by maintaining standards relating to new applicants and existing licence holders' driving standards, and at the same time provide some clarity that the council would not prematurely seek to revoke existing licence holders' licences.
- 7.2 A small number of drivers (currently 178 with 7 or more points, 98 with 9 or more points, and 5 with 12 points on their DVLA licence) continue to hold a licence will raise the risk to the safety of passengers and other road users, there is a significant impact to the public of bad driving or speeding in the event of an accident, and it is therefore important these cases are the subject of a review. Driver training is always regarded as the first action in order to address public safety for repeated minor motoring convictions.

8 Conclusions

- 8.1 The report has outlined the findings of the Working Group to recommend an amendment to the minor road traffic offences criterion within Table A of the Policy. The report has summarised the key features of the Working Group's activity and summarises the main points raised in discussion.
- 8.2 The recommendations made by the Working Group, for approval by Licensing Committee of option 3, and any subsequent decision by the

Executive, will be discussed with neighbouring authorities as part of policy harmonisation.

9 Recommendations

9.1 Licensing Committee is recommended to:

- (i) Note the purpose and content of the information in this report.
- (ii) Support the recommendations of the Working Group (option 3); and
- (iii) Recommend to the Executive Board that it approves formal public consultation of option 3 for a period of 4 weeks with a view to amending the Suitability and Convictions Policy by replacing existing criterion with new criterion set out in paragraph 3.11 of this report.

Background documents (most recent first)

Link to List of UK Driving Conviction Codes & Penalty Points:

<https://www.gov.uk/penalty-points-endorsements/endorsement-codes-and-penalty-points>

Department of Transport: Taxi and Private Hire Vehicle Licensing: Statutory Guidance for Licensing Authorities, July 2020:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/928583/statutory-taxi-and-private-hire-vehicle-standards-english.pdf

Report to Leeds City Council Licensing Committee - Suitability and Convictions Policy – additional report – 28 January 2020:

<https://democracy.leeds.gov.uk/ieListDocuments.aspx?CId=163&MId=9682&Ver=4>

Report to Leeds City Council Executive Board - Proposed Suitability (Convictions) Policy for Taxi and Private Hire - 16 October 2019:

<https://democracy.leeds.gov.uk/ieListDocuments.aspx?CId=102&MId=9773&Ver=4>

Report to Leeds City Council Licensing Committee. Proposed Suitability (Convictions) Policy for Taxi and Private Hire - 3 September 2019:

<https://democracy.leeds.gov.uk/ieListDocuments.aspx?CId=163&MId=9678&Ver=4>

Policing and Crime Act 2017, section 177:

<https://www.legislation.gov.uk/ukpga/2017/3/section/177>

Suitability and Convictions Policy

Leeds City Council Suitability (Convictions) policy – February 2020

<https://www.leeds.gov.uk/licensing/taxi-and-private-hire/licensing/suitability-and-convictions-policy>

Appendix 1 - Summary of discussion points at working group

a) “This would be a further barrier to enter the trade. There already is a shortage of HC drivers?”

Reply – The council’s position is that the public are entitled to expect high driving standards (and indeed other standards) from taxi and private hire licence holders. The policy is part of a national driver standard for more consistency and a focus on more vulnerable passengers.

b) “HC and PH drivers drive a lot of miles, and the council should accept it is normal to get motoring points.”

Reply – Around 20% of HC and PH drivers have declared points, so around 80% either have no points or have not declared them.

c) “I have concern that officer discretion is unfair, inconsistent, and unreasonable. Concern about an Equality Impact Assessment carried out.”

Reply – Officers use their professional judgement based on mitigating and aggravating circumstance. Legally a licence holder can appeal to magistrates’ court to appeal a decision made by officers.

The Equality Impact Assessment was submitted to the Licensing Committee at the time of the initial recommendation for the policy. This is clearly available on the council’s website within the formal minutes of the meeting but is attached to this report. The Equality Impact Assessment considers the requirements of both drivers and passengers.

d) “I don’t accept Leeds City Council will implement this policy until all the other West Yorkshire and York authorities’ harmonisation is complete, including vehicle conditions?”

Reply – Leeds City Council is the last of the regional authorities to implement this policy. Vehicle conditions are not part of this WG’s remit.

e) “How are council employees treated when they get points on their licences?”

Reply – Those driving Large Goods Vehicles are regulated by the Traffic Commissioners and are subjected to suspension and revocation. (The holder of the Operator’s licence (managers) also has a responsibility and maybe held to account). In addition, these drivers and those of smaller vehicles are

subjected to internal discipline measures and additional training if considered appropriate.

f) “What about bus drivers working for First Bus?”

Reply – First Bus refuses to employ a driver with 3 points on a DVLA licence. Existing drivers are also regulated by the Traffic Commissioner, who according to guidance, consider driving a bus with passengers to be an aggravating factor when an offence is committed.

g) “What was wrong with the old policy?”

Reply – As the regulator the council has decided to follow the Department of Transport recommendation to work with neighbouring authorities. Some authorities had poor convictions policies. This creates a level and fairer playing field for those working in the trade. It will deter licence shopping, where a licence holder obtains a licence from the authority with lower standards.

h) “I agree with the serious stuff in the policy but the seven points is worrying. What if you have a drunk in the back and he’s messing around? It’s easy to just slip through a speed camera two or three miles above the limit.”

Reply - Taxi drivers are professional drivers. Their driving should be a higher standard than a domestic motorist, a professional driver should know their speed with minimal reference to a speedometer, will recognise hazards and driving conditions and adapt their driving accordingly.

i) “I fear that Leeds City Council will automatically revoke, unlike other councils who on paper have signed up to the same policy.”

Reply – Driving is the most complained aspect of taxi and private hire, over a third of all complaints. Leeds City Council approach is to advise and retrain, revocation is a last resort.

j) “I do not accept that accidents indicate a poor standard of driving. How many people were injured in or by taxis? Drivers are professional, driving up to 10 or 12 hours a day.”

Reply – Within the last 3 years 593 taxi and private hire vehicles required post-accident inspection in the TPHL garage (2018-236; 2019-260; 2020-97). Leeds City Council wants to reduce accidents. The council does not report road traffic injury figures specific to taxi and private hire vehicles.

k) “I feel the council are withholding information, not seen beforehand. Where does discretion come into it? This should not be with Taxi Licensing. They are institutionally racist.”

Reply – The service is required to complete an Annual Licensing Report, this years has recently been approved by the Licensing Committee. The report demonstrates our transparency including figures of our activities and decisions. The service has agreed to provide an overview of licensing decisions as part of the Statutory Guidance review, but does not accept that officer decisions are based on race or ethnicity.

l) “Referring to the slide – ‘advantages and disadvantages’. 75 drivers out of 6000 would be affected by introducing this clause. It is so low, why bring the policy in? There is nothing wrong with the old policy. 7 points is too low, raise it to 9 points.”

Reply – At 7 points, there is the opportunity for a driver to correct their behaviour before incurring a stronger penalty. The old policy does not provide that opportunity. Drivers are much more likely to be disqualified by a court with 12 points.

m) “Nobody is going to get sacked (revoked), so why introduce it if you are not going to use it? The Statutory Guidance says you should not give the benefit of doubt.”

Reply – We do intend to use the policy. We intend bringing drivers up to a standard of a professional driver. For example, York have revoked drivers who, in addition to the number of points, committed breaches of licencing conditions. We expect this position to be similar across West Yorkshire.

n) “Can I suggest that because of the low numbers of drivers affected – it could be argued both ways. The main issue is around officer discretion, I am comfortable that it was not going to be an ‘automatic’ revocation at 7 points. I think that at 7 points, if drivers have a warning discussion and or training, and at 9 points revoked. This would give the trade some peace of mind and get rid of the officer discretion anxiety.”

Reply (Chair) – The issues surrounding officer discretion is to be examined by the Licensing Committee as part of the Statutory Guidance work.

Reply - To introduce something different regionally could be awkward. Officers want to make good equitable decisions with the aim of bringing people into compliance.

o) “We can’t deny this issue has caused concerns in the trade. We are out of kilter with West Yorkshire and York authorities anyway such as with tinted windows. If this is not a problem with 10 points why change? Go for 9 points, automatic suspension pending training.”

Reply – It is really important that we try and raise standards and reward good driving standards.

Appendix 2. Working Group - Attendees

Appendix 3. Working group – Terms of Reference

Appendix 4. Written responses from Working Group members

Appendix 5. Delegated decision to not implement criterion for 7 points

Appendix 6. Equality Impact Assessment of changes to the council’s Suitability and Convictions policy.