

 <b>WARWICK DISTRICT COUNCIL</b>	<b>Regulatory and Licensing Committee</b> <b>December 2014</b>	<b>Agenda Item No. 7</b>
<b>Title</b>	Convictions and Cautions report	
<b>For further information about this report please contact</b>	Marianne Rolfe, Regulatory Manager, Health and Community Protection. 01926 456320 Marianne.rolfe@warwickdc.gov.uk	
<b>Wards of the District directly affected</b>	All	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	6 <sup>th</sup> August 2014	
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality and Sustainability Impact Assessment Undertaken</b>	Yes

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive		
Head of Service		Richard Hall
CMT		
Section 151 Officer		
Monitoring Officer		
Finance		
Portfolio Holder(s)		Michael Coker
<b>Consultation &amp; Community Engagement</b>		
<p>Consultation has taken place with the Licensed Private Hire Drivers, Hackney carriage Drivers and Private Hire Operators and Warwickshire police through the Taxi Drivers and Operators Forum. This forum has been established specifically to allow consultation with the Taxi Trade and each member of the forum has been nominated by other members of the trade to represent them.</p>		
<p>In addition each of the Licenced Private Hire or Hackney Carriage Drivers were written to in order to raise awareness of the consultation and to invite comments on the draft policy.</p>		
<p>There was also press release issued drawing members of the public attention to the consultation and inviting opinions on the draft policy.</p>		

<b>Final Decision?</b>	No
<b>Suggested next steps (if not final decision please set out below)</b>	
Recommendations for the Executive committee.	

## 1. **SUMMARY**

- 1.1 To present the reviewed Convictions and Cautions Policy which is applicable to Drivers of Hackney Carriages and Private Hire Taxi Drivers.

## 2. **RECOMMENDATION**

- 2.1 That the committee recommends to the executive committee that the proposed policy and agree that it will be used for the assessment of all new and renewing drivers.
- 2.2 That the committee recommends to the executive committee that the methodology for dealing with existing drivers who fall outside of the standards identified in the policy.
- 2.3 That the committee recommends to the executive committee that the taxi driver licence application form is amended to reflect the new policy.

## 3. **REASONS FOR THE RECOMMENDATION**

- 3.1 It has come to the attention of Officers that the Convictions and Cautions Policy, against which all new applicants and renewal applicants for a Hackney Carriage and Private Hire Driver's License are assessed, is set at a level below the requirements outlined by all of the neighbouring authorities' policies.
- 3.2 The draft policy has been consulted upon and the comments received reviewed against the proposed policy. The resulting policy is the attached appendix 1.
- 3.3 The changes to the policy are wide ranging and are designed to ensure the safety of the general public by ensuring that the applicants and renewing drivers are fit and proper.
- 3.4 Many of the standards laid down in the revised policy are the same or similar to the current policy. The existing Policy can be made available.

## 4. **POLICY FRAMEWORK**

- 4.1 This will not change the policy framework, merely the Convictions and Cautions Policy for Hackney Carriage and Private Hire (HC/PH) drivers and new applicants for a HC/PH Driver's Licence.
- 4.2 **Fit for the Future**
- 4.3 Contents of Policy provide guidance, consistency, best practices, transparency, and proportionality and promote safety and wellbeing to the community. This contributes to making it a great place to work, live and visit.

## 5. **BUDGETARY FRAMEWORK**

- 5.1 There are no budgetary implications resulting from the change of policy.

## 6. **RISKS**

- 6.1 From our records, there will be four existing drivers who will not meet the new policy standard with regard to the number of points on their licence. Regard would be had when these points were acquired and whether the points limit was

exceeded during the licensing period or held before the last licence renewal. Drivers whom do not meet this requirement would, as with all applicants be given the option to be heard by to the committee upon renewal of their licences.

- 6.2 There will be a number of drivers who do not meet the new policy standard with regard to convictions and cautions upon their records. However these drivers have already been assessed by the committee and in consideration of the offences and mitigation, found to be 'Fit and Proper'. Therefore it is proposed that there is no need for these drivers to be heard by the committee for a second time.
- 6.3 There may be a number of drivers who have committed offences since their last licence was issued and these drivers will be subject to the standards described in the proposed policy.
- 6.4 If these drivers have declared these new convictions prior to the renewal of their licence, they will be referred to the committee and therefore the issue of their 'fit and proper' status will already have been determined. However if the drivers have failed to declare those convictions they will be subject to the standards outlined in the policy.
- 6.4 Any driver with excessive points or new undeclared convictions will upon notification that we are minded to refuse their licence is made aware of the ability to make representations.
- 6.5 Should they choose to make representations, this will result in an initial increase in the number of existing drivers being referred for a hearing.
- 6.6 It would then be for the committee to decide if it is appropriate to deviate from the policy and grant the existing license holder a renewal based on the merits of each case.

## **7. ALTERNATIVE OPTION(S) CONSIDERED**

- 7.1 The proposed policy could be refreshed and the current policy continues being used. However, it is considered that our policy is out of step with those of our neighbouring authorities. This has the potential for lower standards of behaviour and competence of drivers in our district.

## **8. BACKGROUND**

- 8.1 The current policy is used for the assessment of every new applicant and renewal applications for Hackney Carriage and Private Hire Driver's Licenses.
- 8.2 The current WDC policy is not as stringent as neighbouring authorities' policies. This means that, in terms of a person's history and the applicant being considered a 'fit and proper' person, our measure is considerably lower.
- 8.3 Applicants at the committee and in communications with officers have stated that the reason that they have applied to be a taxi driver in the WDC area is that it is easier to get a license with WDC.
- 8.4 The committee regularly deviates from the policy which would indicate that the policy does not provide the appropriate level of guidance to the Committee in

order to deal with applicants before them with a question as to their fit and proper status.

- 8.5 All of the policies that apply to the assessment and operation of the Taxis trade with WDC are under review. This is to address the concerns of the officers, general public and councillors. The review will ensure that the policies are robust and as a minimum in line with our neighbouring authorities.
- 8.6 The current policy has many grey areas which do not assist officers, or the committee, in assessing applicants or renewal of existing driver suitability. The review of the policy should make these areas clearer and direct attention towards an assessment of a driver in order to demonstrate that they are a 'fit and proper person' namely:
- Would you trust this person with your son/daughter, mother/father, grand parent, sister/brother or another vulnerable person?
  - Would you trust this person with sensitive information? That you are on holiday? That the house is empty? That parents don't get home for a couple of hours?
  - Is this person safe and suitable to hold this role?
- 8.7 The Driver and Operators Forum were consulted on their opinions as to what standards the policy should set. They agreed at the initial meeting on the 5<sup>th</sup> June 2014:
- They were not happy with the current policy
  - The reviewed policy should be, as a minimum, equivalent to the neighbouring authorities.
  - The following offences should result in an automatic refusal for an application
    - Drug and Drink Related
    - Sexual
    - Dishonesty
    - Insurance
  - Violence offences as they were so wide ranging should be assessed on a scale based upon type and age.
  - The acceptable number of Penalty points on a driving license should be reduced to 6 points for new applicants.
- 8.8 Legal opinion has been obtained throughout the drafting of the policy. Officers have drafted the policy to define a framework by which both officers and the committee can assess if a person is 'fit and proper' which must be the primary consideration.
- 8.9 The new policy will require a minimum period free from conviction. In addition should a driver have more than one conviction, the minimum period free from conviction will have to be assessed on a case by case basis, to see if it remains appropriate.
- 8.10 The policy is a framework in order that officer's applying the policy can be consistent and proportionate in their decision making. The policy is also a framework for the committee and should a person find themselves in front of the committee it is for the committee to decide if the framework should be deviated from.
- 8.11 The policy was sent out for public consultation which closed on the 18<sup>th</sup> August 2014. Very few public responses were received. The following comments were

received (including those received at the Licensing and Regulatory Committee on the 6<sup>th</sup> August 2014:

*General Comments:*

- Appendix A the first five steps issues with the layout of them
- 'Disclosure requirements' refers to 'general guidelines' but where are they?
- Reconsider the use of the word 'offences'
- National standard going to be introduced in November so why bother.
- Include enforcement policy into this document
- How will existing licence holders be dealt with?
- Warwick is very good and never shamed in the trade magazines.

*Penalty Points on licence:*

- 7 points banned for ever?
- Number of points on licence should be the same as neighbours
- Change the wording on the 7 points section to make the meaning clearer
- 7 points is too low.
- Existing drivers with more than 7 points should be brought before the committee

*Wearing of Licenced Driver Identification Badge:*

- 2 years for not wearing your badge?
- Not wearing badge should be higher ban

*Insurance:*

- Driving without insurance should be higher ban

*Mobile Phone Use:*

- Driving with a mobile phone should be a higher ban

Assaulting WDC staff, Police Officer or Agent of WDC (i.e. street marshals etc.)

- This should be higher (received after the closing of the consultation).

8.12 The Driver and Operators Forum on the 18<sup>th</sup> August 2014 made the following comments:

*General Comments:*

- Clarification needed on certain points within the policy
- Clarification needed about what happens when existing drivers fall outside of the policy.
- Clarify the method by which a driver would be treated upon application. The Forum recognised that it was in the policy but the section had not read by many of the PH/HC Drivers

*Penalty Points on licence:*

- Should be 7 active points on license.
- The Forum recognised that neighbouring local authorities have a similar level of points in their policy.
- The Forum suggested that drivers who have more than 6 points on their driving license are made to do an Advanced Driving Course.
- There should be an implementation period to allow persons to meet the new policy if they are existing drivers.

*Wearing of Licenced Driver Identification Badge:*

- PH/HC drivers are concerned about the 'wearing badges' section of the policy. The forum recognises that prosecution for failing to wear a badge would take place when all other methods encouraging a driver to wear their badge have failed.
- They suggested that something better than a badge is introduced. I.e. something that requires display like the New York Taxis.

*Driving Convictions:*

- PH/HC drivers are concerned that the suggested restriction on 'Careless Driving' is too harsh, as there are three different types. However, the Forum recognises that the method by which they are recorded on a person's DBS (formally CRB) means that they must all be treated in the same manner within the policy. The Forum does not believe that a person with a careless driving conviction should be considered 'fit and proper' on initial assessment of an application.
- PH/HC drivers are concerned that the policy does not take into account that a magistrate is more lenient on a person for drink driving when they drive for a living. *(It is worth noting that comment is incorrect. The sentencing guidelines state that the offence is aggravated where the person is driving for hire or reward and the guidelines do not state that the sentence should be more lenient where a person drives for a living).*

- 8.13 In addition 17 comments were received stating "The suspension/ ban period for offences is not proportionate to the offences listed. It should remain as it currently is. The current system works fine so why alter it"
- 8.14 A petition was delivered to the Licensing and Regulatory Committee Meeting on the 6<sup>th</sup> August 2014 signed by 143 Licenced drivers questioning the legality of the policy and commenting that the policy is stricter than our neighbours. The petition which was addressed to the committee will be available at the committee meeting.
- 8.15 All of the comments have been considered and amendments made to the policy where necessary. All comments and amendments have been considered in conjunction with legal advice from council legal representatives and from a legal firm who specialise in taxi law.
- 8.16 The firm commented that the policy overall is much more realistic and sensible than many authorities.
- 8.17 Appendix 2 contains a summary of the changes from the current policy.
- 8.18 Officers are continuing to review the other conditions and policies associated with Hackney Carriage and Private Hire activities. This policy will in the longer term be incorporated into a larger document containing all of the associated policies.
- 8.19 At the Driver and Operators Forum held on the 1<sup>st</sup> December 2014 the proposed policy was discussed. The Forum agreed the measures taken to address the concerns raised for existing drivers.