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# Convictions Guidance - Summary Report

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<b>Committee considering report:</b>	Licensing Committee
<b>Date of Committee:</b>	11 February 2019
<b>Portfolio Member:</b>	Councillor Richard Somner
<b>Report Author:</b>	Charlie Fletcher, Acting Principal Licensing Officer
<b>Forward Plan Ref:</b>	N/a

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## 1. Purpose of the Report

- 1.1 This report examines the criminal convictions element of the 'fit & proper' test. This test applies to existing licence holders and new applicants for Hackney Carriage driver licences, Private Hire driver licences, and Private Hire Operators licences.
- 1.2 It is proposed to replace the Council's existing criminal convictions guidance document with a more comprehensive policy, which has been drafted to reflect the recently published 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades', produced and published by the Institute of Licencing ('IoL').

## 2. Recommendations

- 2.1 That the Committee agrees that:
  - (a) the Guidance published by the IoL is noted.
  - (b) a consultation is carried out with the trade on the proposals that:
    - i. the new Guidance is adopted by the Council
    - ii. the new Criminal Convictions Policy is adopted, replacing the existing guidance notes
  - (c) the results of that consultation be brought back to this Committee for further consideration.

## 3. Implications

- 3.1 **Financial:** There are no specific financial implications arising from this report.
- 3.2 **Policy:** The Council's existing policy for considering licence holder and licence applicant criminal convictions is in need of an update and would be so updated following the analysis and consideration of any consultation responses, should the Committee be minded to proceed.
- 3.3 **Personnel:** There are no specific personnel implications arising from this report.
- 3.4 **Legal:** Section 51 and 55 of the Local Government (Miscellaneous Provisions) Act 1976 includes the provision for the fit and

proper person test.

3.5 **Risk Management:** There are no specific risk matters arising from the adoption of this policy. A risk would arise should the Council fail in its statutory duty to only licence individuals who are deemed fit and proper to hold a licence.

3.6 **Property:** None

3.7 **Other:** None

#### 4. Other options considered

4.1 The Committee could decline to proceed with a consultation on the adoption of the guidance, meaning the Council would continue to utilise the existing guidance document.

## Executive Summary

### 5. Introduction / Background

- 5.1 The Local Government (Miscellaneous Provisions) Act 1976 provides that a Licensing Authority must satisfy themselves, before a licence is granted, that the applicant for a driver or operator licence is a fit and proper person.
- 5.2 The Council includes a criminal records check (DBS) as part of its fit and proper person test, and has published guidance to assist applicants and decision makers in relation to interpreting any trace highlighted on this check.
- 5.3 The IoL has recently published a comprehensive guidance document in relation to determining applicant suitability, specifically in relation to any trace identified within criminal records checks, or other non-conviction information that comes to light.

### 6. Proposals

- 6.1 It is proposed to adopt the guidance produced by the IoL and to incorporate the timescales included therein into an updated and overhauled Hackney Carriage and Private Hire Licensing Criminal Convictions Policy.
- 6.2 A consultation shall be carried out with the trade and general public, the results of which shall be presented back to the committee for further consideration.

### 7. Conclusions

- 7.1 A comprehensive and robust policy will aid clarity for applicants, licence holders, Council officers, and elected Members.
- 7.2 The IoL guidance is also due to be adopted across the Public Protection Partnership, and whilst there may be some localised deviations in policy, they are only minor in nature, enabling the Council to benefit from economies of scale and resilience.

### 8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment
- 8.2 Appendix B – Equalities Impact Assessment
- 8.3 Appendix C – Supporting Information
- 8.4 Appendix D – Institute of Licensing guidance document
- 8.5 Appendix E – Current Council guidance on criminal convictions
- 8.6 Appendix F – Comparison of timescales between current and proposed conviction timescales
- 8.7 Appendix G – Draft Criminal Convictions Policy

## Appendix A

### Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via [dp@westberks.gov.uk](mailto:dp@westberks.gov.uk)

Directorate:	Public Protection and Culture
Service:	Public Protection Partnership
Team:	Licensing
Lead Officer:	Julia O'Brien
Title of Project/System:	Criminal Convictions Policy
Date of Assessment:	11 January 2019

## Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p><b>Will you be processing SENSITIVE or “special category” personal data?</b></p> <p><i>Note – sensitive personal data is described as “data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation”</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be processing data on a large scale?</b></p> <p><i>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will your project or system have a “social media” dimension?</b></p> <p><i>Note – will it have an interactive element which allows users to communicate directly with one another?</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will any decisions be automated?</b></p> <p><i>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will your project/system involve CCTV or monitoring of an area accessible to the public?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using the data you collect to match or cross-reference against another existing set of data?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using any novel, or technologically advanced systems or processes?</b></p> <p><i>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.**

## Appendix B

### Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
    - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
    - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

**Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.**

<b>What is the proposed decision that you are asking the Executive to make:</b>	Agree to consult on the adoption of a new criminal convictions policy for licence holders and applicants
<b>Summary of relevant legislation:</b>	Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847
<b>Does the proposed decision conflict with any of the Council's key strategy priorities?</b>	No
<b>Name of assessor:</b>	Charlie Fletcher
<b>Date of assessment:</b>	11 January 2019

<b>Is this a:</b>		<b>Is this:</b>	
<b>Policy</b>	<b>Yes</b>	<b>New or proposed</b>	<b>No</b>
<b>Strategy</b>	<b>No</b>	<b>Already exists and is being reviewed</b>	<b>Yes</b>
<b>Function</b>	<b>No</b>	<b>Is changing</b>	<b>Yes</b>
<b>Service</b>	<b>No</b>		

<b>1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?</b>	
<b>Aims:</b>	To adopt a new criminal convictions policy
<b>Objectives:</b>	To ensure the protection of the public via a robust decision making process
<b>Outcomes:</b>	Strong and defensible decisions on licence holder suitability
<b>Benefits:</b>	Ensuring that only suitable persons are granted licences

<b>2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.</b> (Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
<b>Group Affected</b>	<b>What might be the effect?</b>	<b>Information to support this</b>
Age	No impact	

Disability	No impact	
Gender Reassignment	No impact	
Marriage and Civil Partnership	No impact	
Pregnancy and Maternity	No impact	
Race	No impact	
Religion or Belief	No impact	
Sex	No impact	
Sexual Orientation	No impact	
<b>Further Comments relating to the item:</b>		
No further comments		

<b>3 Result</b>	
<b>Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?</b>	<b>No</b>
<b>Please provide an explanation for your answer:</b> No evident contribution to inequality	
<b>Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?</b>	<b>No</b>
<b>Please provide an explanation for your answer:</b> No evidence the adoption of a revised policy will have an adverse impact.	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

<b>4 Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	
<b>Owner of Stage Two assessment:</b>	
<b>Timescale for Stage Two assessment:</b>	

Name: Charlie Fletcher

Date: 11 January 2019