



Policy and Resources Committee - 19 April 2010

Hackney Carriage and Private Hire Drivers Criminal Records Policy

Summary

This report seeks approval of a new Hackney Carriage and Private Hire Drivers Criminal Records Policy.

Attachment(s)

Hackney Carriage and Private Hire Drivers Criminal Records Policy.

1.0 Introduction

1.1 When determining applications for Hackney Carriage and Private Hire Drivers, there must be an assessment as to whether the driver is considered to be fit and proper to hold such a licence. Part of this assessment involves checking the driver's criminal record using the Enhanced Criminal Records Bureau (CRB) test. The results of the CRB check need assessing in order to ensure applicants are fit and proper to be a driver within East Northamptonshire. In the past Home Office circulars have been used to help make these decisions but these documents are now out of date and it is best practice to have a Council policy to determine applications.

2.0 Criminal Records Policy

2.1 This policy has been developed by East Northamptonshire Council with a view to being adopted as a County document. This document, if adopted as part of County policy, will enable authorities to share information about drivers that have been refused licences as they have all been assessed against the same criteria. This has been an initiative that has been developed as part of the County Licensing Seminars which involve licensing councillors from the County licensing authorities.

2.2 The document has been out to consultation with all of the East Northamptonshire Licensing Committee Councillors. In addition, all of our existing drivers have been consulted and it has been published on the Council's website for consultation. Comments have been received from Councillors and these have been incorporated into the document. No comments have been received from any other sources. The document is currently being consulted on and commented on by other local authorities in the County.

3.0 Recommendation

3.1 It is recommended that the Hackney Carriage and Private Hire Drivers Criminal Records Policy be approved as set out in Appendix 1.

Implications:		
Corporate Outcomes or Other Policy/Priority/Strategy		
Good Quality of Life	<input checked="" type="checkbox"/>	Good Reputation <input checked="" type="checkbox"/>
Good Value for Money	<input type="checkbox"/>	High Quality Service Delivery <input checked="" type="checkbox"/>
Effective Partnership Working	<input type="checkbox"/>	Strong Community Leadership <input checked="" type="checkbox"/>
Effective Management	<input type="checkbox"/>	Knowledge of our Customers and Communities <input checked="" type="checkbox"/>
Employees and Members with the Right Knowledge, Skills and Behaviours		<input type="checkbox"/>

Other:		<input type="checkbox"/>
Decision(s) would be outside the budget or policy framework and require full Council approval		<input type="checkbox"/>
Financial	There are no financial implications at this stage	<input checked="" type="checkbox"/>
	There will be financial implications – see paragraph	<input type="checkbox"/>
	There is provision within existing budget	<input type="checkbox"/>
	Decisions may give rise to additional expenditure at a later date	<input type="checkbox"/>
	Decisions may have potential for income generation	<input type="checkbox"/>
Risk Management	An assessment has been carried out and there are no material risks	<input checked="" type="checkbox"/>
	Material risks exist and these are recorded at Risk Register Reference - inherent risk score - residual risk score -	<input type="checkbox"/>
Staff	There are no additional staffing implications	<input checked="" type="checkbox"/>
	Additional staff will be required – see paragraph	<input type="checkbox"/>
Equalities and Human Rights	There will be no impact on equality (race, age, gender, disability, religion/belief, sexual orientation) or human rights implications	<input checked="" type="checkbox"/>
	There will be an impact on equality (see categories above) or human rights implications – see paragraph	<input type="checkbox"/>
Legal	Power: The Town Police Clauses Act 1847 Part II Of The Local Government (Miscellaneous Provisions) Act 1976 The Hackney Carriage Byelaws	
	Other considerations:	
Background Papers: Home Office Circular 2/92 Home Office Circular 13/92		
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Date: 18 March 2010		
CFO		MO
		CX

(Committee Report Normal Rev. 21)



East
Northamptonshire
Council

Hackney Carriage and Private Hire Drivers Criminal Records Policy

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Draft v3	Jan 10	Cllr Harwood comments
Draft v4	Jan 10	Robert Rowland, Brian Northall, Rupert Reichold comments
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Consultees

Internal	External
e.g. Individual(s) / Group / Section	e.g. Stakeholders / Partners /Organisation(s)
Commercial Health (comments)	Taxi Trade (No comments)
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Links to other documents

Document	Link

Additional Comments to note

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Executive summary

Hackney Carriage and Private Hire Drivers are licensed by East Northamptonshire Council. They hold a position of responsibility and are trusted by the community to transport adults, children and vulnerable people. It is important that prior to issuing a licence East Northamptonshire Council is satisfied that the public are safe with those drivers. This policy helps us to make decisions about whether a driver is safe to be licensed as a hackney carriage and private hire driver, this is known as the 'Fit and Proper' test.

1.0 Introduction

Applicants for Hackney Carriage and Private Hire Drivers licences should be aware that, as a consequence of the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 all applicants for a licence are excluded from the provisions of the Rehabilitation of Offenders Act 1974 in relation to spent convictions. For the purposes of licensing drivers there is no such thing as a spent conviction.

All convictions and cautions including motoring convictions and fixed penalties must be declared.

The Licensing Authority will pay due care and attention to the principles of rehabilitation, so there are no unnecessary barriers for employment of ex-offenders. It will also consider any matters due before the Courts

2.0 Statement of intent

- 2.1 The Licensing Authority's key objective is ensuring public safety and protection from criminal activity. The policy reflects this overriding concern. This policy does recognise that employment plays an important part in preventing *ex-offenders* from reoffending, however, a licensed driver is in a position of trust which means that a pattern of offending / re-offending or, a single specific offence may render an applicant unfit to hold a licence.
- 2.2 Before, the Licensing Authority makes any decision it will allow an opportunity for an applicant to make comment about any such convictions and cautions.
- 2.3 The Licensing Authority may offer some discretion if the offence is isolated and there are mitigating circumstances. This will be only upon the Licensing Authority establishing the facts surrounding a unique case. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.
- 2.4 The Licensing Authority will in all cases verify an applicant's identity and require an enhanced Criminal Record Bureau (CRB) check. Where the check reveals that the applicant has a record of convictions and / or cautions and warnings, the Licensing Authority will consider these carefully on the basis of:-
 - How relevant the offences were to the type of licence applied for
 - The relative gravity of the offences committed and
 - How recent they were
- 2.5 The Licensing Authority will consider all convictions with further attention given to offences involving:
 - Dishonesty

- Assault including assault, battery or GBH / ABH including any conviction of aiding and abetting or incitement for any such offence
 - Drugs – to include cultivation, sale, supply or the recreational use thereof
 - Alcohol
 - Criminal damage
 - Sexual offences
 - Serious offences connected with the driving of a motor vehicle
- 2.6 During the term of a valid licence, the Licensing Authority may receive updates from the Police and Courts of new convictions and cautions issued to licence holders. This will allow officers to decide whether internal action needs to be taken as to whether the person may continue to hold a licence. It is the responsibility of each licence holder to inform the Licensing Authority of any conviction, caution or fixed penalty arising during the currency of the licence.

3.0 Scope

- 3.1 When submitting an application for the grant or renewal of a Hackney Carriage/Private Hire Vehicles Driver's Licence, applicants must declare any convictions, cautions, Anti Social Behaviour Orders, Criminal Anti Social Behaviour Orders or Fixed Penalty Notices (FPN's) they may have, regardless of age. In addition they must disclose any matters currently under investigation.
- 3.2 An enhanced criminal record disclosure is required upon application and renewal.
- 3.3 A DVLA mandate is required upon application and at renewal.
- 3.4 Applications with relevant offences (see list below) or cause for concern will be referred to the Licensing Panel for determination.
- 3.5 Drivers who receive a relevant conviction within their current licence period will be referred to the Licensing Panel in order that their licence be reviewed.
- 3.6 Applicants refused a driver's licence on the ground that they are not a 'fit and proper' person to hold a licence has the right of appeal to a Magistrates Court within 21 days of the decision.

4.0 Consideration of Licence Applications

All of the matters in this section will be determined by the Licensing Panel unless stated otherwise. Officers will determine applications that have previously been considered by the Licensing Panel. If an officer is minded to refuse an application it will be referred to the Licensing Panel.

4.1 Traffic Offences

4.1.1 Isolated convictions for minor traffic offences should not normally prevent a person from being granted a licence eg:

- Obstruction of the highway;
- Waiting in a restricted street;
- Speeding offences which have resulted only in a fixed penalty which has not resulted in the applicant losing their licence or which has not resulted in formal proceedings being taken against the applicant at Magistrates Court;
- Jumping a red light.

Officers may make the decision relating to this type of offences.

4.1.2 If an applicant has received more than six points within the last two years for speeding or other minor offences, or has failed to inform the Licensing Authority within 14 working days of the points being notified, the application will be considered by the Licensing Panel to determine their suitability.

4.1.3 Convictions relating to driving offences committed when the applicant was driving a Hackney Carriage or Private Hire vehicle will be considered more seriously.

4.1.4 An application showing two convictions or more for driving without due care and attention, causing death by dangerous driving or similar offence within the last two years will not be entertained due to public safety.

4.1.5 If an applicant has been disqualified from driving, for any reason whether a single conviction or an accumulation of penalty points, a period of at least 12 months after the restoration (whichever is the longer period) of the driving licence will be required before an application is considered.

4.1.6 Convictions with regard to invalid or no insurance will always be relevant and all renewal applications will be determined by the Licensing Panel.

4.2 Drunkenness & Drugs

Whilst in charge of a motor vehicle.

4.2.1 A serious view will be taken of convictions of driving or being in charge of a vehicle whilst unfit, due to drink or drugs. A conviction for these offences will raise serious doubts as to the applicant's suitability to hold a licence. A period of 3 years (after restoration of the driving licence) would be required before a licence application is considered.

4.2.2 Convictions for offences relating to alcohol or drug abuse committed when the applicant was driving a Hackney Carriage or Private Hire will be considered in a more serious light and a much longer period of rehabilitation will need to be demonstrated before a licence application is considered.

In this instance confirmation may be sought from a doctor nominated by the Council that the rehabilitation programme has been effective (the costs of which will be borne by the applicant).

Not in a motor vehicle

4.2.3 An isolated conviction for drunken behaviour or any isolated conviction for the possession or misuse of drugs need not preclude an applicant from gaining a licence, although further consideration of the application should be required having regard to the circumstances of the offence. However, more than one conviction would usually merit refusal and normally no further application will be entertained until a period of at least 3 years free from convictions has elapsed or 5 years after detoxification if the applicant was an addict.

4.2.4 If there is any indication that the applicant is an alcoholic or has a drug problem, a medical examination with a doctor nominated by the Licensing Authority will be arranged (the costs of which will be borne by the applicant) before an application is considered.

If the applicant is found to be an alcoholic or a drug addict, normally a period of at least five years will need to elapse after completion of treatment before a further licence application is considered.

4.3 Indecency Offences

4.3.1 As Hackney Carriage and Private Hire Vehicle drivers often carry unaccompanied passengers, applicants with convictions for sexual offences will normally be refused.

4.3.2 Applications will be refused in cases where the applicant remains on the Sex Offenders Register.

4.4 Violence and Abusive Behaviour

4.4.1 As Hackney Carriage and Private Hire Vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violent or abusive offences. This category includes public order offences and criminal damage.

4.4.2 At least 5 years free of such convictions will normally be necessary before an application is entertained and even then a strict warning as to future conduct will be given.

4.4.3 Convictions for offences relating to violence committed when the applicant was driving a Hackney Carriage or Private Hire vehicle will be considered in a more serious light and a much longer period of rehabilitation will need to be demonstrated before a licence application will be considered

4.5 Dishonesty (including theft)

4.5.1 Hackney Carriage and Private Hire Vehicle drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Foreign visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver.

4.5.2 For these reasons a serious view will be taken of any conviction involving dishonesty. Normally, a period of three to five years free of convictions will be required before entertaining an application.

4.5.3 Convictions for offences relating to dishonesty committed when the applicant was driving a Hackney Carriage or Private Hire Vehicle will be considered in a more serious light and a much longer period of rehabilitation will need to be demonstrated before a licence application will be considered

4.6 Other

4.6.1 Anti Social Behaviour orders (ASBOs) and Criminal Anti Social Behaviour Orders (CRASBOs)

Hackney Carriage and Private Hire Vehicle drivers should conduct themselves in a responsible manner and have a record of good behaviour. For these reasons the issuing of an ASBO or CRASBO will be taken seriously. Normally a period of two years free of an ASBO or CRASBO and a subsequent record of good behaviour would be required before an application would be considered.

4.6.2 Fixed Penalty Notices (FPN)

Hackney Carriage and Private Hire Vehicle drivers should conduct themselves in a responsible manner and have a record of good behaviour. The nature and circumstances involved with the issuing of a FPN will be considered prior to issuing a drivers licence, it may be appropriate in some circumstances for this to be referred to the Licensing Panel for consideration. Officers may make the decision relating to FPNs.

4.6.3 Notes on the Enhanced CRB check

There are circumstances in which notes may appear on the enhanced CRB check received by the authority. These notes must not be discussed with the applicant directly but may contain information that would affect the fit and proper test. This creates a difficult situation as licences may be refused with no detail as to why available to the applicant. These applications should be considered without the presence of the applicant, if refused the applicant would be informed in writing of the outcome, referring to the decision relating to undisclosed material supplied to the authority about the applicant. It would then be up to the applicant to appeal the decision.

4.6.4 Substantiated Complaints

Any substantiated complaint made by a member of the public, or any complaints made by Council employees, enforcement officers, Police Officers or traffic/parking officers for any other reasonable cause may also be referred to a Licensing Panel. A serious view

will be taken of any substantiated complaint relating to verbal abuse, violence or aggression towards any member of the public, authorised officer or employee of the Council, Police Officer or Traffic Warden whilst in the course of their duty.

4.6.5 Other Matters

Any other matters that are deemed relevant to the assessment of the fit and proper person test will be drawn to the attention of the Licensing Panel in order for it to make this assessment. This may include statements from officers who have dealt with applicants.

4.7 Offences Under:

- **The Town Police Clauses Act 1847**
- **Part II Of The Local Government (Miscellaneous Provisions) Act 1976**
- **The Hackney Carriage Byelaws**

4.6.1 One of the main purposes of the licensing regime set out in the above Acts and Byelaws is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire and when deciding if a person is a fit and proper person to hold a licence.

4.6.2 In particular, an application may be refused where an applicant has more than one conviction for an offence under the above Acts and Byelaws in the five years prior to the date of the application.

4.6.3 Convictions for offences relating to the above Acts and Byelaws committed while licensed as a Hackney Carriage or Private Hire Driver, Proprietor or Operator will be considered in a more serious light and a revocation of the appropriate licences may be instigated.

5.0 Policy outcomes

5.1 Outcomes and links to the corporate outcomes

The policy contributes to the following corporate outcomes:

- Good reputation with customers and regulators
- Good quality of life in East Northamptonshire – cleaner, safer, prosperous, healthier and sustainable

6.0 References

Home Office Circular 2/92

Home Office Circular 13/92

Department of Transport best practice guidance for taxis