

BOROUGH OF KETTERING

Committee	LICENSING COMMITTEE	Item A2	Page 1 of 4
Report Originator	Russ Howell	<i>Fwd Plan Ref No:</i>	
Wards Affected	All	26 th November 2019	
Title	TO ADOPT GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADES		

1. PURPOSE OF REPORT

- 1.1 To adopt guidance on determining the suitability of applicants and licensees in the Hackney and Private Hire trades.

2. INFORMATION

- 2.1 The Local Government (Miscellaneous Provisions) Act 1976 provides the legal framework for the administration of licences to the Hackney Carriage and Private Hire trades.
- 2.2 It is a requirement that Hackney Carriage drivers, Private Hire operators and Private Hire drivers must be fit and proper to hold such a licence.
- 2.3 There is no legal definition of fit and proper. With regards to drivers, James Button in his book *Button on Taxis: Licensing Law and Practice* describes the issues of concern very well:-

“A Driver has significant power and with such power comes significant responsibility. When a passenger gets into a [licensed vehicle], following a hailing, a hiring from a rank or a pre-booking, they are placing themselves in the hands of the driver. The passenger and all other road users rely on the assumption that the driver is a good driver, with sufficient driving experience to safely negotiate the perils of the public highway. The passenger (or passengers) also rely on the expectation that they will not be harmed during the journey. That harm could arise from a road traffic accident (which should be covered by the first assumption) but could also result from the actions of the driver towards the passenger. The driver’s behaviour should be above reproach at all times and should never cause the passengers to have concerns about their safety or welfare.

The driver has the ability to take a passenger to a remote or secluded place for nefarious purposes and there is little a passenger can do to prevent such a journey taking place. It is equally possible for a driver to rob a passenger, overcharge a passenger or abuse a passenger either physically or verbally.

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Passengers come from all sections of society, and encompass persons of all colours, creeds, abilities and disabilities. A great many passengers are vulnerable persons due to age, infirmity or disability, intoxication or drug use, as well as emotional issues. Drivers must ensure that the welfare of the passenger is their overriding aim and act accordingly.”

2.4 With regards to Private Hire operators, Mr Button again sums up the concerns:

“When a booking is made for a private hire vehicle, the person booking the vehicle will provide a significant amount of generally personal information to that operator. This can include the times that they leave and return to their home, where they are travelling, the frequency of those visits, whether they are going on holiday for a period of time and so on. It is essential that the recipient of that information, the operator, ensures that the information is not used for criminal or unacceptable purposes. For example, it would be very easy to use the knowledge that a family was on holiday for a fortnight to burgle their house or use the knowledge of regular and illicit rendezvous with third parties to blackmail an individual.”

2.5 There has historically been guidance provided by the Home Office but this was not reviewed or updated and became not fit for purpose.

2.6 For some years now the Authority has based its decision-making process on the merits of the individual application and the information provided.

2.7 There have however been cases in recent times where committee decisions have been made which have been appealed to the Magistrates’ Courts and the appellant has won.

2.8 In 2018 the Institute of Licensing issued its national guidance “Guidance on determining the suitability of applicants and licensees in the private hire and hackney carriage trades”. A copy of this document is attached at **Appendix A**.

2.9 This document was produced in answer to the void that had been left by the Home Office guidance becoming unfit for purpose. As can be seen by the front cover, the document was produced by the Institute of Licensing along with Lawyers in Local Government, The National Association of Licensing Enforcement Officers and the Local Government Association.

2.10 The Guidance was subject to widespread national consultation prior to the release of the document presented today.

2.11 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their ‘fitness and propriety’ or ‘character’. As with any guidance it need not be slavishly followed but it provides a starting or reference point from

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which decisions can be made taking into account the particular merits of each case.

- 2.12 There is no intention that the guidance will be used to fetter the discretion of the Authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach has been endorsed by the High Court (R (on the application of Nicholds) v Security Industry Authority).
- 2.13 It is proposed that the standards in Section 4 of the document would be used as the baseline for dealing with applications and for considering matters within the life of a licence; the view being that a matter which warrants an application refusal will also warrant a revocation of an existing licence. The intention would be that officers would use the guidance in the first instance to review new and renewal applications and would apply it accordingly. Where an applicant feels that they have a case for the decision to be reconsidered the matter would be brought to a committee for further consideration.
- 2.14 Where existing licence holders are brought before the committee for matters arising during the life of the licence, it would be for the Committee to use the guidance to steer their decision-making process as described above.

3. CONSULTATION AND CUSTOMER IMPACT

- 3.1 The Guidance document has been consulted on nationally and in particular the Institute's Working Party consulted with and considered the issues from all perspectives including Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.
- 3.2 The introduction of a framework for assessing applications and other licensing matters for the hackney carriage and private hire trades will provide an open, transparent and consistent approach to the licensing process

4. POLICY AND RESOURCE IMPLICATIONS

- 4.1 There are no policy or resource implications.

5. LEGAL AND EQUALITY IMPLICATIONS

- 5.1 There are no legal and equality implications.

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6. CLIMATE CHANGE IMPLICATIONS

6.1 There are no climate change implications.

7. RECOMMENDATION

7.1 The Head of Public Services recommends that:

- The Institute of Licensing Guidance on determining the suitability of applicants and licensees in the private hire and hackney carriage trades is used by the Authority as the basis for decision making in considering applications and other matters relevant to the Guidance in relation to the licensing of the hackney carriage and private hire trades.
- That the standards laid down in Section 4 of the Guidance become the baseline for decision making in relation to those matters.
- That at the application stage officers with reference to this information have the authority to refuse applications.

Background Papers:

Title

Date

Contact Officer

Previous Minutes/Reports:

Ref:

Date: