

REPORT:	Regulatory Committee
DATE:	30 th June 2021
REPORTING OFFICER:	Strategic Director Enterprise, Community and Resources
PORTFOLIO:	Resources
SUBJECT:	Taxi Licensing Matter
WARDS:	Borough-wide

1. PURPOSE OF REPORT

To update the Committee on the Statutory Taxi & Private Hire Vehicle Standards and to make a recommendation to the Executive Board on the assessment of previous convictions.

2. RECOMMENDED: That -

2.1 The Executive Board be recommended to resolve as follows:

- **The amendments to the “Previous Convictions Policy” put forward in this report be considered and adopted**
- **An amendment be made to the hackney carriage and private hire driver’s conditions relating to the requirement to report matters relating to their behaviour**

3. INTRODUCTION AND BACKGROUND INFORMATION

3.1 On 2nd September 2020 this Committee recommended to adopt the Department for Transport’s (DFT) “Assessment of Previous Convictions” document as part of the hackney carriage and private hire driver’s licensing policy. This recommendation was subsequently adopted by the Executive Board. A copy of the current “Convictions Policy” can be found at Appendix A of this document.

3.2 At the same Committee hearing, Members were also notified that further matters from the DFT’s “Statutory Taxi & private Hire Vehicle Standards” would be thoroughly examined by Officers of the Council and referred back to this Committee for consideration.

- 3.3 The Committee is responsible for determining the Council's policies in connection with the grant, variation, suspension or revocation of licences relating to taxi and private hire.
- 3.4 However, the Constitution must now be interpreted in accordance with the case of R (On the application of 007 Stratford Taxis Limited v Stratford on Avon District Council 2011. This Court of Appeal decision interpreted the meaning of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 in respect of matters which must be dealt with by a Council's Executive or by a committee of its council. Essentially, the court held that: (1) it was clear that individual applications relating to taxi matters must be dealt with by the equivalent of this Council's Regulatory Committee and (2) matters calculated to facilitate, or be conducive or incidental to such applications must also be dealt with in the same way but (3) any "plan or strategy" associated with such a function would be an executive function and therefore have to be determined by a council's executive. The Stratford case concerned the introduction of a wheelchair access policy. The decision was taken by the Council's cabinet rather than its Licensing Committee. The challenge from the taxi trade was that the Licensing Committee should have adopted the policy. This element of the challenge was rejected by the court.
- 3.5 Consequently, any decision of the Regulatory Committee on matters contained in this agenda will be by recommendation to the Executive Board.
- 3.6 In deciding whether or not to adopt or to recommend the adoption of a policy the following questions should be addressed:
- 3.6.1 Has proper consultation been undertaken?
- 3.6.2 Are the proposals necessary and proportionate?

4. SUPPORTING INFORMATION

- 4.1 Following the introduction of the current policy in September 2020 it has been noticed by Officers that there are gaps in the policy which provide little or no guidance as to what action (if any) is to be taken by Officers or Members in certain circumstances.
- 4.2 This is not to say that action must be taken against a driver who has committed a criminal offence however the necessity of having a clear and transparent policy benefits everyone.

4.3 The proposed additions to the policy not only give guidance on convictions but also on the following which may be taken into account when considering if a person can be deemed to be a fit and proper person within the meaning of the Local Government (Miscellaneous Provisions) Act 1976:

- Matters which do not meet the threshold to be found guilty of an offence beyond all reasonable doubt
- Driving convictions/offences
- Formal or simple cautions
- Actions of a driver where they fall below a level to the extent that Members of the Regulatory Committee would not feel safe with a member of their family being carried in a vehicle driven by said driver.

4.4 The proposed policy (should it be approved) will be referred to as the “*Professional Standards Policy*”.

4.5 The proposed policy can be found at Appendix B of this document.

4.6 To accompany the potential changes to the policy, the second proposal is to amend the existing hackney carriage/private hire driver licensing condition partly at the request of the Department for Transport as well as ensuring the condition is fit for purpose.

4.7 The current licensing condition requiring licensed drivers to report indiscretions to the licensing section is as follows:

“Duty to disclose convictions, cautions, reprimands, warnings, and fixed penalty notices

The holder shall immediately disclose to the Council Solicitor in writing details of any conviction, cautions, reprimands and warnings imposed on the holder during the currency of this Licence. (Convictions include road traffic offences and whether involving endorsements or not). This duty also extends to any fixed penalty notice following payment and simple and conditional cautions.”

4.8 The Department for Transport have stated the following within the “Statutory Taxi & Private Hire Vehicle Standards”:

“Licence-holders should be required to notify the issuing authority within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence.

Importantly, a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation”.

- 4.9 Details of the proposed new condition can be found at Appendix C of this document.

5. CONSULTATION

- 5.1 As part of a consultation the local trade were contacted on 16th April 2021 by email for any comments on this matter. Details of the consultation were also posted on the Council’s website with a closing date for comments or opinions to be made by 14th May 2021.

- 5.2 The following replies were made to the licensing team as part of the consultation process. Each person submitting their views on this matter has had their identities removed but has been referred to with a number for audit purposes only. No comment has been amended, corrected or rephrased.

- 5.2.1 Number 1

Reply to Point 6 of the proposed policy change

Fixed penalty notices are issued as an alternative to a prosecution and where paid the case is subsequently closed. Each year over three million FPNs are issued by the police for motoring offences. These should not be included in the conditions. Clearly they have slipped in and now is the time to correct this injustice and remove it. A FPN as an alternative to conviction is a fundamental legal right. It does not appear on the DBS and is not a conviction.

Where is the reasoning behind these proposals? Is the gravity of such so severe that it warrants this change whilst ignoring all the other problems such as unlicensed and uninsured out of town vehicles?

Reply to Point 13 of the proposed policy change

Reference the 1974 Act and 2002 Order and quote from your consultation, 'allows the licensing authority to take into account all convictions recorded against an applicant or an existing licence holder, whether spent or not.' We accept this decision based on the Herefordshire District Council (stated case) v Prosser, however It does not include Fixed Penalty Notices

which by way of being an alternative to prosecution cannot be construed as a criminal record and therefore, neither can they be viewed as a spent conviction.

Note: FPNs are an alternative to a prosecution and are not a conviction subject to the penalty being paid. They are issued for low level singular offences. Offences of which it should be noted are not Specific Intent offences. Paradoxically, offences of theft; criminal damage etc share the requirement of intent.

Reply to Point 19 of the proposed policy change

Noted - maximum of 14 days

Reply to Point 20 of the proposed policy change

Noted

Reply to the proposed policy change on types of offences

Crimes resulting in death (driving)

We feel that this should not be an automatic reason to debar the grant of a licence where the offence is by way of careless or inconsiderate. The option to require a driver improvement course attendance or additional tuition should be available.

Motoring Convictions

We believe that the limit of a single offence (debar possibility) is too severe. Again referring back to specific intent and the ease by which a transgression of a speed limit for example can unintentionally be committed with the arsenal of enforcement measures thrown at the motorist, most drivers plead guilty to avoid court and legal costs. Given the number of invalid speed restrictions by way of non-compliance with the Road Signs and General Directions rules and/or the enormous TRO anomalies then drivers could lose their livelihoods unlawfully. There are plenty of signage and TOR irregularities in Halton (source: M Noone former HBC/Operational Director/Highways, Transport & Logistics to the Env & Urban Renewal PPB Chair meeting)

Plying for Hire

This is currently a persistent problem throughout Halton with out-of-town vehicles. Widnes is flooded with Knowsley and Sefton vehicles whereas Runcorn is overrun with Chester and Cheshire West vehicles.

Proposed Amendment to Licensing Condition

Fixed penalty notices should not be brought within the scope of this because these are not convictions; they are a conditional offer as an alternative to a prosecution for a low-level offence. They are not classed as a criminal conviction and provided you pay an FPN within the time limit one will not get a criminal record for it. The matter is then closed.

To proceed with this proposal is draconian, unnecessary.

5.2.2 Numbers 2, 3 and 4 refer solely to the consultation to the proposed changes to the medical policy which was also conducted at the same time.

5.2.3 Number 5

I would support these changes fully.

5.3 Members of the Regulatory Committee may add any weight to the above comments as they see reasonable.

6. REGULATORS' CODE 2014

6.1 The Regulators' Code 2014 requires regulators (such as the Council) to take into account a number of factors when introducing new policies.

6.2 For example, paragraph 1.2 of the Code states: "When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best:

- understand and minimise negative economic impacts of their regulatory activities;
- minimise the costs of compliance for those they regulate;
- improve confidence in compliance for those they regulate, by providing greater certainty; and
- encourage and promote compliance."

6.3 The Code also states that regulators should base their regulatory activities on risk. In the present case the balancing exercise is to weigh any negative consequences on the taxi trade against the positive consequences on the public who use the services of the trade.

6.4 It is taken as read that unnecessary burdens should never be imposed and that all actions need to be proportionate.

7. OPTIONS

7.1 The options available to the committee are to **recommend:**

- Agreement to some or all of the potential changes or
- Amendment to some or all of the potential changes or
- Rejection of the potential changes.

7.2 Should the Committee recommend the second option to amend any of the potential changes to the policy and/or licensing condition then they will need to be altered. The Committee would therefore be requested to include within the resolution a delegation of the task of preparing detailed wording and other consequential matters to the Licensing Manager.

8. POLICY IMPLICATIONS

8.1 Any changes made would change elements of existing policy relating to applicants applying to hold a hackney carriage and private hire driver's licence (referred to as a Single Status Driver's Licence) issued by Halton Borough Council.

9. OTHER IMPLICATIONS

None

10. IMPLICATIONS FOR THE COUNCILS PRIORITIES

10.1 **Children and Young People in Halton**

None

10.2 **Employment Learning and Skills in Halton**

N/A

10.3 **A Healthy Halton**

N/A

10.4 **A Safer Halton**

None

10.5 **Halton's Urban Renewal**

N/A

11. RISK ANALYSIS

There are no associated risks which have been identified with this item.

12. EQUALITY AND DIVERSITY ISSUES

There are no equality or diversity issues related to a review

13. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
1. Taxi Consultation File	Licensing Section	Kay Cleary Nick Wheeler
2. Current licensing policies		