

23 January 2019

<b>Report of</b>	<b>Assistant Director (Communities)</b>	<b>Author</b>	<b>Jon Ruder</b>
<b>Title</b>	<b>Changes to the Hackney Carriage and Private Hire Licensing Policy</b>		
<b>Wards affected</b>	Not applicable		

## 1. Executive Summary

- 1.1 The report proposes changes to the Council's Hackney Carriage and Private Hire Licensing Policy and recommends that, in the interests of clarity, the changes set out be approved.

## 2. Recommended Decisions

- 2.1 That the changes set out in bold at Paragraphs 5.1 to 5.4 be made to the Council's Hackney Carriage and Private Hire Licensing Policy.

## 3. Reason for Recommended Decision

- 3.1 The key consideration of the Council in licensing hackney carriage and private hire drivers, operators and proprietors is the safety of the travelling public. The protection of the public; safeguarding children and vulnerable persons; and the prevention of crime are therefore key factors in the Policy.
- 3.2 The Council must be satisfied that an applicant is a fit and proper person to hold a licence and remains so for the duration of the licence period. There is no definition of 'fit and proper' and to assist in determining this question the Council has drawn up a Convictions Policy to categorize and assess the risk to the public of a wide variety of convictions. The Policy has been reviewed in the light of the Council's work on safeguarding and it is considered appropriate to add a category dealing with exploitation to the table of convictions. This not only provides a clear standard against which applications and licensed drivers can be assessed but also sets out clearly the Council's stance on a range of exploitation issues.
- 3.3 The other changes suggested clarify existing procedures, particularly in relation to the determination of applications and the appeals process.

## 4. Alternative Options

- 4.1 To leave the Policy unaltered and deal with any safeguarding matters by drawing parallels to other listed convictions.

## 5. Supporting Information

- 5.1 It is suggested that the following changes are made in order to clarify the process -

### Changes to the Driver Convictions

- 5.1 To add the following words in bold to clarify the position for those who fail the knowledge test three times

11. Have passed the Council's knowledge test.

**Please note** – The test comprises questions picked at random from the Council's driver and vehicle conditions, place locations, shortest routes between two points, the Highway Code, tourism and basic arithmetic. The test paper will be marked immediately and you will be advised of the outcome; the Adjudicators decision is final and no discussion of individual questions will be entered into. If you don't pass the test you will be permitted two further attempts at a minimum of fortnightly intervals when a further fee per test will be payable; these re-tests must be completed within three months of the **first test** being taken. A different question paper will be selected for each test re-sit. Failure to pass the knowledge tests after 3 attempts will deem the applicant unsuccessful. **You will be required to wait for 12 months, following the date of the final test, before you can book a further knowledge test.**

### Changes to the Convictions Policy

- 5.2 To clarify the investigation, determination and appeal process and the revocation process so that it reads as follows (the changed wording is indicated in bold)-

- 4.1 The Council will deal with offences as follows –

- a. On receiving a disclosure from the DBS or other notification a member of the Licensing Team will assess whether any of the convictions and/or any of the additional information received has any relevance as to whether the applicant/licence holder is a fit and proper person to hold a licence,
- b. A member of the Licensing Team will investigate the facts, which may include interviewing the applicant/licence holder under caution. The Council may also, as part of its investigation, request a Police National Computer Check (PNC) from the Police to ensure it has all the evidence necessary to properly investigate the matter. This may mean that matters that formed part of a previous decision are reconsidered in the light of new evidence and this may result in a licence, previously granted, being revoked.
- c. **Upon completion of the investigation, points may be applied. Notification that points have been given will be sent in writing to the licence holder and, where appropriate, a copy will be sent to their vehicle proprietor or operator within 7 days of the decision. The award of points can be appealed to the Licensing Manager in the first instance and this should be done within 21 days of being notified of the award of points. Appeals must be made in writing to [licensing.team@colchester.gov.uk](mailto:licensing.team@colchester.gov.uk) or to the Licensing, Food & Safety**

**Manager, Colchester Borough Council, Rowan House, 33 Sheepen Road, Colchester CO3 3WG.**

- d. The Licensing Manager will consider the matter and confirm his decision in writing to the licence holder.**
- e. There is a further right of appeal, where points are awarded, to the Licensing Committee.** The appellant may submit documentary evidence in advance of the hearing and has the right to address the Committee and/or nominate someone else to do so on their behalf. Appeals must be made in writing to [licensing.team@colchester.gov.uk](mailto:licensing.team@colchester.gov.uk) or to the Licensing, Food & Safety Manager, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG within 21 days **of being notified of the Licensing Manager's decision.**
- f. The Committee will make its decision based on the evidence presented at the hearing and may exercise its discretion to increase or reduce the number of points that are applied. The number of points may be reduced where it considers that the case has been proved by the applicant that there were genuine and mitigating circumstances.**
- g. The determination of the Licensing Committee is final and there is no right of appeal to the Magistrates' Court.**

## **Revocation**

**4.2 If following completion of the investigation (set out in 4.1a and b above) there are matters of significant concern requiring urgent action, which circumstances and/or the Policy indicates should result in the revocation of the licence, the following process will be followed –**

- a. The matter will be reported to the Licensing, Food & Safety Manager (the Licensing Manager) for determination.**
- b. The Licensing Manager will consider the matter and confirm his decision in writing to the licence holder. Depending on the nature of the offence the decision may be either to revoke the licence but allow the licence holder to operate until the appeal has been determined or revoke with immediate effect and not permit operation.**
- c. There is a right of appeal to the Magistrates' Court. Appeals must be made in writing to the Clerk of the Court, Essex Magistrates' Court's, Osprey House, Hedgerows Business Park, Colchester Road, Springfield, Chelmsford CM2 5PF within 21 days of having been notified of the Licensing Manager's decision. Where an appeal has been made the implementation of any suspension or revocation will be held over until the appeal has been determined unless the licence has been revoked with immediate effect.**

- 5.3 The inclusion of the following under Paragraph 5.2 of the Convictions Policy, Level 1 – Serious Crimes including sexual offences and that 12 points be given for such offences to last indefinitely -**

### **Exploitation\***

\*For the purposes of this Policy, exploitation means where there is evidence that an applicant or licensee has been convicted or is the subject of an ongoing investigation or where a concern has been raised in relation to abuse, exploitation, misuse or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse and domestic violence. This list is not exhaustive and other matters may fall into this definition.

## **Changes to the Penalty Points Scheme**

5.4 To clarify elements of the investigation, determination and appeal process and the revocation process so that it reads as follows (the changed wording is indicated in bold)-

- 3.4 The penalty point process will operate without prejudice to the Council's ability to take other action that it is entitled to take under legislation, regulations **and its own Policy.**
- 3.5 **On occasions it may be determined not to award points but to proceed immediately to the revocation of a licence on the grounds that the Council considers that the licence holder is not fit and proper to hold a licence. In such cases the right of appeal will be direct to the Magistrates' Court.**

## **4. Investigation, Committee and Appeal Procedure**

- 4.1 e. **There is a further right of appeal, where points are awarded, to the Licensing Committee. The appellant may submit documentary evidence in advance of the hearing and has the right to address the Committee and/or nominate someone else to do so on their behalf. Appeals must be made in writing to [licensing.team@colchester.gov.uk](mailto:licensing.team@colchester.gov.uk) or to the Licensing, Food & Safety Manager, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG within 21 days of being notified of the Licensing Manager's decision.**
- f. **The Committee will make its decision based on the evidence presented at the hearing and may exercise its discretion to increase or reduce the number of points that are applied. The number of points may be reduced where it considers that the case has been proved by the applicant that there were genuine and mitigating circumstances.**
- g. **The determination of the Licensing Committee is final and there is no right of appeal to the Magistrates Court.**

5.5 The inclusion of the following on the Penalty Points table -

114	Unacceptable behaviour or conducted by a licensed driver, e.g. language	6	X	-	-
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## **6. Strategic Plan References**

- 6.1 The Policy aims to contribute to the Council's vision of the Borough by ensuring that the licensed trade plays a significant role not only in the Borough's transport strategy but also in helping to promote Colchester and thereby enhancing our reputation as a destination and encouraging further investment.

## **7. Consultation**

- 7.1 The changes seek to clarify the stance already taken in the Policy, which has previously been the subject of extensive consultation. It is therefore considered that further consultation on the proposed amendments was not required.

## **8. Publicity Considerations**

- 8.1 The new revised Policy will be available for all on the Council's website.

## **9. Financial Implications**

- 9.1 There may be costs incurred in defending any action brought against the Council which seeks to judicially review the policy.

## **10. Community Safety**

- 10.1 The policy and the proposed amendments deal with the protection of children and vulnerable adults.

## **11. Equality, Diversity and Human Rights Implications**

- 11.1 The draft Policy has been developed in accordance with, and taken account of, all relevant legislation and national and local strategies.

## **12. Risk Management Implications**

- 12.1 A flexible yet robust revised Policy will continue to provide the Council with a sound basis for decision making.

## **13. Health & Safety Implications**

- 13.1 There are no known direct public health and safety issues which might arise from the adoption of the revised Policy.