**REGULATORY SERVICES COMMITTEE**

**6 DECEMBER 2017**

**PART I DELEGATED**

**7. HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER AND PRIVATE HIRE OPERATOR SUITABILITY POLICY**

 (DCES)

**1.** **Summary**

1.1 On 14 June 2017 the Regulatory Services Committee approved consultation to proceed on a draft Hackney Carriage and Private Hire Operator Suitability Policy. This Policy consultation has been completed and this report seeks to authorise final approval of the Policy.

 1.2 Three Rivers District Council are responsible for licensing Private Hire Drivers, vehicles and operators under the Local Government (Miscellaneous Provisions) Act 1976. The Council is also responsible for licensing Hackney Carriages and their drivers under the Town Police Clauses Act 1847. The attached policy document sets out a proposed amended Council Policy to be considered in determining these types of application.

1.3 In summary, the Policy adopts a tiered approach. For an applicant with a criminal record, offending history, penalty points or similar relevant matters, the Policy requires a passage of time between that matter and the date of application.

1.4 This Policy has been reviewed against the background of learning from the investigation into child sexual abuse arising in Rotherham and Oxford. In these areas, Licensing Committees came under intense scrutiny and attracted much criticism.

1.5 The Rotherham report states “Inspectors have found that Rotherham has not taken, and does not take, sufficient steps to ensure only fit and proper persons are permitted to hold a taxi licence. As a result, it cannot provide assurances that the public, including vulnerable people, are safe. The inspection uncovered serious weaknesses and concerns.” (p103, Report of Inspection into Rotherham Council).

**2.** **Details**

2.1 S.51 of the Local Government (Miscellaneous Provisions) Act 1976 states *“that a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver’s licence:*

 *Provided that a District Council shall not grant a licence—*

 *(a) unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence; or*

 *(b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver’s licence so authorised”*

2.2 S.55 of the Local Government (Miscellaneous Provisions) Act 1976 states “*a district council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operator’s licence:*

*Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator’s licence.”*

S.59 the Local Government (Miscellaneous Provisions) Act 1976 states “*Notwithstanding anything in the Act of 1847, a district council shall not grant a licence to drive a hackney carriage—*

*(a) unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence; or*

*(b) to any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver’s licence so authorised*.**”**

2.3 The existing policy document, titled Statement of Policy about relevant convictions or other information in determining refusals for Hackney Carriage or Private Hire Drivers’ licences, was adopted in 2009. The previous policy has been in place for a number of years and this policy reviews and replaces this as part of the Regulatory Service Committee’s work programme. This policy has been based upon the well-publicised Rotherham Council document following their review and inspection of licensing.

2.4 The amended policy sets out clear information on how Three Rivers District Council views convictions and behaviour when determining whether an applicant is ‘Fit and Proper’.

2.5 The most serious offences will normally bar the person from ever becoming a licensed driver (murder, manslaughter, terrorism, offences involving children, young persons or vulnerable adults, most sex offences, traffic offences involving the loss of life or matters of similar gravity).

2.6 The next level of seriousness requires a passage of 10 years before applications will normally be granted (ABH Affray, Assault with intent to resist arrest, Assault on Police, Arson, Burglary with intent, any ‘hate’ crime, Grievous Bodily Harm, Robbery and Wounding with intent to cause GBH, or matters of similar gravity).

2.7 The next level of seriousness requires a passage of 5 years before applications will normally be granted (Benefit Fraud, Burglary, Criminal Damage, Common Assault, Forgery, Fraud, Handling Stolen Goods Harassment, Major Traffic Offences, or matters of similar gravity).

2.8 The amended document provides a comprehensive and clear policy for use by applicants/operators in their application for a licence and for use by licensing staff in the determination of any application. The consultation period of 8 weeks had been considered appropriate as it is felt that it is not too long or too short.

2.9 Officers carried out a consultation exercise with residents, Resident Associations, Parish Councils, District Councillors, the trade, Trade Associations, Hertfordshire Constabulary, Hertfordshire Safeguarding Children’s Board, Hertfordshire Safeguarding Adults Board, the Citizens Advice Bureau and adjacent local authorities. . This consultation asked for comments on the proposed Policy document.

2.10 The consultation expired on 24 November 2017. To date there have been no formal comments received although there have been a few enquiries as to what the new Policy consists of.

2.11 Any further comments received will be brought to the attention of the Committee as soon as possible after the 24 November 2017 deadline.

2.12 There has been one change to the original draft. This has been to provide further clarity to Section 18: Licensing Offences. This section has been renamed as Licensing / Offences under the Equality Act 2010. Failure to carry an assistance dog has been added to this paragraph. This was originally mentioned but only in the table at the end of the document.

2.13 With regards to a previous request for additional content on terrorism and an enquiry regarding Terrorism Prevention and Investigation Measures (TPIMS) and Enhanced Terrorism Prevention and Investigation Measures (ETPIMS), Officers contacted Hertfordshire Constabulary for clarification. Officers have been informed that this information would not be available locally. This information is only available to select individuals within the counter-terrorism and security services. Only about 5 persons have been subjected to a TPIM since the introduction in 2011. Therefore, this would be a very low risk. With regards to ETPIMS this is still within the Bill stage and so not yet legislation.

**3.** **Options/Reasons for Recommendation**

3.1 The options available to the Committee are:

* To adopt the Policy as amended
* To make amendments to the Policy and adopt with amendments
* Not to adopt the new policy leaving the old Policy adopted in 2009 in place.

3.2 Regard should be had to any further comments received prior to the consultation end date. However, in the current absence of comments, it is recommended that the Committee formally adopt the Hackney Carriage and Private Hire Driver and Private Hire Operator Suitability Policy as amended.

**4.** **Policy/Budget Reference and Implications**

4.1 The recommendations in this report are within the Council’s agreed budgets but require a modification to Committee Policy.

**5.** **Financial Implications**

5.1 This Policy has been subject to stakeholder and public consultation which incurred a small cost.

5.2 Refusals are open to appeal.  There may be financial implications to defend these matters. Any future variances will be reported through budget monitoring.

**6.** **Legal Implications**

6.1 This Policy explains how the Council will view convictions and behaviour in assessing whether an applicant is ‘fit and proper’ and therefore determining S.51 and / or S.55 of the Local Government (Miscellaneous Provisions) Act 1976.

6.2 This Policy has been based upon the well-publicised Rotherham Council document following their review and inspection of licensing.

6.3 Refusals are open to appeal. There may be legal implications to defend these matters.

**7.** **Equal Opportunities Implications**

7.1 **Relevance Test**

|  |  |
| --- | --- |
| Has a relevance test been completed for Equality Impact?***There is no change to the Equality Impact since the original policy*** | No  |
| Did the relevance test conclude a full impact assessment was required? | No |

7.2 **Impact Assessment**

There is no detrimental impact likely towards any protected group from amending the statement of policy about relevant convictions or other information in determining refusals for hackney carriage or private hire drivers and / or private hire operator licences. Any consultation with the public will seek to collect relevant demographic data in order to assess the different views of relevant protected groups if any.

**8.** **Community Safety Implications**

8.1 This Policy seeks to improve community safety as it sets out how the Council will determine applications for Private Hire and Hackney Carriage applicants.

8.2 The Policy will help to ensure we protect the health and wellbeing of the most vulnerable people in our community.

**9. Communications and** **Website Implications/Staffing Implications/ Environmental Implications Public Health implications and Customer Services Centre Implications.**

9.1None specific.

**10.** **Risk Management and Health & Safety Implications**

10.1 The Council has agreed its risk management strategy which can be found on the website at http://www.threerivers.gov.uk. In addition, the risks of the proposals in the report have also been assessed against the Council’s duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

10.2 The following table gives the risks if the recommendation(s) are agreed, together with a scored assessment of their impact and likelihood:

|  |  |  |
| --- | --- | --- |
| Description of Risk | Impact | Likelihood |
| 1 | Risk of appeal to Magistrates Court | I | E |

10.3 The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

|  |  |  |
| --- | --- | --- |
| Description of Risk | Impact | Likelihood |
| 2 | Reputational risk of being compared to Rotherham Council if policy is weak and does not contain both conviction and non-conviction information. | IV | F |
| 3 | A weak Policy would not match the Council’s duty of care to the public | III | E |

10.4 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Likelihood** | A |  |  |  |  |  | Impact | Likelihood |
| B |  |  |  |  |  | V = Catastrophic | A = >98% |
| C |  |  |  |  |  | IV = Critical | B = 75% - 97% |
| D |  |  |  |  |  | III = Significant | C = 50% - 74% |
| E | 1 |  | 1 |  |  | II = Marginal | D = 25% - 49% |
| F |  |  |  | 1 |  | I = Negligible | E = 3% - 24% |
|  | I | II | III | IV | V |  | F = <2% |
| **Impact** |  |  |

10.5 In the officers’ opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of treatment plans are reviewed by the Audit Committee annually.

**11.** **Recommendation**

11.1 To formally adopt the Hackney Carriage and Private Hire Driver and Private Hire Operator Suitability Policy as amended.

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 **Data Quality**

Data sources:

 None

 **Background Papers**

**APPENDICES / ATTACHMENTS**

**Appendix A:** Hackney Carriage and Private Hire Driver and Private Hire Operator Suitability Policy.