

Bolton Council

Report to: Executive Cabinet Member
Environmental Services

Date: 11th February 2019

Report of: Director of Place **Report No:** 465

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Report Title: **Statement of Fitness and Suitability (Private Hire, Hackney Carriage & Social Needs Transport)**

Non-Confidential: (***Non-Confidential***) This report does **not** contain information which warrants its consideration in the absence of the press or members of the public

Purpose: To Invite the Executive Member to consider the proposals to amend the Statement of Fitness & Suitability as outlined in the report.

Background Doc(s): Bolton Council's Statement of Fitness and Suitability (Private Hire, Hackney Carriage and Social Needs Transport).

Appendices / Attachments None

Recommendations: The Executive Cabinet Member recommend that:

- (i) the Statement of Fitness and Suitability be amended in accordance with the information detailed in the report; or
- (ii) the Statement of Fitness and Suitability stays in its current format

Decision:

Signed: _____

Leader / Executive
Member

Monitoring Officer

Date:

Summary:

Proposals to make amendments to the Statement of Fitness and Suitability as outlined in the report went to a meeting of the Place PDG on 12th December 2018. At this meeting the amendments were discussed and the PDG augmented by the Licensing Environmental and Regulation Committee supported the proposals.

1. INTRODUCTION & BACKGROUND

- 1.1 The Council has a 'Statement of Fitness and Suitability (Hackney Carriage, Private Hire and Social Needs Transport)', relating to the standards of fitness expected of licensed drivers, vehicles owners and operators regarding any criminal or motoring offences and any other relevant conduct matters.
- 1.2 The Statement of Fitness and Suitability is modelled on the framework developed by the Association of Greater Manchester Authorities (AGMA), with the objective of ensuring transparency and consistency across the region. The latest revision of the Policy was implemented by Bolton in April 2016.
- 1.3 The Local Government (Miscellaneous Provisions) Act 1976, prescribes that the Council shall only licence drivers and operators who they consider 'fit and proper persons' to hold a licence. The above policy is used as part of the process to assess the 'fit and proper person standard'. Other areas assessed as part of the 'fit and proper person' test include medical fitness, spoken English, topographical knowledge of Bolton, practical driving skills, and knowledge of licensing laws etc.
- 1.4 There is no legal definition of a 'fit and proper person', however James Button in his text Button on Taxis Licensing Law and Practice suggests:

'Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?'

Mr Justice Silber made an obiter observation in the case of Leeds City Council v Hussain. In the context of a suspension of a drivers licence "for any other reasonable cause" he said

'... the purpose of the power of suspension is to protect users of licensed vehicle and those who are driven by them and members of the public. Its purpose, therefore, is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.'

And this passage would support the above test for fitness and propriety.'

2. ISSUES

- 2.1 The current policy, implemented in April 2016 in conjunction with the Council's Scheme of Delegation, required all new applicants with any conviction, caution or intelligence including fixed penalty notices to be referred to a relevant Committee or Sub-committee for determination.
- 2.2 In recent years there has been widespread media coverage of cases involving child sexual exploitation and other safeguarding matters involving 'taxi' drivers (e.g. Rotherham, South Ribble, Rochdale). There have also been moves nationally (via the Institute of Licensing and the Department for Transport Task and Finish Group on Taxi and Private Hire Vehicle

Licensing) and within Greater Manchester (the Greater Manchester Combined Authority common minimum standards) for proposed minimum fitness standards. In view of this it's important that the current policy is strengthened in relation to sexual related matters i.e. offences and other relevant sexual conduct matters. This will bring the Council in line with other authorities and will ensure that the policy is robust in the face of challenges around sexual offences.

- 2.3 An increase in the growth of the private hire trade has resulted in an increase in the number of referrals to the relevant Committee or Sub-committee. It's important that all conduct matters are dealt with promptly. Hackney carriage and private hire trade representatives have requested whether an expedited process can be considered in respect of drivers who have minor isolated traffic offences that have resulted in a fixed penalty notice with no more than 3 penalty points.

3. **PROPOSED AMENDMENTS**

3.1 **Schedule D – Offences Involving Sexual and Indecency as follows (extract with changes highlighted below):**

1. *Sex offender register*

Where a person is currently on the sex offenders register, then a person applying for a licence, renewing a licence or an existing licence holder whose licence is being reviewed, will normally have the application refused, or the licence revoked.

2. *Offences against children (under 14 years) and young persons (aged 14 to 17 years)*

Where the commission of a sexual offence involves a child or young person, then a person applying for a licence, renewing a licence or an existing licence holder whose licence is being reviewed will normally have the application refused, or the licence revoked.

3. *CSE (grooming)*

Evidence indicating a licence holder is involved in CSE will result in an immediate consideration of the 'fit and proper' status of the licence holder and may result in the licence being revoked. A person applying or renewing a licence where evidence indicates the person is involved in CSE will (is likely to) be refused.

An example of CSE may include inappropriate contact - both physically and by use of any forms of communication e.g. text messaging, Facebook messaging, telephone call; allegation of sexual contact or sexual assault on a child or young person.

4. *Sexual or indecency offences against another individual other than children/young persons*

Where an applicant or licence holder has been convicted of rape, indecent assault, or any other similar offences or similar offences under the Sexual Offences Act 2003 then a person applying for a licence, renewing a licence or an existing licence holder whose

licence is being reviewed, will normally have the application refused, or the licence revoked.

Where a person has a conviction for an offence related to sexual offences such as soliciting, importuning, indecent exposure or other similar offences or similar offences under the Sexual Offences Act 2003 and the date of conviction is less than 7 years, then a person applying for a licence, renewing a licence or an existing licence holder whose licence is being reviewed, will normally have the application refused, or the licence revoked.

~~Where the person has more than one conviction related to sexual offences the period above will be extended to 10 years. After 10 years, consideration may be given to the circumstances of the offences and any evidence demonstrating that the person is now 'a fit and proper person' to hold a licence. In the case of serious or multiple offences, a longer period of rehabilitation may be required.~~

~~The Council may consider the circumstances, which if they occurred at the time of the consideration of the application would not be a criminal offence.~~

4. Custodial sentence:

~~Where the penalty applied to an indecency or sexual offence was a custodial sentence, the periods specified above commences at the end of the custodial period. This includes any period on licence or under the supervision of the Probation Service or equivalent service provider.~~

3.2 Schedule F Minor or Intermediate Motoring Offences (see Schedule F Tables B & C):

Fixed Penalty Notice:

For a single minor or intermediate motoring offence which: results in a fixed penalty notice with 3 penalty points; the individual has no further convictions in the preceding 3 years; there is not a pattern of behaviour which would question the individuals ability to meet the 'fit and proper person' test and the individual has not attended the Licensing & Environmental Regulation Committee or Sub Committees in the last three years, then a warning letter will be issued.

A warning letter will also be issued for a breach of licence conditions, for failing to notify the Council of a Fixed Penalty Notice within the specified time period, for the circumstances outlined above.

It may be necessary to fall outside of this guidance in some circumstances and it is entirely at the discretion of the Council to consider when this is appropriate.

4. OPTIONS

- 4.1 That the Executive Cabinet Member for Environmental Services authorises the amendment of the Statement of Fitness and Suitability detailed above.

4.2 That the Executive Cabinet Member for Environmental Services leaves the Statement of Fitness and Suitability in its current format and instructs that no changes should be made to the existing Statement of Fitness and Suitability.

5. IMPACTS AND IMPLICATIONS:

Financial

5.1 There are no significant financial implications for the Council, however expediting the considerations of isolated traffic offences (3 penalty points) will result in some applications and reviews being determined more quickly and therefore may offer applicants/ licence holders a quicker route into employment

Legal

5.2 As in the case of all Council Policy a review of the policy may be subject to Judicial Review

HR

5.3 None

Other

5.4 None

6. CONSULTATION

6.1 Has been undertaken as outlined in the report at Appendix A which was considered by place PDG on 12 December. The PDG were supportive of the proposals

7. EIA

7.1 Under the Equality Act 2010, the Council must have due regard to:

- Eliminating unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act;
- Advancing equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Fostering good relations between people who share a protected characteristic and people who do not share it.

7.2 It is therefore important to consider how the proposals contained within this report may positively or negatively affect this work. To support this analysis, an Equality Impact

Assessment (EIA) screening form has been completed for the proposals and is attached within Appendix A at Appendix A4

- 7.3 The EIA looks at the anticipated (positive and/or negative) impacts of the proposal on people from Bolton's diverse communities, and whether any group (or groups) is likely to be directly or indirectly differentially affected.
- 7.4 At this stage it is not anticipated that the proposals will have a disproportionate impact on any of Bolton's diversity groups.

8. RECOMMENDATIONS

- 8.1 The Executive Cabinet Member is recommended to:
 - 8.1.1 Amend the Statement of Fitness and Suitability in accordance with the information detailed within the report at paragraph 3.