

## WAVERLEY BOROUGH COUNCIL

### LICENSING AND REGULATORY COMMITTEE – 25 SEPTEMBER 2017

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**Title:**

**HACKNEY CARRIAGE AND PRIVATE HIRE POLICY REVIEW**

[Wards Affected: All]

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**Summary and purpose:**

The purpose of the report is to enable the Committee to consider proposed changes to Hackney Carriage/Private Hire policy. The primary change relates to a complete revision of the current convictions policy, in order to help prevent the sexual exploitation of children by introducing consistent standards across Surrey. The key changes are:

- Adopting a consistent taxi and private hire convictions policy across Surrey
- Mandatory CSE training for all taxi and private hire drivers in Surrey

Waverley's current Hackney Carriage/Private Hire Licensing policy was originally adopted by the Council in July 2010 and was last revised on 01 March 2016. A copy of the current policy with track changes (in red) is attached at [Annexe 1](#).

The report seeks approval to consult on the proposed changes.

The report has no direct resource, environmental or "Opportunities for All" implications for Waverley.

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**How this report relates to the Council's Corporate Priorities:**

Taxis play an important part in the overall public transport network in the Borough, and contribute to policies on the environment and improving lives.

**Financial implications:**

The financial implications include the cost of the consultation of the policy, the possible advertising of any fee changes and following adoption the printing (internal) and posting of approximately 320 updated policy booklets to licensees.

**Legal implications:**

Once granted, licences are classed as a possession under Article 1 of the First Protocol of the European Convention on Human rights (enshrined in UK law under the Human Rights Act 1998), which states that every person is entitled to the peaceful enjoyment of his possessions. Policies or guidelines should not be established by the Body (in this case, the Licensing and Regulatory Committee) which regulates or determines a function. Accordingly, this Committee is asked to address the Policy issues around such licensing, in conjunction with the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act

1847, and make recommendations to the Executive to update Waverley's policy regarding taxi and private hire licensing.

### **Introduction:**

1. On the 20 July 2010 the Waverley's Hackney Carriage and Private Hire Licensing policy was adopted by the Council, with the latest amendments adopted in March 2016.
2. Since the introduction of the policy, Surrey Safeguarding Children Board (SSCB) and its partners including all 11 Surrey Local Authorities have agreed a Child Sexual Exploitation Strategy and action plan, which aims to develop a coordinated response to child sexual exploitation (CSE) across the County. Licensing targets include taxi and private hire licensing, premises licensed under the Licensing Act 2003, participation in Operation Make safe and information sharing.
3. Achieving the targets will help Surrey Local Authorities to fulfil their statutory responsibilities defined in Section 11 of the Children's Act 2004 to safeguard children and to promote welfare effectively. Delivery of the strategy supports the SSCB's statutory duties to co-ordinate activities to safeguard and promote the welfare of children in Surrey, as well as ensuring the effectiveness of what is being done by partners.
4. Two actions identified within the CSE action plan relating to taxi and private hire are:
  - Adopting a consistent taxi and private hire convictions policy across Surrey
  - Mandatory CSE training for all taxi and private hire drivers in Surrey
5. The two changes will raise the standards of public safety across Surrey and build on the positive steps already taken to protect the most vulnerable in our communities.
6. Once considered by the Licensing and Regulatory Committee, the policy, with any amendments, will be sent out for consultation.

### **Convictions Policy**

7. Following recent cases of licensed drivers and operators across the country involved in sexual exploitation of children, it is important that Local Authorities take appropriate steps to prevent future cases by ensuring that licensed drivers are 'fit and proper'. Consideration of a person's criminal convictions and other relevant character or behaviour information is a key part of the 'fit and proper' assessment.
8. Local Authorities across Surrey are seeking to standardise the information taken into account when determining if someone is 'fit and proper' by adopting the same convictions policy. Whilst there are significant similarities in the majority of the conviction policies, there are some differences, and these

could result in applicants being revoked or refused then being granted a licence in another Surrey Local Authority with different standards. The differences mainly relate to the number of years an offence is considered relevant.

9. As only 'fit and proper' persons must conduct these responsible duties, the convictions policy proposes to add that people banned from working with children or vulnerable adults will not normally be granted a licence.
10. Currently, those banned from working with children and vulnerable persons would not be permitted to drive under a Surrey County Council contract but could potentially be granted a licence by a Surrey District or Borough Council. This is an unacceptable risk, as taxis and private hire vehicles are likely to transport children at times other than to school plus elderly and disabled users often rely on taxis and private hire vehicles to access local services.
11. The sample Convictions Policy produced by the Local Government Association has been referred to in the production of this policy.
12. When applying the convictions policy, all Licensing Authorities are mindful that each case must be considered on its merits and where the circumstances demand, the Council may depart from its policy.

#### **Mandatory CSE and Safeguarding Training**

13. Surrey Local Authorities want to take appropriate steps to protect the most vulnerable in our society by introducing mandatory CSE and safeguarding training for taxi and private hire drivers. Following the recent examples of the sexual exploitation of children in our communities, a number of Local Authorities have already introduced this requirement.
14. The training would include how to spot signs of child sexual exploitation and how to report concerns of children or vulnerable persons at risk using agreed Surrey processes. There will be a multiple-choice assessment to ensure understanding of the subject matter.
15. If adopted, it is proposed that all new drivers would be required to pass the CSE training in advance of first being licensed and all existing drivers to pass within one year of adopting the requirement.

#### **CSE Training & Convictions Policy Consultation ONLY**

16. Reigate and Banstead Borough Council will host the six week web based consultation on behalf of all 11 Surrey Local Authorities. The results will be reported separately for each Local Authority and to date
  - Surrey Safeguarding Children Board have been involved throughout and endorse these proposals.

- The Surrey Licensing Officers Group and Surrey Solicitors Group have both been consulted on the proposed convictions policy and training package.
- The Surrey Chief Executive Group are in support work of the proposed changes and have made resources available and a financial contribution to help ensure that the project is delivered in a timely manner

**Amendments/Consideration of changes to Waverley Borough Council's Policy Only**

17. Officers have taken the opportunity to bring to the Committee a number of Waverley specific amendments to its policy which will be consulted on as a separate exercise. These are explained in more detail below, and there are also some amendments to the text which help to clarify the policy or which reflect changes that have come into effect since the last policy review. These changes are all shown in red in Annexe 1.

**Window Tinting Consideration**

18. Waverley current policy states

*There shall be no additional tint (darkening) of windows beyond the legal limit of light transmission to minimum 75% for front and side front windows, and light transmission of minimum 70% for all other windows, or the manufacturer's specification, whichever is the lightest.*

19. The current law requires all vehicles to allow not less than 75% transmission of light through the front windscreen and not less than 70% transmission of light through the front passenger/driver side windows. There are no regulations relating to rear passenger windows or rear windscreens (i.e. all windows rear of the front driver/passenger seats). This facilitates the proliferation of vehicle manufacturers that provide, as standard, dark tinted rear windows.
20. A significant number of vehicle manufacturers offer the option of very dark windows behind the front driver/passenger seats and an increasing number fit these windows as standard without the option of alternate clearer glass.
21. Officers recently used a light meter to check the rear windows on a number of different manufacturers new models on sale at Slyfield Industrial Estate, the results of which are shown below;

<b>Make</b>	<b>Model</b>	<b>Light transmission %</b>
KIA	CEE'D	40%
VW	GOLF 1.6 Diesel (5 years old)	70%
BMW	5 SERIES 520D	18%
BMW	I3 (ELECTRIC)	37%
VW	SHARAN TSI	31%
VW	PASSAT 2.0 TDI	27%
VW	TOURAN 2.0 TDI	20%

VAUXHALL	MOKKA X ACTIVE	74%
VAUXHALL	MOKKA S.E. DIESEL	20%
VAUXHALL	INSIGNIA CDTI SPORTS	27%
VAUXHALL	INSIGNIA GRAND TOURER	28%
VAUXHALL	INSIGNIA SRI HATCHBACK	27%
VAUXHALL	ZAFIRA 1.8 TOURER	34%

22. The main benefits of tinted glass are considered to be;

- Improved privacy/security
- Added protection from ultraviolet rays (UV) coming from the sun
- Improved thermal comfort by reducing heat build-up inside the vehicle
- Aesthetic appearance by enhancing the look of the vehicle

23. Dark tinted windows fundamentally make it more difficult to see into the rear of a vehicle and may conflict with other parts of the policy.

- Activities taking place in the vehicle cannot be viewed from the outside posing a potential risk to both passengers and driver.
- Enforcement officers need to see that the maximum number of passengers the vehicle is licensed to carry is not being exceeded
- Vulnerable passengers, for example young persons, the elderly and lone females may feel safer in a vehicle where they can be seen.
- A potential threat/person may already be in the vehicle that the passenger may not be able to see.

24. Officers have experienced a growing issue regarding tinting owing to the increasing number of vehicles being manufactured with dark tinted rear windows as standard. It has also been alleged that in some cases there is no clear glass option to allow the glass to be replaced. The Department of Transport Taxi & Private Hire Vehicle Licensing best practice guidance March 2010 states;

The minimum light transmission for glass in front of, and to the side of, the driver is 70%. Vehicles may be manufactured with glass that is darker than this fitted to windows rearward of the driver, especially in estate and people carrier style vehicles. When licensing vehicles, authorities should be mindful of this as well as the large costs and inconvenience associated with changing glass that conforms to both Type Approval and Construction and Use Regulations.

25. The Freight Transport Association's (FTA) Hackney Carriage and Private Hire Vehicles National standards August 2012 states;

Only vehicles complying with the following conditions will generally be considered for licensing as private hire vehicles;

- With the exception of stretch limousines, vehicles will not be accepted with blacked out windows. Passengers being carried in the vehicle

must be visible from the outside. **In exceptional circumstances**, tinted windows may be acceptable.

26. Rotherham Metropolitan Borough Council's Hackney Carriage Vehicle condition states:

**Glazing**

All glazing must at all times comply with Road Vehicles (Construction and Use) Regulations 1986 regulation 32 with regards to the level of tint. A minimum light transmission value of 70% shall be maintained in all windows except a windscreen, which shall have a minimum light transmission value of 75%. Tinted films applied to the vehicle windows are not permitted.

27. Attached at Annexe 2 is a list of neighbouring Councils and their policy regarding tinted windows in Hackney Carriage and Private Hire vehicles.

**Options to consider**

28. The Committee is invited to consider whether there is merit in amending the wording of the current policy to clarify the situation with regards to tinting of licensed vehicles at Waverley. Consideration may also be given to one of the following options;
1. Retain the existing policy (subject to rewording) for both Hackney Carriage and Private Hire Vehicles
  2. Retain the existing policy (subject to rewording) for Hackney Vehicles only with no condition on Private Hire vehicles
  3. Revise percentage of light transmission for all or only Hackney Carriages
  4. Remove tinting condition for all vehicles
  5. A combination of the above.

**Using a mobile phone while driving**

29. Mobile phone driving laws were first enacted in December 2003, and since 2007 the penalty had been three points on A DVLA licence and a fine (£60 at first, but £100 from 2013).
30. From 1 March 2017, the penalty was doubled – so being caught using a mobile phone while driving carries a penalty of six points and a £200 fine.
31. Waverley's Penalty Point Scheme was introduced in 01 March 2016, with 6 penalty points given for using a mobile phone while driving. As this was before the change in law, the committee is invited to consider whether it is necessary to increase the number of penalty points issued in accordance with Waverley Penalty Point Scheme.

**Waverley Hackney Carriage & Private Hire Policy ONLY – Public Consultation**

32. The consultation will include notification to all Hackney Carriage and Private Hire licensees of the proposed changes, a public notice at all the taxi ranks

within Waverley, notice placed on Waverley's website and offices, and an item included on the agenda of the taxi liaison meeting on 9 October 2017.

### **Consultation timetable**

- Initial report to Licensing & Regulatory Committee – 25 September 2017
- Write/mailed all HC/PH licencees – Late September 2017
- Placed notice at all taxi ranks – Late September 2017
- Place consultation information on web – Late September 2017
- Inspection copies at Council Offices – October 2017
- Consultation period ends 10 November 2017 (6 weeks)
- Licensing and Regulatory Committee 15 January 2018
- Executive – 05 February 2018
- Council – 19 February 2018

### **Human Rights Implications**

33. The Human Rights Act 1998 incorporated into English law the protection of human rights enshrined in the European Convention on Human Rights (ECHR). The Council must have regard to the human rights of individuals affected by its decisions. In determining applications for licences and in matters of enforcement, the Council will have regard to Article 1 of the First Protocol of the ECHR (the right to the peaceful enjoyment of one's possessions), and Article 6 (the right to a fair trial). Existing licensees have a right to the peaceful enjoyment of their licence. However, this is a qualified right; a balance should be achieved between the protection of licence-holders' individual rights and the interest of the community.

### **Conclusion**

34. The Committee is asked to consider the proposed changes made to the Hackney Carriage and Private Hire Licensing Policy and make its recommendations for amending the Policy to the Executive. The Policy is ultimately set by the Council as part of the Policy Framework, on the recommendation of the Executive, and the activity under the Policy is the remit of this Committee.
35. Approving consultation on the two changes regarding CSE training and the Convictions Policy to the Taxi and Private Hire Licensing Policy will help ensure a co-ordinated and consistent response across to prevent the sexual exploitation of children in Surrey.

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### **Recommendation**

It is recommended that the Licensing and Regulatory Committee approve the draft changes to the taxi and private hire taxi policy for public consultation over a 6 week period.

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## Background Papers

Waverley Hackney Carriage and Private Hire licensing Policy.

The sample Convictions Policy produced by the Local Government Association  
<https://www.local.gov.uk/sites/default/files/documents/lga-example-taxi-and-priv-d6c.pdf>

Report of Professor Jay into Child Sexual Exploitation in Rotherham (September 2014)  
[http://www.rotherham.gov.uk/downloads/file/1407/independent\\_inquiry\\_cse\\_in\\_rotherham](http://www.rotherham.gov.uk/downloads/file/1407/independent_inquiry_cse_in_rotherham)

Casey report into Rotherham Metropolitan Borough Council (February 2015)  
<https://www.gov.uk/government/publications/report-of-inspection-of-rotherham-metropolitan-borough-council>

Surrey Safeguarding Children Board, Child Sexual Exploitation Strategy 2016-17  
<http://www.surreyscb.org.uk/wp-content/uploads/2016/05/SSCB-CSE-Strategy-2016-17.pdf>

Surrey Safeguarding Children Board, Child Sexual Exploitation Action Plan 2016-17  
<http://www.surreyscb.org.uk/wp-content/uploads/2016/12/Updated-joint-Surrey-CSE-Plan-Dec-2016-v.4.0.pdf>

DFT Taxi and Private Hire Vehicle Licensing Best Practice  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212554/taxi-private-hire-licensing-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212554/taxi-private-hire-licensing-guide.pdf)

Rotherham BC Taxi Licensing and Private Hire policy documents -Appendix M - Hackney Carriage Vehicle Conditions  
[http://www.rotherham.gov.uk/downloads/file/2486/appendix\\_m\\_hackney\\_carriage\\_vehicle\\_conditions](http://www.rotherham.gov.uk/downloads/file/2486/appendix_m_hackney_carriage_vehicle_conditions)

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