

Licensing Committee

28 February 2018



Title	Update of Spelthorne's Hackney Carriage and Private Hire Licensing Policy, including the adoption of the finalised Surrey-wide convictions policy and mandatory Child Sexual Exploitation (CSE) training		
Purpose of the report	To make a decision		
Report Author	Rob Thomas		
Cabinet Member	Councillor Nick Gething	Confidential	No
Corporate Priority	Delivering quality of life services		
Cabinet Values	Community and Accountability		
Recommendations	<p>The adoption of the finalised version of the Surrey-wide Hackney Carriage & Private Hire Licensing Policy regarding the relevance of convictions and other related information (hereafter known as the 'Surrey-wide convictions policy') will help to prevent the sexual exploitation of vulnerable children and adults, by introducing consistent standards across Surrey.</p> <p>It is recommended that the Committee: -</p> <ul style="list-style-type: none">• adopt the finalised Surrey-wide convictions policy (attached as Appendix A) to replace the draft version previously attached to Spelthorne's Hackney Carriage and Private Hire Licensing Policy;• approve the requirement for all existing taxi and private hire drivers to undertake mandatory CSE training by 1 May 2019;• approve the requirement for all new taxi and private hire drivers to undertake mandatory CSE training from the 11 April 2018; and• approve all other minor amendments to the Policy and Penalty Points Scheme.		

1. Key issues

- 1.1 Spelthorne's Hackney Carriage and Private Hire Licensing Policy was adopted on 23 May 2017.
- 1.2 Attached as an appendix to this Policy was a draft version of the Surrey-wide Hackney Carriage & Private Hire Licensing Policy regarding the relevance of convictions and other related information (the 'Surrey-wide convictions policy'),

which provides guidance for members and staff working for Spelthorne Borough Council on how applications and licences should be treated when an applicant presents with a conviction or caution for any number of offences.

- 1.3 Since then, 11 Surrey Local Authorities have consulted on amendments to this convictions policy. The final version, proposed to replace the one currently attached to Spelthorne's Hackney Carriage and Private Hire Licensing Policy, is attached as **Appendix A**.
- 1.4 The Surrey Safeguarding Children Board (SSCB) and its partners – again including 11 Surrey Local Authorities - have agreed a Child Sexual Exploitation Strategy and action plan, which aims to develop a co-ordinated 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.
- 1.5 Achieving the targets, helps enable Surrey Local Authorities to fulfil their statutory responsibilities defined in Section 11 of the Children 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.
- 1.6 Two actions identified within the CSE action plan and related 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
- 1.7 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.

2. Consultation

- 2.1 Reigate and Banstead Borough Council hosted a six week consultation on behalf of all 11 Surrey Local Authorities between 23 October and 4 December 2017.
- 2.2 The following organisations were invited to respond to the consultation:
 - Institute of Licensing
 - Transport for London
 - Local Government Association
 - National Association of Licensing and Enforcement Officers
 - All District and Borough Councils in the South East of England
 - Surrey Police
- 2.3 The 396 consultation responses received have been analysed collectively, these are shown in **Appendix B**. Responses from the taxi and private hire trade and those who live, work or visit the County are presented separately for comparison purposes.

- 2.4 There has been separate analysis of each Local Authority area with Guildford responses shown in **Appendix C**. Of the 23 responses, 19% were from the taxi and private hire trade with the remainder mainly from those who live or work in the Borough.

3.0 Convictions Policy - Consultation results

- 3.1 Local Authorities across Surrey are seeking to standardise the information they take into account when determining if someone is 'fit and proper' by adopting the same convictions policy.
- 3.2 The consultation results showed support across Surrey for introducing the convictions policy with 73% (69% of the taxi and private hire trade and 76% of those who live and work in the County) in agreement with the relevant convictions and free from conviction timescales being included in the new policy and used when determining if a person is 'fit and proper'. The support within Guildford was stronger with 78% in agreement with introducing the convictions policy.
- 3.3 There was also strong support for people banned from working with children or vulnerable adults not normally being granted a taxi or private hire licence with 87% (93% of those who live or work in Surrey and 78% of the Surrey taxi and private hire trade) in agreement that it should be included in the policy. Of respondents within the Guildford area 91% were in agreement with the proposed inclusion of this element in the convictions policy.
- 3.4 Introducing this element in the policy removes the unacceptable risk, which currently exists of those banned from working with children and vulnerable persons not being permitted to drive under a Surrey County Council contract but potentially being granted a licence by a Surrey District or Borough Council.
- 3.5 Following analysis of all the consultation responses amendments have been made to the draft convictions policy. All consultation comments can be found at:

http://www.reigate-banstead.gov.uk/info/20119/taxi_and_private_hire_licensing/902/taxi_and_private_hire_policy_consultation_2017_results.

The key proposed changes to the policy are:

- Including the ability to consider relevant records or information from a reliable source other than the police when determining if an applicant is fit and proper.
- Clarifying that the policy applies to applicants, which includes companies.
- Confirming Councils will only depart from the policy in exceptional circumstances.
- Clarifying that the 'Offences involving a weapon' heading does not include firearms offences which are in a separate section.
- Increase relevant years for offences involving weapons to 5 years, as consultation feedback highlighted the current standard is too low particularly compared with 5 years for obstruction offences.

- In the alcohol and drug offences section, drunkenness offences not involving a motor vehicle are an addition as they are already in one Local Authorities' policy and excluding them would result in lowering the existing standard.
 - Minor grammatical changes.
 - Changes to clarify the elements that are 'policy' and 'guidance'.
- 3.6 Several respondents wished to see a blanket ban for applicants with certain convictions. When applying the convictions policy, all Licensing Authorities must judge each case on its merits and an absolute prohibition cannot be imposed therefore a mandatory ban is not appropriate and the phrase 'normally would be refused' is used within the policy.
- 3.7 A number of respondents felt that common assault is different from other offences in the 10 year category and a lower number of years would be more appropriate. It is not proposed to lower the period for common assault as it is considered a relevant serious offence and Local Authorities have discretion, as they must judge each case on its merits.
- 3.8 The revised version of the convictions policy taking into account the consultation responses and proposed by all Surrey authorities is at **Appendix A**.
- 3.9 Prior to the policy being implemented training would be arranged for Licensing Officers, Solicitors and Licensing Committee Members to help ensure consistency of application.
- 3.10 Further changes to the convictions policy may be required in the future to comply with guidance issued by organisations such as the Department of Transport or the Institute of Licensing to standardise the convictions policies across the Country.
- 3.11 In the future all 11 Local Authorities will aim to keep the convictions policy consistent across Surrey as guidance and best practice changes.

4.0 Mandatory CSE and Safeguarding Training – consultation results

- 4.1 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. A number of Local Authorities have already introduced this requirement.
- 4.2 Prior to obtaining a Spelthorne private hire or hackney carriage driver licence badge, applicants are required to pass knowledge tests. CSE does not currently form part of this testing criteria.
- 4.3 Results of the consultation showed support for the proposal with 69% (56% of the Surrey taxi and private hire trade and 73% of those who live and work in the County) agreeing that taxi and private hire drivers should have to complete this additional training on Child Sexual Exploitation and Safeguarding prior to becoming a driver. Amongst Guildford respondents, there was stronger support with 81% in agreement with the proposal.
- 4.4 In total 64% of all respondents support Child Sexual Exploitation training for existing drivers but there was a difference between responding groups. 72% of respondents who live and work in Surrey supported the proposal of existing taxi

and private hire drivers having to complete additional training on Child Sexual Exploitation and Safeguarding. There was less support, only 41%, from the respondents working in the taxi and private hire trade for existing drivers being required to undergo the training. A higher percentage of all Guildford respondents agreed with the proposal, with 81% supporting additional training for existing drivers.

- 4.5 Whilst it is acknowledged there is not widespread support amongst trade respondents the public were in strong support of the proposal and Local Authorities have a social responsibility to take steps to prevent CSE. Due to the nature of their work, the taxi trade are in a unique position to be able to identify CSE therefore it is recommended to retain the proposal requiring existing drivers to complete the training.
- 4.6 If approved, Surrey Local Authorities are ready to implement an online training programme, which would be free for one year to all existing drivers. The training would take approximately one hour to complete and 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 and each Local Authority will make arrangements for completion of the course.

5.0 Consultations

- 5.1 Surrey Safeguarding Children Board have been involved throughout the consultations and endorse the above-detailed proposals.
- 5.2 Having reviewed the consultation results, the Surrey Licensing Officers Group and Surrey Solicitors Group continue to support the introduction of a common convictions policy and mandatory CSE training across Surrey. The Surrey Chief Executive Group supports the introduction of these proposals with one Chief Executive monitoring implementation of these proposals.

6.0 Other minor amendments to Spelthorne's Hackney Carriage and Private Hire Licensing Policy

- 6.1 Since the adoption of the Policy in May 2017, a number of minor amendments have been identified by Licensing Enforcement Officers (LEOs) working for the Council.
- 6.2 These amendments have been flagged up on the revised Policy (attached as **Appendix D**) via tracked changes.
- 6.3 In Summary they are as follows: -
- Applicants should obtain a new MoT for any vehicle they are presenting to be licensed no more than 14 days before submitting an application. This will ensure that the Council can say with some certainty that when a vehicle was last inspected by one of it's LEOs, it was of a sound mechanical state.
 - All private hire operators will be required to ensure they comply with the Immigration Act 2016 in light of recent amendments, and will keep copies of all paperwork so that they can prove due diligence if requested by an officer of the Council.

- To clear up any grey area, although no smoking is covered by other pieces of legislation and not permitted regardless, wording has been added that categorically advises no smoking can be permitted in a Hackney Carriage or Private Hire vehicle – including vaping.
 - Wording has been added which states that the only permissible reason a driver may refuse to afford assistance in the loading and unloading of luggage is if a medical condition precludes them from doing so.
- 6.5 Amendments have also been made to bring requirements for the notification of driving licence endorsements, fixed penalty notices, warnings, reprimands, police cautions, criminal convictions and other criminal proceedings into line with the Surrey-wide convictions policy.
- 6.6 Some minor changes have been made to Spelthorne's Penalty Points Scheme (attached as **Appendix E**) so that it matches up with the Policy accordingly.

7.0 Options analysis and proposal

- 7.1 There are a number of options for Licensing Committee to recommend to Council:
- Reject one or more of the recommendations
 - Amend the convictions policy and/or training requirement
 - Recommend the options as presented
- 7.2 Officers recommend that both the convictions policy and CSE training for all new and existing taxi drivers be adopted as presented to help ensure consistency across all Surrey Local Authorities in protecting children and vulnerable adults from CSE.

8.0 Financial implications

- 8.1 Modifications to the policy and consultation will be met within existing budgets.
- 8.2 The Surrey Chief Executive Group has agreed to pay for the CSE training for one year to support its introduction so there is no cost to existing drivers. Spelthorne Council will however be billed for £2000 in due course, to cover the cost of implementing and administering the training.

9.0 Legal Implications

- 9.1 The basis for the changes within the policy is to ensure that the Council fulfils its statutory safeguarding obligations to prevent the exploitation of children and vulnerable persons more effectively.
- 9.2 The current taxi byelaws remain unchanged.
- 9.3 There is no statutory requirement to have a taxi and private hire licensing policy; however, it is good practice to do so. A policy assists with consistent decision-making; however each case must be considered on its own merits with the decision maker being prepared to make exceptions to the policy in appropriate circumstances.

- 9.4 In relation to taxi and private hire licensing, there are specific powers contained in the Town Police Clauses Act 1847, Transport Act 1985 and Local Government (Miscellaneous Provisions) Act 1976. These allow the Council to specify the requirements that vehicles and drivers must meet in order to be licensed, and to refuse a licence to drivers if we are not satisfied that the drivers are fit and proper persons to hold a licence. They also allow conditions to be attached to licences (with the exception of hackney carriage driver's licences).

10.0 Other considerations

- 10.1 To amend the delegations to permit the Senior Head of Environmental Health to agree minor changes to Spelthorne's Hackney Carriage and Private Hire Policy as and when they arise so as to expedite the implementation of alterations which benefit the taxi-using public by ensuring their safety and helping to minimise the Licensing department's workload.

11.0 Relevant background information:

- 11.1 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

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

- 11.3 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>

- 11.4 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>

12.0 Appendices:

- 12.1 Appendix A – Finalised version of Surrey-wide Hackney Carriage & Private Hire Licensing Policy regarding the relevance of convictions and other related information changes (referred to above as the 'Surrey-wide convictions policy')
- 12.2 Appendix B – Responses from all Surrey authorities to Reigate and Banstead Borough Council's six-week consultation
- 12.3 Appendix C – Responses to Guildford Borough Council's six-week consultation
- 12.4 Appendix D – Proposed amended version of Spelthorne's Hackney Carriage and Private Hire Licensing Policy, marked with tracked changes
- 12.5 Appendix E – Proposed amended version Spelthorne's Penalty Points Scheme