

**TAXI LICENSING POLICY – REQUIREMENT FOR AN ENHANCED LEVEL CRIMINAL RECORDS DISCLOSURE****1. Introduction**

- 1.1 The purpose of this report is to ask members to determine whether the Council's policy regarding Criminal Records Bureau checks carried out in connection with hackney carriage and private hire vehicle driver licence applications should be amended in light of recent statements made by the Criminal Records Bureau.

**2. Background**

- 2.1 Where information is required about a person's criminal history, the law provides for certain situations where this information can be obtained from the Criminal Records Bureau (CRB), an executive agency of the Home Office.

- 2.2 The CRB was set up to provide three types of disclosure:

- Criminal conviction certificate – records unspent convictions and cautions.
- Criminal record certificate (often referred to as "standard disclosure") – records all spent and unspent convictions and all cautions.
- Enhanced disclosure – same as the standard disclosure, plus details of other information held by the police which, in the opinion of the police, is relevant for the purpose for which the disclosure is sought.

- 2.3 Prior to granting an application for a hackney carriage/private hire vehicle driver's licence, a licensing authority must be satisfied that the applicant is a "fit and proper person" to hold such a licence. This test gives the licensing authority a wide discretion, which must be exercised with regard to the underlying objective of public protection. When an application is received, the licensing authority undertakes a check with the CRB, to determine whether the applicant has any criminal convictions or cautions. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, Sch 2, the licensing authority is entitled to request information from the CRB about both spent and unspent convictions, as well as cautions. However, a question remains about whether the licensing authority is permitted to request enhanced disclosure in connection with this type of application.

**3. Criminal Records Bureau**

- 3.1 Until recently large numbers of licensing authorities sought enhanced CRB checks in relation to applications for hackney carriage/private hire drivers' licences. This was not challenged by the CRB.
- 3.2 However, the March 2011 issue of the CRB News stated that the CRB considered that it would be "illegal" to request an Enhanced CRB check for the sole purpose of issuing a licence to a hackney carriage or private hire

driver. They stated that this view was based on the following legislative framework:-

3.2.1 The Police Act 1997 sets out a list of employments and positions which are entitled to an enhanced level CRB check. As it currently stands, the issuing of a licence in respect of either a hackney carriage or private hire vehicle driver is not listed.

3.2.2 Taxi drivers are not a “specified position” in the Safeguarding Vulnerable Groups (SVG) Act 2006, unless they transport children or vulnerable adults to or from a regulated activity, and the transport is organised by the providers of the regulated activity or an organisation working on their behalf (e.g. a Local Authority school contract or NHS contract).

3.2.3 The CRB News states that it is not a regulated activity if a child or vulnerable adult hires a taxi in the street or by telephone privately.

#### **4. Department for Transport (DfT) – Taxi Licensing Best Practice Guidance**

4.1 The DfT guidance on criminal records checks for taxi drivers (hackney carriage and private hire) has been amended to reflect the position of the CRB. Paragraph 58 of the guidance now states:

‘A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable. Taxi drivers can be subject to a Standard Disclosure (and for those working in “Regulated Activity” to an Enhanced Disclosure) through the Criminal Records Bureau. Both levels of Disclosure include details of spent and unspent convictions, cautions, reprimands and final warnings. An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police. An Enhanced Disclosure is for those working in Regulated Activity as defined by The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Regulations 2009.’

#### **5. New Forest Taxi Licensing Policy**

5.1 Paragraph 1.6.4 of the New Forest District Council Statement of Principles for Hackney Carriage & Private Hire Licensing: **Previous convictions** states:

- ‘Unless otherwise specified, all applicants for new Hackney Carriage/Private Hire Drivers Licence must satisfactorily undergo an Enhanced Criminal Records Bureau check prior to the granting of a licence and resubmit the same at the end of the first year and then at three yearly intervals in line with the renewal application. Refusal to complete the CRB form will mean that no licence will be issued.’

5.2 It is established law that, when determining applications for hackney carriage/private hire drivers’ licences, licensing authorities are entitled to take into account the sort of information which might be disclosed through enhanced disclosure. This might include, for example, information arising from failed prosecutions (eg, where a person was acquitted, where the prosecution was withdrawn etc), or where an investigation took place but criminal proceedings were not actually brought. This is because licensing authorities must determine whether, on the balance of probabilities, someone

is a “fit and proper person” to hold such a licence. This is a far less stringent test than the criminal burden of proof, which requires that someone must be proved guilty beyond a reasonable doubt.

## 6. Legal advice

6.1 A number of licensing authorities within Hampshire had, until the March 2011 edition of the CRB News, carried out enhanced CRB checks for all hackney carriage/private hire drivers’ licence applications. Following the CRB’s statement in March 2011, which was clearly at odds with the practice and policies of these councils, a number of councils in Hampshire decided to seek advice from counsel, as to whether they could continue to seek enhanced CRB checks for these applications. Advice was provided by Peter Savill of 12 College Place Chambers, and is summarised below: -

6.1.1 The CRB has referred, in the March 2011 edition, to a piece of legislation which has been repealed, and is therefore of no effect. It is anticipated that the CRB intended to refer to Regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, which read as follows: -

*“5A. Enhanced criminal record certificates: prescribed purposes*

*The purposes for which an enhanced criminal record certificate may be required in accordance with a statement made by a registered person under section 113B(2)(b) of the Act are prescribed as follows, namely the purposes of –*

*(a) considering the applicant’s suitability –*

*(i) to engage in any activity which is a regulated activity relating to children within the meaning of Part I of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, or*

*(ii) for a position which otherwise involves regularly caring for, training, supervising or being solely in charge of persons aged under 18;*

*(aa) considering the applicant’s suitability for any work which is a controlled activity relating to children within the meaning of section 21 of the Safeguarding Vulnerable Groups Act 2006;*

*(b) considering the applicant’s suitability –*

*(i) to engage in any activity which is a regulated activity relating to vulnerable adults within the meaning of Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, or*

*(ii) for a position which otherwise involves regularly caring for, training, supervising or being solely in charge of vulnerable adults within the meaning of section 59 of the Safeguarding Vulnerable Groups Act 2006.”*

6.1.2 The CRB’s view is that, as taxi drivers will not be engaging in “regulated activity” or “controlled activity”, it is not appropriate to request an enhanced CRB check. However, the Regulation states that an enhanced CRB check may be sought where the person in question will be carrying out a regulated activity **or** where they will be regularly caring for, training, supervising or being solely in charge of

children or vulnerable adults. The March 2011 CRB statement appears to have ignored the second part of this test completely.

- 6.1.3 It is important to bear in mind that a hackney carriage driver may not, without reasonable excuse, decline a fare. A child or vulnerable adult may hail a hackney carriage. A private hire driver's fares are allocated by the operator, who is unlikely to know the age or "vulnerability" of the person making the booking. As such, it is perfectly credible that a hackney carriage or private hire driver would carry children or vulnerable adults in their vehicle regularly in their daily work.
- 6.1.4 It is also perfectly credible to argue that a hackney carriage or private hire vehicle driver would be caring for or in sole charge of (assuming they were travelling alone) a child or vulnerable adult being carried in their vehicle.
- 6.1.5 The CRB News article states that it would be "illegal" to request an enhanced CRB check for the sole purpose of issuing a licence to a hackney carriage or private hire driver. The use of the word "illegal" suggests that the CRB consider that this would amount to a criminal offence. However, the only potentially relevant offence under the Act is the offence of "making a false statement" in an application. So long as the officer makes the application for enhanced disclosure in the honest belief that they are entitled to do so by Regulation 5A, it is not at all clear why the CRB considers that they would commit a criminal offence. If the Council had in place a clear policy which states that the authority requires enhanced checks for this type of application, and officers make such applications in accordance with that policy, then it seems unlikely that the officers would be prosecuted for a criminal offence.
- 6.1.6 It may be that the CRB article in fact intended to suggest that making such an application for disclosure would be "unlawful", in the sense that the CRB take the view that the application would not be in accordance with the statute. If that is the case, the CRB could seek to judicially review the decision of the authority to seek the enhanced disclosure.

## **7. Conclusion**

7.1 At present the Council's current policy on the level of disclosure required for hackney carriage/private hire driver licensing does not reflect the latest views published by the Criminal Records Bureau and the Department for Transport 'Best Practice Guidance'.

7.2 There are two options open to the Council:

### **7.2.1 Retain its current requirement that all applicants will be subject to enhanced CRB checks, and clarify its policy on this point**

The potential implications of this decision are as follows:-

- This directly contradicts the CRB's published view;
- This could expose the Council to the risk of judicial review, potentially by the CRB or by a disgruntled applicant;

- There is the potential for the CRB to argue that an officer who makes such an application has committed a criminal offence (although a prosecution on this basis is considered to be very unlikely, particularly if the officer is following the Council's clearly drafted policy).

Or

**7.2.2 Amend its policy to require that criminal record certificates (standard disclosure), but not enhanced disclosure, will be obtained for all applications.**

The potential implications of this are as follows: -

- The Council will not find out information which the police consider to be relevant to a person's application for a taxi licence. This might include serious allegations made against applicants (which may include violent, sexual or dishonesty offences), where a criminal conviction was not secured for some reason.
- If that person was granted a licence, and subsequently committed an offence against a member of the public, the Council could be criticised for its decision not to seek an enhanced CRB check. There is the potential for a legal claim against the Council from the victim of such crime on the grounds that it failed to properly exercise its duty of care when determining whether the applicant was a "fit and proper person" to hold a taxi licence.

**8. Financial Implications**

- 8.1 The cost of the CRB disclosure is met by the applicant as part of the application or renewal process. The current fee for an Enhanced disclosure is £44 and £26 for the Standard disclosure.
- 8.2 The potential costs of a judicial review (if the requirement for an enhanced CRB check is retained) or civil claim (if the policy is changed) could be significant.

**9. Environmental Implications**

- 9.1 There are no environmental implications arising from this report.

**10. Crime and Disorder Implications**

- 10.1 The purpose of hackney carriage and private hire licensing is to protect the public from, amongst other things, crime and disorder.

**11. Equality and Diversity Implications**

- 11.1 It is important that the nature of a person's convictions, and possible threat that they may pose to the public, is balanced against the potential loss of livelihood if the licence is refused, suspended or revoked.

## **12. Recommendations**

12.1 The Committee is asked to consider what level of disclosure should be requested from the Criminal Records Bureau. The Committee may decide to:-

- (a) Retain its current requirement that all applicants will be subject to enhanced CRB checks, and clarify its policy on this point; or
- (b) Amend its policy to require that criminal record certificates (standard disclosure), but not enhanced disclosure, will be obtained for all applications.

### **Further Information:**

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### **Background papers:**

NFDC Taxi Licensing Policy v1  
DfT Taxi Vehicle Licensing -  
'Best Practice Guidance'  
CRB Newsletter (issue 15 – March 2011)

Or for legal issues: -

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