

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**20 JUNE 2018**  
**ALL WARDS**

**DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE  
HACKNEY CARRIAGE AND PRIVATE HIRE TRADES  
including DRUGS TESTING POLICY**

1. Summary

- 1.1 This report outlines the content of the Institute of Licensing (IoL) Guidance published in April 2018.
- 1.2 It also identifies areas where the existing policies and procedures of the Licensing and Public protection Committee differ from the guidance as published.
- 1.3 The report includes recommendations for amendments in order to address these differences.
- 1.4 This report also seeks to respond to the Coroner's Report of 1<sup>st</sup> June 2018 recommending action be taken to address the issue of monitoring licensed drivers for drug use.

2. Recommendations

- 2.1 That the Committee recognises the Institute of Licensing Guidance as best practice guidance, with a view to implementing the proposals therein.
- 2.2 That all licence applicants and existing licence holders will be required to sign up to the Disclosure and Barring Service Update Scheme.
- 2.3 That all applicants for the grant or renewal of Private Hire Operator or Vehicle Proprietor Licence be required to produce a Basic Disclosure Certificate for consideration.
- 2.4 That Officers produce a Draft Drug Testing Policy as per 7.3 of this report.
- 2.5 That the Coroner should be notified of the matters arising from this report in accordance with the requirements of the Notice at Appendix 1.

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### 3. Background

- 3.1 The City Council has a number of licensing, regulatory and registration powers and duties and the exercise of these powers and duties is delegated to the Licensing and Public Protection Committee.
- 3.2 While some Acts are prescriptive in their nature and are accompanied by detailed guidance, the law pertaining to hackney carriage & private hire licences has no such provision.
- 3.3 It is a matter for each individual licensing authority to decide how they will determine their licence applications; respond to matters arising during the licence period, what conditions should be attached to licences and also any pre-application requirements. As such, there is a degree of variation across the country which could lend itself to inconsistency.
- 3.4 According to the Department for Transport *“Taxi and Private Hire Licensing – Best Practice Guide”* para 8:  
*“The aim of local authority licensing of the taxi and PHV trades is to protect the public.”*
- 3.5 Licensing Authorities CANNOT grant drivers and operators a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59; s55 in respect of operators).
- 3.6 The ‘fit and proper’ test has never been officially defined. The Institute of Licensing guidance (Appendix 1) has been produced in collaboration with the Local Government Association (LGA), Lawyers in Local Government (LLG), and the National Association of Licensing and Enforcement Officers in order to try and assist local authorities to achieve greater consistency in the absence of any national guidance or legislative reform.
- 3.7 Aside from the convictions policy, the Guidance includes some concepts which are not currently addressed within our existing policies, procedures or pre-application requirements which must be given careful consideration.
- 3.8 These concepts include some aspects of DBS checking, Drug testing and also some additional conditions for Private Hire Operators. These will be explored in greater detail later in this report.

3.9 As both the Coroner's Report and the IoL Guidance make reference to drug testing of drivers it was felt appropriate that the two matters be combined into one report for completeness.

3.10 Also, there have been a number of critical reports in the media, both nationally and locally, concerning the criminal history of drivers licensed by this Authority (and others).

#### 4. Coroner's Report to the City Council

4.1 On 17<sup>th</sup> December 2017 a serious collision occurred on Lee Bank Middleway resulting in multiple deaths, including a Sandwell Licensed Hackney carriage Driver and his two passengers.

4.2 Following the Inquest into the death of the Hackney carriage Driver, the Coroner issued a report to both Sandwell Metropolitan Borough Council and Birmingham City Council, requiring action to be taken to address the risk of future deaths. (Appendix 2)

4.3 The reason for the Coroner's concerns was the toxicology results of the Hackney carriage driver showed him to be over the legal drug drive limit.

4.4 Although it was made clear that this was not a factor in the cause of death of any of the victims, the Coroner is concerned that there is no drug testing policy in place for licensed drivers, which, according to the evidence of West Midlands Police to the Inquest, is necessary to ensure the safety of passengers.

4.5 The introduction of a Drug Testing Policy is explored in Paragraph 7 of this report.

#### 5. The Institute Of Licensing Guidance

5.1 The guidance document seeks to assist local authorities by providing a reference framework of what they consider to be reasonable principles to follow.

5.2 Traditionally, the approach taken within Birmingham, and most other licensing authorities has been that 'each case is considered on its own merits' meaning the policies have never said 'never'.

5.3 This can be evidenced by the current policy Reference DBS3 in the latest Policies Procedures and Delegations Report which states:

"Where the DBS check reveals cautions or convictions relating to drugs, dishonesty, violence, or offences of a sexual nature, or reveals any information giving cause for concern, the applicant, or licensed driver will be referred to the Licensing Sub-Committee where the individual's fitness to hold a licence will be considered, unless

those matters have already been taken into consideration and passed by Committee.”

- 5.4 The IoL Guidance seeks to establish certain parameters for certain types of offences which give greater clarity for both applicants and decision makers. Specific offences are not referred to, just categories of offence, such as ‘Dishonesty’ or ‘Violence’.
- 5.5 The Guidance makes reference to applicants with convictions undergoing drug testing at their own expense. This is addressed in Paragraph 7 of this report.

## 6. Criminal Record Checks

- 6.1 Currently, new applicants for driver’s licences are required to provide an Enhanced DBS certificate on application, with a requirement to repeat the check every three years.
- 6.2 It is proposed to change this to require all licence applicants and existing licence holders to sign up to the Disclosure and Barring Service Update Scheme. Registration costs £13 a year.
- 6.3 The IoL Guidance proposes Basic Disclosure Checks be carried out on Private Hire Operators and also Vehicle proprietors. The justification for requiring these checks is contained within paragraphs 3.35-3.47 of the guidance.
- 6.4 It is proposed that these requirements be introduced as described within the guidance for Vehicle Proprietors and Private Hire Operators.
- 6.5 The Guidance proposes placing a condition onto Private Hire Operators requiring them to carry out similar suitability checks on the staff they employ or use within their company. This proposal would require an amendment to the Conditions of Licence for Private Hire Operators.

## 7. Drugs Policy

- 7.1 The Coroner’s Report detailed in Paragraph 4 above requires Birmingham City Council to respond setting out what action is going to be taken to address her concerns including details of a timetable of actions.
- 7.2 The IoL Guidance refers to the Drug testing of drivers convicted of drug related offences.
- 7.3 In order to respond to both of these matters, it is recommended that Officers be instructed to investigate the feasibility and cost of such a drug testing scheme.

7.4 A report will be brought back to this Committee exploring the options available to the Committee and also, having regard to the ever present issue of cross-border working: detailing existing drug testing provisions in neighbouring authorities (if any).

8. Consultation

8.1 This report seeks to introduce additional policies and processes which will require consultation.

9. Implications for Resources

9.1 to follow

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10. Implications for Policy Priorities

10.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services.

11. Public Sector Equality Duty


11.1 to follow.

**ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: nil



	<p><b>REGULATION 28 REPORT TO PREVENT FUTURE DEATHS</b></p> <p><b>THIS REPORT IS BEING SENT TO:</b></p> <ol style="list-style-type: none"> <li>1. Sandwell Metropolitan Borough Council</li> <li>2. Birmingham City Council</li> </ol>
1	<p><b>CORONER</b></p> <p>I am Louise Hunt Senior Coroner for Birmingham and Solihull</p>
2	<p><b>CORONER'S LEGAL POWERS</b></p> <p>I make this report under paragraph 7, Schedule 5, of the Coroners and Justice Act 2009 and regulations 28 and 29 of the Coroners (Investigations) Regulations 2013.</p>
3	<p><b>INVESTIGATION and INQUEST</b></p> <p>On 21/12/2017 I commenced an investigation into the death of Imtiaz Mohammed. The investigation concluded at the end of an inquest on 29th May 2018. The conclusion of the inquest was Road Traffic Collision.</p>
4	<p><b>CIRCUMSTANCES OF THE DEATH</b></p> <p>On 17/12/17 at 01.11 a serious collision took place on Lee Bank Middleway in Birmingham. An Audi A3 registration SV09STX containing 4 occupants was travelling towards Highgate having come from the traffic island on Broad Street in the City Centre. The Audi car was driving between 94 and 100mph on a road with a speed limit of 40mph. After negotiating a slight left hand bend the driver of the Audi has lost control of the vehicle, crossing the oncoming carriageway. The Audi vehicle has then rotated to collide its nearside to the front of a black Peugeot Taxi reg SH05 ONG traveling in the opposite direction. The taxi contained the driver and two passengers. The Taxi has in turn collided with a silver Toyota Yaris reg AF07KNC and then overturned. The Audi has continued to rotate coming to rest straddling lanes 1 and 2 in the opposite carriageway. During this, all 4 occupants of the Audi were ejected from the vehicle, two from the sun roof and two from the boot. None were wearing seatbelts. One occupant from the Audi survived. The 3 occupants from the taxi all died as a result of their injuries. The cause of the collision was driving a vehicle at excessive speed with defected tyres contributed to be driving under the influence of cannabis.</p> <p>Following a post mortem the medical cause of death was determined to be: MULTIPLE INJURIES</p>
5	<p><b><u>CORONER'S CONCERNS</u></b></p> <p>During the course of the inquest the evidence revealed matters giving rise to concern. In my opinion there is a risk that future deaths will occur unless action is taken. In the circumstances it is my statutory duty to report to you.</p> <p>The <b>MATTERS OF CONCERN</b> are as follows. –</p> <ol style="list-style-type: none"> <li>1. Toxicology was obtained for the deceased who was driving the Taxi involved in the collision. This confirmed the following blood levels: Cocaine 0.010mg/l Benzoylcegonine (a cocaine metabolite) 0.40mg/l</li> </ol>

	<p>Carboxy THC 0.10 mg/l</p> <p>The level of the cocaine metabolite would have resulted in the deceased being over the legal drug drive limit. This did not contribute to this collision.</p> <p>However West Midlands Police raised concerns at the inquest that there was presently no system in place to monitor and check whether taxi drivers are over the drug limit whilst driving. They confirmed in evidence that some sort of testing was required for the safety of passengers.</p>
6	<p><b>ACTION SHOULD BE TAKEN</b></p> <p>In my opinion action should be taken to prevent future deaths and I believe you have the power to take such action.</p>
7	<p><b>YOUR RESPONSE</b></p> <p>You are under a duty to respond to this report within 56 days of the date of this report, namely by 27 July 2018. I, the coroner, may extend the period.</p> <p>Your response must contain details of action taken or proposed to be taken, setting out the timetable for action. Otherwise you must explain why no action is proposed.</p>
8	<p><b>COPIES and PUBLICATION</b></p> <p>I have sent a copy of my report to the Chief Coroner and to the following Interested Persons families of Lucy Davis, Lee Jenkins, Imtiaz Mohammed, Mohammed Fasha, Tauqeer Hussain, Kasar Jehangir, WMP and the Taxi's insurers. I have also sent it to Department of Transport who may find it useful or of interest.</p> <p>I am also under a duty to send the Chief Coroner a copy of your response.</p> <p>The Chief Coroner may publish either or both in a complete or redacted or summary form. He may send a copy of this report to any person who he believes may find it useful or of interest. You may make representations to me, the coroner, at the time of your response, about the release or the publication of your response by the Chief Coroner.</p>
9	<p>01/06/2018</p> <p>Signature </p> <p>Louise Hunt Senior Coroner Birmingham and Solihull</p>