

# **LICENSING COMMITTEE AGENDA**

**Wednesday, 13 November 2019 at 7:15pm**

**Council Chamber, Braintree District Council, Causeway House, Bocking  
End, Braintree, CM7 9HB**

**THIS MEETING IS OPEN TO THE PUBLIC**  
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**Members of the Licensing Committee are requested to attend this meeting to transact the business set out in the Agenda.**

**Membership:-**

Councillor J Baugh (Chairman)	Councillor S Rehman
Councillor Mrs J Beavis	Councillor B Rose (Vice Chairman)
Councillor P Euesden	Councillor Mrs J Sandum
Councillor A Hensman	Councillor P Schwier
Councillor H Johnson	Councillor Mrs L Walters
Councillor Mrs J Pell	Councillor Mrs S Wilson
Councillor R Ramage	Councillor B Wright

Members unable to attend the meeting are requested to forward their apologies for absence to the Governance and Members Team on 01376 552525 or email [governance@braintree.gov.uk](mailto:governance@braintree.gov.uk) by 3pm on the day of the meeting.

A WRIGHT  
Chief Executive

## **INFORMATION FOR MEMBERS - DECLARATIONS OF INTERESTS**

### **Declarations of Disclosable Pecuniary Interest, Other Pecuniary Interest or Non-Pecuniary Interest**

Any member with a Disclosable Pecuniary Interest, other Pecuniary Interest or Non-Pecuniary Interest must declare the nature of their interest in accordance with the Code of Conduct. Members must not participate in any discussion of the matter in which they have declared a Disclosable Pecuniary Interest or other Pecuniary Interest or participate in any vote, or further vote, taken on the matter at the meeting. In addition, the Member must withdraw from the chamber where the meeting considering the business is being held unless the Member has received a dispensation from the Monitoring Officer.

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The Council reserves the right to decline any requests to register to speak if they are received after this time. Members of the public can remain to observe the public session of the meeting.

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## **PUBLIC SESSION**

## **Page**

- 1 Apologies for Absence**
- 2 Declarations of Interest**  
To declare the existence and nature of any Disclosable Pecuniary Interest, other Pecuniary Interest, or Non-Pecuniary Interest relating to Items on the Agenda having regard to the Code of Conduct for Members and having taken appropriate advice where necessary before the meeting.
- 3 Minutes of the Previous Meeting**  
To approve as a correct record the Minutes of the meeting of the Licensing Committee held on 11th September 2019 (copy previously circulated).
- 4 Public Question Time**  
(See paragraph above)
- 5 Criminal Convictions Policy Adoption of Guidance - Applicants and Licensees in the Hackney Carriage and Private Hire Trades** **4 - 61**
- 6 Licensing Committee Update** **62 - 64**
- 7 Urgent Business - Public Session**  
To consider any matter which, in the opinion of the Chairman, should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.
- 8 Exclusion of the Public and Press**  
To agree the exclusion of the public and press for the consideration of any Items for the reasons set out in Part 1 of Schedule 12(A) of the Local Government Act 1972.

## **PRIVATE SESSION**

## **Page**

- 9 Urgent Business - Private Session**  
To consider any matter which, in the opinion of the Chairman, should be considered in private by reason of special circumstances (to be specified) as a matter of urgency.

<b>ADOPTION OF GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY CARRIAGE AND PRIVATE HIRE TRADES</b>		<b>Agenda No: 5</b>
<b>Portfolio</b>	<b>Environment and Place</b>	
<b>Corporate Outcome:</b>	<b>A sustainable environment and a great place to live, work and play</b> <b>Residents live well in healthy and resilient communities where residents feel supported</b>	
<b>Report presented by:</b>	<b>Daniel Mellini (Environmental Health Manager)</b>	
<b>Report prepared by:</b>	<b>Daniel Mellini (Environmental Health Manager)</b>	
<b>Background Papers:</b>		<b>Public Report</b>
<ol style="list-style-type: none"> <li>1. Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades, April 2018. (Appendix 1)</li> <li>2. Braintree District Council Hackney Carriage and Private Hire Driver Criminal Convictions Policy February 2018. (Appendix 2)</li> <li>3. Summary comparison between the existing and proposed periods of time in which a licence would be granted, from completion of sentence or from date of conviction. (Appendix 3)</li> </ol>		<b>Key Decision: No</b>
<b>Executive Summary:</b>		
<p>The Council is the Licensing Authority for drivers of hackney carriages and private hire vehicles. To ensure the suitability of new applicants and current licence holders the Council has in place a Criminal Convictions Policy. The Council completed the last review of the Hackney Carriage and Private Hire Driver Criminal Convictions Policy on 20th February 2018.</p> <p>The purpose of the policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver or private hire operator licence.</p> <p>In this regard, the overriding aim of the Licensing Authority is to protect the safety of the public. The Licensing Authority is concerned to ensure:</p> <ul style="list-style-type: none"> <li>• That a person is a fit and proper person</li> <li>• That a person does not pose a threat to the public</li> <li>• That the public are safeguarded from dishonest persons</li> <li>• The safeguarding of children, young persons and vulnerable adults</li> </ul>		

In April 2018, the Institute of Licensing (IoL) in partnership with the Lawyers in Local Government, the National Association of Licensing Enforcement Officers, and the Local Government Association produced guidance for Local Authorities on 'determining the suitability of applicants in the hackney and private hire trades'.

The Committee are now asked to consider a review of the existing Criminal Convictions Policy, although only approximately 18 months old, in line with the relevance of convictions section within the IoL Guidance.

#### **Recommended Decision:**

That the draft revised Council policy relating to the relevance of convictions goes out for public consultation, with the consultation responses being reported to Committee for consideration.

#### **Purpose of Decision:**

This report is seeking Members approval to review the 'Braintree District Council Hackney Carriage and Private Hire Driver Criminal Convictions Policy', to reflect any changes recommended in the IoL Guidance with respect to the relevance of convictions.

#### **Corporate Implications**

##### **Financial:**

Any costs associated with consultation will be minimal and will be met from within existing budgets.

##### **Legal:**

Each case must be determined on its own merits having regard to the Convictions Policy and the facts and circumstances of the specific case. Members are not bound by the terms of the Convictions Policy and will be able to make exceptions to it if they consider this to be appropriate. Applicants and existing licence holders also have the right to appeal to the Magistrates' Court in respect of refusal or suspension of a licence. If refusals are for offences "not on the list", detailed reasons will have to be given for the decision in case of a legal challenge.

Provided there is a reasonable justification then cost issues can generally be negated.

It is important however to note that any departure from policy must be considered as an exception and not become a means of normalising decision making contrary to the policy.

It is acceptable for the Local Authority to depart from its policy if necessary. This approach was endorsed by the High Court in *R (on application of Nichols) v Security Industry Authority* [2—7] 1 WLR 2067.

<b>Safeguarding</b>	The recommendations made within this report strengthen the role the Council plays in this regard.
<b>Equalities/Diversity:</b>	<p>A basic equality impact assessment form has been completed. The assessment determined that an equality impact assessment is not required in this case.</p> <p>The primary aim of the Local Authority in licensing the taxi and private hire trades is to protect the public. Members of the general public should have reasonable access to taxi and private hire vehicle services because of the part they play in the transport provision for the local community.</p>
<b>Customer Impact:</b>	No matters arising from this report
<b>Environment and Climate Change:</b>	No matters arising from this report
<b>Consultation/Community Engagement:</b>	Should Members agree to the recommendation within this report, the intention will be to publish the draft revised policy document on the Braintree District Council website and notify drivers, vehicle owners, private hire operators and other groups or organisations with an interest in the consultation when it goes live.
<b>Risks:</b>	<p>That the Council's decision in relation to hackney carriage/private hire drivers and private hire vehicle operators' licences or applicants is challenged and costs awarded against the Council.</p> <p>That the Council is inconsistent in relation to decisions possibly leading to complaints and the Council being poorly regarded.</p>
<b>Officer Contact:</b>	Daniel Mellini
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## **1. Background**

- 1.1 The Institute of Licensing (IoL) is the professional body for licensing practitioners, representing those who work in the field of licensing (in regulation, industry, and legal fields). As part of that role, the Institute produce guidance and contribute to national policy and legislative reviews. In April 2018, following collaboration with Lawyers in Local Government (LLG); the National Association of Licensing and Enforcement Officers (NALEO); and the Local Government Association (LGA), the document entitled, “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades” (Appendix 1) was published. The Guidance was subject to wide ranging consultation prior to publication, including with Licensing Officers, Elected Members, lawyers, the hackney carriage and private hire trades; academics; the Probation Service and the Police.
- 1.2 The purpose of the Guidance was to clarify the role that a Local Authority plays in ensuring public safety with a view to encouraging consistency across the Country. The Guidance acknowledges that “While of course licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this Guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty, and confidence in the system of licensing. Adherence to the Guidance may also provide protection to Licensing Authorities on appeal”.
- 1.3 The overriding aim of any Licensing Authority when carrying out its function relating to the licensing of hackney carriage or private hire drivers, vehicle proprietors and operators, must be the protection of the public and others who use (or can be affected by) hackney carriage and private hire services. The granting of a licence places a person in a unique position of trust. The Local Government (Miscellaneous Provisions) Act 1976 provides that any applicant for a driver or operator licence must satisfy the Authority that they are a ‘fit and proper’ person to hold a licence. It is the final part of the process of an application when the decision is made under the Scheme of Delegation. It involves a detailed examination of an applicant’s entire character in order to make a judgement as to their fitness and propriety. Braintree District Council already has a Convictions Policy in place (Appendix 2).
- 1.4 Each case will always need to be considered on its own merits having regard to policy and the Licensing Authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the Licensing Authority considers there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on application of Nichols) v Security Industry Authority* [2—7] 1 WLR 2067.
- 1.5 It is important however to note that any departure from policy must be considered as an exception and not become a means of normalising decision making contrary to the policy. This would render the policy immaterial and it would need to be updated as a result.

- 1.6 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1972. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared) can be taken into account by the Local Authority in assessing safety and suitability, but only relevant convictions should be considered by the decision maker. Case law makes it clear that the impact of losing (or not being granted) a driver’s licence on the applicant and his family is not a consideration to be taken into account (Leeds City Council v Hussain [2002] EWHC 1145 (Admin), [2203] RTR 199.
- 1.7 The Council already requires applicants and licence holders to obtain an Enhanced Disclosure (DBS) Certificate with barred lists checks and to provide this as part of the application process and every three years thereafter. As of 1st October 2019 all licensees are also required to maintain their certificates through the DBS Update Service throughout the duration of their licence. This enables the Licensing Team to maintain ongoing checks on driver records and also speeds up the licensing process.
- 1.8 This proposal is reflected in the draft national minimum standards which have recently been consulted on by the Department of Transport.
- 1.9 The IoL Guidance highlights – “One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi, but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation”.

## **2.0 IoL Guidance**

- 2.1 The Guidance talks about the following tests for each licence type:
- 2.2 Drivers – “Would you (as a member of the Licensing Committee or other person charged with the ability to grant a 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?”
- 2.3 Private Hire Operators – “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”
- 2.4 Hackney Carriage Vehicle Proprietors – “Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be satisfied that s/he



would not allow it to be used for criminal or other unacceptable purposes, and be confident that s/he would maintain it to an acceptable standard throughout the period of the licence?”

- 2.5 The Guidance, unlike Braintree District Council's current Criminal Convictions Policy, contains no detailed list of offences. All offences are allocated to a general category such as 'Drugs' or 'Dishonesty'. This reduces the potential for argument that a specific offence is not covered by the policy as it is not on the list. This will also mean that the policy will not have to be subject to regular reviews as new offences emerge.

### **3.0 Changes to Existing Policy**

- 3.1 Appendix 3 provides a table which indicates the differences between the existing Braintree District Council Hackney Carriage and Private Hire Driver Criminal Convictions Policy and that set out in chapter 4 (pages 20 – 24, paragraphs 4.25 – 4.54) in the IoL Guidance.
- 3.2 The main differences between the current policy and the IoL Guidance are:
- 3.3 The Council's Criminal Convictions Policy currently relates to hackney carriage drivers, private hire drivers and dual hackney carriage and private hire drivers and Private hire Operators.
- 3.4 The current policy does not relate to the owners of vehicles, which includes hackney carriages and private hire vehicles. The current policy is also silent on staff employed by Private Hire Operators, who operate the telephones and radios, or that may have access to customers' personal data.
- 3.5 In order to ensure that any change to the Criminal Convictions Policy is meaningful, if the Council were to adopt the relevant parts of the IoL Guidance, it would also be necessary to require vehicle proprietors (both hackney carriage and private hire vehicles) to obtain a basic DBS check which details unspent convictions and conditional cautions.
- 3.6 If adopted the updated policy would cover:
- hackney carriage drivers, private hire drivers and dual hackney carriage and private hire driver licences
  - private hire operators' licences
  - hackney carriage and private hire vehicle proprietors' licences
- 3.7 The IoL Guidance suggests that “where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person”.
- 3.8 In effect this statement suggests that it would not be normal practice to issue a licence or allow a licence to continue where a person(s) has multiple convictions.

## **4.0 Exclusions**

### **4.1 Private Hire Operator Employees**

- 4.2 The IoL Guidance suggests that Local Authorities consider imposing a condition(s) on a private hire operator licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and to retain that information to demonstrate that compliance to the Local Authority.
- 4.3 The Guidance suggests this can be affected by means of the individual staff member being required by the operator to obtain a basic Disclosure and Barring Service (DBS) certificate.
- 4.4 Any failure on the part of the private hire operator to either comply with this requirement, or act upon information that they obtain (thereby allowing unsuitable staff to work in positions of trust) would then have serious implications on the continuing fitness and propriety of the private hire operator.
- 4.5 It is not clear as to which employees could and should be subject to this requirement. This could include employees that traditionally process customer enquiries by way of telephone and radio, but could also include all employees that have access to customers' personal data.
- 4.6 Based on the information available to the Authority, the majority of private hire operators based in the District at this time would be classed as small businesses and would employ few people. In most cases the operator would also be the sole employee. There are a smaller number of larger operators working in the District that would employ a larger number of employees.
- 4.7 It is felt that at this time, without further consideration of the potential impacts placed upon private hire operators, it would be too onerous to introduce this requirement.
- 4.8 There would also be a burden placed on the Authority to ensure that any condition(s) imposed in this regard be meaningful, are managed satisfactorily, and rigorously enforced as part of the licensing process.
- 4.9 As a result, it is proposed to exclude the recommendation to place condition(s) on a private hire operator's licence to require relevant employees to provide basic criminal records checks at this time.
- 4.10 It is acknowledged that the Authority could review this decision and choose to introduce these changes at a later time.
- 4.11 Should the Licensing Committee wish to introduce this requirement it would be necessary to define which operators and those employees of the operators it would apply to. It would also be necessary to amend the existing conditions attached to a private hire operator's licence to reflect this change.

## **5.0 Consultation**

- 5.1 Should the Licensing Committee chose the recommended option within this report, a draft version of the updated policy will be produced to reflect the changes to the relevance of convictions as per the IoL Guidance.
- 5.2 The draft version of the updated policy will not include the proposed exception to the policy stated in section 4 of this report above unless otherwise stated by the Licensing Committee.
- 5.3 It is proposed that the consultation will last for six weeks.
- 5.4 The consultation will include sending a letter to existing drivers, vehicle owners, private hire operators and other persons and/or groups who would have an interest in the policy inviting them to view the policy on the Council's website.
- 5.5 The responses will then be collated and a report submitted to the next available meeting of the Licensing Committee.

## **6.0 Conclusions**

- 6.1 In the context of this report "The function of licensing is the protection of the public". In simplistic terms this means with respect to taxi licensing "a member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver" or someone booking a taxi should be able to trust a vehicle proprietor or private hire operator in not using their personal data for criminal purposes.
- 6.2 With this in mind the Licensing Authority should have a written policy in place which aids the decision making process with respect to assessing the suitability of licensees and applicants to ultimately ensure the protection of the public.
- 6.3 The Licensing Authority has a Criminal Convictions Policy in place at this time, which was last reviewed in February 2018.
- 6.4 The IoL has provided Guidance, following widespread consultation, to Licensing Authorities to help assist them in determining whether their current policies remain fit for purpose.
- 6.5 The report, in particular Appendix 3, highlights the differences between the Council's current Criminal Convictions Policy and the relevance of convictions section of the IoL Guidance.
- 6.6 Members are therefore asked to consider the report and the following recommendation:

That the draft revised Council policy relating to the relevance of convictions goes out for public consultation, with the consultation responses being reported to Committee for consideration.

# Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades



April 2018



Produced by the Institute of Licensing in partnership with:



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## Foreword

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

Everybody working in this field should acquaint themselves with the facts of the Rotherham case, which stands as a stark testament to what can happen when licensing performs its safeguarding role inadequately. But the extremity of that appalling story should not distract us from the job of protecting the public from more mundane incompetence, carelessness or dishonesty. The standards of safety and suitability do not have to be set as a base minimum. To the contrary, they may be set high, to give the public the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.

Crucially, this is not a field in which the licensing authority has to strike a fair balance between the driver's right to work and the public's right to protection. The public are entitled to be protected, full stop. That means that the licensing authority is entitled and bound to treat the safety of the public as the paramount consideration. It is, after all, the point of the exercise.

Therefore, this guidance is to be welcomed. It rightly emphasises that any circumstance relating to the licensee is potentially relevant, provided of course that it is relevant to their safety and suitability to hold a licence. It provides useful and authoritative guidelines to licensing authorities as to how they ought to approach their important task of making determinations about the safety and suitability of drivers and operators.

While, of course, licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing. Adherence to the guidance may also provide protection to licensing authorities on appeal.

The guidance is therefore commended to licensing authorities. It is hoped that, in due course, it will sit at the elbow of every councillor and officer working in taxi licensing.

Philip Kolvin QC  
Cornerstone Barristers

April 2018

## Chapter 1: Introduction

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- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications<sup>1</sup>. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

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<sup>1</sup> Except vehicle proprietors. In those cases there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*<sup>2</sup>.

- 1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards.
- 1.11 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

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<sup>2</sup> [2007] 1 WLR 2067



## Chapter 2: Offenders and Offending - An Overview

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- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.<sup>3</sup> With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm<sup>4</sup>. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

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<sup>3</sup> DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

<sup>4</sup> Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

- 2.6 Flaud<sup>5</sup> noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place<sup>6</sup>.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future<sup>7</sup>. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%<sup>8</sup>. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences<sup>9</sup>.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity<sup>10</sup>. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population<sup>11</sup>. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

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<sup>5</sup> Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

<sup>6</sup> Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

<sup>7</sup> Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

<sup>8</sup> Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

<sup>9</sup> Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

<sup>10</sup> McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

<sup>11</sup> Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

### Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”<sup>12</sup>.
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”<sup>13</sup>.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over<sup>14</sup>. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships<sup>15</sup>. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males<sup>16</sup>.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist<sup>17</sup>. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance<sup>18</sup>. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

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<sup>12</sup> National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

<sup>13</sup> Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

<sup>14</sup> Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

<sup>15</sup> Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

<sup>16</sup> Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

<sup>17</sup> Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.

<sup>18</sup> Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3<sup>rd</sup> Edition. Oxford: Oxford University Press.

ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past”<sup>19</sup>.

- 2.16 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual’s previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when making a decision as to whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person’s ability to sustain such change. This can be a long process that can only be achieved over time.

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<sup>19</sup> Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

## Chapter 3: 'Taxi' Licensing Overview

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- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in the DfT *"Taxi and Private Hire Licensing – Best Practice Guide"* para 8 which states:
- "The aim of local authority licensing of the taxi and PHV trades is to protect the public."
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage driver; private hire driver and private hire operator.
- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.
- 3.8 In each case, the authority has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

### Taxi Drivers

- 3.10 The term "taxi driver" encompasses two different occupations: hackney carriage drivers and private hire drivers. "Taxi driver" is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory

criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person<sup>20</sup>.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK<sup>21</sup>.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.<sup>22</sup>
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*<sup>23</sup>. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], 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.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘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?’<sup>24</sup>
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

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<sup>20</sup> Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

<sup>21</sup> Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

<sup>22</sup> “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1<sup>st</sup> December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

<sup>23</sup> [2002] EWHC 1145 (Admin), [2003] RTR 199

<sup>24</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 10.21

3.18 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers' licence?

3.19 The local authority has the power to require an applicant to provide:

“such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”<sup>25</sup>

This “information” can include any pre-conditions or tests that they consider necessary

3.20 Some of these are universal, such as medical assessments<sup>26</sup>. Others are required by some authorities, but not others. These include:

- Enhanced DBS certificates and sign-up to the update service;
- Knowledge tests;
- Driving tests;
- Disability Awareness;
- Signed Declarations;
- Spoken English tests.

3.21 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.

3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared<sup>27</sup>) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker<sup>28</sup>.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks<sup>29</sup> and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

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<sup>25</sup> Local Government (Miscellaneous Provisions) Act 1976 s57(1)

<sup>26</sup> See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

<sup>27</sup> “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.

<sup>28</sup> See *Adamson v Waveney District Council* [1997] 2 All ER 898

<sup>29</sup> “For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children’s Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2” DBS email 31st August 2017.



- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability<sup>30</sup>.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account<sup>31</sup>. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been)

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<sup>30</sup> As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

<sup>31</sup> *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)



to assault another sexually has demonstrated completely unacceptable standards of behaviour.

- 3.31 Applicants may claim that they have sought employment in other fields and been precluded as a result of their antecedent history particularly if that contains convictions. They therefore seek to become a licensed driver as an occupation of last resort. This is unacceptable as the granting of a licence would place such a person in a unique position of trust. The paramount responsibility of a licensing authority is to protect the public, not provide employment opportunities.
- 3.32 Licensees are expected to demonstrate appropriate professional conduct at all time, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. In no circumstances should Licensees take the law into their own hands. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.
- 3.33 There are those who seek to take advantage of vulnerable people by providing services that they are not entitled to provide; for example, by plying for hire in an area where they are not entitled to do so. Licensees are expected to be vigilant of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers should feel confident to check that the person offering a service is entitled to do so. Licensees should willingly demonstrate that they are entitled to provide the offered service by, for example, showing their badge.
- 3.34 As a society, we need to ask the question “who is driving my taxi?” and be secure in the knowledge that the answer is “a safe and suitable person”. The vast majority of drivers are decent, law abiding people who work very hard to provide a good service to their customers and the community at large. However poor decisions by local authorities and courts serve to undermine the travelling public’s confidence in the trade as a whole. Unless local authorities and the courts are prepared to take robust (and difficult) decisions to maintain the standards the local authority lays down, and in some cases tighten up their own policies, the public cannot have complete confidence in taxi drivers. This is detrimental to all involved.

## Private Hire Operators

- 3.35 A private hire operator (“PHO”) is the person who takes a booking for a private hire vehicle (“PHV”), and then dispatches a PHV driven by a licensed private hire driver (“PHD”) to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same

authority<sup>32</sup>. A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person<sup>33</sup>.

- 3.36 As with taxi drivers the role of the PHO goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
- 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.39 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.
- 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:
- “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”<sup>34</sup>
- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they

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<sup>32</sup> See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

<sup>33</sup> Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

<sup>34</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 12.35

obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the PHO.

- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation<sup>35</sup>. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

## Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence<sup>36</sup> and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.47 A suitable test would be:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be

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<sup>35</sup> See s57(1)(c) of the 1976 Act.

<sup>36</sup> S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?”<sup>37</sup>

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<sup>37</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> Ed Bloomsbury Professional at para 8.98

## Chapter 4: Guidance on Determination

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- 4.1 As is clear from the overview of Offenders and Offending above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk reduces over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.2 Many members of our society use, and even rely on, hackney carriages and private hire vehicles to provide transportation services. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.3 Ideally, all those involved in the hackney carriage and private hire trades (hackney carriage and private hire drivers, hackney carriage and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 4.4 The purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

### Pre-application requirements

- 4.5 Licensing authorities are entitled to set their own pre-application requirements. These will vary depending upon the type of licence in question but can include some or all of the following (these are not exhaustive lists):

#### Vehicles:

- Basic DBS checks;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space etc;
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.

#### Drivers:

- Enhanced DBS checks with update service;
- Checks made to the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);
- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

#### Operators:

- Basic DBS checks;
- Details of their vetting procedures for their staff;
- Knowledge of the licensing area.

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership<sup>38</sup>) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.

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<sup>38</sup> Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction<sup>39</sup>. Fixed penalties and community resolutions will also be considered in the same way as a conviction<sup>40</sup>.
- 4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

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<sup>39</sup> This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

<sup>40</sup> This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.

- 4.19 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.
- 4.20 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 4.21 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 4.22 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 4.23 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.
- 4.24 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.

## Drivers

- 4.25 As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.26 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.



- 4.27 As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.28 In relation to single convictions, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.

#### Crimes resulting in death

- 4.29 Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

#### Exploitation

- 4.30 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

#### Offences involving violence

- 4.31 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

#### Possession of a weapon

- 4.32 Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

#### Sex and indecency offences

- 4.33 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.
- 4.34 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

### Dishonesty

- 4.35 Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Drugs

- 4.36 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 4.37 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

### Discrimination

- 4.38 Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Motoring convictions

- 4.39 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

### Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving

- 4.40 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 4.41 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

### Other motoring offences

- 4.42 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.43 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Hackney carriage and private hire offences

- 4.44 Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### Vehicle use offences

- 4.45 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

## Private Hire Operators

- 4.46 A private hire operator (“an operator”) does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or other unacceptable purposes.
- 4.47 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.48 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be effected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority’s overall criteria, that will lead to the operator’s licence being revoked.

- 4.49 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, which are outlined above.

## Vehicle proprietors

- 4.50 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 4.51 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.52 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.53 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.
- 4.54 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

## Acknowledgements

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In December 2015, the Institute of Licensing established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

The core project group comprised:

- Stephen Turner, Solicitor at Hull City Council, Licensing Lead for Lawyers in Local Government and Vice Chair of the North East Region IoL (Project Group Chair)
- Jim Button, Solicitor at James Button & Co and President of IoL
- Philip Kolvin QC, Cornerstone Barristers and Patron of IoL
- John Miley, Licensing Manager for Broxtowe Borough Council, National Chair for NALEO and Vice Chair of the East Midlands Region IoL
- Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the South East Region IoL
- Phil Bates, Licensing Manager for Southampton City Council
- Sue Nelson, Executive Officer of IoL

This Guidance is the result of the work of the project team and includes consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

The Institute is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

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- Louise Scott Garner
- Jenna Parker, Institute of Licensing

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# **HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER CRIMINAL CONVICTIONS POLICY**

**2018**



## **PREFACE**

### **1. Purpose of policy**

- 1.1 The purpose of the policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a Hackney Carriage and/or Private Hire Driver or Private Hire Operator licence.
- 1.2 The overriding aim of the Licensing Authority is to protect the safety of the public. The Licensing Authority is concerned to ensure:
- That a person is a fit and proper person
  - That the person does not pose a threat to the public
  - That the public are safeguarded from dishonest persons
  - The safeguarding of children, young persons and vulnerable adults
- 1.3 The term ‘fit and proper person’ for the purposes of licensing is not legally defined and in assessing whether someone is ‘fit and proper’ the Council will consider the following together with and other relevant information:
- Criminality
  - Human rights
  - Length of time holding a driver’s licence
  - Number of penalty points endorsed on driving licence
  - Right to work
  - Medical fitness
  - Conduct of the applicant in making the application
  - Previous licensing history

In addition the Council will also consider further information provided by sources such as the Police (including abduction notices) and other statutory agencies.

As set out above, there is no definition of ‘fit and proper’ however the case of *McCool v Rushcliffe BC 1998* assists by way of Lord Bingham, Lord Chief Justice in determining that:

*“One must it seems to me approach this case bearing in mind the objectives of this licensing regime, which is plainly intended among other things to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience; sober, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers”.*

- 1.4 The policy will provide guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
- Applicants for licences
  - Existing licence holders whose licences are being reviewed

- Licensing Officers
  - Members of the Licensing Committee (Drivers' Panel)
  - Magistrates hearing appeals against Local Authority decisions
- 1.5 Where Licensing Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Licensing Committee (Drivers' Panel). Whilst Officers and the Licensing Committee (Drivers' Panel) will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and where the circumstances demand, the Committee (Drivers' Panel) may depart from the guidelines.
- 1.6 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences, which may show a pattern of offending and unfitness.

## **2. Consultation**

- 2.1 The draft Hackney Carriage and Private Hire Criminal Convictions Policy went through a six week public consultation including individuals, businesses and public bodies with an interest in the policy.
- 2.2 The consultation responses were individually considered by the Licensing Committee and the draft Hackney Carriage and Private Hire Criminal Convictions Policy was amended where appropriate.
- 2.3 On 15<sup>th</sup> November 2017 the Licensing Committee considered the consultation responses and determined that the policy be recommended to Full Council for approval.

# **HACKNEY CARRIAGE AND PRIVATE HIRE CRIMINAL CONVICTIONS POLICY**

## **1. Introduction**

- 1.1 The purpose of this Policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an Applicant or an existing Licence Holder is a fit and proper person to hold a Hackney Carriage and/or Private Hire Driver or combination of both or Private Hire Operator's Licence .
- 1.2 The overriding aim of the Licensing Authority is to protect the safety of the public. The Licensing Authority is concerned to ensure:
- A person is a fit and proper person
  - A person does not pose a threat to the public
  - The public are safeguarded from dishonest persons
  - The safeguarding of children, young persons and vulnerable adults
- 1.3 The term 'fit and proper person' for the purposes of licensing is not legally defined and in assessing whether someone is 'fit and proper' the Council will consider the following together with and other relevant information:
- Criminality
  - Human rights
  - Length of time holding a Driver's Licence
  - Number of penalty points endorsed on Driving Licence
  - Right to work
  - Medical fitness
  - Conduct of the Applicant in making the application
  - Previous licensing history

In addition, the Council will also consider further information provided by sources such as the Police (including Abduction Notices) and other Statutory Agencies.

- 1.4 This Policy provides guidance to any person with an interest in taxi and Private Hire Licensing. In particular, but not exclusively:
- Applicants for Licences
  - Existing License Holders whose Licences are being reviewed
  - Licensing Officers
  - Members of the Licensing Committee
  - Magistrates hearing Appeals against Local Authority decisions
- 1.5 Where Licensing Officers have delegated powers to grant Licences, they will utilise these guidelines when making a decision to grant a Licence. In all other cases applications for Licences will be referred to the Licensing Committee. Whilst Officers and the Licensing Committee will have regard to the guidelines contained in the Policy, **each case will be considered on its individual merits and where the circumstances demand, the Committee may depart from the guidelines.**

## **2. General Policy**

- 2.1 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances or alternatively, where there are many or continuous offences, which may show a pattern of offending and unfitness.
- 2.2 A person with a conviction for a serious offence need not be automatically barred from obtaining a Licence but would normally be expected to:
  - a. Remain free of conviction for an appropriate period; and
  - b. Show adequate evidence that he/she is a fit and proper person to hold a Licence (the onus is on the Applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a Licence.
- 2.3 **Where an Applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction** [Nottingham City Council v. Mohammed Farooq (1998)].
- 2.4 For the purpose of this Policy Formal/Simple Cautions/Warnings and Fixed Penalties will be treated as though they were convictions.
- 2.5 A very serious view will be taken of any conviction; no matter how minor or serious, that occurs whilst the person is the holder of a current Licence and especially if the offence occurred whilst in the course of their employment as a licensed proprietor, Driver or Operator.

## **3. Appeals**

- 3.1 Any applicant refused a Driver's Licence on the grounds that the Licensing Authority is not satisfied he/she is a fit and proper person to hold such a Licence has a right to appeal to the Magistrates' Court within 21 days of the Notice of refusal.
- 3.2 Any Applicant refused a Private Hire Operator's Licence on the grounds that the Licensing authority is not satisfied that they are a fit and proper person to hold such a Licence has the right to appeal to the Magistrates' Court within 21 days of the Notice of refusal.
- 3.3 Any Licensee whose Licence is suspended or revoked has the right to appeal to the Magistrates' Court within 21 days of the suspension or revocation.

## **4. Powers**

- 4.1 Sections 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the Licensing Authority to suspend, revoke or refuse to renew a Licence if the Applicant/Licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

- 4.2 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an Applicant or the Holder of a Private Hire Vehicle or Hackney Carriage Driver's Licence, whether spent or not. Therefore, the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 4.3 In this Policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An Applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

## **5. Consideration of Disclosed Criminal History**

- 5.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an Applicant for the grant or renewal of a Hackney Carriage and/or a Private Hire Driver's Licence and/or Private Hire Operator's Licence is a 'fit and proper' person to hold such a Licence. However, if an Applicant has any convictions, warnings, cautions, or charges awaiting trial, the Licensing Authority will look into:
- How relevant the offence(s) are to the Licence being applied for
  - How serious the offence(s) were
  - When the offence(s) were committed
  - The date of conviction
  - Circumstances of the individual concerned
  - Sentence imposed by the court
  - The applicant's age at the time of conviction
  - Whether they form part of a pattern of offending
  - Any other character check considered reasonable (e.g. personal references)
  - Any other factors that might be relevant
- 5.2 Existing holders of driver's licences are required to notify the Licensing Authority in writing within seven days of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions).
- 5.3 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the Licensing Officer on 01376 557790 in confidence for advice.
- 5.4 The Licensing Authority conducts enhanced disclosures from the Disclosure and Barring Service (DBS) of any Applicant for a Driver's Licence. The Licensing Authority follows the DBS's Code of Practice on the fair use of disclosure information. A copy is available on request.
- 5.5 Applicants applying for the grant or a renewal of a Driver's Licence will be required to obtain an Enhanced Disclosure Certificate at their expense. A check of both child and adult barred lists will also be conducted. Applicants for a Private Hire Operator's Licence will be required to obtain a basic criminal records check DBS check at their own expense (unless they are the holder of a current Hackney Carriage, Private Hire

or Dual Driver's Licence issued by Braintree District Council. The Licensing Authority abides by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.

- 5.6 More information about the DBS can be found on their website at <https://www.gov.uk/government/organisations/disclosure-and-barring-service>.
- 5.7 The Licensing Authority is also entitled to use other records and information that may be available to it, in determining applications or an entitlement to continue holding a Licence. This may include information held by the Licensing Authority or other Licensing Authorities.
- 5.8 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a Licence. Where an Applicant has made a false statement or a false declaration on their application for the grant or renewal of a Licence, the Licence will normally be refused.
- 5.9 For renewal application and current Licence holders the Policy will not be applied retrospectively where there are no new concerns or convictions. The Policy will be applied to existing Licence holders if any additional convictions are incurred or they are otherwise brought to the attention of the Council for conduct that would call into question a person's suitability to hold a Licence.
- 5.10 Offences not covered by this Policy will be considered by the Council when determining whether the Applicant or Licence holder is a fit and proper person.

## **6. Serious Offences Involving Violence**

- 6.1 Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the Applicant has a conviction for an offence that involved the loss of life.
- 6.2 In other cases anyone of a violent disposition will normally be refused to be licensed until at least 3 years free of such conviction. However, given the range of the offences that involve violence, consideration must be given to the nature of the conviction.
- 6.3 Unless there are exceptional circumstances a Licence will not normally be granted where the Applicant has a conviction for an offence such as:
- Murder
  - Manslaughter
  - Manslaughter or culpable homicide while driving
  - Terrorism offences
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.4 A Licence will not normally be granted where an applicant has a conviction for an offence of similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date of application:

- Arson
- Malicious wounding or grievous bodily harm, which is racially aggravated
- Actual bodily harm, which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences, which replace the above

6.5 A Licence will not normally be granted where an applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.6 A Licence will not normally be granted where an applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm
- Affray
- S.5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S.4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences, which replace the above

6.7 A Licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

6.8 In the event of a Licence being granted, a strict warning both verbally and in writing will be administered.

## **7. Possession of a Weapon**

7.1 If an Applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public.

- 7.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer) before a Licence is granted.

## **8. Sex and Indecency Offences**

- 8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely scrutinised. Those with convictions for the more serious sexual offences will generally be refused. For other offences, applicants will be expected to show a substantial period (normally at least 5 years) free of conviction for such offences before a licence will be granted.
- 8.2 Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:
- Rape
  - Assault by penetration
  - Offences involving children or vulnerable adults
  - Sexual assault
  - Indecent assault
  - Possession of indecent photographs, child pornography etc.
  - Exploitation of prostitution
  - Trafficking for sexual exploitation
  - Indecent exposure
  - Soliciting (kerb crawling)
  - Or any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.5 In addition to the above the Licensing Authority will not normally grant a Licence to any applicant who is currently on the Sex Offenders Register.
- 8.6 A Licence will not normally be granted if an applicant has more than one conviction for a sex or indecency offence.

## **9. Dishonesty**

- 9.1 A licensed PHV or Taxi Driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Taxi Drivers are required to deposit such property with the Police within 24 hours. PHV drivers must pass lost property to the Private Hire Operator. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.



9.2 In general, a minimum period of 5 years free of conviction or at least 3 years from completion of sentence (whichever is longer) should be required before granting a Licence. Offences involving dishonesty include:

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

## **10. Drugs**

- 10.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.
- 10.2 A Licence will not normally be granted where an applicant has a conviction for an offence related to the supply of drugs and has not been free of conviction for 5 years.
- 10.3 A Licence will not normally be granted where an applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.
- 10.4 An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a Licence but consideration should be given to the nature and quantity of the drugs.
- 10.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 Medical Standards) may be required before a Licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

## **11. Driving Offences Involving the Loss of Life**

- 11.1 A very serious view is to be taken of any Applicant who has been convicted of a driving offence that resulted in the loss of life.

Unless there are exceptional circumstances a Licence will not normally be granted where the Applicant has a conviction for an offence such as:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by driving: unlicensed, disqualified or uninsured drivers
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

## **12. Drink Driving/Driving Under the Influence of Drugs/Using a Mobile Phone Whilst Driving**

- 12.1 As Licensees are professional vocational drivers, a serious view is taken of convictions for driving or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA Driving Licence but should be warned as to the significant risk to their Licence status in the event of re-offending. Normally at least 3 years after the restoration of the driving licence following a drink/drug drive conviction should elapse before an application will be considered. If there is any suggestion that an applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.
- 12.2 Applicants should also be aware of the serious risk posed by driving whilst using a mobile phone. There is a substantial body of research (see for instance <http://www.rosipa.com/rospaweb/docs/advice-services/road-safety/drivers/mobile-phone-report.pdf>) which shows that drivers who use a mobile phone suffer physical and cognitive distraction which means they:
- Are much less aware of what's happening on the road around them
  - Fail to see road signs
  - Fail to maintain proper lane position and steady speed
  - Are more likely to 'tailgate' the vehicle in front
  - React more slowly, take longer to brake and longer to stop
  - Are more likely to enter unsafe gaps in traffic
  - Feel more stressed and frustrated.
- 12.3 There is evidence to show that drivers who use a mobile phone have slower reaction times than those who have consumed up to the legal alcohol limit. In light of this an equally serious view should be taken of convictions for driving whilst using a mobile phone as for driving under the influence of drink or drugs.
- 12.4 A Licence will not normally be granted if an applicant has more than one conviction for an offence of driving under the influence of drink or drugs or whilst using a mobile phone.

## **13. Outstanding Charges or Summonses**

- 13.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed but the application will need to be reviewed at the conclusion of proceedings.

- 13.2 If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety, the application may be put on hold until proceedings are concluded or the Licence may be refused.

## **14. Non-Conviction Information**

- 14.1 If an applicant has, on more than one occasion, been arrested or charged but not convicted for a serious offence, which suggests they could be a danger to the public, consideration should be given to refusing the application.
- 14.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

## **15. Cautions/Warnings**

- 15.1 Admission of guilt is required before a caution/warning can be issued. Every case will be considered on its own merits including the details and nature of the offence.

## **16. Licensing Offences**

- 16.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a Licence being granted or renewed until a period of 3 years has passed.
- 16.2 A Licence will not normally be granted if an applicant has more than one conviction for a licensing related offence.

## **17. Insurance Offences**

- 17.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without Insurance. An isolated incident in the past will not necessarily stop a Licence being granted provided he/she has been free of conviction for 3 years, however, strict warning should be given as to future behaviour.
- 17.2 A Licence will not normally be granted if an applicant has more than 1 conviction for an insurance related offence.
- 17.3 A Private Hire Operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance, will normally have their Private Hire Operator's Licence revoked immediately and be prevented from holding a Licence for at least 3 years.

## **18. Overseas Residents**

- 18.1 If an Applicant or Licence holder has spent 6 continuous months or more overseas the Licensing Authority will expect to see evidence of a criminal record check from the country/countries covering the period.

## **19. Licences Issued by Other Licensing Authorities**

- 19.1 Applicants who hold a Licence with one Licensing Authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.
- 19.2 Licensees who are licensed by multiple Authorities are expected to inform all such Authorities that they are licensed by and to advise each Authority of any changes in this respect and should expect those Authorities to share information regarding their conduct and to take it into account as appropriate.

## **20. Summary**

- 20.1 To summarise, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed before 3 years free from conviction have elapsed.
- 20.2 Any person who has committed an offence and has to wait before an application is positively considered is more likely to value their Licence and act accordingly.
- 20.3 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances but the overriding consideration is the protection of the public.

## Annex A – Motoring Offences and Penalty Points

The following is a guide to the number of penalty points a Court may impose. It does not reflect the fact that some offences may incur a disqualification. These codes are recorded from information supplied by the Courts (accurate at the time of this document).

Code	Offence	Penalty Points
<b>Accident Offences</b>		
AC10	Failing to stop after an accident	5-10
AC20	Failing to give particulars or to report an accident within 24 hours	5-10
AC30	Undefined accident offences	4-9
<b>Disqualified Driver</b>		
BA10	Driving whilst disqualified by Order of Court	6
BA30	Attempting to driver while disqualified by Order of Court	6
<b>Careless Driving</b>		
CD10	Driving without due care and attention	3-9
CD20	Driving without reasonable consideration for other road users	3-9
CD30	Driving without due care and attention or without reasonable consideration for other road users	3-9
CD40	Causing death through careless driving when unfit through drink	3-11
CD50	Causing death by careless driving when unfit through drugs	3-11
CD60	Causing death by careless driving with alcohol level above the limit	3-11
CD70	Causing death by careless driving then failing to supply a specimen for analysis	3-11
CD71	Causing death by careless driving then failing to supply a specimen for drug analysis	3-11
CD80	Causing death by careless, or inconsiderate, driving	3-11
CD90	Causing death by driving: unlicensed, disqualified or uninsured drivers	3-11
<b>Construction &amp; Use Of Offences</b>		
CU10	Using a vehicle with defective brakes	3
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicles or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition	3
CU30	Using a vehicle with defective tyre(s)	3
CU40	Using a vehicle with defective steering	3
CU50	Causing or likely to cause danger by reason of load or passengers	3
C80	Using a mobile phone while driving a vehicle	6
<b>Dangerous Driving</b>		
DD40	Dangerous Driving	3-11
DD60	Manslaughter or culpable homicide while driving a vehicle	3-11
DD90	Furious Driving	3-9
<b>Drink or Drugs</b>		

DR10	Driving or attempting to drive with alcohol level above limit	3-11
DR20	Driving or attempting to drive while unfit through drink	3-11
DR30	Driving or attempting to drive then failing to supply a specimen for analysis	3-11
DR40	In charge of a vehicle while alcohol level above limit	10
DR50	In charge of vehicle while unfit through drink	10
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive	10
DR61	Failure to supply a specimen for drug analysis in circumstances other than driving or attempting to drive	10
DR70	Failing to provide specimen for breath test	4
DR80	Driving or attempting to drive when unfit through drugs	3-11
DR90	In charge of a vehicle when unfit through drugs	3-11
<b>Insurance Offences</b>		
IN10	Using a vehicle uninsured against third party risks	6-8
<b>Licence Offences</b>		
LC20	Driving otherwise than in accordance with the Licence	3-6
LC30	Driving after making a false declaration about fitness applying for a Licence	3-6
LC40	Driving a vehicle having failed to notify a disability	3-6
LC50	Driving after a Licence has been revoked or refused on medical ground	3-6
<b>Miscellaneous Offences</b>		
MS10	Leaving a vehicle in a dangerous position	3
MS20	Unlawful pillion riding	3
MS30	Play street offences	2
MS50	Motor racing on the highway	3-11
MS60	Offences not covered by other codes	As Appropriate
MS70	Driving with uncorrected defective eyesight	3
MS80	Refusing to submit to an eyesight test	3
MS90	Failure to give information as to identity of driver etc.	3
<b>Motorway Offences</b>		
MW10	Contravention of Special Roads Regulations (excluding speed limits)	3
<b>Pedestrian Crossings</b>		
PC10	Undefined Contravention of Pedestrian Crossing Regulation	3
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle	3
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle	3
<b>Speed Limits</b>		
SP10	Exceeding goods vehicle speed limits	3-6
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)	3-6
SP30	Exceeding statutory speed limit on a public road	3-6
SP40	Exceeding passenger vehicle speed limit	3-6
SP50	Exceeding speed limit on a motorway	3-6
<b>Traffic Directions And Signs</b>		
TS10	Failing to comply with traffic light signals	3

TS20	Failing to comply with double white lines	3
TS30	Failing to comply with 'Stop' sign	3
TS40	Failing to comply with direction of a constable/warden	3
TS50	Failing to comply with a traffic sign (excluding stop signs, traffic signs or double white lines)	3
TS60	Failing to comply with a school crossing patrol sign	3
TS70	Undefined failure to comply with a traffic direction sign	3
<b>Special Code</b>		
TT99	To signify a disqualification under totting-up procedure If the total of penalty points reaches 12 or more within Years, the driver is liable to be disqualified	
<b>Theft or Unauthorised Taking</b>		
UT50	Aggravated taking of a vehicle	3-11

### **Aiding, abetting, counseling or procuring**

Offences as coded, but with 0 changed to 2 e.g. LC10 becomes LC12.

### **Causing or permitting**

Offences as coded, but with 0 changed to 4 e.g. LC10 becomes LC14.

### **Inciting**

Offences as coded, but with the end 0 changed to 6 e.g. DD40 becomes DD46.

## **Non-endorsable offences**

Some offences are non-endorsable. A non-endorsable offence is an offence which Courts do not endorse onto paper counterpart. No penalty points are attributed to these offences but they carry a period of disqualification.

At the end of the disqualification (over 56 days) the driver will have to apply for a renewal Licence together with the appropriate fee. Any queries about offences and endorsements should be directed to the convicting court.

## **Period of time**

Periods of time are signified as follows: D=Days, M=Months, Y=Years

Endorsements remain on a counterpart Licence for the following periods of time:

Endorsements must remain on a Licence for 11 years from date of conviction if the offence is:

- Drinking/drugs and driving (shown on the Licence as DR10, DR20, DR20 and DR80).
- Causing death by careless driving whilst under the influence of drink/drugs (shown on the Licence as CD40, CD50 and CD 60).
- Causing death by careless driving, then failing to provide a specimen for analysis (shown on the Licence as CD70).

Or 4 years from the date of conviction if the offence is as listed below:

- Reckless/dangerous driving (shown on the Licence as DD40, DD60 and DD80).
- Offences resulting in disqualification.
- Disqualified from holding a full Licence until a driving test has been passed.

Or 4 years from the date of offence in all other cases.

Source [www.direct.gov.uk](http://www.direct.gov.uk)



### **Appendix 3 - Draft Criminal Convictions Policy changes 2019**

Summary comparison between the existing and proposed periods of time in which a licence would be granted, from completion of sentence or from date of conviction.

<b>Offences</b>	<b>Period of time in which a licence would be granted, from completion of sentence or from date of conviction.</b>	
	<b>Existing</b>	<b>Proposed</b>
<b>Violence</b>		
Conviction for an offence that involved loss of life	Refusal	Refusal
Anyone of a violent disposition	At least 3 years free of such conviction	At least 10 years elapsed since completion of any sentence imposed
<ul style="list-style-type: none"><li>• Murder</li><li>• Manslaughter</li><li>• Manslaughter to culpable homicide whilst driving</li><li>• Terrorism</li><li>• Any offences (including attempted or conspiracy to commit offences) that are similar to those above</li></ul>	Refusal	Refusal
<ul style="list-style-type: none"><li>• Arson</li><li>• Malicious wounding or grievous bodily harm which is racially aggravated</li><li>• Actual bodily harm, which is racially aggravated</li><li>• Grievous bodily harm with intent</li><li>• Robbery</li><li>• Possession of firearm</li><li>• Riot</li><li>• Assault Police</li><li>• Common Assault with racially aggravated</li><li>• Violent disorder</li><li>• Resisting arrest</li><li>• Or any similar offences (including attempted or conspiracy to commit) offences, which replace the above</li></ul>	At least 10 years have passed since the completion of any sentence imposed	At least 10 years elapsed since completion of any sentence imposed
<ul style="list-style-type: none"><li>• Racially aggravated criminal damage</li><li>• Racially aggravated offence</li><li>• Or any similar offences (including attempted or conspiracy to commit) offences which replace the above</li></ul>	At least 3 years have passed since the completion of any sentence imposed	At least 10 years elapsed since completion of any sentence imposed

<ul style="list-style-type: none"> <li>• Common assault</li> <li>• Assault occasioning actual bodily harm</li> <li>• Affray</li> <li>• S.5 Public Order Act 1986 offence (harassment, alarm or distress)</li> <li>• S.4 Public Order Act 1986 offence (fear of provocation of violence)</li> <li>• S.4A Public Order Act 1986 offence (intentional harassment, alarm or distress)</li> <li>• Obstruction</li> <li>• Criminal damage</li> <li>• Or any similar offences (including attempted or conspiracy to commit) offences, which replace the above</li> </ul>	At least 3 years have passed since the completion of any sentence imposed	At least 10 years elapsed since completion of any sentence imposed
If any applicant has a history of violence (more than one conviction of any type of violence within a ten year period)	Application will normally be refused	Application will normally be refused
Offensive weapon	Free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer)	At least 7 years elapsed since completion of any sentence imposed
<b>Sex and Indecency Offences</b>		
<ul style="list-style-type: none"> <li>• Rape</li> <li>• Assault by penetration</li> <li>• Offences involving children or vulnerable adults</li> <li>• Sexual assault</li> <li>• Indecent assault</li> <li>• Possession of indecent photographs, child pornography etc.</li> <li>• Exploitation of prostitution</li> <li>• Trafficking for sexual exploitation</li> <li>• Indecent exposure</li> <li>• Soliciting (kerb crawling)</li> <li>• Or any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver</li> <li>• Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.</li> </ul>	Refusal	Refusal (including anyone who is currently on the Sex Offenders Register or the barred list)

<b>One or</b> more conviction for a sex or indecency offence	Refused	Refused
Other sex and indecency offences	At least 5 years	Refused
<b>Dishonesty</b>		
<ul style="list-style-type: none"> <li>• Theft</li> <li>• Burglary</li> <li>• Fraud</li> <li>• Benefit fraud</li> <li>• Handing or receiving stolen goods</li> <li>• Forgery</li> <li>• Conspiracy to defraud</li> <li>• Obtaining money or property by deception</li> <li>• Other deception</li> <li>• Taking a vehicle without consent</li> <li>• And any similar offences</li> <li>• Or any similar offence (including attempted or conspiracy to commit) offences which replace the above</li> </ul>	Minimum period of 5 years free of conviction or at least 3 years have passed since the completion of sentence (whichever is longer)	At least 7 years elapsed since completion of any sentence imposed
<b>Drugs</b>		
Supply of drugs	A licence will not be granted where the application has a conviction for an offence related to the supply of drugs	At least 10 years elapsed since the completion of any sentence imposed
Possession of drugs	A licence will not normally be granted where an applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years	At least 10 years elapsed since the completion of any sentence imposed
Isolated conviction related to the possession of drugs	Within Last 3- 5 years (consideration to nature and quantity of drugs)	At least 10 years elapsed since the completion of any sentence imposed
If the applicant was an addict	Required to show evidence of 5 years free from drug taking after detoxification treatment	At least 5 years elapsed since completion of any sentence imposed and a requirement to undergo drug testing at their own expense to demonstrate that they are not using controlled drugs
<b>Driving offences involving the loss of life</b>		
<ul style="list-style-type: none"> <li>• Causing death by dangerous driving</li> <li>• Causing death by careless driving whilst under the influence of drink or drugs</li> </ul>	A licence will not be granted	Refusal

<ul style="list-style-type: none"> <li>• Causing death by careless driving: unlicensed, disqualified or uninsured drivers</li> <li>• Or any similar offence (including attempted or conspiracy to commit) offences which replace the above.</li> </ul>		
<b>Drink Driving/Driving under the influence of Drugs/Using a mobile phone whilst driving</b>		
Drink drive conviction	At least 3 years after the restoration of the driving licence following a drink drive conviction should elapse	At least 7 years elapsed since completion of any sentence imposed
<b>Other traffic offences</b>		
Other traffic offences such as driving without due care and attention, reckless driving, some speeding offences, etc. will give rise to the serious doubts about the applicants suitability to be a driving professional	An applicant with any such convictions will be required to show a period of at least one year free of such convictions. For applicants with more than one offence this should normally be increased to 2 years.	At least 7 years
<b>Outstanding charges or summonses</b>		
	<p>If the individual is the subject of an outstanding charge or summons their application can continue to be processed but the application will need to be reviewed at the conclusion of proceedings</p> <p>If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety, the application may be put on hold until proceedings are concluded or the licence may be refused</p>	Not specified
<b>Cautions/Warnings</b>		
	Admission of guilt is required before a caution/warning can be issued. Every case will be considered on its own	Not specified

	merits including the details and nature of the offence	
<b>Licensing Offences</b> Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons	A period of 3 years has passed since conviction	Not specified
<b>Driving without Insurance or driving whilst disqualified</b>	3 year period shall run from the date of restoration of the licence	Not specified
<b>Immigration Offences</b>	A period of at least 3 years free of convictions	Not specified
Minor traffic offences	For existing drivers who have accumulated 9 or more points on their DVLA driving licence, consideration will be given to formally suspending their hackney carriage/private hire drivers licence until the driver has successfully undertaken a driving assessment	Not specified
<b>Touting</b>  More than one touting conviction	Free of conviction for a period of 12 months Period of 3 years free of conviction	Not specified
<b>Plying for hire</b>	At least 1 year free of such a conviction	Not specified

LICENSING COMMITTEE UPDATE		Agenda No: 6
Portfolio	Environment and Place	
Corporate Outcome:	Delivering better outcomes for residents and businesses and reducing costs to taxpayers	
Report presented by:	Daniel Mellini, Environmental Health Manager	
Report prepared by:	John Meddings, Principal Licensing Officer	
Background Papers:	Public Report	
None	Key Decision: No	
Executive Summary:		
To update Members on applications determined and relevant new information.		
Recommended Decision:		
To note the information detailed.		
Purpose of Decision:		
To update Members.		
Corporate Implications		
Financial:	None arising from this report	
Legal:	None arising from this report	
Safeguarding:	None arising from this report	
Equalities/Diversity:	None arising from this report	
Customer Impact:	None arising from this report	
Environment and Climate Change:	None arising from this report	
Consultation/Community Engagement:	None arising from this report	
Risks:	None arising from this report	
Officer Contact:	John Meddings	
Designation:	Principal Licensing Officer	
Ext. No:	2213	
E-mail:	<a href="mailto:john.meddings@braintree.gov.uk">john.meddings@braintree.gov.uk</a>	

## **1. Background**

- 1.1 Members have requested regular updates on applications determined by Licensing Sub-Committees and the Drivers Panel. A summary of all applications determined since the previous Licensing Committee on 11th September 2019 are highlighted below.

## **2. Hackney Carriage and Private Hire Drivers Licences**

- 2.1 There has been one application presented to the Drivers Panel since the previous update.
- 2.2 The matter related to a Private Hire Operator wishing to licence a vehicle older than five years of age on first application and to exempt the vehicle from the requirements to display a full vehicle livery, in accordance with the Council's Executive Vehicles Policy. In this case, the application was granted, subject to conditions.
- 2.3 On 30th October 2019 a Private Hire Driver had his licence suspended with immediate effect as the driver posed an unacceptable risk to public safety on medical grounds. The suspension will remain in place until a specialist confirms that the driver meets the required medical standards.

## **3. Licensing Act 2003**

- 3.1 There has been one Licensing Act 2003 hearing since 11th September 2019.
- 3.2 An application for a new premises licence was presented for 92 High Street, Braintree and heard on 17th September 2019. This application was granted as stated in the operating schedule along with additional conditions.

## **4. VE Day Celebrations**

- 4.1 The Home Secretary has announced plans to extend pub licensing hours across England and Wales to mark the 75th anniversary of Victory in Europe (VE) Day.
- 4.2 Under the proposals, pubs, clubs and bars which are licensed to trade until 11pm could be allowed to open until 1am on both Friday 8th May and Saturday 9th May 2020.

## **5. Updates**

### **Licensing Team**

- 5.1 Catherine Higgins, Licensing Technical Administration Officer, has left the team to take up a position as a Licensing Officer at Chelmsford City Council. The interviews for this post are due to take place during the week

commencing 4th November 2019 and it is expected to have an officer in place before Christmas.

- 5.2 Nicola Evans has been appointed to the vacant Licensing Officer post and she will be starting with the team on 18th November 2018. Nicola joins us from Chelmsford City Council where she held the positions of Licensing Officer and Community Safety Officer.