

LICENSING COMMITTEE AGENDA

Wednesday, 15 November 2017 at 07:15 PM

Committee Room 1, Braintree District Council, Causeway House,
Bocking End, Braintree, CM7 9HB

THIS MEETING IS OPEN TO THE PUBLIC
(Please note this meeting will be audio recorded)

www.braintree.gov.uk

Members of the Licensing Committee are requested to attend this meeting to transact the business set out in the Agenda.

Membership:-

Councillor Mrs J Allen	Councillor H Johnson
Councillor M Banthorpe (Chairman)	Councillor Mrs J Pell
Councillor P Barlow	Councillor B Rose
Councillor J Baugh (Vice Chairman)	Councillor R van Dulken
Councillor J Elliott	Councillor Mrs L Walters
Councillor J Goodman	Councillor Mrs S Wilson
Councillor A Hensman	

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 by 3pm on the day of the meeting.

A WRIGHT
Acting 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.

Question Time

The Agenda allows for a period of up to 30 minutes when members of the public can speak. Members of the public wishing to speak are requested to register by contacting the Governance and Members Team on 01376 552525 or email governance@braintree.gov.uk no later than 2 working days prior to the meeting. 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.

Please note that there is public Wi-Fi in the Council Chamber, users are required to register in order to access this. There is limited availability of printed agendas.

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Documents

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We welcome comments from members of the public to make our services as efficient and effective as possible. If you have any suggestions regarding the meeting you have attended, you can send these via governance@braintree.gov.uk

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 16th August 2017 (copy previously circulated).	
4	Public Question Time (See paragraph above)	
5	Equality Act 2010 - Taxi and Private Hire Medical Exemption Policy	4 - 28
6	Hackney Carriage and Private Hire Criminal Convictions Policy - Post Consultation	29 - 54
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.	
	<i>At the time of compiling this Agenda there were none.</i>	

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.	

Equality Act 2010 – Taxi & Private Hire Medical Exemption Policy		Agenda No: 5
Portfolio:	Environment and Place	
Corporate Outcome:	A sustainable environment and a great place to live, work and play Residents live well in healthy and resilient communities where residents feel supported	
Report presented by:	John Meddings, Principal Licensing Officer	
Report prepared by:	John Meddings, Principal Licensing Officer	
Background Papers:	Public Report	
1. The Equality Act 2010	Key Decision: No	
2. Department for Transport, Access for wheelchair users to Taxis and Private Hire Vehicles – Statutory Guidance		
Executive Summary:		
<p>Section 165 of the Equality Act places duties on the driver of a hackney carriage or a private hire vehicle, making it an offence not to offer reasonable assistance, to charge extra for providing any assistance, or to refuse a fare from a disabled passenger altogether.</p> <p>Section 166 of the Act allows Local Authorities (LA) to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or as long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties.</p> <p>The Taxi & Private Hire Medical Exemption Policy will outline the application process and provide guidance on how applications will be determined and the criteria used. It is proposed that the policy is subject to public consultation for a period of six weeks and then returned to the next available meeting of the Licensing Committee, with any responses, for determination.</p>		
Recommended Decision:		
To approve the draft Hackney Carriage and Private Hire Medical Exemption Policy for consultation.		
Purpose of Decision:		
To allow Braintree District Council to control the issuing of medical exemptions in relation to the Equalities Act 2010.		

Corporate Implications	
Financial:	The cost of introducing the provisions of the Act will be absorbed by the relevant Licence fees.
Legal:	No issues arising from this report.
Safeguarding:	No issues arising from this report.
Equalities/Diversity:	Implementation of S.166 of the Equality Act will assist in reducing discrimination for disabled hackney carriage and private hire vehicle passengers. An Equality Impact Assessment will be completed as part of the implementation process.
Customer Impact:	It is envisaged that there will be very few exemptions issued and the impact on the travelling public should be negligible.
Environment and Climate Change:	No issues arising from this report.
Consultation/Community Engagement:	It is proposed that a 6 week consultation process will take place with the public and other relevant parties. This will include drivers, operators and medical professionals.
Risks:	No issues arising from this report.
Officer Contact:	John Meddings
Designation:	Principal Licensing Officer
Ext. No:	2213
E-mail:	john.meddings@braintree.gov.uk

1. Background

- 1.1 Part 12 of the Equality Act 2010 (the Act) makes provisions for disabled persons transport. There are a number of sections in Part 12 of the Act which are not yet in force and those sections which have been introduced have been implemented over a number of years.
- 1.2 Section 165 of the Act places duties on the driver of a hackney carriage or a private hire vehicle designated under Section 167, making it an offence not to offer reasonable assistance, to charge extra for providing any assistance, or to refuse a fare from a disabled passenger altogether.
- 1.3 Section 166 of the Act allows the Authority to exempt drivers from the duties under Section 165, where it is appropriate to do so, on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply.
- 1.4 The exemption is not exclusively for offering assistance with wheelchair users. It will also cover previously enacted parts of the Equality Act, which make it an offence for the driver of a private hire vehicle to fail, or refuse to carry out a booking accepted by the operator of the vehicle if the booking is made by or on behalf of a disabled person, or a person who wishes to be accompanied by a disabled person, and the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog, unless an exemption certificate from the requirement to carry assistance dogs has been issued by the Council and that certificate is displayed within the vehicle.

2. Policy

- 2.1 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 suitable to hold a medical exemption from the requirements placed upon them under the Equality Act 2010 with respect to the carriage of passengers in wheelchairs and/or assistance dogs.
- 2.2 The policy applies to new applicants and drivers who possess a current hackney carriage, private hire, or dual hackney carriage/private hire driver's Licence issued by Braintree District Council.
- 2.3 The policy is to be read in conjunction with the Council's general requirements regards driver medicals. All drivers **MUST** meet DVLA group 2 medical standards and should be aware of this requirement before making an application to be exempt from their duties under the Equality Act 2010.
- 2.4 Included as an Appendix is a flow chart to assist applicants and it summarises the process for drivers wishing to obtain an exemption under Sections 165, 169 & 171 of the Act.
- 2.5 The application forms, letters and exemption notices relevant to the process have been included within the policy as Appendices.

3. Consultation

- 3.1 Once a draft Hackney Carriage and Private Hire Medical Exemption Policy has been approved by Members it will be put forward for consultation prior to implementation.
- 3.2 It is proposed that the consultation will last for six weeks.
- 3.3 The consultation will include existing drivers and private hire operators, Members, medical professionals and other persons who would have an interest in the policy.
- 3.4 The policy will be made available for viewing via the Council's website.
- 3.5 The responses will then be collated and a report submitted to the next available meeting of the Licensing Committee.

4. Recommendation

- 4.1 To proceed with the consultation with or without amendments to the draft Hackney Carriage and Private Hire Medical Exemption Policy.

DRAFT



**Taxi and Private Hire
Medical Exemption Policy**

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1. Introduction

- 1.1 This policy applies to all drivers who possess a current hackney carriage, private hire or dual hackney carriage/private hire drivers Licence issued by Braintree District Council.
- 1.2 The policy applies where a licensed driver wishes to be exempt from the requirements placed upon them under the Equality Act 2010 with respect to the carriage of passengers in wheelchairs and/or assistance dogs.
- 1.3 The policy is to be read in conjunction with the Council's general requirements regards driver medicals. All drivers **MUST** meet DVLA group 2 medical standards and should be aware of this requirement before making an application to be exempt from their duties under the Equality Act 2010.

2. Equality Act 2010 – Relevant Sections

- 2.1 Section 165 places certain duties on drivers of designated wheelchair accessible hackney carriages and private hire vehicles. Those duties include:
 - To carry the passenger whilst in the wheelchair.
 - Not to make any charge for doing so.
 - Should the passenger choose to sit in a passenger seat, to carry their wheelchair.
 - To take such necessary steps to ensure that the passenger is carried in safety and reasonable comfort.
 - To give the passenger such mobility assistance as is reasonably required.
- 2.2 Sections 168 & 170 place the following duties on drivers of hackney carriage and private hire drivers:
 - To carry the passenger's (guide, hearing or assistance) dog
 - Allowing the dog to remain with the passenger
 - Not to make any additional charge for doing so.
- 2.3 Section 168 applies to all hackney carriage drivers or dual hackney carriage drivers (acting in the capacity of a hackney carriage driver)
- 2.4 Section 170 applies to all private hire drivers or dual private hire drivers (acting in the capacity of a private hire vehicle driver)
- 2.5 Section 166 of the Act allows The Council to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply.
- 2.6 Section 169 of the Act allows The Council to exempt hackney carriage drivers from the duties under Section 168 if satisfied that it is appropriate to do so, on medical grounds or because of the physical characteristics of the taxi which

the person drives or those of any kind of taxi in relation to which the person requires the certificate.

- 2.7 Section 171 of the Act allows The Council to exempt private hire vehicle drivers from the duties under Section 170 if satisfied that it is appropriate to do so, on medical grounds or because of the physical characteristics of the private hire vehicle which the person drives or those of any kind of private hire vehicle in relation to which the person requires the certificate.

3. Equality Act 2010 - Offences

- 3.1 Under Section 165 of the Act, it is an offence for a driver of a designated wheelchair accessible hackney carriage or private hire vehicle to refuse to carry a passenger in a wheelchair in the circumstances defined in paragraph 2.1 of this document.
- 3.2 Under Section 168 of the Act, It is an offence for the driver of a hackney carriage that has been hired by or for a disabled person who is accompanied by an assistance dog (or by another person who wishes to be accompanied by a disabled person with an assistance dog) to fail to carry the disabled person's dog and allow it to remain with that person or to make any additional charge for doing so, unless an exemption certificate has been issued by the Council and that certificate is displayed within the vehicle.
- 3.3 Under Section 170 of the Act, It is an offence for the operator of a private hire vehicle to fail or refuse to accept a booking for the vehicle if the booking is requested by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and the reason for the failure or refusal is that the disabled person will be accompanied by an assistance dog. The operator also commits an offence if they make an additional charge for carrying an assistance dog which is accompanying a disabled person.
- 3.4 Under Section 170, it is an offence for the driver of a private hire vehicle to fail or refuse to carry out a booking accepted by the operator of the vehicle if the booking is made by or on behalf of a disabled person or a person who wishes to be accompanied by a disabled person, and the reason for the failure or refusal is that the disabled person is accompanied by an assistance dog, unless an exemption certificate from the requirement to carry assistance dogs has been issued by the Council and that certificate is displayed within the vehicle.

4. Exemptions from the requirements

4.1 Medical

- 4.1.1 In some circumstances a driver of a hackney carriage or private hire vehicle may be unable to fulfil the requirements of the Equality Act 2010 for medical reasons, short or long term.

4.1.2 Section 166 allows The Council to grant an exemption to drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so, on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with the duties.

4.1.3 Sections 169 & 171 allows the Council to grant exemption to drivers from the duties to transport assistance dogs if they are satisfied that it is appropriate to do so, on medical grounds.

4.2 Other Exemptions

4.2.1 There are no exemptions, medical or otherwise, for a hackney carriage or private hire driver in respect of conveying a reasonable quantity of luggage or providing reasonable assistance in the loading and unloading of luggage.

4.2.2 Hackney carriage bye law 14 of 21st March 2003 states that "every driver of a hackney carriage vehicle, when requested by any person hiring or seeking to hire the carriage shall":

- "Convey a reasonable quantity of luggage".
- "Afford reasonable assistance in loading and unloading luggage".
- "Afford reasonable assistance in removing luggage to or from the entrance of any building, station, or place which he may take up or set down such person".

4.2.3 Private hire driver licence condition 3(j) states:

- "The licensed driver must, at all times, whilst driving or in attendance upon a private hire vehicle".
- "Assist in loading (and subsequently unloading) any and all luggage of a reasonable quantity that can be carried safely by the vehicle (any roof rack or box affixed to the vehicle for such use, must be in accordance with the vehicle licence conditions)".

4.3 Penalties

4.3.1 If a hackney carriage driver or a dual driver (working as a hackney carriage driver) offends against the Bye Law they shall be liable, upon conviction, to a fine not exceeding level 2 on the standard scale. In the case of a continuing offence to a further fine not exceeding two pounds for each day which the offence continues after conviction therefor.

4.3.2 If a private hire vehicle driver or a dual driver (working as a private hire driver) is unable to observe their driver licence conditions they shall be subject to the Council's penalty point scheme and/or may be referred to the Licensing Sub Committee.

5. Obtaining an exemption

5.1 The Council has produced a flow chart which can be found in appendix 1 of this policy document and summarises the process for drivers wishing to obtain an exemption under Sections 165, 169 & 171.

5.2 For those drivers considering applying for an Exemption under Section 165 (carriage of passengers in wheelchairs) you may wish to first determine whether the vehicle you drive (or may drive in the future) has been designated as wheelchair accessible?

5.3 To check which vehicles have been designated as wheelchair accessible click on the following link on The Council's website.

<https://wheelchairaccessiblevehicles> (MADE UP DOES NOT WORK)

5.4 If the vehicle you drive is not designated as wheelchair accessible then you do not need to apply for an exemption under Section 165. You can however choose to apply for an exemption regardless of whether the vehicle you drive or may drive in the future is going to be designated as wheelchair accessible.

5.5 The licensed driver must obtain and supply a letter from their own General Practitioner (G.P) explaining to the Council what duties the driver:

- Cannot undertake
- Why the duties cannot be undertaken
- For how long the duties cannot be undertaken for.

5.6 The letter must be accompanied by the application (appendix 2 to this policy) which must be submitted to the Licensing Team or completed via the [online](#) process. There is no fee attached to this process however the cost (if any) of obtaining the letter from the drivers G.P must be paid for by the applicant.

5.7 If the driver's G.P letter states that the driver is unfit to carry passengers in wheelchairs and/or assistance dogs for a specified period of time (up to a maximum of three months), an 'Exemption Notice' (appendix 3/4) will be issued by the Licensing Team with an expiry date in line with the information provided on the G.P's letter. If the applicants G.P does not specify a period of time then the authority will reject the application.

5.8 If the doctor's letter is not clear or is ambiguous in any way, the matter will be referred to the Council's Licensing Sub-Committee for consideration. If a Committee is convened, the applicant will be invited to attend and explain the nature of the exemption request and the matter will be determined.

5.9 Upon the expiry of the 'Exemption Notice', the Council will deem drivers fit to undertake all duties and the 'Exemption Notice' must be returned to the Licensing Team within 7 days.

- 5.10 If the 'Exemption Notice' is not returned to the Licensing Team, within the specified period, the drivers licence could be suspended until such time as the Notice is returned and the matter will be referred to the Council's Licensing Sub-Committee.
- 5.11 If the driver expects that the 'Exemption Notice' to be extended beyond the period of 3 months, then prior to the expiry date of the notice the driver will need to contact the Licensing Team to discuss the next steps and timescales. The driver is strongly advised to make contact at the earliest opportunity; it will not be possible to extend the 'Exemption Notice' outside of this process.
- 5.12 In this situation, the driver will receive the following:
- A letter of notification (Appendix 5) advising that they will now be subject to a further medical referral.
 - A letter to present to their G.P (Appendix 6) which explains the exact requirements.
 - A letter to present to the Council's approved medical practitioner (Appendix 7) along with a template Statement of Fitness (Appendix 8).
- 5.13 The driver will be required to contact their own G.P to arrange for an in depth medical report to be compiled (the cost for which must be paid for by the driver). The medical report is to be submitted to the Council and will in the first instance be forwarded to the Council's approved medical practitioner for assessment. If the medical report is ambiguous in anyway the driver will be required to make an appointment with the Council's approved medical practitioner to present the report from their own GP and to undergo an examination/ consultation. The Council's approved medical practitioner will then complete the 'Statement of Fitness' (Appendix 8) on the applicant's capability to undertake the duties in terms of their medical grounds and/ or physical condition, and for how long. The driver will not be required to pay for the statement of fitness supplied by the Council's approved medical practitioner.
- 5.14 The driver will need to submit the 'Statement of Fitness' to the Licensing Team for determination.

6. Outcome

- 6.1 If the statement confirms that the driver is able to undertake the duties and is fit for work, the 'Exemption Notice' must be returned to the Licensing Team and the driver will be expected to resume normal duties. If the 'Exemption Notice' is not returned to the Licensing Team, the drivers licence could be suspended until such time as the Notice is returned and driver will be referred to the Licensing Sub-Committee.
- 6.2 If the 'Statement of Fitness' confirms that the driver is able to undertake duties, with reasonable adjustments, a further 'Exemption Notice' of up to 3

months may be issued. It is expected that within those 3 months the driver will undertake the reasonable adjustments to allow a return to full duties. At the end of 3 months the 'Exemption Notice' must be returned to the Licensing Team and the driver will be expected to resume normal duties. If the 'Exemption Notice' is not returned to the Licensing Team, the drivers licence could be suspended until such time as the Notice is returned and the driver will be referred to the Licensing Sub-Committee.

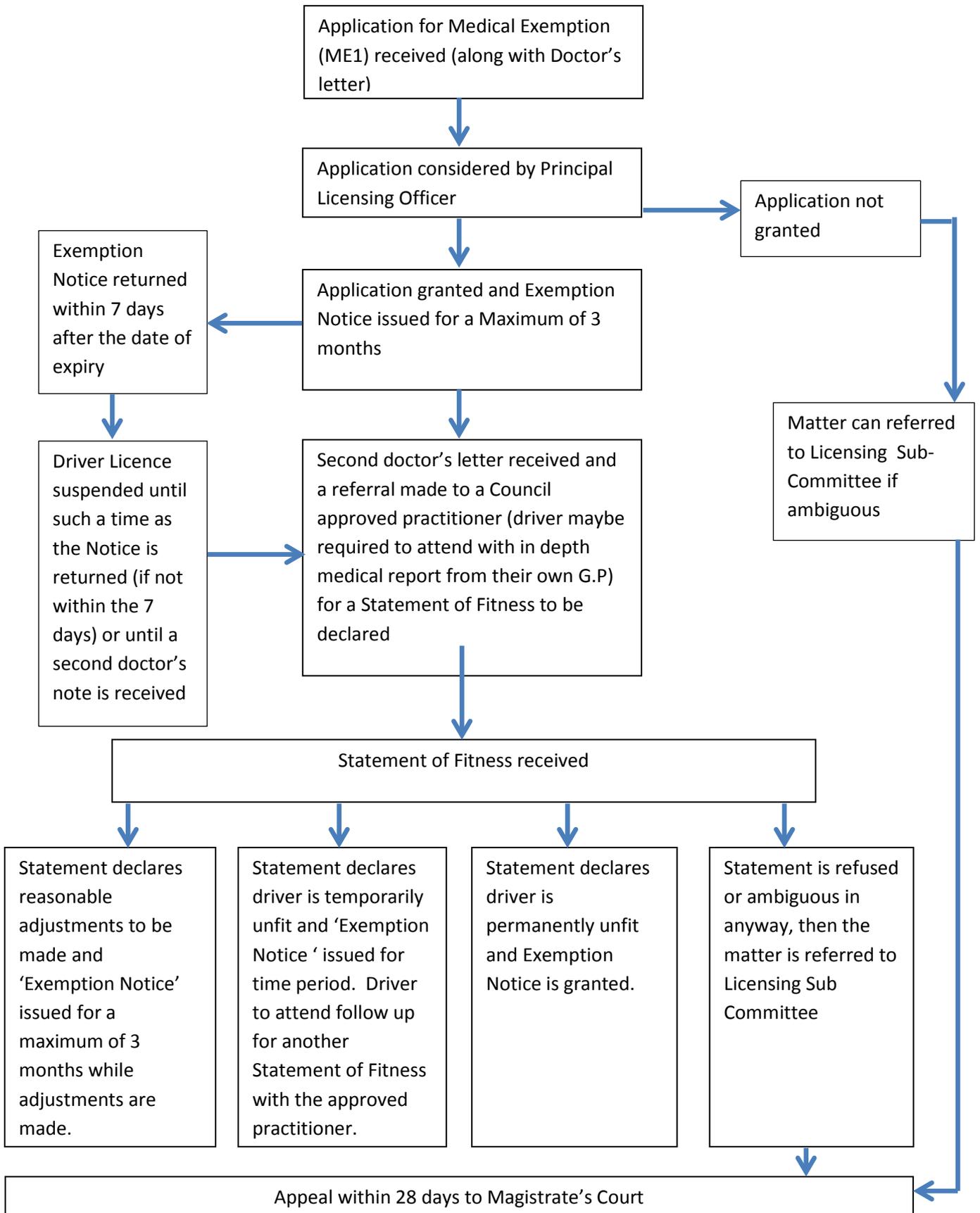
- 6.3 If the statement confirms that the driver is temporarily unfit to carry passengers in wheelchairs and/ or assistance dogs, an 'Exemption Notice' will be granted for the length of time as determined by the approved medical practitioner. The driver will then be expected to attend a further assessment/ consultation with the approved medical practitioner prior to the expiry date of the 'Exemption Notice'.
- 6.4 If the driver is declared permanently unfit to carry passengers in wheelchairs and/ or assistance dogs an Exemption Notice (Appendix 3/4) will be issued. The Exemption Notice must be displayed prominently in the vehicle for public viewing. The exemption may be reviewed every 5 years, with reference to expert medical evidence/ advice and each case will be determined on an individual basis. This could include a further referral to the approved practitioner.
- 6.5 If the driver disagrees with the medical recommendation and subsequent determination by the Licensing Team, the matter will be referred to the Licensing Sub- Committee for consideration.

7. Dispute resolution

- 7.1 If a driver does not agree with the decision of the Licensing Sub Committee they are able to appeal the decision to the Magistrates' court. The driver has 28 days from the date of refusal to appeal.

Appendix 1

MEDICAL EXEMPTION FLOW CHART



Appendix 2

MEDICAL EXEMPTION APPLICATION FORM



1. DRIVER DETAILS

FULL NAME OF DRIVER:

ADDRESS

CONTACT TELEPHONE NUMBER:

DATE OF BIRTH:

DRIVER LICENCE NUMBER:

EXPIRY DATE:

2. EXEMPTION REQUEST (✓ as appropriate)

I AM REQUESTING THAT BRAINTREE DISTRICT COUNCIL CONSIDER GRANTING ME AN EXEMPTION FROM THE FOLLOWING:

CARRYING WHEELCHAIR USERS

CARRYING ASSISTANCE DOGS

3. DOCTOR DETAILS

NAME OF GENERAL PRACTITIONER (G.P)

ADDRESS:

CONTACT TELEPHONE NUMBER:

4. BRIEF DETAIL OF REASONS/CIRCUMSTANCES WHY THE REQUEST FOR MEDICAL EXEMPTION IS BEING MADE

DECLARATIONS

I have read and understood Braintree District Council's Medical Exemption Policy and I understand the process in applying for a medical exemption.

1. I enclose a valid GP certificate to accompany my application
2. I understand that if, after consideration, my application for exemption is granted I will be issued with an 'Exemption Notice' for a maximum period of up to 3 months.
3. I confirm that upon expiry of the 'Exemption Notice' I will return the Notice to the Licensing Team within 7 days. I understand that if the 'Exemption Notice' is not returned, my driver licence could be suspended until such time as the Notice is returned or a further doctor's note is received.
4. I acknowledge that if I expect that the 'Exemption Notice' is to be extended, I will be referred on to a medical practitioner approved by the Council and I will be required to obtain an in depth medical report from my own G.P to support the Statement of Fitness regarding my capability to undertake the duties in terms of my medical fitness and/or physical condition.
5. I understand that the purpose of consultation with the approved medical practitioner will be to determine whether a further exemption should be granted, and for how long.
6. I understand that if during any part of the process, any doctor's note or statement of fitness recommends that the application for exemption is refused or if it is ambiguous in any way, the matter will be referred to the Licensing Sub-Committee for consideration.
7. I understand that all fees associated with this application are to be paid by myself.

The personal information that you give us will also be used in a confidential manner to help us monitor our processes.

We may also use the information if there is a complaint or legal challenge relevant to this process. We may check the information collected.

We may also use or pass to certain third parties information to prevent or detect crime, to protect public funds, or in other ways as permitted by law.

By signing the application form we will be assuming that you agree to the processing of sensitive personal data, in accordance with our registration with the Data Protection Commissioner.

Signed _____

Dated: / /20

FOR OFFICE USE ONLY

DATE MEDICAL EXEMPTION APPLICATION RECEIVED:

Section A

EXEMPTION AGREED

EXEMPTION DECLINED

Section B

If exemption declined, give reasons and details of any further action taken:

Signed _____ Dated: / /

Section C

Date Temporary Exemption Notice Issued:

Date of Expiry:

Entered on to Uniform

By:

Appendix 3

Section 166 Equality Act 2010

Notice Of Exemption

Name of licensing authority

Driver's name

Licence No.

The person named above is exempt from the duties required by section 165 of the Equality Act 2010.

Ew

This notice expires _____ 20 ____

Attention

Only the driver named overleaf may display this notice when driving the vehicle. The notice may also remain on display when the vehicle is parked provided it has been driven by, and is to be driven by, the named driver. Otherwise the named driver must remove the notice.

Appendix 4

SECTION 37A DISABILITY DISCRIMINATION ACT 1995

NOTICE OF EXEMPTION

Name of private hire vehicle licensing authority _____

Driver's full name* _____

Licence No. _____

The person named above is exempt from carrying guide dogs, hearing dogs, or assistance dogs in the private hire vehicle specified at "A" below or in a kind of private hire vehicle specified at "B" below.

A Registration number of specified private hire vehicle* _____

B Kind of private hire vehicle* _____

- (a) Private hire vehicle with fixed partition segregating the driver from the passenger compartment*
- (b) Private hire vehicle without fixed partition segregating the driver from the passenger compartment*

This notice expires† _____ 20 _____

**Delete as appropriate
†to be completed*

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Attention

Only the driver named overleaf may display this notice when driving the vehicle. The notice may also remain on display when the vehicle is parked provided it has been driven by, and is to be driven by, the named driver. Otherwise the named driver must remove the notice.

Appendix 5



Our ref:
Dial: 01376 557790
E-mail: licensing@braintree.gov.uk
Date:

Licensing
Bocking End
Braintree
Essex CM7 9HB

www.braintree.gov.uk

Address

Dear Mr/Mrs/Miss (*delete as applicable*)

Medical exemptions under Sections 166, 169 & 171 EQUALITY ACT 2010 **Letter of Notification (Driver)**

You have advised the Council that you wish to obtain a continuation of your current medical exemption from your duties with respect to the carriage of wheelchair users or assistance dogs under *the Equality Act 2010*.

In order to obtain a further exemption you will now need to contact your own General Practitioner (G.P) and arrange for an in depth medical report to be compiled. The report should include information into the tasks you cannot undertake, why you are unable to undertake your duties and a realistic estimation into the length of time you will be unable to undertake your duties for (temporary or permanent) plus any other information that may be relevant to your application.

The report is to be submitted to the Council and will in the first instance be forwarded to the Council's approved medical practitioner for assessment. If the report is ambiguous in any way you will be required to make an appointment with the Council's approved medical practitioner to present the report from your own G.P and to undergo an examination/ consultation.

The Council's approved medical practitioner will then complete the 'Statement of Fitness' on your capability to undertake the duties in terms of your medical grounds and/ or physical condition, and for how long. You will not be required to pay for the consultation or the statement of fitness supplied by the Council's approved medical practitioner.

If the statement confirms that you are able to undertake the duties and are fit for work, your existing 'Exemption Notice' must be returned to the Licensing Team and you are expected to resume normal duties. If the 'Exemption Notice' is not returned to the Licensing Team, your licence could be suspended until such time as the Notice is returned you will be referred to the Licensing Sub-Committee.

If the 'Statement of Fitness' confirms that you are able to undertake duties, with reasonable adjustments, a further 'Exemption Notice' of up to 3 months may be issued. It is expected that within those 3 months you will undertake the reasonable adjustments to allow a return to full duties. At the end of 3 months the 'Exemption Notice' must be returned to the Licensing Team and you will be expected to resume normal duties. If the 'Exemption Notice' is not returned to the Licensing Team, your licence could be suspended until such time as the Notice is returned and you will be referred to the Licensing Sub-Committee.

If the statement confirms that you are temporarily unfit to carry passengers in wheelchairs and/ or assistance dogs, an 'Exemption Notice' will be granted for the length of time as determined by the Council's approved medical practitioner. You will then be expected to attend a further assessment/ consultation with the Council's approved medical practitioner prior to the expiry date of the 'Exemption Notice'.

If you are declared permanently unfit to carry passengers in wheelchairs and/ or assistance dogs an Exemption Notice will be issued. The Exemption Notice must be displayed prominently in the vehicle for public viewing. The exemption may be reviewed every 5 years, with reference to expert medical evidence/ advice. This review could include a further referral to the Council's approved medical practitioner.

If you disagree with the Council's approved medical practitioner's recommendation and subsequent determination by the Licensing Team, the matter will be referred to the Licensing Sub- Committee for consideration.

If you do not agree with the decision of the Licensing Sub Committee; you are able to appeal the decision to the Magistrates' court within 28 days from the date of refusal.

Yours sincerely

Licensing

Appendix 6



Our ref: 17/01609/LICTAX
Dial: 01376 557790
E-mail: licensing@braintree.gov.uk
Date:

Licensing
Bocking End
Braintree
Essex CM7 9HB

www.braintree.gov.uk

Address

Dear Mr/Mrs/Miss *(delete as applicable)*

Medical exemptions under Sections 166, 169 & 171 EQUALITY ACT 2010
Letter of Notification (G.P)

You have advised the Council that you wish to obtain a further medical exemption from your duties with respect to the carriage of wheelchair users or assistance dogs under Sections 166/169/171 *(delete as applicable)* of the Equality Act 2010.

In order to obtain a further exemption you will now need to contact your own General Practitioner (G.P) and arrange for an in depth medical report to be compiled. The report should include information into the tasks you are unable to take, why you are unable to undertake your duties and a realistic estimation into the length of time you are unable to undertake your duties for (temporary or permanent)

The report is to be submitted to the Council and will in the first instance be forwarded to the Council's approved medical practitioner for assessment. If the report is ambiguous in any way you will be required to make an appointment with the Council's approved medical practitioner to present the report from your own G.P and to undergo an examination/ consultation.

The Council's approved medical practitioner will then complete the 'Statement of Fitness' on your capability to undertake the duties in terms of your medical grounds and/ or physical condition, and for how long. You will not be required to pay for the statement of fitness supplied by the Council's approved medical practitioner.

If the statement confirms that you are able to undertake the duties and are fit for work, your existing 'Exemption Notice' must be returned to the Licensing Team and you are expected to resume normal duties. If the 'Exemption Notice' is not returned to the Licensing Team, your licence could be suspended until such time as the Notice is returned you will be referred to the Licensing Sub-Committee.

If the 'Statement of Fitness' confirms that you are able to undertake duties, with reasonable adjustments, a further 'Exemption Notice' of up to 3 months may be issued. It is expected that within those 3 months you will undertake the reasonable adjustments to allow a return to full duties. At the end of 3 months the 'Exemption Notice' must be returned to the Licensing Team and you will be expected to resume normal duties. If the 'Exemption Notice' is not returned to the Licensing Team, your licence could be suspended until such time as the Notice is returned and you will be referred to the Licensing Sub-Committee.

If the statement confirms that you are temporarily unfit to carry passengers in wheelchairs and/ or assistance dogs, an 'Exemption Notice' will be granted for the length of time as determined by the Council's approved medical practitioner. You will then be expected to attend a further assessment/ consultation with the Council's approved medical practitioner prior to the expiry date of the 'Exemption Notice'.

If you are declared permanently unfit to carry passengers in wheelchairs and/ or assistance dogs an Exemption Notice will be issued. The Exemption Notice must be displayed prominently in the vehicle for public viewing. The exemption may be reviewed every 5 years, with reference to expert medical evidence/ advice. This review could include a further referral to the Council's approved medical practitioner.

If you disagree with the Council's approved medical practitioner's recommendation and subsequent determination by the Licensing Team, the matter will be referred to the Licensing Sub- Committee for consideration.

If you do not agree with the decision of the Licensing Sub Committee you are able to appeal the decision to the Magistrates' court within 28 days from the date of refusal.

Yours sincerely

Licensing

Appendix 7



Our ref:
Dial: 01376 557790
E-mail: licensing@braintree.gov.uk
Date:

Licensing
Bocking End
Braintree
Essex CM7 9HB

www.braintree.gov.uk

Address

Dear Sirs

Medical exemptions under Sections 166, 169 & 171 Equality Act 2010
Statement of Fitness

A request has been received from a licensed driver, to continue to be exempt from their duties under the Equality Act 2010 with respect to the carriage of wheelchair users and/ or assistance dogs on medical grounds.

I attach a report supplied by the applicant's General Practitioner which details the nature and extent of the driver's medical condition(s) which prevent them fulfilling their duties. An estimation of the relevant time frames the exemption should apply for has also been provided.

I would be grateful if in the first instance if you could undertake a desk assessment of the report and advise the Council whether in your opinion whether a further exemption should be granted and for how long.

If you feel the report is ambiguous in any way or you wish to see the applicant in person please contact the applicant and make an appointment to undertake your own medical assessment. I include the applicant's contact details for your use should you need them. Once you have completed your assessment, please complete the enclosed Statement of fitness and return to the Council.

If you require further advice or information regards the exemption process, please do not hesitate to contact a member of the Licensing Team on 01376 557790.

Yours sincerely

Licensing

Appendix 8

MEDICAL STATEMENT OF FITNESS



5. DRIVER DETAILS

FULL NAME OF DRIVER:

ADDRESS:

CONTACT TELEPHONE NUMBER:

DATE OF BIRTH:

The above named attended for assessment today regarding exemption from carrying disabled or wheelchair using passengers and/or assistance dogs

2. FINDINGS (Please tick appropriate box)

Fit for work:

Fit for work with reasonable adjustments:

Please specify reasonable adjustments:

Permanently unfit to carry:

Passengers in Wheelchairs

Assistance Dogs

Temporarily unfit to carry:

Passengers in Wheelchairs

Assistance Dogs

Review of case recommended Yes / No

If yes the review should be in Weeks/Months/Years (delete as required)

(The maximum period between reviews is 5 years)

3. Examining Medical Practitioner's details

To be completed by the doctor carrying out the examination. Please ensure all sections of the form have been completed. Failure to do so will result in the form being returned to you.

Please print name and address in capital letters

Name:

Address:

Phone:

E-mail:

I confirm that this statement of fitness was completed by me at examination and that I am currently GMC registered and licensed to practice in the UK or I am a doctor who is medically registered within the EU, if the report was completed outside in the UK.

Signature of practitioner

Date of Signature

D	D	M	M	Y	Y
---	---	---	---	---	---

GMC Registration number

--	--	--	--	--	--	--	--	--	--

Doctors stamp

Draft Hackney Carriage and Private Hire Criminal Convictions Policy (Post Consultation)		Agenda No: 6
Portfolio:	Environment and Place	
Corporate Outcome:	A sustainable environment and a great place to live, work and play Residents live well in healthy and resilient communities where residents feel supported	
Report presented by:	John Meddings, Principal Licensing Officer	
Report prepared by:	John Meddings, Principal Licensing Officer	
Background Papers:	Public Report	
<ol style="list-style-type: none"> 1. Draft Hackney Carriage and Private Hire Criminal Convictions Policy (Appendix 1) 2. Consultation Response – ECC Children’s Safeguarding (Appendix 2) 3. Consultation Response – ECC Passenger Transport (Appendix 3) 4. Consultation Response – Mr R Barden, Licensed Driver (Appendix 4) 	Key Decision: No	
Executive Summary:		
<p>The Licensing Committee on 16th August 2017 agreed to publish the draft Hackney Carriage and Private Hire Criminal Convictions Policy for consultation. The consultation ended on 29th October 2017 and three responses were received.</p>		
Recommended Decision:		
<p>It is proposed that the draft of the Hackney Carriage and Private Hire Criminal Convictions Policy is approved by Members and put before Full Council with the amendments detailed in the report.</p>		
Purpose of Decision:		
<p>The creation of this policy is to provide guidance and bring the Council’s standards in line with ‘good practice’ guidance and to enable a more robust ‘fit and proper’ test for applicants. This will also act as a guide for potential applicants and provide reassurance for the travelling public.</p>		

Corporate Implications	
Financial:	No issues arising from this report
Legal:	No issues arising from this report
Safeguarding:	The Policy will give a more robust 'fit and proper' test for applicants.
Equalities/Diversity:	No issues arising from this report or the EIA completed
Customer Impact:	Existing licence holders will not be affected by the Policy until the 'fit and proper' test is engaged again.
Environment and Climate Change:	No issues arising from this report.
Consultation/Community Engagement:	The public consultation lasted for six weeks.
Risks:	No issues arising from this report
Officer Contact: John Meddings	
Designation: Principal Licensing Officer	
Ext. No: 2213	
E-mail: John.meddings@braintree.gov.uk	

1. Background

- 1.1 Section 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.
- 1.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 allows the Licensing Authority to take into account all convictions recorded against an applicant for, 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.
- 1.3 Under the provisions of Sections 51, 55, and 59 of the 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 a 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 take into account:
 - 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
- 1.4 Existing holders of drivers' 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).
- 1.5 Licensing Authorities have been recommended by a joint Circular from the Department of Transport 2/92 and Home Office 13/92 to adopt guidelines relating to the relevance of convictions in determining applications for Hackney Carriage and Private Hire Driver's Licences.
- 1.6 In December 2016, the Local Government Association produced a "best practice" set of guidelines for Local Licensing Authorities to emulate when producing, or updating their Criminal Convictions Policy.

2. Policy

- 2.1 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's licence, or Private Hire Operator's licence.
- 2.2 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 and young persons

- 2.3 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.

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".

- 2.4 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

- Magistrates hearing appeals against Local Authority decisions

- 2.5 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.**
- 2.6 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.
- 2.7 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.
- 2.8 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. Fit and Proper Person Test

- 3.1 Under Section 51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976, a District Council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence.
- 3.2 In accordance with the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975, all previous convictions, including spent convictions, are "live" and can be taken into account by the Council (Licensing Authority) when considering the fit and proper status of an applicant.

In *Leeds City Council v Hussain 2002*, in relation to the power of suspension, it was suggested that this could also be applied to protect users of licensed vehicles and those who were driven by them and members of the public.

Members will note that the overall consideration should be the protection of the public, but also bear in mind the applicant's right to a fair trial as per Article 6 of the Human Rights Act 1998.

4. Consultation

- 4.1 The consultation ended on 29th October 2017 and three responses were received.

4.2 The consultation included existing drivers, Private Hire Operators and other persons who would have an interest in the policy including; Essex Police, Essex County Council and Community Safety. The policy was also made available for viewing via the Council's website.

4.3 Essex County Council, Children's Safeguarding (Appendix 2)

1. *The representation asked the question where the information about previous licensing history would be obtained, especially if the person has moved area.*

Response

The term 'previous licence history' refers to a wide range of information including previous licence history with Braintree District Council. The determination of the 'fit and proper' status occurs prior to each time a licence is issued, not just on first application.

Information is obtained from other Authorities when it is declared as part of the application process.

The representation is a question rather than suggesting a change to the draft policy. It is recommended that the definition remains deliberately wide as to not limit sources of information. The Local Government Association is also working on a national database for licensed drivers which would be incorporated under 'licensing history'.

2. *The representation raised that the term 'child pornography' is deemed offensive and is not used by professionals. The appropriate legal term to be used is 'indecent images of children'.*

Response

The wording formed part of the original Local Government Association template and was carried forward to the draft policy. However, the point raised appears to be valid and in line with modern terminology. It is recommended that the wording 'child pornography' is replaced with 'indecent images of children'.

4.4 Essex County Council, Passenger Transport (Appendix 3)

1. *The representation highlighted that a recent change in legislation raised the points issued for mobile phone offences from 3 to 6 penalty points.*

Response

The DVLA penalty points for using a mobile device while driving has been increased to 6 points. It is therefore recommended that this is reflected in the policy.

2. *The representation raised that Furious Driving is old law and unlikely to be relevant.*

Response

Whilst Furious Driving is old legislation it still forms part of our legal system. Furthermore, it is specifically referred to in legislation governing Hackney

Carriages and Private Hire. It is recommended that the wording remains as detailed in the draft policy.

3. *The representation suggests that more information should be added on the specific offence of trafficking.*

Response

The intention of the policy isn't to cover all offences in detail. The specific mention of trafficking is in relation to trafficking for sexual exploitation. This is to highlight that due to the sexual element of the offence, unless there are exceptional circumstances, an application will normally be refused.

- 4.5 Mr R Barden, Licensed Driver (Appendix 4)

1. *The representation was positive and does not suggest any amendments.*

5. Recommendation

- 5.1 To approve the post consultation draft of the Hackney Carriage and Private Hire Criminal Convictions Policy with the amendments detailed above and to put it before Full Council at the next available opportunity.

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 the 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 the 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 the 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

8.3 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.

8.4 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 Police within 24 hours. PHV drivers must pass lost property to the 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 the 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 the 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 the 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 he should be warned as to the significant risk to his 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 the 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 he 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 his 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 of the 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
Accident Offences		
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
Disqualified Driver		
BA10	Driving whilst disqualified by Order of Court	6
BA30	Attempting to driver while disqualified by Order of Court	6
Careless Driving		
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
Construction & Use Of Offences		
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	3

	load or passengers	
C80	Using a mobile phone while driving a vehicle	6
Dangerous Driving		
DD40	Dangerous Driving	3-11
DD60	Manslaughter or culpable homicide while driving a vehicle	3-11
DD90	Furious Driving	3-9
Drink or Drugs		
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 though drugs	3-11
Insurance Offences		
IN10	Using a vehicle uninsured against third party risks	6-8
Licence Offences		
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
Miscellaneous Offences		
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 Appro
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
Motorway Offences		
MW10	Contravention of Special Roads Regulations (excluding speed limits)	3
Pedestrian Crossings		
PC10	Undefined Contravention of Pedestrian Crossing	3

	Regulation	
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle	3
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle	3
Speed Limits		
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
Traffic Directions And Signs		
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
Special Code		
TT99	To signify a disqualification under totting-up procedure. If the total of penalty points reaches 12 or more within 3 Years, the driver is liable to be disqualified	
Theft or Unauthorised Taking		
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

Webb, Alison

From: Licensing
Sent: 12 October 2017 15:50
To: Meddings, John
Subject: FW: Taxi and Private Hire Convictions Policy - comments from ECC Childrens Safeguarding
Attachments: Consultation Letter.pdf; Criminal_Convictions_Policy__DRAFT_.doc

From: Maria Barnett, Service Manager Safeguarding [<mailto:Maria.Barnett@essex.gov.uk>]
Sent: 11 October 2017 4:53 PM
To: Licensing
Subject: RE: Taxi and Private Hire Convictions Policy - comments from ECC Childrens Safeguarding

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 – not clear where this info is obtained from – especially if the person has moved areas?

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. – the term 'child pornography' is deemed offensive and is not used by professionals, the appropriate legal term to be used is "indecent images of children"
- 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

Kind regards

Maria Barnett
 Service Manager/Lead for Safeguarding – LADOs & ESCB
 Quality Assurance and Safeguarding
 Children and Families

Webb, Alison

From: Meddings, John
Sent: 24 October 2017 12:07
To: Meddings, John
Subject: Taxi and Private Hire Convictions Policy consultation letter
Attachments: Consultation Letter.pdf

From: Denise Joy, Passenger Transport Analyst [<mailto:Denise.Joy@essex.gov.uk>]
Sent: 10 October 2017 9:40 AM
To: Licensing
Subject: FW: Taxi and Private Hire Convictions Policy consultation letter

Good morning Licensing Team,

I write with regard to your consultation on Criminal Convictions Policy received on 9th October 2017, comments are:-

Information contained within appears to be incorrect - particularly in Annex 2. Before publishing you may consider getting input and advice from your legal team to ensure guidance is relevant and up to date. For example:

- Driver while using a mobile phone is now guidance at 6 points not 3
- Furious driving is old law and unlikely to be relevant to a taxi driver on public roads
- One mention of trafficking – given issues highlighted in the press not so long ago should more information be added?

This may be an opportunity to adopt a county-wide approach for 'fit and proper' to be fully guided with an agreed protocol for all DLO's in Essex which will enable a consistent approach for action against drivers transgressing in Essex as a whole, rather than just the area in which they are licenced.

I hope this response is helpful.

Denise

Passenger Transport
 Essex County Council

E: passenger.transport@essex.gov.uk
 W: www.essex.gov.uk

From: Maria Barnett, Service Manager Safeguarding
Sent: 09 October 2017 10:49
To: Denise Joy, Passenger Transport Analyst
Cc: Karen Saunders, Passenger Transport Lead
Subject: FW: Taxi and Private Hire Convictions Policy consultation letter

Fyi
 Thanks
 Maria

ENVIRONMENTAL
27 OCT 2017
HEALTH

Licence no. 78

25/10/17

Dear Sir

Having looked through the draft criminal convictions policy online , I found it to be very thorough and covered every aspect. I have no further comments to add to the policy.

Yours sincerley