



Kim Webber B.Sc. M.Sc.
Chief Executive
52 Derby Street
Ormskirk
West Lancashire
L39 2DF

9 February 2018

**TO: COUNCILLORS T DEVINE, N DELANEY, C EVANS, J KAY, D MCKAY, J MEE,
R MELLING, M MILLS, G OWEN, A OWENS AND K WRIGHT**

Dear Councillor,

A meeting of the **LICENSING & APPEALS COMMITTEE** will be held in the **COUNCIL CHAMBER, 52 DERBY STREET, ORMSKIRK L39 2DF** on **TUESDAY, 20 FEBRUARY 2018** at **7.30 PM** at which your attendance is requested.

Yours faithfully

Kim Webber
Chief Executive

**AGENDA
(Open to the Public)**

- 1. APOLOGIES**
- 2. MEMBERSHIP OF THE COMMITTEE**

To be apprised of any changes to the membership of the Committee in accordance with Council Procedure Rule 4.

- 3. URGENT BUSINESS**

Note: No other business is permitted unless, by reason of special circumstances, which shall be specified at the meeting, the Chairman is of the opinion that the item(s) should be considered as a matter of urgency.

4. DECLARATION OF PARTY WHIP

Party Whips are not to be used by this Committee in respect of functions concerning the determination of new Licence Applications, Revocations and Appeals. When considering any other matter which relates to a decision of the Cabinet or the performance of any Member of the Cabinet, in accordance with Regulatory Committee Procedure Rule 9, Members must declare the existence of any Party Whip and the nature of it, before the commencement of the Committee's deliberations on the matter.

5. DECLARATION OF INTEREST

443 -
444

If a Member requires advice on Declarations of Interest, he/she is advised to contact the Borough Solicitor in advance of the meeting. (For the assistance of members a checklist for use in considering their position on any particular item is included at the end of the agenda sheet).

6. MINUTES OF SUB - COMMITTEES OR WORKING GROUPS

There are no minutes to receive.

7. MINUTES

445 -
448

To receive as a correct record the minutes of the meeting held on 5 December 2017.

8. INSTITUTE OF LICENSING CONSULTATION - SUITABILITY OF HACKNEY CARRIAGE AND PRIVATE HIRE APPLICANTS AND LICENSEES

449 -
510

To consider the report of the Director of Leisure and Environment Services.

9. EXCLUSION OF PRESS AND PUBLIC

It is recommended that members of the press and public be excluded from the meeting during consideration of the following item(s) of business in accordance with Section 100A(4) of the Local Government Act 1972 on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Act and as, in all the circumstances of the case the public interest in disclosing the information. The nature of the exempt information and the relevant exemption paragraphs are shown in brackets after the report title.

10. **APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000233094** 511 - 520
- To consider the report of the Director of Leisure and Environment Services.
(IDENTITY OF AN INDIVIDUAL/CRIMINAL MATTERS-Paragraphs 2 & 7)
11. **APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000236716** 521 - 524
- To consider the report of the Director of Leisure and Environment Services.
(IDENTITY OF AN INDIVIDUAL/CRIMINAL MATTERS-Paragraphs 2 & 7)
12. **APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000236453** 525 - 528
- To consider the report of the Director of Leisure and Environment Services.
(IDENTITY OF AN INDIVIDUAL/CRIMINAL MATTERS-Paragraphs 2 & 7)
13. **APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000234945** 529 - 536
- To consider the report of the Director of Leisure and Environment Services.
(IDENTITY OF AN INDIVIDUAL/CRIMINAL MATTERS-Paragraphs 2 & 7)

We can provide this document, upon request, on audiotape, in large print, in Braille and in other languages.

FIRE EVACUATION PROCEDURE: Please see attached sheet.

MOBILE PHONES: These should be switched off or to 'silent' at all meetings.

For further information, please contact:-
Julia Brown on 01695 585065
Or email julia.brown@westlancs.gov.uk

**FIRE EVACUATION PROCEDURE FOR:
COUNCIL MEETINGS WHERE OFFICERS ARE PRESENT
(52 DERBY STREET, ORMSKIRK)**

PERSON IN CHARGE: Most Senior Officer Present
ZONE WARDEN: Member Services Officer / Lawyer
DOOR WARDEN(S) Usher / Caretaker

IF YOU DISCOVER A FIRE

1. Operate the nearest **FIRE CALL POINT** by breaking the glass.
2. Attack the fire with the extinguishers provided only if you have been trained and it is safe to do so. **Do not** take risks.

ON HEARING THE FIRE ALARM

1. Leave the building via the **NEAREST SAFE EXIT**. **Do not stop** to collect personal belongings.
2. Proceed to the **ASSEMBLY POINT** on the car park and report your presence to the **PERSON IN CHARGE**.
3. **Do NOT** return to the premises until authorised to do so by the **PERSON IN CHARGE**.

NOTES:

Officers are required to direct all visitors regarding these procedures i.e. exit routes and place of assembly.

The only persons not required to report to the Assembly Point are the Door Wardens.

CHECKLIST FOR PERSON IN CHARGE

1. Advise other interested parties present that you are the person in charge in the event of an evacuation.
2. Make yourself familiar with the location of the fire escape routes and inform any interested parties of the escape routes.
3. Make yourself familiar with the location of the assembly point and inform any interested parties of that location.
4. Make yourself familiar with the location of the fire alarm and detection control panel.
5. Ensure that the zone warden and door wardens are aware of their roles and responsibilities.
6. Arrange for a register of attendance to be completed (if considered appropriate / practicable).

IN THE EVENT OF A FIRE, OR THE FIRE ALARM BEING SOUNDED

1. Ensure that the room in which the meeting is being held is cleared of all persons.
2. Evacuate via the nearest safe Fire Exit and proceed to the **ASSEMBLY POINT** in the car park.
3. Delegate a person at the **ASSEMBLY POINT** who will proceed to **HOME CARE LINK** in order to ensure that a back-up call is made to the **FIRE BRIGADE**.
4. Delegate another person to ensure that **DOOR WARDENS** have been posted outside the relevant Fire Exit Doors.

5. Ensure that the **ZONE WARDEN** has reported to you on the results of his checks, **i.e.** that the rooms in use have been cleared of all persons.
6. If an Attendance Register has been taken, take a **ROLL CALL**.
7. Report the results of these checks to the Fire and Rescue Service on arrival and inform them of the location of the **FIRE ALARM CONTROL PANEL**.
8. Authorise return to the building only when it is cleared to do so by the **FIRE AND RESCUE SERVICE OFFICER IN CHARGE**. Inform the **DOOR WARDENS** to allow re-entry to the building.

NOTE:

The Fire Alarm system will automatically call the Fire Brigade. The purpose of the 999 back-up call is to meet a requirement of the Fire Precautions Act to supplement the automatic call.

CHECKLIST FOR ZONE WARDEN

1. Carry out a physical check of the rooms being used for the meeting, including adjacent toilets, kitchen.
2. Ensure that **ALL PERSONS**, both officers and members of the public are made aware of the **FIRE ALERT**.
3. Ensure that **ALL PERSONS** evacuate **IMMEDIATELY**, in accordance with the **FIRE EVACUATION PROCEDURE**.
4. Proceed to the **ASSEMBLY POINT** and report to the **PERSON IN CHARGE** that the rooms within your control have been cleared.
5. Assist the **PERSON IN CHARGE** to discharge their duties.

It is desirable that the **ZONE WARDEN** should be an **OFFICER** who is normally based in this building and is familiar with the layout of the rooms to be checked.

INSTRUCTIONS FOR DOOR WARDENS

1. Stand outside the **FIRE EXIT DOOR(S)**
2. Keep the **FIRE EXIT DOOR SHUT**.
3. Ensure that **NO PERSON**, whether staff or public enters the building until **YOU** are told by the **PERSON IN CHARGE** that it is safe to do so.
4. If anyone attempts to enter the premises, report this to the **PERSON IN CHARGE**.
5. Do not leave the door **UNATTENDED**.

Agenda Item 5

MEMBERS INTERESTS 2012

A Member with a disclosable pecuniary interest in any matter considered at a meeting must disclose the interest to the meeting at which they are present, except where it has been entered on the Register.

A Member with a non pecuniary or pecuniary interest in any business of the Council must disclose the existence and nature of that interest at commencement of consideration or when the interest becomes apparent.

Where sensitive information relating to an interest is not registered in the register, you must indicate that you have an interest, but need not disclose the sensitive information.

Please tick relevant boxes

Notes

General			Notes
1.	I have a disclosable pecuniary interest.	<input type="checkbox"/>	<i>You cannot speak or vote and must withdraw unless you have also ticked 5 below</i>
2.	I have a non-pecuniary interest.	<input type="checkbox"/>	<i>You may speak and vote</i>
3.	I have a pecuniary interest because it affects my financial position or the financial position of a connected person or, a body described in 10.1(1)(i) and (ii) and the interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice my judgement of the public interest or it relates to the determining of any approval consent, licence, permission or registration in relation to me or a connected person or, a body described in 10.1(1)(i) and (ii) and the interest is one which a member of the public with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice my judgement of the public interest	<input type="checkbox"/> <input type="checkbox"/>	<i>You cannot speak or vote and must withdraw unless you have also ticked 5 or 6 below</i> <i>You cannot speak or vote and must withdraw unless you have also ticked 5 or 6 below</i>
4.	I have a disclosable pecuniary interest (Dispensation 20/09/16) or a pecuniary interest but it relates to the functions of my Council in respect of: (i) Housing where I am a tenant of the Council, and those functions do not relate particularly to my tenancy or lease. (ii) school meals, or school transport and travelling expenses where I am a parent or guardian of a child in full time education, or are a parent governor of a school, and it does not relate particularly to the school which the child attends. (iii) Statutory sick pay where I am in receipt or entitled to receipt of such pay. (iv) An allowance, payment or indemnity given to Members (v) Any ceremonial honour given to Members (vi) Setting Council tax or a precept under the LGFA 1992	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<i>You may speak and vote</i> <i>You may speak and vote</i> <i>You may speak and vote</i> <i>You may speak and vote</i> <i>You may speak and vote</i>
5.	A Standards Committee dispensation applies (relevant lines in the budget – Dispensation 20/09/16 – 19/09/20)	<input type="checkbox"/>	<i>See the terms of the dispensation</i>
6.	I have a pecuniary interest in the business but I can attend to make representations, answer questions or give evidence as the public are also allowed to attend the meeting for the same purpose	<input type="checkbox"/>	<i>You may speak but must leave the room once you have finished and cannot vote</i>

'disclosable pecuniary interest' (DPI) means an interest of a description specified below which is your interest, your spouse's or civil partner's or the interest of somebody who you are living with as a husband or wife, or as if you were civil partners and you are aware that that other person has the interest.

Interest

Employment, office, trade, profession or vocation

Sponsorship

Prescribed description

Any employment, office, trade, profession or vocation carried on for profit or gain.

Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.

	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

"body in which the relevant person has a beneficial interest" means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest; "director" includes a member of the committee of management of an industrial and provident society;

"land" excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income; "M" means a member of a relevant authority;

"member" includes a co-opted member; "relevant authority" means the authority of which M is a member;

"relevant period" means the period of 12 months ending with the day on which M gives notice to the Monitoring Officer of a DPI;

"relevant person" means M or M's spouse or civil partner, a person with whom M is living as husband or wife or a person with whom M is living as if they were civil partners;

"securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

'non pecuniary interest' means interests falling within the following descriptions:

- 10.1(1)(i) Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (ii) Any body (a) exercising functions of a public nature; (b) directed to charitable purposes; or (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
- (iii) Any easement, servitude, interest or right in or over land which does not carry with it a right for you (alone or jointly with another) to occupy the land or to receive income.
- 10.2(2) A decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a connected person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision.

'a connected person' means

- (a) a member of your family or any person with whom you have a close association, or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph 10.1(1)(i) or (ii).

'body exercising functions of a public nature' means

Regional and local development agencies, other government agencies, other Councils, public health bodies, council-owned companies exercising public functions, arms length management organisations carrying out housing functions on behalf of your authority, school governing bodies.

A Member with a personal interest who has made an executive decision in relation to that matter must ensure any written statement of that decision records the existence and nature of that interest.

NB Section 21(13) of the LGA 2000 overrides any Code provisions to oblige an executive member to attend an overview and scrutiny meeting to answer questions.

PRESENT:

Councillor: T Devine (Chairman)

Councillors:	N Delaney	S Currie
	C Evans	D McKay
	J Mee	R Melling
	M Mills	G Owen
	A Owens	K Wright

In attendance:

Officers: Paul Charlson, Commercial, Safety and Licensing Manager
Michaela Murray, Senior Licensing Officer
Kay Lovelady, Principal Solicitor
Julia Brown, Member Services/Civic Support Officer

36 **APOLOGIES**

There were no apologies for absence received.

37 **MEMBERSHIP OF THE COMMITTEE**

In accordance with Council Procedure Rule 4, the Committee noted the termination of membership of Councillor Kay, and the appointment of Councillor Currie for this meeting only, thereby giving effect to the wishes of the political groups.

38 **URGENT BUSINESS**

There were no urgent items of business.

39 **DECLARATION OF PARTY WHIP**

There were no declarations of Party Whip.

40 **DECLARATION OF INTEREST**

Councillor Devine declared a pecuniary interest in relation to Agenda Item 12 – Application for Private Hire Driver Licence WK/000232352 as the Applicant was known to him.

41 **MINUTES OF SUB - COMMITTEES OR WORKING GROUPS**

There were no minutes to receive.

42 MINUTES

RESOLVED: That the Minutes of the meeting held on 10 October 2017 be received as a correct record and signed by the Chairman.

43 APPROVAL OF HACKNEY CARRIAGE AND PRIVATE HIRE POLICY STATEMENT 2018

Consideration was given to the report of the Director of Leisure and Wellbeing as contained on pages 241 to 394 of the Book of Reports which sought Members approval of the Hackney Carriage and Private Hire Policy Statement 2018.

The Commercial, Safety and Licensing Manager outlined the report and responded to comments and questions raised by Members.

RESOLVED: That having regard to the response to the public consultation contained in the report, the Hackney Carriage and Private Hire Licensing Policy Statement 2018 attached at Appendix 2 to this report be approved for use from 1 February 2018 with the addition of an amendment to the text contained in paragraphs 12.30 and 16.30 to clarify the existing requirement for drivers to disclose convictions, formal cautions or other matters during the period of licence.

44 LICENSING FEES AND CHARGES 2018/19

Consideration was given to the report of the Director of Leisure and Wellbeing as contained on pages 395 to 403 of the Book of Reports which was to consider proposed changes in Licensing fees and charges for the period 1 April to 31 March 2019.

The Commercial, Safety and Licensing Manager outlined the report and responded to comments and questions raised by Members.

- RESOLVED: A. That with effect from 1 April 2018, the proposed changes in Hackney Carriage and Private Hire Licensing fees and charges as contained in Table 1 in the report be approved.
- B. That delegated authority is granted to the Director of Leisure and Wellbeing Services to give notice under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 of the Councils intention to vary the fees and charges for vehicle, driver and operator licences.
- C. That with effect from 1 April 2018, the proposed fees and charges contained in Table 2 in the report be approved.

45 **EXCLUSION OF PRESS AND PUBLIC**

RESOLVED That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 2 (Identity of an individual) and Paragraph 7 (Criminal Matters) part 1 of Schedule 12A outweighs the public interest in disclosing the information.

46 **APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000229122**

Members were asked to consider an Application for a Private Hire Driver Licence Number WK/000229122 having regard to the content of the Statutory Declaration that accompanied the Application Form and any other relevant information.

RESOLVED: That Private Hire Driver Licence Number WK/000229122 be 'not proceeded with'.

47 **APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000232352**

Members were asked to consider an Application for a Private Hire Driver Licence Number WK/000232352 having regard to the content of the Statutory Declaration that accompanied the Application Form and any other relevant information.

The Applicant attended the meeting with his wife and was interviewed by the Committee during which he was advised of his right of appeal to the Magistrates Court if he was aggrieved by the decision.

RESOLVED: That Private Hire Driver Licence Number WK/000232352 be GRANTED.

(Note 1: Councillor Devine declared a pecuniary interest in relation to this item as the Applicant was known to him, and therefore left the Chamber during consideration of this item).

(Note 2: Councillor Delaney took the Chair for this item).

(Note 3: The Officers from the Leisure and Wellbeing Services left the meeting as Members considered their decision in this case).

48 **APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000234945**

Members were asked to consider an Application for a Private Hire Driver Licence Number WK/000234945 having regard to the content of the Statutory Declaration that accompanied the Application Form and any other relevant information.

RESOLVED: That Private Hire Driver Licence Number WK/000234945 be deferred one cycle in order to allow receipt of the DBS report.

49 APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000235062

Members were asked to consider an Application for a Private Hire Driver Licence Number WK/000235062 having regard to the content of the Statutory Declaration that accompanied the Application Form and any other relevant information.

The Applicant attended the meeting and was interviewed by the Committee during which he was advised of his right of appeal to the Magistrates Court if he was aggrieved by the decision.

RESOLVED: That Private Hire Driver Licence Number WK/000235062 be **REFUSED**.

(Note: The Officers from the Leisure and Wellbeing Services left the meeting as Members considered their decision in this case).

50 APPLICATION FOR PRIVATE HIRE DRIVER LICENCE - WK/000234379

Members were asked to consider an Application for a Private Hire Driver Licence Number WK/000234379 having regard to the content of the Statutory Declaration that accompanied the Application Form and any other relevant information.

The Applicant attended the meeting and was interviewed by the Committee during which he was advised of his right of appeal to the Magistrates Court if he was aggrieved by the decision.

RESOLVED: That Private Hire Driver Licence Number WK/000234379 be **GRANTED**.

(Note: The Officers from the Leisure and Wellbeing Services left the meeting as Members considered their decision in this case).

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Chairman



Agenda Item 8

AGENDA ITEM:

LICENSING & APPEALS
COMMITTEE:
20 February 2018

Report of: Director of Leisure and Environment

Contact for further information: Paul Charlson (ext 5246)
(E-mail: paul.charlson@westlancs.gov.uk)

SUBJECT: INSTITUTE OF LICENSING CONSULTATION – SUITABILITY OF HACKNEY CARRIAGE AND PRIVATE HIRE APPLICANTS AND LICENSEES

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

- 1.1 To inform Members of a public consultation, conducted by the Institute of Licensing, on determining the suitability of applicants and licensees in the Hackney Carriage and Private Hire trades and to approve a response.

2.0 RECOMMENDATIONS

- 2.1 That the consultation response provided at Appendix 4 to this report be approved for submission to the Institute of Licensing before the consultation deadline of 28 February 2018.

3.0 BACKGROUND

- 3.1 Members will be aware that the principal legislation governing the licensing of the Hackney Carriage (HC) and Private Hire (PH) trades is contained in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. This legislation provides that any person must satisfy the Council that they are a 'fit and proper' person to hold a relevant licence, which involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 3.2 However, given the age of this legislation, the current HC and PH licensing regime is principally built on case law. Moreover, 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, which has led to inconsistencies of approach between local authorities due to local interpretation.

- 3.3 Understanding these limitations, the Council has long adopted a Hackney Carriage and Private Hire Licensing Policy (the Policy). Whilst there is no legislative requirement for the Council to operate the Policy, it is the most appropriate means for the Council to discharge its responsibilities consistently and transparently. Furthermore, as the Policy has been in place since 2010, it has undergone several revisions to ensure its requirements are congruent with available guidance.
- 3.4 The consultation document produced by the Institute of Licensing (IoL) is intended to provide national guidance on determining suitability, taking into account the character of the applicant or licensee. The Council's approach to this issue has been to adopt a 'Convictions Policy', which is an appendix to the Policy. The detail contained in the Convictions Policy was taken from a document used in the Greater Manchester area and adopted within Lancashire. This was done in an attempt to improve consistency of approach across the region, which the IoL now seeks to develop nationally.
- 3.5 A copy of the IoL consultation document is provided at Appendix 2 to this report. A copy of the Council's current Convictions Policy is also provided at Appendix 3 for Members' information.

4.0 ISSUES

- 4.1 The majority of the consultation document content is consistent with the Policy, but seeks to develop this approach for drivers, operators, and notably, vehicle proprietors. The consultation document also focuses on why people commit offences, as well as the risk of reoffending, as a means to underpin the reasons for its approach.
- 4.2 There are some differences between the requirements outlined in the consultation and the Council's current standards. The majority of these relate to the period of time that should elapse from the date of an offence to the date on which a licence application would be considered. If such differences remain in the final document published by the IoL, these will be presented to Members for further consideration.
- 4.3 Appendix 4 to this report details the consultation questions posed by the IoL and the proposed response from the Council.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 5.1 These services have the potential to impact upon many areas within the Community, particularly upon taxi services and the travelling public within West Lancashire. Therefore the proposal links with the following aspect of the Community Strategy: Transport (issue B).

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 There are no financial implications associated with this report.

7.0 RISK ASSESSMENT

- 7.1 Officers are supportive of national guidance to assist in the determination of HC and PH licences and would seek to contribute to the IoL consultation. Should the IoL document be formally published, this will be presented to Members as a means to ensure the Policy mirrors national guidance. However, Members should note that the IoL guidance would not be binding on the Council; rather it aims to provide a reference point from which the Council can make decisions taking into account the particular merits of each case.
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Background Documents

There are no background documents (as defined in Section 100D (5) of the Local Government Act 1972) to this Report.


Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

1. Equality Impact Assessment.
2. Institute of Licensing consultation: determining the suitability of applicants and licensees in the hackney carriage and private hire trades
3. West Lancashire Borough Council – Convictions Policy
4. Proposed consultation response from West Lancashire Borough Council

Appendix 1

Equality Impact Assessment Form 	
Directorate: Leisure and Environment	Service: Licensing
Completed by: Paul Charlson	Date: 03/01/17
Subject Title: INSTITUTE OF LICENSING CONSULTATION – SUITABILITY OF HACKNEY CARRIAGE AND PRIVATE HIRE APPLICANTS AND LICENSEES	
1. DESCRIPTION	
Is a policy or strategy being produced or revised:	No
Is a service being designed, redesigned or cutback:	No
Is a commissioning plan or contract specification being developed:	No
Is a budget being set or funding allocated:	No
Is a programme or project being planned:	No
Are recommendations being presented to senior managers and/or Councillors:	Yes
Does the activity contribute to meeting our duties under the Equality Act 2010 and Public Sector Equality Duty (Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations):	No
Details of the matter under consideration:	
<p><i>If you answered Yes to any of the above go straight to Section 3</i></p> <p><i>If you answered No to all the above please complete Section 2</i></p>	
2. RELEVANCE	
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	No
If Yes , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered Yes go to Section 3</i>	

If you answered No to both Sections 1 and 2 provide details of why there is no impact on these three groups: <i>You do not need to complete the rest of this form.</i>	
3. EVIDENCE COLLECTION	
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	Licensing Authorities, service users, members of the public.
If the work being carried out relates to a universal service, who needs or uses it most? (Is there any particular group affected more than others)?	All sections of the public and businesses use or operate the licences outlined in this report.
Which of the protected characteristics are most relevant to the work being carried out?	
Age	No
Gender	No
Disability	No
Race and Culture	No
Sexual Orientation	No
Religion or Belief	No
Gender Reassignment	No
Marriage and Civil Partnership	No
Pregnancy and Maternity	No
4. DATA ANALYSIS	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	All sections of the public and businesses use or operate the licences outlined in this report.
What will the impact of the work being carried out be on usage/the stakeholders?	Consultation responses will help shape a guidance issued by the Institute of Licensing. The Council will consider this guidance when available.

What are people's views about the services? Are some customers more satisfied than others, and if so what are the reasons? Can these be affected by the proposals?	The Institute of Licensing is conducting this public consultation and so the Council is not currently seeking public views.
What sources of data including consultation results have you used to analyse the impact of the work being carried out on users/stakeholders with protected characteristics?	The Institute of Licensing is conducting this public consultation. This report seeks to provide comment to the consultation and so the policies of the Council are not being changed.
If any further data/consultation is needed and is to be gathered, please specify:	N/A
5. IMPACT OF DECISIONS	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	None.
6. CONSIDERING THE IMPACT	
If there is a negative impact what action can be taken to mitigate it? (If it is not possible or desirable to take actions to reduce the impact, explain why this is the case (e.g. legislative or financial drivers etc.).	N/A
What actions do you plan to take to address any other issues above?	No actions
7. MONITORING AND REVIEWING	
When will this assessment be reviewed and who will review it?	Consultation responses will help shape a guidance issued by the Institute of Licensing. The Council will consider this guidance when available.

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



Consultation version, February 2018



Institute of Licensing

CONSULTATION DRAFT

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 comprises:

1. Stephen Turner, Solicitor at Hull City Council and Licensing lead for the Lawyers in Local Government (Project Group Chair)
2. Jim Button, James Button & Co
3. Philip Kolvin QC, Cornerstone Barristers
4. John Miley, Broxtowe Borough Council and National Chair for NALEO
5. Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the IoL South East Region.
6. Phil Bates, Licensing Manager for Southampton City Council

This 'Guidelines on determining suitability for applicants etc.' is the result of the work of the project team and we welcome views on this consultation draft document. The guidelines include 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 of Licensing is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government jointly supporting this project with IoL.

We are grateful to others who have contributed to the work of the project group, including former probation officer Hannah Jones (now Housing Officer at Flintshire Council) who has assisted the group in providing the chapter on 'Offenders and Offending'. There are many other contributors and we are grateful to everyone for their contributions. All contributors will be acknowledged in the final post consultation document.

Responding to the consultation

We have provided an online survey to collect responses, and would ask that where possible, the survey is used to submit consultation responses. Please take the time to complete our survey giving us your views on the draft guidelines.

The survey can be accessed via:

https://www.surveymonkey.co.uk/r/Guidelines_on_Suitability_consultation_Feb18

THIS SURVEY WILL BE AVAILABLE UNTIL MIDNIGHT ON 28 FEBRUARY 2018 WHEN THE CONSULTATION PERIOD WILL END.



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Chapter 1: Introduction

- 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 qualifications¹. 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.
- 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 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*².

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

² [2007] 1 WLR 2067

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- 1.8 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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Chapter 2: Offenders and Offending - An Overview

“The aim of local authority licensing of the Hackney and PHV trades is to protect the public.”

- 2.1 With this in mind, Public Protection must be at the forefront of the decision makers 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 harm³. Risk assessment tools are regularly employed by those who are responsible for managing individuals that have committed offences. Local Authorities are not always privy to this information and 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.

³ Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press



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- 2.6 Flaud⁴ noted that risk is in principle, a matter of fact, but danger is a matter of judgement and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring, danger maybe the degree of damage (harm) caused should that event take place⁵.
- 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 future⁶. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than 12 months this increased to 59%⁷. 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 offences⁸.
- 2.9 Dynamic factors are considered changeable and can vary over time for example attitudes, cognitions and impulsivity⁹. It is documented that the greater the 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 more often than not, problems and/or needs are more frequently observed in offender populations than in the general population¹⁰. Many of these factors are interlinked and embedded in an individuals' 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. It is of note that such needs will vary

⁴ 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.

⁵ Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁶ Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

⁷ Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

⁸ Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

⁹ 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

¹⁰ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.



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from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

Risk of re-offending:

- 2.11 Increase in crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation prospects 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 individuals’ ability to address and reduce such needs relies heavily on their motivation to change and desist and often takes place over a period of time”¹¹.
- 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”¹².
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged thirty years and over¹³. 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 pro social relationships¹⁴. 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 males¹⁵.
- 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 desist¹⁶. As a result, it is important for individuals to evidence change in their behaviour. Often the only way of achieving this is over 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

¹¹ National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

¹² Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

¹³ Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364.

¹⁴ Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

¹⁵ Trueman, C.N. (2015). Women and Crime. The History Learning Site. Ingatestone: Essex.

¹⁶ Farrell, S (2005). Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback.



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more one comes to see the benefits of desistance¹⁷ . Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some 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”¹⁸ .

- 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 towards an individuals’ 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 license. Being able to evidence change in behaviour will involve consideration towards the circumstances at the time of the offence, steps taken to address any issues identified and that persons’ ability to sustain such change. This can be a long process that can only be achieved over time.

¹⁷ Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3rd Edition. Oxford: Oxford University Press.

¹⁸ 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

- 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 hands of the driver.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing¹⁹.
- 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 & 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?

¹⁹ Unfortunately, TfL have declined the invitation to contribute to, or participate in, this exercise, so this guidance document concentrates on the position in the remainder of England and Wales.

Taxi Drivers

- 3.10 What is a taxi driver? 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” person²⁰.
- 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 UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 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*²³. 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

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

²¹ 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.

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

²³ [2002] EWHC 1145 (Admin), [2003] RTR 199

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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?’²⁴

- 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.
- 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.”²⁵
- This “information” can include any pre-conditions or tests that they consider necessary
- 3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:
- 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 any and all criminal convictions (apart from “protected convictions” and “protected cautions”²⁷) can be taken into account by the local authority in assessing safety and

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

²⁵ Local Government (Miscellaneous Provisions) Act 1976 s57(1)

²⁶ See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

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



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suitability, but only relevant spent convictions should be considered by the decision maker²⁸.

- 3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate and to provide this to the Licensing Authority. All Licensees should also be required to maintain it through the DBS Update Service throughout the currency of their licence.
- 3.24 If any applicant has 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 suitability²⁹.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed.
- 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 drivers' licence on the applicant and his family is not a consideration to be taken into account³⁰. 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;

²⁸ See *Adamson v Waveney District Council* [1997] 2 All ER 898

²⁹ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³⁰ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

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drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these situations 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) 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.³¹ 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.³² PHOs also often take bookings for hackney carriages³³, which is outside the scope of a PHO Licence and local authorities should be mindful that passengers who are dispatched anything other than a PHV by a PHO will not have the benefit of the safeguards provided by the private hire regime.
- 3.36 As with taxi drivers the role 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 PHOs are as trustworthy and reliable as a driver, notwithstanding their slightly remote role.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability”?
- 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 PHO.
- 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?”³⁴

³¹ See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³² Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

³³ There is no requirement for a person who takes bookings solely for hackney carriages to hold any form of licence (see *Brentwood Borough Council v Gladen* [2004] EWHC 2500 (Admin); [2005] R.T.R. 12 and *Stockton v Fidler* [2010] EWHC 2430 (Admin); [2011] R.T.R. 23 Admin Crt

³⁴ *Button on Taxis – Licensing Law and Practice* 4th Ed Bloomsbury Professional at para 12.35



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- 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 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 organisation³⁵. 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 drivers’ 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, 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 licence³⁶ 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 applicants to transfer a vehicle as well as on grant applications.

³⁵ See s57(1)(c) of the 1976 Act.

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



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 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?”³⁷

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



Chapter 4: Guidance on Determination

- 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 All members of our society use, and in many cases 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 to either be granted a licence in the first place or 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

- 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.

Drivers

- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

Operators

- 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 & 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 proprietors licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operators licence, the limited company together with its directors and secretary, or all members of a partnership³⁸) 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.
- 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 conviction³⁹. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴⁰.

³⁸ 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.

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

⁴⁰ 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.



- 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 unacceptable 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, what weight should be attached to it and each and every case will be determined on its own merits, but 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 do have relevance, but they are not the 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 behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for unacceptable behaviour.
- 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 people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will 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



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(drivers, vehicle and operator) 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.

Crimes resulting in death

- 4.25 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 as a driver, operator or proprietor.

Drivers

- 4.26 As the criteria for determining whether an individual should be granted or retain a hackney carriage drivers licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.27 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



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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.

4.28 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.

4.29 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:

Offences involving violence

4.30 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

4.31 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

4.32 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.

4.33 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

4.34 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

4.35 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.



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- 4.36 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.

Motoring convictions

- 4.37 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 mobile phone whilst driving

- 4.38 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 5 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.
- 4.39 Where an applicant has a conviction for using a mobile phone whilst driving, a licence will not be granted until at least 3 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

Other motoring offences

- 4.40 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 a second conviction for a minor traffic offence or similar offence, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.41 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



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will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Hackney carriage and private hire offences

- 4.42 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

- 4.43 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

- 4.44 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.
- 4.45 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.
- 4.46 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 operators’ licence being revoked.
- 4.47 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

- 4.48 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.



- 4.49 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 4.50 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.51 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.
- 4.52 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.

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Appendix 3: Convictions Policy



West Lancashire Borough Council

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Hackney Carriage & Private Hire Licensing

Statement of Policy - relevant convictions, cautions, complaints and other relevant matters

1.0 Introduction

1.1 This document should be read in conjunction with the Council's Hackney Carriage and Private Hire Statement Licensing Policy and sets out the approach the Council will take in determining relevant convictions, cautions, complaints and other relevant matters in relation to:

- Hackney Carriage drivers
- Private Hire drivers
- Private Hire Operators

1.2 Accordingly, this Policy covers applications (new and renewal) as well as existing licensed drivers and operators.

1.3 The Council will aim to apply this Policy in a consistent manner; however, it may depart from this Policy if it has reason to do so, but will give full justification for such departure.

2.0 Definitions

2.1 "Individual" - an existing licence holder, an applicant for a new licence or an applicant for the renewal of an existing licence.

2.2 "Issue" – includes the following:

- Complaints made to the Council, Police, Private Hire Operator or any other agency
- Breaches of licence conditions
- Intelligence received from other agencies, which includes circumstances that have not resulted in a criminal conviction, caution or other disposal. By way of example, this would also include incidents that have resulted in a police investigation, but there has been no further action due to the criminal burden of proof, if the Council is satisfied that the incident occurred based on the balance of probabilities

2.3 "The Council" – West Lancashire Borough Council.

3.0 General

- 3.1 Licences may only be granted where the Council is satisfied that the individual is a “fit and proper person” to hold such a licence.
- 3.2 This Policy is intended to give guidance on one aspect of whether an individual is or is not a “fit and proper” person; specifically, the situation where an individual has previous convictions, cautions, complaints and/or other relevant matters.
- 3.3 The Council is concerned to ensure:
- That an individual is a “fit and proper” person
 - That the public are not exposed to individuals with a history of dishonesty, indecency and/or violence
 - The safeguarding of children, young persons and vulnerable adults
- 3.4 The public are not normally permitted to attend hearings relating to specific driver or operator licences. In determining an application or licence, the Council will take account of the human rights of the wider public and balance these against the human rights of the individual.
- 3.5 When submitting an application for a licence to drive a Hackney Carriage or Private Hire vehicle, or for an Operator licence, individuals are required to declare any and all previous convictions. Individuals are also required to declare any and all:
- Formal/simple cautions
 - Matters of restorative justice
 - Fixed penalties and endorsable fixed penalties
 - Details of criminal matters of which they are currently the subject of criminal investigation and/or prosecution
- 3.6 The information will be treated in confidence and will only be taken into account in relation to the relevant application in order to assist the Council in determining whether the applicant is a “fit and proper” person to hold a driver’s licence for the purposes of Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, and / or whether the Council should exercise any of its powers under Section 61 and 62 of this Act (i.e. suspension, revocation or refusal to renew a existing licence).
- 3.7 Driver licence applicants should be aware that the Council is empowered by law to check with the Disclosure and Barring Service for the existence and content of any criminal record and / or intelligence held in their name. Furthermore, the Council will, where appropriate, contact other agencies for any other information (e.g. other local authorities, the Police, Children’s Services) which they may hold in order to determine the application or existing licence. This information will be kept in strict confidence and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and

good practice after the application is determined or any appeal against such determination is decided.

- 3.8 The disclosure of a criminal conviction, caution or other relevant information relating to an individual's conduct will not debar that individual from being granted, retaining or renewing a licence. It will depend on whether or not an individual can satisfy the Council that they are a "fit and proper" person to hold such a licence.
- 3.9 The Council may not be satisfied that an individual is a "fit and proper" person to hold a licence for any good reason. If adequate evidence that an individual is a fit and proper person is not presented or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a licence.
- 3.10 In considering evidence of an individual's good character and fitness to hold a driver / operator licence and where previous convictions / cautions or other information relating to criminal matters or character are disclosed, the Council will consider:
- The nature of the offence / issue and penalty
 - When it was committed / took place
 - The date of conviction / issue and the length of time elapsed
 - The age of the individual when the offence / issue took place
 - Whether or not it is part of a pattern of behaviour
 - The intent the harm could or did cause
 - Any other factors which may be relevant
- 3.11 Where an applicant has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*].
- 3.12 The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining new / renewal applications for driver and operator licences, and also when considering whether to take any action against an existing licence holder.
- 3.13 The guidelines do not address every type of offence and do not prevent the Council from taking into account offences not specifically addressed in the guidelines or other conduct that may be relevant to an individual. If an individual has a conviction for an offence not covered by these guidelines, regard will be made to the factors contained in paragraph 3.10 when deciding whether any action should be taken.
- 3.14 Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.
- 3.15 The guidelines are not an attempt to define what a "fit and proper person" is.

- 3.16 Any individual refused a driver licence, or has such licence suspended or revoked, on the grounds that the Council is not satisfied he / she is a fit and proper person to hold such a licence has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.
- 3.17 Any individual who is refused an operator licence has a right to appeal to the Magistrates Court within 21 days of the notice of refusal.
- 3.18 The guidelines will be used for the determination of new applications, the renewal of existing licences and the review of existing licences in relation to Hackney Carriage drivers, Private Hire drivers and Private Hire Operators.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS, CAUTIONS, COMPLAINTS AND OTHER RELEVANT MATTERS

4.0 General Policy

4.1 Each case will be decided on its own merits.

4.2 The Council has a duty to ensure so far as is possible that drivers are “fit and proper” persons to hold licences. One aspect of this is the extent to which previous convictions indicate that an individual is not a “fit and proper” person and / or may take advantage of passengers, abuse or assault them or otherwise take advantage of the role that the licence provides. This includes, but is not limited to, convictions for:

- Offences against children, young people or vulnerable adults
- Dishonesty
- Sexual offences
- Violence and drugs
- Traffic offences

4.3 Restorative justice and other criminal disposals are increasingly used by the Police as a less formal method of dealing with issues and an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders. Nevertheless, all such disposals will be taken into account when determining if an individual is a “fit and proper” person.

4.4 An individual with a conviction for a serious offence(s) need not be automatically barred from obtaining a licence, but would normally be expected to:

- Remain free of conviction for an appropriate period; and
- Show adequate evidence that he or she is a “fit and proper” person to hold a licence (the onus is on the individual to produce such evidence)

4.5 Simply remaining free of conviction will not generally be regarded as sufficient evidence that a person is a “fit and proper” person to hold a licence.

4.6 It may be appropriate to depart from these guidelines in certain situations, these include:

- Where the offence is isolated and there are mitigating circumstances
- Where a conviction defaults outside of the policy between the application date and the determination date

4.7 Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account. Any case which involves a sexual

offence, murder or manslaughter the application / licence will normally be refused / revoked.

- 4.8 The Council will convene to consider any information / representations that an individual is not / no longer a “fit and proper” person or has proven to have breached a licence condition. In such cases the Council may refuse, revoke or suspend a licence for any specified period. The Council may also determine that such action be implemented with immediate effect.
- 4.9 The following examples afford a general guide on the action, which might be taken where convictions are disclosed.

5.0 Dishonesty offences

- 5.1 Drivers of a Hackney Carriage and / or Private Hire vehicles are expected to be persons of trust. Licences awarded by the Council are to those considered under the Council’s guidelines, to be a fit and proper person. This is because it is the Council’s view that it is relatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways. Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. Passengers may include especially vulnerable people and children.
- 5.2 For these reasons the Council takes a serious view of any convictions involving dishonesty. In general, an applicant with convictions for dishonesty which is less than 5 years of the conviction date, is unlikely to be considered favourably and be referred to a hearing for determination.
- 5.3 In particular, an application will normally be refused where the applicant has a conviction for an offence listed below and the conviction is less than 3 years prior to the date of the application. Between 3 and 5 years after conviction, or release from prison (whichever is the most recent), regard will be made to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.
- Burglary
 - Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
 - Blackmail
 - Bribery
 - Conspiracy to defraud
 - Forgery (e.g. producing false insurance policy)
 - Fraud
 - Handling or receiving stolen goods
 - Obtaining money or property by deception
 - Theft
 - Offence of possession of goods with false trade mark for sale or hire-Trade Marks Act 1994

- Other deception
- Similar offences
- Offences which replace any of the above offences

6.0 Violent offences

- 6.1 Members of the public and in particular, the elderly, infirm and children or vulnerable adults entrust their personal safety to Private Hire and Hackney Carriage drivers whenever they take a journey. Passengers often travel alone and are vulnerable to physical attack etc.
- 6.2 Users of Private Hire and Hackney Carriage vehicles have a right to expect that drivers are not individuals with a predisposition towards or a propensity for violent behaviour at any level.
- 6.3 Convictions for violence are amongst the most serious of all criminal offences.

Offences of violence against children and young people

- 6.4 Drivers of Private Hire and Hackney Carriage vehicles are often entrusted with the transportation of children and young persons who are particularly vulnerable whilst in the care of the driver. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.
- 6.5 The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.
- 6.6 An extremely serious view will be taken where an applicant has been convicted of any offence of violence involving a child (under 14 years of age) or a young person (aged 14 to 17 years) and, in order to afford an appropriate degree of protection to children and young people, an applicant will be required to provide substantial evidence of rehabilitation before the Council will be satisfied that the applicant is a "fit and proper" person.
- 6.7 Convictions of less than 10 years old prior to the date of application will be referred to a hearing. A conviction less than 5 years old will generally be refused. Between 5 and 10 years after conviction, or release from prison (whichever is the most recent), regard will be made to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.
- 6.8 Where the commission of an offence involved the loss of life, a licence will normally be refused.

Offences against adults

- 6.9 Hackney Carriage and Private Hire vehicle drivers maintain close contact with the people from all parts of the community and the Council takes the view that law abiding citizens should not be exposed to a risk of violence by placing them in a

vehicle driven by a person with a history of criminal violence. The elderly and infirm, the vulnerable, lone females and people who are drunk are all at particular risk from a driver with a tendency to resort to violence.

- 6.10 Where the commission of an offence involved the loss of life, a licence will normally be refused.
- 6.11 Convictions of less than 10 years old prior to the date of application, or their release from prison (whichever is most recent) will be referred to a hearing. A conviction less than 3 years old will generally be refused.

Offence types

6.12 Convictions falling into the most serious group offences of violence involving the loss of life are likely to result in refusal of an application:

- murder
- manslaughter
- culpable homicide
- Similar offences
- Offences which replace the above offences

6.13 Applicants with one or more convictions for very serious violence should expect the application to be refused until a period of at least 10 years has elapsed from the date of conviction or their release from prison (whichever is most recent), including:

- Arson
- Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861)
- Which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- Actual bodily harm (s.47 Offences Against the Person Act 1861) (v) Which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
- Grievous bodily harm with intent (s.18 Offences Against the Person Act 1861)
- Grievous bodily harm with intent (s.20 Offences Against the Person Act 1861)
- Robbery
- Possession of firearm
- Riot
- Kidnap
- Assault Police
- Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Violent disorder
- Resisting arrest
- Similar offences
- Offences which replace the above offences

6.14 Applicants with one or more convictions for serious violence should expect the application to be refused until a period of at least five years has elapsed from the date of conviction or their release from prison (whichever is most recent), including:

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Fear of provocation of violence which is racially-aggravated (s.4 Public Order Act 1986) or (s.31(1)(a) Crime and Disorder Act 1998)
- Intentional harassment, alarm or distress which is racially-aggravated (s.4A Public Order Act 1986 offence) or (s.31(1)(b) Crime and Disorder Act 1998)
- Harassment which is racially-aggravated (s.2 Protection from Harassment Act 1997) or (s.32(1)(a) Crime and Disorder Act 1998)
- Putting people in fear of violence which is racially-aggravated (s.4 Protection from Harassment Act 1997) or (s.32(1)(b) Crime and Disorder Act 1998)
- Harassment, alarm or distress which is racially-aggravated (s.5 Public Order Act 1986) (s.31(1)(c) Crime and Disorder Act 1998)
- Similar offences
- Offences which replace the above offences

6.15 Applicants with one or more convictions for other offences of violence should expect the application to be refused until a period of at least three years has elapsed from the date of conviction or their release from prison (whichever is most recent), including:

- Common assault
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Affray
- Battery
- Harassment, alarm or distress (s.5 Public Order Act 1986 offence)
- Fear of provocation of violence (s.4 Public Order Act 1986 offence)
- Intentional harassment, alarm or distress (s.4A Public Order Act 1986 offence)
- Obstruction
- Possession of offensive weapon
- Criminal damage
- Similar offences
- Offences which replace the above offences

7.0 Drugs offences

7.1 An application will normally be refused where the applicant has a conviction for an offence related to the supply of drugs and the conviction is less than 5 years prior to the date of application or their release from prison (whichever is most recent). Between 5 and 10 years, regard will be had to the circumstances of the offence and any evidence demonstrating that the individual is now a fit and proper person to hold a licence.

- 7.2 An application will normally be refused where the applicant has more than one conviction for offences related to the possession of drugs and the convictions are less than 5 years prior to the date of the application.
- 7.3 An application from an individual who has an isolated conviction for an offence related to the possession of drugs within the last 3 to 5 years will require careful consideration of the facts.
- 7.4 If any applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

8.0 Sexual and indecency offences

- 8.1 Any individual currently on the sex offenders" register would not normally be granted a licence.

Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)

- 8.2 Drivers of Hackney Carriages and Private Hire vehicles are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons. Where the commission of a sexual offence involves a child or young person an application for a licence will normally to be refused.

Intelligence and other information which has not resulted in a criminal conviction

- 8.3 The Council will sometimes be made aware of other intelligence or low level information about an individual which has not resulted in the conviction of that person but is relevant in relation to their character. The Council will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Where appropriate, the Council will investigate such information/ intelligence. Any additional information gathered through the investigation process may then be taken into account at any subsequent hearing.

Offences against persons other than children and young persons

- 8.4 Hackney Carriage and Private Hire vehicle drivers often carry unaccompanied passengers; therefore applicants will normally be refused a licence if they have a conviction for:

- Indecent assault
- Rape
- Other similar offences
- Offences under the Sexual Offences Act 2003

- 8.5 Applicants will normally be refused a licence if they have a conviction relating to sexual offences until they can show a substantial period (normally 10 years) free from any such conviction or their release from prison (whichever is most recent). Between 5 and 10 years following conviction or their release from prison (whichever

is most recent), regard will be had to the circumstances of the offence and any evidence demonstrating that such an individual is now a fit and proper person to hold a licence, including:

- Importuning
- Indecent exposure
- Soliciting
- Other similar offences or offences under the Sexual Offences Act 2003 when the provisions of that Act come into force

8.6 The Council may also consider such circumstances that, if they occurred at the time of the consideration of the application, would not be a criminal offence.

9.0 Motoring offences

Disqualification

9.1 Where an applicant has been disqualified from driving because of a major traffic offence, the applicant will generally be refused a drivers licence for a Hackney Carriage or Private Hire vehicle unless a period of 3 years free from conviction has passed since the reinstatement of the DVLA licence, and 5 years where the disqualification relates to drink driving.

9.2 Where several minor traffic offences have resulted in the applicant being disqualified from driving for a period of time, this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 3 years free from conviction must have elapsed from the restoration of the DVLA licence.

9.3 In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver, the Council is likely to refuse a Hackney Carriage or Private Hire driver licence because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the Court made its finding of exceptional circumstances justifying the non-qualification.

Major Traffic Offences

9.4 An application will normally be refused where the applicant has a conviction for an offence within 2 years of the date of the application from the date of conviction. More than one conviction for this type of offence within the last 5 years from the date of conviction is likely to merit refusal. A list of offences to which this paragraph applies is attached as Table 1.

Minor Traffic Offences

9.5 Isolated convictions for minor traffic offences should not prevent a person from obtaining a licence. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature, the applicant will normally be expected to show a period free of conviction of at least 6

months from the date of conviction. A list of offences to which this paragraph applies is attached as Table 2.

Hybrid Traffic Offences

- 9.6 Offences of the type listed in Table 2 will be treated as major traffic offences if the Court awarded 4 or more penalty points for the offence and as minor traffic offences if the Court awarded 3 or less penalty points for the offence.

Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws

- 9.7 One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 (“the Acts”) and Hackney Carriage Byelaws is to ensure the protection of the public. For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire) when deciding whether an individual is to be treated as a fit and proper person to hold a licence. In particular, an applicant will normally be refused a licence if he / she has been convicted of an offence under the Acts at any time during the 2 years preceding the application from the date of conviction or has more than one conviction within the last 5 years preceding the date of the application from the date of conviction.

Drunkenness

- 9.8 Driving whilst under the influence of drink is unacceptable under any circumstances and puts not only the driver, but passengers and other road users at risk. Such irresponsible behaviour is not conducive with the responsibilities of a Private Hire or Hackney Carriage driver.

With a motor vehicle

- 9.9 A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An application will normally be refused where the applicant has a conviction for an offence within 2 years of the date of the application. More than one conviction for this type of offence within the last 5 years from the date of conviction is likely to merit refusal. Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should elapse after the restoration of the DVLA licence before an applicant is considered for a licence.

- 9.10 In addition, applicants will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if he / she were an alcoholic.

Not in a motor vehicle

- 9.11 An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical

examination and refusal of a licence. In addition, applicants will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if he / she were an alcoholic.

10.0 General

Spent Convictions

10.1 The Council will only consider spent convictions if it appears to be relevant for deciding whether an individual is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

Cautions, Reprimands and Fixed Penalties

10.2 For the purpose of these guidelines formal cautions, reprimands and fixed penalties shall be treated as though they were convictions.

Other relevant offences

10.3 The Council takes a serious view of any convictions involving the law and practice concerning bail conditions. In general if an application is received with a conviction which is less than 3-5 years of the conviction date or their release from prison (whichever is most recent), it is unlikely to be considered favourably.

10.4 In particular, an application will normally be refused where the applicant has a conviction for offences committed under the:

- Bail Act 1976
- Bail (Amendment) Act 1993
- Magistrates' Court Act 1980
- Magistrates' Court Rules 1981
- Criminal Justice Act 2003
- Powers of Criminal Courts (sentencing) Act 2000

or similar offences or offences which replace the above offences and the conviction(s) are less than 3 years prior to the date of application. Between 3 and 5 years, regard will be had to the circumstances of the offence and any evidence demonstrating that such an individual is now a fit and proper person to hold a licence.

Table 1**MAJOR TRAFFIC OFFENCES**

AC10:	Failing to stop after an accident
AC20:	Failing to give particulars or to report an accident within 24 hours
AC30:	Undefined accident offences
BA10:	Driving while disqualified by order of Court
BA30:	Attempting to drive while disqualified by order of Court
CD10	Driving without due care and attention
CD20:	Driving without reasonable consideration for other road users
CD30:	Driving without due care and attention or without reasonable consideration for other road Users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for
CD80	Causing death by careless, or inconsiderate, driving
CD90	Causing death by driving: unlicensed, disqualified or uninsured drivers
DD40:	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DD90	Furious driving
DR10:	Driving or attempting to drive with alcohol level above limit
DR20:	Driving or attempting to drive while unfit through drink
DR30:	Driving or attempting to drive then failing to supply a specimen for analysis
DR40:	In charge of a vehicle while alcohol level above limit
DR50:	In charge of a vehicle while unfit through drink
DR60:	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR70:	Failing to provide specimen for breath test
DR80:	Driving or attempting to drive when unfit through drugs
DR90:	In charge of a vehicle when unfit through drugs
IN10:	Using a vehicle uninsured against third party risks
LC20:	Driving otherwise than in accordance with a licence
LC30:	Driving after making a false declaration about fitness when applying for a licence
LC40:	Driving a vehicle having failed to notify a disability
LC50:	Driving after a licence has been revoked or refused on medical grounds
MS50:	Motor racing on the highway

MS60:	Offences not covered by other codes (including offences relating to breach of requirements as to control of vehicle)
TT99	To signify a disqualification under 'totting-up' procedure. If the total of penalty points reaches 12 or more within three years, the driver is liable to be disqualified
UT50:	Aggravated taking of a vehicle
<i>Aiding, abetting, counselling or procuring</i>	
Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)	
<i>Causing or permitting</i>	
Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)	
<i>Inciting</i>	
Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)	
Or similar offences or offences which replace the above offences	

Table 2

MINOR TRAFFIC OFFENCES

CU10:	Using vehicle with defective brakes
CU20:	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30:	Using a vehicle with defective tyres
CU40:	Using a vehicle with defective steering
CU50:	Causing or likely to cause danger by reason of load or passengers
CU80:	Using a mobile phone while driving a motor vehicle
MS10:	Leaving a vehicle in a dangerous position
MS20:	Unlawful pillion riding
MS30:	Play street offences
MS40:	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70:	Driving with uncorrected defective eyesight
MS80:	Refusing to submit to an eyesight test
MS90:	Failure to give information as to identity of driver, etc.
MW10:	Contravention of Special Road Regulations (excluding speed limits)
PC10:	Undefined contravention of Pedestrian Crossing Regulations
PC20:	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30:	Contravention of Pedestrian Crossing Regulations with stationary vehicle
SP10:	Exceeding goods vehicle speed limit
SP20:	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30:	Exceeding statutory speed limit on a public road
SP40:	Exceeding passenger vehicle speed limit
SP50:	Exceeding speed limit on a motorway
SP60:	Exceeding speed limit offence
TS10:	Failing to comply with traffic light signals
TS20:	Failing to comply with double white lines
TS30:	Failing to comply with a "Stop" sign
TS40:	Failing to comply with direction of a constable or traffic warden
TS50:	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60:	Failing to comply with school crossing patrol sign
TS70:	Undefined failure to comply with a traffic direction sign
<i>Aiding, abetting, counselling or procuring</i>	
Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)	
<i>Causing or permitting</i>	

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)
<i>Inciting</i>
Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)
Or similar offences or offences which replace the above offences

Appendix 4: Proposed consultation response

Question 1: Do you support the 'bright-line' approach taken in this guidance?

Proposed response:

The Council first adopted a Policy to govern its approach to the licensing of Hackney Carriage and Private Hire trades in 2010, which has been updated since that time. This Policy contains a 'Convictions Policy' which has similar aims to the consultation document. The content of the Convictions Policy was based on that developed in the Greater Manchester area. Accordingly, our Convictions Policy does not adopt a 'bright line' approach and does use the wording "a licence would not normally be granted if..." This wording is used as a means to ensure, and demonstrate, there is no predetermination or bias and allows Members to truly consider the individual merits of the case. A bright line approach does not affect the individual merits of a case, but does provide a clear steer to Members that would necessitate the wording of a decision to reflect why and how that decision was taken.

Question 2: Do you support the provision of guidance on determining suitability for applicants and licensees in the hackney carriage and private hire trades?

Proposed response:

Yes.

Question 3: What do you consider are the main advantages to this guidance?

Proposed response:

It would promote greater consistency between local authorities. In the absence of formal and/or Government guidance, it is also important that the guidance is produced by a noted body i.e. the IoL, but also supported for relevant bodies e.g. Local Government Association, trade bodies, Police etc.

Question 4: Do you think there are potential disadvantages to this guidance?

Proposed response:

A similar approach has been taken by this Council since 2013. However, whilst the current Convictions Policy supports, and is broadly consistent with, the IoL document, it is more prescriptive in its consideration of individual offences. The Council would seek to support the IoL document, but would not wish to lessen its standard or approach unless this was inconsistent. There are also likely to be justifiable local considerations within local authorities, such as historical issues and/or local sensitivities, which seek a higher or more specific standard than that proposed by the IoL document, and this should be acknowledged.

Question 5: Are you likely to recommend that your local authority consider the guidance as a basis for its own policy once the final version is published?

Proposed response:
Yes.

Question 6: Are there any factors which would influence the likelihood of your local authority adopting the Policy?

See response to question 4.

Question 7: Do you have any comments on the introduction to the document?

Proposed response:
No, other than the aforementioned comments regarding the 'bright line' approach.

Question 8: Do you have any comments on the 'Offenders and Offending overview' section of the document?

Proposed response:
The Council's current Convictions Policy does not contain this information. The details about research and findings in relation to offenders and patterns of re-offending, as well insights into why time lapse is an important factor when considering likelihood of re-offending and suitability of an applicant, are useful.

Question 9: Do you have any comments on the 'taxi overview' section of the document?

Proposed response:
Much of this section is similar to that contained in the Council's Policy. The document is therefore useful to ensure that any references are consistent.

Question 10 - Please provide your views to the following statements:

Question 10a:

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.

Proposed response:
We would support this statement and similar wording is contained in the Council's current Policy.

Question 10b:

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[1]. Fixed penalties and community resolutions will also be considered in the same way as a conviction[2].

[1] This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

[2] 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.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10c:

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 unacceptable behaviour, but which have not resulted in a conviction.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10d:

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.

Proposed response:

Applicants and existing licence holders are currently presented to Committee when charged with a relevant offence for determination in accordance with the Councils' Policy. We do not currently defer a new application until the trial has been completed or the charges withdrawn. This is because of the aforementioned statements that it is important to recognise that matters which have not resulted in a criminal conviction can and will be taken into account by the Council.

Question 10e:

In all cases, the licensing authority will consider the conviction or behaviour in question, what weight should be attached to it and each and every case will be determined on its own merits, but in the light of these guidelines.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10f:

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.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10g:

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 do have relevance, but they are not the determining factor.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10h:

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 behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for unacceptable behaviour.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10i:

Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will not prevent the grant or renewal of a licence.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10j:

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 (drivers, vehicle and operator) 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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10k:

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10l:

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 11 - Please provide your views to the following statements:

Question 11a: Crimes resulting in death

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 as a driver, operator or proprietor.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences.

Question 11b: Offences involving violence

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences. The Council makes the distinction between levels and nature of violence, with differing elapsed periods ranging from 3 to 10 years. Serious violence that includes loss of life would normally be refused.

Question 11c: Possession of a weapon

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences. The Council makes the distinction between levels and nature of violence, with differing elapsed periods ranging from 3 to 10 years.

Question 11d: Sex and indecency offences

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. In addition, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences.

Question 11e: Dishonesty

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, the period of time from the date of offence is currently set at 5 years.

Question 11f: Drugs

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between sale and supply of drugs, as well as isolated or multiple offences.

Question 11g: Drugs

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 11h: Motoring convictions

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 11i: Drink driving/driving under the influence of drugs/using a mobile phone whilst driving

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 5 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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between offences.

Question 11j: Drink driving/driving under the influence of drugs/using a mobile phone whilst driving

Where an applicant has a conviction for using a mobile phone whilst driving, a licence will not be granted until at least 3 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, there is a difference in the period from the date of offence.

Question 11k: Other motoring offences

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 a second conviction for a minor traffic offence or similar offence, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made, given the wide variety of offences.

Question 11l: Other motoring offences

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, the period of time from the date of offence is currently set at 5 years.

Question 11m: Hackney carriage and private hire offences

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences with differing elapsed periods ranging from 2 to 5 years.

Question 11n: Vehicle use offences

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.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences with differing elapsed periods ranging from 2 to 5 years.

Question 12: Do you agree that the same standards should be applied to private hire operators as to drivers?

Proposed response:

We are interested to note the applicability of knowledge tests to such licences, but there are limitations as to the level of DBS disclosure that can be applied to operators that are not consistent with drivers. This Council requires that operators provide a list, and attest to the safety and suitability, of those persons that work for (and/or are used by) them. This would include booking staff etc.

Question 13: Do you agree that the same standards should be applied to vehicle proprietors as to drivers?

Proposed response:

We would be interested to consider the arguments that similar standards can be applied to vehicle licences, as there is no explicit regime to regulate settle businesses that provide cars to licensed drivers, but are not licensed drivers themselves.

By virtue of paragraph(s) 2, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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