



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

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28 September 2018

**TO: COUNCILLORS      G OWEN, N FUREY, C DERELI, C EVANS, P HUDSON, J KAY,  
J MEE, M MILLS, A OWENS, D WEST 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, 9 OCTOBER 2018** at **7.30 PM** at which your attendance is requested.

Yours faithfully

A handwritten signature in black ink, appearing to be "Kim Webber", written over a horizontal line.

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** 29 - 30

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** 31 - 32

To receive as a correct record the minutes of the meeting held on 5 June 2018

**8. HEALTH AND SAFETY REGULATORY SERVICE PLAN 2018/19** 33 - 46

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

**9. ADMINISTRATIVE AND SAFEGUARDING MEASURES, INCLUDING CHANGES TO THE CONVICTIONS POLICY CONTAINED IN THE HACKNEY CARRIAGE AND PRIVATE HIRE STATEMENT OF LICENSING POLICY 2018** 47 - 96

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

**10. THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (ENGLAND) REGULATIONS 2018** 97 - 104

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

**11. 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.

**12. APPLICATION FOR PRIVATE HIRE DRIVER LICENCE – WK/000244951** 105 - 108

To consider the report of the Director of Leisure and Environment.  
(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](mailto:julia.brown@westlancs.gov.uk)

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

<b>PERSON IN CHARGE:</b>	Most Senior Officer Present
<b>ZONE WARDEN:</b>	Member Services Officer / Lawyer
<b>DOOR WARDEN(S)</b>	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"/>	You cannot speak or vote and must withdraw unless you have also ticked 5 below
2.	I have a non-pecuniary interest.	<input type="checkbox"/>	You may speak and vote
3.	<p>I have a pecuniary interest <b>because</b></p> <p>it affects my financial position or the financial position of a connected person or, a body described in 10.1(1)(i) and (ii) <b>and</b> 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</p> <p>or</p> <p>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) <b>and</b> 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</p>	<input type="checkbox"/>       <input type="checkbox"/>	<p>You cannot speak or vote and must withdraw unless you have also ticked 5 or 6 below</p>       <p>You cannot speak or vote and must withdraw unless you have also ticked 5 or 6 below</p>
4.	<p>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:</p> <p>(i) Housing where I am a tenant of the Council, and those functions do not relate particularly to my tenancy or lease.</p> <p>(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.</p> <p>(iii) Statutory sick pay where I am in receipt or entitled to receipt of such pay.</p> <p>(iv) An allowance, payment or indemnity given to Members</p> <p>(v) Any ceremonial honour given to Members</p> <p>(vi) Setting Council tax or a precept under the LGFA 1992</p>	<input type="checkbox"/>       <input type="checkbox"/>       <input type="checkbox"/>       <input type="checkbox"/>       <input type="checkbox"/>       <input type="checkbox"/>	<p>You may speak and vote</p>       <p>You may speak and vote</p>       <p>You may speak and vote</p>       <p>You may speak and vote</p>       <p>You may speak and vote</p>
5.	A Standards Committee dispensation applies (relevant lines in the budget – Dispensation 20/09/16 – 19/09/20)	<input type="checkbox"/>	See the terms of the dispensation
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"/>	You may speak but must leave the room once you have finished and cannot vote

**‘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

### **Prescribed description**

Employment, office,  
trade, profession or  
vocation

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

## Sponsorship

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.

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	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.



## LICENSING & APPEALS COMMITTEE

**HELD: Tuesday, 5 June 2018**

Start: 7.30 pm

Finish: 8.20 pm

### PRESENT:

Councillor: G Owen (Chairman)

Councillors:	N Furey	C Dereli
	C Evans	J Kay
	M Mills	A Owens
	D West	

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

### 1 APOLOGIES

Apologies were received on behalf of Councillor Wright.

### 2 MEMBERSHIP OF THE COMMITTEE

There were no changes to Membership of the Committee.

### 3 URGENT BUSINESS

There were no urgent items of business.

### 4 DECLARATION OF PARTY WHIP

There were no declarations of Party Whip.

### 5 DECLARATION OF INTEREST

There were no declarations of interest.

### 6 MINUTES OF SUB - COMMITTEES OR WORKING GROUPS

There were no minutes to receive.

### 7 MINUTES

RESOLVED That the Minutes of the meeting held on 10 April 2018 be received as a correct record and signed by the Chairman.

### 8 DATE OF NEXT MEETING

RESOLVED That the meeting date be changed from Tuesday 10 July 2018 to Tuesday 3 July 2018.

**9 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.

**10 APPLICATION FOR PRIVATE HIRE DRIVER LICENCE – WK/000238507**

Members were asked to consider an Application for a Private Hire Driver Licence Number WK/000238507 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/000238507 be GRANTED.

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

**11 APPLICATION FOR PRIVATE HIRE DRIVER LICENCE – WK/000233094**

Members were asked to consider an Application for a Private Hire Driver Licence Number WK/000233094 having regard to the Statutory Declaration that accompanied the Application Form and any other relevant information.

RESOLVED: That Private Hire Driver Licence Number WK/000233094 be endorsed 'Not Proceeded With'.

.....  
**Chairman**



# Agenda Item 8

## AGENDA ITEM:

### LICENSING & APPEALS COMMITTEE:

9 OCTOBER 2018

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**Report of: Director of Leisure and Environment**

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

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**SUBJECT: HEALTH AND SAFETY REGULATORY SERVICE PLAN 2018/19**

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Wards affected: Borough wide

## **1.0 PURPOSE OF REPORT**

- 1.1 To seek Members agreement of the Health and Safety Regulatory Service Plan 2018/19.

## **2.0 RECOMMENDATIONS**

- 2.1 That the Health and Safety Regulatory Service Plan for 2018/19, attached at Appendix 2 to this report is approved.

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## **3.0 BACKGROUND**

- 3.1 Every local authority is required to make adequate arrangements for the enforcement of the Section 18 of the Health & Safety at Work etc Act 1974 (the Act) and associated legislation. The Act also places a duty on local authorities to perform that duty in accordance with such guidance as the Health and Safety Executive (HSE) provides.
- 3.2 This guidance is principally contained within HSE Circular LAC 67/2, which sets out the HSE's priorities for local authority regulation the given year. In previous years, the HSE has moved away from routine proactive inspections towards targeted sector specific interventions. As many of these sectors were not present within the Borough, this reduced the number of interventions that were available to the Council. This, coupled with significant operational pressures placed on the Commercial Safety Service during previous years, meant that it was agreed that a formal service plan would not be published during this time. That said,

operational plans have been put in place and the requirements of those plans have been implemented and submitted to the HSE.

#### **4.0 CURRENT POSITION**

- 4.1 In contrast to previous years, the LAC 67/2 for 2018/19 provides greater opportunity for the Council's Officers to undertake interventions within the Borough. The means by which this will be achieved is contained in the Health and Safety Regulatory Service Plan 2018/19 (the Plan), which is attached to this report at Appendix 1.
- 4.2 The delay in presenting this report to Members was due to the finalised data submitted to the HSE for 2017/18 not being available in sufficient time prior to the summer recess. Future reports will be submitted to Members at the earliest opportunity, outlining the requirements of the Plan [without finalised data if necessary], so that approval can be obtained earlier in the relevant financial year (i.e. April or June).
- 4.3 Whilst the subject of this report is not directly related to the routine business of the Licensing and Appeals Committee, the authority to approve the Plan is contained within the delegations to this Committee.

#### **5.0 SUSTAINABILITY IMPLICATIONS**

- 5.1 The Plan provides an expression of the Council's ongoing commitment to the development of the Health and Safety Service. Accordingly, the service has an impact on the health, safety and welfare of residents, businesses and employees within West Lancashire and contributes significantly towards improving the health of the local communities.

#### **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 6.1 The costs associated with production of the Plan and the work detailed in the Plan for 2018/19 can be met within existing resources.

#### **7.0 RISK ASSESSMENT**

- 7.1 The Health and Safety Regulatory Service Plan describes the financial and resource implications for the service, which will be met from existing budgets. If adequate resources were not available, the Council may not be able to deliver an effective health and safety enforcement service as required by Government and the HSE.

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#### **Background Documents**

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

- Guidance Section 18 Guidance to Local Authorities
- HSE Local Authority Circular 67/2


### **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. Health and Safety Regulatory Service Plan 2018/19.

## Appendix 1

<h1 style="text-align: center;">Equality Impact Assessment Form</h1> 	
Directorate: Leisure and Environment	Service: Health & Safety Enforcement
Completed by: Paul Charlson	Date: 09/10/18
Subject Title: HEALTH AND SAFETY REGULATORY SERVICE PLAN 2018/19	
<b>1. DESCRIPTION</b>	
Is a policy or strategy being produced or revised:	No <i>*delete as appropriate</i>
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 ( <b>Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations</b> ):	No
Details of the matter under consideration:	
<p><i>If you answered <b>Yes</b> to any of the above <b>go straight to Section 3</b></i></p> <p><i>If you answered <b>No</b> to all the above <b>please complete Section 2</b></i></p>	
<b>2. RELEVANCE</b>	
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	Yes <i>*delete as appropriate</i>
<p>If <b>Yes</b>, provide details of how this impacts on service users, staff or Councillors (stakeholders):</p> <p><i>If you answered <b>Yes</b> go to <b>Section 3</b></i></p>	The proposed service plan dictates the nature and frequency of health & safety interventions due to be carried out during 2018/19.
<p>If you answered <b>No</b> to both Sections 1 and 2 provide details of why there is no impact on these three groups:</p> <p><i>You do not need to complete the rest of this form.</i></p>	
<b>3. EVIDENCE COLLECTION</b>	
Who does the work being carried out impact on, i.e. who is/are the stakeholder(s)?	Regulated businesses, HSE, 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)?	Regulated businesses, service users, members of the public.

Which of the protected characteristics are most relevant to the work being carried out?	<i>*delete as appropriate</i>
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
<b>4. DATA ANALYSIS</b>	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	Regulated businesses, service users, members of the public.
What will the impact of the work being carried out be on usage/the stakeholders?	The proposed service plan dictates the nature and frequency of health & safety interventions due to be carried out during 2018/19.
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?	Compliance with H&S legislation is mandatory, 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?	See above. N/A.
If any further data/consultation is needed and is to be gathered, please specify:	N/A
<b>5. IMPACT OF DECISIONS</b>	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	None.
<b>6. CONSIDERING THE IMPACT</b>	
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  <i>If no actions are planned state no actions</i>

**7. MONITORING AND REVIEWING**

When will this assessment be reviewed and who will review it?

The plan is to be reviewed annually and will be submitted to the Licensing and Appeals Committee for approval.



# **West Lancashire Borough Council**

## **Health and Safety Regulatory Service Plan**

**2018/2019**

## **Contents**

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## **1.0 Introduction**

- 1.1 West Lancashire Borough Council (the Council) is responsible for the provision of health and safety support and regulation to relevant businesses within its boundaries under the Health and Safety at Work etc. Act 1974, associated legislation and guidance. These duties are discharged by the Health and Safety Service (the Service), which is part of the Commercial, Safety and Licensing Section.
- 1.2 This Health and Safety Regulatory Service Plan (the Plan) covers all elements of health and safety enforcement for which the Council has responsibility. It also covers those objectives relating to non-enforcement activity, including education and partnership working.
- 1.3 The Plan ensures a consistent approach, which enables the Health and Safety Executive (HSE) to assess how we are doing and allows other Local Authorities to compare and contrast performance and service delivery.
- 1.4 The Plan will be produced annually by the Director of Leisure and Environment and the Commercial, Safety and Licensing Manager. It is an expression of the Council's on-going commitment to health and safety in the Borough and the importance of the Service.

## **2.0 Aims and Objectives**

- 2.1 The aim of the Service is to protect the health, safety and welfare of those people working in West Lancashire and to safeguard others, principally members of the public, who may be exposed to risks from such work activities.
- 2.2 In order to achieve these aims the Service will:
  - Ensure its acts in accordance with relevant guidance from the HSE;
  - Encourage businesses to comply with the law by offering advice;
  - Apply the principle of continuous improvement by comparing and measuring its performance and rectifying any shortcomings;
  - Responding to local need and ensuring the Service is accessible to everyone;
  - Ensure that the delivery of the Service is undertaken in a manner so as not to be discriminatory towards equality target groups and accessible to all who request or receive the Service.

## **3.0 Background**

### *Profile of the Borough*

- 3.1 West Lancashire is the most southerly of the Local Authorities within Lancashire. It has a population of 110,700 (National Census 2011) and covers an area of over 34,000 hectares, a large proportion of which is good and versatile agricultural land. The Borough has two market towns: Ormskirk and Burscough, with mainly rural parishes and villages to the north and the former New Town of Skelmersdale to the east.

### *Enforcement policy*

- 3.2 A Corporate Enforcement Policy has been agreed by Council. The aim of the Enforcement Policy is to promote consistency across the Council and it provides the principles of the Council's approaches to enforcement. The Leisure and Environment Enforcement Policy is positioned below the Corporate Policy and contains more service specific information relating to legislation, approach etc. Accordingly, all recipients of letters and notices relating to health and safety enforcement are advised of the relevant Enforcement Policy.

### *Demands on the Health and Safety Enforcement Service*

- 3.3 Over recent years, the emphasis of the HSE has been away from proactive routine inspections and toward sector specific targeted interventions. This has resulted in reduced opportunities for the Council's Officers to routinely enter a wide variety of premises, which in turn reduces the accuracy of the Council's premises database. Nevertheless, based on current available data, there are in total 1442 known health and safety premises in the Borough for which the Service has enforcement responsibility, as follows:

Retail shops	460
Wholesale shops, warehouses and fuel storage depots	55
Offices	110
Catering, restaurants and Bars	459
Hotels, camp sites and other Short-stay accommodation	14
Residential Care Homes	36
Leisure and cultural services	157
Consumer services and other premises	125
Other premises	26
<b>TOTAL</b>	<b>1442</b>

### *Scope of the Health and Safety Enforcement Service – Interventions Scheme*

- 3.4 Through its Intervention Programme, the Service provides adequate arrangements for enforcement of health and safety as required by the HSE Section 18 Guidance. The Service achieves this by providing the following services:

- Programmed and reactive intervention within relevant commercial premises;
- Revisits to check on compliance;
- Responding to accident notifications;
- Responding to complaints;
- Provision of advice and assistance on health and safety matters;
- Planned special surveys or enforcement initiatives;
- Visits to new premises;
- Input to licensing applications on health and safety matters;
- Partnership Projects – working with other organisations.

### *Liaison with other organisations*

- 3.5 Liaison arrangements exist with a number of organisations to ensure a consistent approach to regulation. Such arrangements include liaison with the following organisations:

- Environmental Health Lancashire (EHL)<sup>1</sup>;
- EHL Health and Safety Officers Group (HASOG);
- HSE;
- HSE Local Authority Unit (LAU);
- HELA;
- PHE including, Food, Water and Environmental Microbiology Network (York Laboratory);
- Lancashire County Council Trading Standards;
- North West Shellfish Liaison Group;
- Lancashire County Council Scientific Services;
- Other Local Authorities to ensure a comprehensive and consistent approach to food law enforcement.

## 4.0 Resources

### *Financial allocation*

- 4.1 The total cost of the Health and Safety Service is £118,940 which comprises of the following:

Staff and associated costs	£116,900
Equipment, materials etc.	£2,040

### *Staffing allocation*

- 4.2 Therefore, the resources allocated within the Service currently equate to 1.6 FTE. This is comprised of the following:

- Commercial, Safety and Licensing Manager (0.1 FTE);
- Health and Safety Officer (1.00 FTE);
- Environmental Health Assistant (0.5 FTE).

### *Staff development*

- 4.3 Staff development is primarily assessed through the Employee Development Appraisal Interview undertaken annually. Records are kept of training needs and competency levels. Attendance on appropriate training courses is undertaken and is complemented by in-house training on specific developments during meetings or workshops.
- 4.4 The Service has undertaken the HSE Regulators' Development Needs Analysis Process for all enforcement officers. Accordingly, the qualifications, experience and training of staff is sufficient to ensure that the Service has the expertise to ensure competent inspection of the premises and processes in our area.
- 4.5 The Council is an active member of the EHL, HASOG and is committed to developing training, peer review, inter-authority auditing, benchmarking and consistency processes.

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<sup>1</sup> EHL is represented by senior environmental health officers from each local authority in Lancashire and meets to coordinate Environmental Health Services across the county.

## 5.0 Review

5.1 Performance is monitored in the following way:

- Monthly performance figures discussed directly with Officers ;
- Accompanied visits with Officers;
- Intervention data is provided to the HSE on an annual basis;
- Performance is discussed at Team Meetings;
- Policies, procedures and standards relating to complaints about a third party, requests for service, statutory notifications and referrals to other regulators (on information received where there is wider regulatory interest) are monitored and any variations are addressed;
- This Service Plan is approved by the Council's Licensing and Appeals Committee.

### *Performance during 2017/18*

5.2 The number of premises that were due for intervention during 2017/2018 and the number achieved was:

Intervention type	Interventions due	Interventions achieved
Programmed targeted	58	56
Other visits/face to face contacts	38	38
Other contact (incl. written)	76	81
Investigation of accidents / dangerous occurrences	50	39
Investigation of complaints	20	8
Advice to businesses	10	7
<b>TOTAL</b>	<b>252</b>	<b>229</b>

## 6.0 Intervention Programme for 2018/19

6.1 Proactive interventions are governed by the HSE LAC 67/2 as follows:

Premises type / activity	Intervention type	Number of interventions
Open Farm/Visitor attraction	Proactive inspection	2
Legionella infection / warehouse	Proactive inspection	1
Low rated food premises / carbon monoxide and/or retail violence	Advice intervention	28
New businesses	Advice intervention	30
Commercial waste bins (external retail parks/areas)	Survey intervention	8
Beverage gas / cellar safety	Advice intervention	12
Gas safety in commercial catering	Proactive inspection	15
Musculoskeletal risks in residential care	Proactive inspection	13
Violence at work in betting shops	Proactive inspection	12

Beauty treatment updates	Written intervention	106
<b>TOTAL</b>		<b>227</b>

In addition to the above, the following reactive interventions are anticipated:

<b>Intervention type</b>	<b>Number of interventions</b>
Investigation of accidents / incidents / dangerous occurrences	40
Investigation of complaints and requests for service	20
Advice to businesses	10
Revisits	40
<b>TOTAL</b>	<b>110</b>

## **Appendix 1: Useful contacts**

### West Lancashire Borough Council Food Safety Service

Address: Robert Hodge Centre, Stanley Way, Skelmersdale, Lancashire WN8 8EE  
Telephone: 01695 577177  
Fax: 01695 585126  
Email: [envhealth.admin@westlancs.gov.uk](mailto:envhealth.admin@westlancs.gov.uk)  
Web: [www.westlancs.gov.uk](http://www.westlancs.gov.uk)

Opening Hours: 09:00 – 17.00 (Monday-Thursday)  
09:00 – 16.45 (Friday)

Out of Hours: 01695 577177

The out of hours emergency service is available 24 hours 7 days a week. An appropriate officer of the Environmental Health Service can be contacted through this number in an emergency – for example: fatal or other serious major accident.

### Health and Safety Executive (North West)

Address: Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS  
Telephone: 0300 003 1647  
Web: [www.hse.gov.uk](http://www.hse.gov.uk)

### Chartered Institute of Environmental Health

Address: Chadwick Court, 15 Hatfields, London SE1 8DJ  
Telephone: 020 7928 6006  
Web: [www.cieh.org](http://www.cieh.org)





# Agenda Item 9

## AGENDA ITEM:

### LICENSING & APPEALS COMMITTEE:

9 OCTOBER 2018

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**Report of: Director of Leisure and Environment**

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

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**SUBJECT: ADMINISTRATIVE AND SAFEGUARDING MEASURES, INCLUDING  
CHANGES TO THE CONVICTIONS POLICY CONTAINED IN THE HACKNEY  
CARRIAGE AND PRIVATE HIRE STATEMENT OF LICENSING POLICY 2018**

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Wards affected: Borough wide

## **1.0 PURPOSE OF REPORT**

- 1.1 To consider administrative and safeguarding measures, including changes to the Convictions Policy contained within the Hackney Carriage and Private Hire Statement of Licensing Policy 2018, following publication of the Institute of Licensing guidance on determining the suitability of applicants and licensees in the Hackney Carriage and Private Hire trades.

## **2.0 RECOMMENDATIONS**

- 2.1 That the Convictions Policy document provided at Appendix 2 to this report be approved for use, subject to consultation, thereby replacing the existing Convictions Policy - Appendix S to the Hackney Carriage and Private Hire Statement of Licensing Policy 2018.
- 2.2 If the recommendation at 2.1 is approved, that the Hackney Carriage and Private Hire Statement of Licensing Policy 2018 be amended as necessary to reflect the content of Appendix 2 attached to this report and those measures detailed in Section 5.0.
- 2.3 That the Director of Leisure and Environment be given delegated authority to subject the amended Hackney Carriage and Private Hire Licensing Policy Statement to a period of public consultation before returning the document to the Licensing and Appeals Committee for final approval.

- 2.4 That delegated authority be given to the Director of Leisure and Environment to amend the application procedures and processes contained in the Hackney Carriage and Private Hire Statement of Licensing Policy as may be necessary.
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### **3.0 BACKGROUND**

- 3.1 Members will recall the report of 20 February 2018, which provided information relating to a consultation document produced by the Institute of Licensing (IoL) intended to provide national guidance on determining the suitability of applicants and licensees in the Hackney Carriage and Private Hire trades.
- 3.2 A response to the consultation was approved by this Committee and duly submitted to the IoL. Following this consultation, the IoL formally published its 'Guidance on Determining the Suitability of Applicants and Licensees in the Hackney Carriage and Private Hire Trades' on 26 April 2018.
- 3.3 The Council's approach to this issue has been to adopt a 'Convictions Policy', which is included as Appendix S to the Hackney Carriage and Private Hire Statement of Licensing Policy 2018 (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 seeks to develop nationally.
- 3.4 As highlighted in the report of 20 February 2018, there are some differences between the requirements of the IoL document 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/sentence to the date on which a licence application would be considered. Nevertheless, it is important that the Policy is reviewed so that the Council's requirements can be consistent with national guidance and other Local Authorities.

### **4.0 ISSUES**

- 4.1 It is proposed that the existing Convictions Policy, which is attached as Appendix S to the Hackney Carriage and Private Hire Statement of Licensing Policy 2018, be replaced with the document provided at Appendix 2 to this report.
- 4.2 In debating the IoL consultation in February 2018, Members expressed views that they would wish to tailor the IoL guidance to ensure it represented local considerations without being inconsistent with its principles. Accordingly, the exact wording of the IoL guidance has not been used to formulate the document at Appendix 2; rather it contains the wording of the existing Convictions Policy where this will aid Members in the determination of any given offence.
- 4.3 Therefore whilst Appendix 2 does not significantly change the Council's approach from that contained in the existing Convictions Policy, the two documents are sufficiently different that presentation of a 'tracked changes' document to highlight such differences is impractical. Accordingly, the existing Convictions Policy is

provided at Appendix 3 to this report to allow suitable comparison. For the benefit of Members, the key differences are also highlighted below and in Table 1:

- Appendix 2 contains information on offenders (and reoffending), as well as the legislative framework, as a means to provide improved justification for the Council's approach.
- Appendix 2 is more generalist in its categorisation of specific offences than the existing Convictions Policy, but this is done to prevent the potential legal argument that a specific offence is not addressed as it 'is not on the list' and also to prevent arguments that a firearm is more serious than a knife, which could lead to differentiation.

Table 1 – comparison of duration required to elapse (either from date of offence or from completion of sentence – whichever is the most recent) before offences are considered:

Offence type	Existing Convictions Policy	Proposed requirements
Crimes resulting in death	Do not grant (specified circumstances)	Do not grant
Exploitation	Not specified	Do not grant
Violence	Refusal or 10, 5 and 3 years (specified circumstances)	Refusal or 10, 5 and 3 years (specified circumstances)
Possession of a weapon	5 years	7 years
Sex and indecency: On sex offenders list	Do not grant	Do not grant
Sex and indecency: Other offences	5 – 10 years (+ consideration of facts)	Do not grant (+ consideration of facts)
Dishonesty	3 – 5 years (+ consideration of facts)	7 years (+ consideration of facts)
Drugs: Supply	5 years (+ consideration of facts)	10 years (+ consideration of facts)
Drugs: Possession	5 years (+ consideration of facts)	5 years (+ consideration of facts)
Discrimination	Not specified	7 years (+ consideration of facts)
<b>Motoring offences</b>		
Disqualification (incl. drink drug driving)	3 years 5 years (if drink driving)	7 years (+ consideration of facts)
Drinking offence (no motor vehicle)	5 years (+ consideration of facts)	5 years (+ consideration of facts)
Use of mobile device	3 years	5 years
Taxi related	5 years (+ consideration of facts)	7 years (+ consideration of facts)
DVLA points: Isolated offences	Pattern of offences considered – 6 months since last conviction	Pattern of offences considered – 6 months since last conviction

Live points	As above	5 years if >7 live DVLA points
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## 5.0 SAFEGUARDING MEASURES

- 5.1 If the recommendation at 2.1 is approved, the Policy will require amendment to ensure there is no conflict with the content of Appendix 2. In doing so, this would require additional safeguarding measures that are not currently contained in the Policy.
- 5.2 These measures are:
- All applicants and drivers be required to sign up to the Disclosure and Barring Service (DBS) update service. This would allow the Council to check the disclosure status of every licensed driver at any time during the period of licence, rather than at each 3 year renewal.
  - A process for the determination of vehicle proprietor licences be adopted to allow for the consideration of relevant offences in a similar manner to licensed drivers and operators.
  - All applicants and existing drivers be required to undertake safeguarding/dementia awareness training as part of the grant and renewal of relevant licences.
  - The use of the National Anti-Fraud Network in the Council's licence application and renewal processes to allow for the consideration of refused driver licence applications and revoked driver licences at other Local Authorities.
  - That the existing Private Hire Operator requirements be amended to allow for changes during the period of licence.
  - Revised checks for foreign drivers to provide detail of any criminal history when not resident in the UK.
  - 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.
- 5.3 Members should also note that if any existing licence holder(s) no longer comply with the requirements detailed in this report, the respective licence would be brought back before this Committee for determination on renewal of that licence.
- 5.4 If Members approve the content of this report, it is proposed that the amended Policy document be subject to public consultation during the latter part of 2018. During this time, all licensed drivers, vehicle owners and operators will be contacted to make them aware of the amendments and of the need to submit any comments during the consultation period. In addition, information will be posted on the Council's website, in the Licensing reception at Robert Hodge Centre and also in the local press.
- 5.5 Any comments received during the consultation period will be assessed and brought back to this Committee. If Members approve the final version of the Policy at that time, it will be implemented thereafter.

## **6.0 PLANNED IMPROVEMENTS TO THE LICENCE APPLICATION / MONITORING PROCESS**

- 6.1 The computer software used by the Council to administer relevant licences and permits is planned to be upgraded before the end of 2018/19. This will involve the introduction of new online functionality to improve the control and accessibility of the application process and also to automate much of the licence monitoring functions, which can be labour intensive. These changes will not affect the Council's licence requirements, only the means by which applicants and licence holders are administered.
- 6.2 It is therefore anticipated that this will require the Council to amend its application procedures and processes accordingly. At time of writing, the full detail of the new software is not available, but the delegation sought at paragraph 2.4 of this report allows the relevant administrative sections of the Policy to be amended without the need to return the matter to this Committee.

## **7.0 SUSTAINABILITY IMPLICATIONS**

- 7.1 The proposals have the potential to impact upon many areas within the Community, particularly upon taxi services directly and the Council's ongoing safeguarding responsibilities to the travelling public within West Lancashire.

## **8.0 FINANCIAL AND RESOURCE IMPLICATIONS**

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

## **9.0 RISK ASSESSMENT**

- 9.1 Officers are supportive of national guidance to assist in the licensing of the Hackney Carriage and Private Hire trades. It is therefore important that the Policy mirrors national guidance. However, Members should note that the IoL guidance is not 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**

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

None.

### **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. Proposed Convictions Policy
3. Existing Convictions Policy (Appendix S to the Hackney Carriage and Private Hire Statement of Licensing Policy 2018)

# Equality Impact Assessment Form



<b>Directorate: Leisure and Environment</b>		<b>Service: Licensing</b>
<b>Completed by: Paul Charlson</b>		<b>Date: 09/10/18</b>
<b>Subject Title: ADMINISTRATIVE AND SAFEGUARDING MEASURES, INCLUDING CHANGES TO THE CONVICTIONS POLICY CONTAINED IN THE HACKNEY CARRIAGE AND PRIVATE HIRE STATEMENT OF LICENSING POLICY 2018</b>		
<b>1. DESCRIPTION</b>		
Is a policy or strategy being produced or revised:	No	<i>*delete as appropriate</i>
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 ( <b>Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations</b> ):	No	
Details of the matter under consideration:		
<i>If you answered <b>Yes</b> to any of the above go straight to Section 3</i> <i>If you answered <b>No</b> to all the above please complete Section 2</i>		
<b>2. RELEVANCE</b>		
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	No	<i>*delete as appropriate</i>
If <b>Yes</b> , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered <b>Yes</b> go to Section 3</i>		
If you answered <b>No</b> 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>		
<b>3. EVIDENCE COLLECTION</b>		
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?	<i>*delete as appropriate</i>
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
<b>4. DATA ANALYSIS</b>	
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 have helped to shape the IoL Guidance, which is now presented to Members for consideration.
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 has conducted a public consultation and reflected these views in the final document.
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?	Consultation responses have helped to shape the IoL Guidance, which is now presented to Members for consideration.
If any further data/consultation is needed and is to be gathered, please specify:	N/A
<b>5. IMPACT OF DECISIONS</b>	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	None.
<b>6. CONSIDERING THE IMPACT</b>	
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  <i>If no actions are planned state no actions</i>
<b>7. MONITORING AND REVIEWING</b>	



When will this assessment be reviewed and who will review it?	Consultation responses have helped to shape the IoL Guidance, which is now presented to Members for consideration.
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# West Lancashire Borough Council

LICENSING SERVICE, ROBERT HODGE CENTRE, STANLEY WAY, SKELMERSDALE, LANCASHIRE WN8 8EE

Tel: 01695 577177 email: [licensing.enquiries@westlancs.gov.uk](mailto:licensing.enquiries@westlancs.gov.uk)

## Hackney Carriage & Private Hire Licensing

### Convictions Policy - Determination of the Suitability of Applicants and Licensees

#### 1.0 Introduction

- 1.1 This document should be read in conjunction with the Council's Hackney Carriage and Private Hire Statement Licensing Policy (the Policy).
- 1.2 The overriding aim of the Council when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Private Hire Operators is 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 Council that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications<sup>1</sup>. It is the final part of the process of an application when the decision is made, whether by the Council's Licensing and Appeals Committee or an Officer [under appropriate delegation]. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This document therefore follows current available national guidance. The Council also participates in National Anti Fraud Network (NAFN) database of refusals and revocations of Hackney Carriage and Private Hire licences.
- 1.6 This document is intended to outline the approach the Council will take when determining suitability, taking into account the character of the applicant or licensee. Each case will be determined in its merits. The Council can depart from this document and the Policy, but it will give full justification for doing so. This will normally happen where the Council considers that there are exceptional circumstances which warrant a different decision.
- 1.7 Section 2 explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. This information is therefore provided to demonstrate the context and justification of the Council's approach. Given

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

the important function of licensing to protect the public, any bar should be set at a level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.6 and Sections 3 and 4.

- 1.8 All offences are allocated to a general category such as ‘dishonesty’ or ‘drugs’. This prevents it being argued that a specific offence is not covered by the Policy or this document as it ‘is not on the list’ and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight will be given to the evidence provided.

## **2.0 Offenders and Offending - an overview**

- 2.1 The aim of the Council in licensing the Hackney Carriage and Private Hire trades is to protect the public.<sup>2</sup> Accordingly, public protection is at the forefront of the Council's approach 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 Council 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 Council 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 reoffending and harm<sup>3</sup>. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. The Council is not always privy to this information, so it is important when it makes decisions around suitability that it has an understanding of offending behaviour and risk of re-offending in generic terms.

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<sup>2</sup> DfT “Taxi and Private Hire Licensing – Best Practice Guide” para 8

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

- 2.6 Flaud<sup>4</sup> noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place<sup>5</sup>.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future<sup>6</sup>. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%<sup>7</sup>. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences<sup>8</sup>.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity<sup>9</sup>. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population<sup>10</sup>. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

### ***The risk of re-offending***

- 2.11 The tendency of a convicted criminal to reoffend and increases in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as "any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual's

<sup>4</sup> Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

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

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

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

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

<sup>9</sup> McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

<sup>10</sup> 11 Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time"<sup>11</sup>.

- 2.12 Kurlychek, 2007 in her study noted that "a person who has offended in the past has been found to have a high probability of future offending, but this risk of a convicted criminal reoffending is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age"<sup>12</sup>.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over<sup>13</sup>. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships<sup>14</sup>. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males<sup>15</sup>.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist<sup>16</sup>. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance<sup>17</sup>. 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 reoffend than individuals who have offended in the recent past"<sup>12</sup>.
- 2.16 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual's previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when making a decision as to whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person's ability to sustain such change. This can be a long process that can only be achieved over time.

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

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

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

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

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

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

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

### **3.0 Overview of Taxi Licensing**

- 3.1 The Council's requirements for licence holders are provided in the Policy. This section of this document is provided to demonstrate context and justification of the Council's approach.
- 3.2 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver's hands.
- 3.3 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 Department for Transport (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. In relation to all these licences, the Council has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.5 Drivers and operators cannot be granted a licence unless the Council is satisfied that they are a "fit and proper person" to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators). There are no statutory criteria for vehicle licences; therefore, the Council has an absolute discretion.
- 3.6 In each case, the Council has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.

#### ***Taxi Drivers***

- 3.7 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 the Council, like many authorities, grant a "dual" licence to cover driving both types of vehicle.
- 3.8 An applicant must hold a full DVLA or equivalent driver's licence, have the right to work in the UK, and be a "fit and proper" person<sup>18</sup>. 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.

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<sup>18</sup> Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

- 3.9 An applicant must also have the right to remain, and work in the UK<sup>19</sup>. Again, this is ultimately a question of fact and the Policy contains requirements that are consistent with the guidance issued by the Home Office.
- 3.10 However, the issue of "fit and proper" can cause difficulty. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*<sup>20</sup>. Silber J said
- "... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers."
- 3.11 This is reflected in the test used by the Council:
- "Would you (as a member of the Licensing and Appeals Committee or other person charged with the ability to grant a Hackney Carriage / Private Hire driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?"<sup>21</sup>
- 3.12 The Council supports the expression "safe and suitable" person to hold a driver's licence as a good interpretation, which neither adds nor removes anything from the original term of "fit and proper" but brings the concept up to date.
- 3.13 In exercising this duty, the Council has the power to require an applicant to provide:
- "such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence."<sup>22</sup>
- 3.14 This "information" can include any pre-conditions or tests that they consider necessary.
- 3.15 The Council's requirements for such "information" are stated in the Policy. The provision of this information aims to satisfy the Council 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.
- 3.16 Both Hackney Carriage and Private Hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no "spent" convictions and that any and all criminal convictions (apart from "protected convictions" and

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<sup>19</sup> Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

<sup>20</sup> [2002] EWHC 1145 (Admin), [2003] RTR 199

<sup>21</sup> Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 10.21

<sup>22</sup> Local Government (Miscellaneous Provisions) Act 1976 s57(1)

"protected cautions" where they have been declared<sup>23</sup>) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker<sup>24</sup>.

- 3.17 All Applicants/Licensees are required to obtain an Enhanced DBS Certificate with Barred Lists checks<sup>25</sup> and to provide this to the Council. All Licensees are also required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.
- 3.18 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period is also required.
- 3.19 The Policy contains a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability<sup>26</sup>.
- 3.20 The character of the driver in its entirety is the paramount consideration when considering whether they should be licensed. It is important to recognise that the Council is not imposing any additional punishment in relation to previous convictions or behaviour. It is using all the information that is available to it to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.21 It is important to note that Case Law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account<sup>27</sup>.
- 3.22 Issues that were committed when the driver was not driving a taxi or did not hold a licence are deemed relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been) to assault another sexually has demonstrated completely unacceptable standards of behaviour.
- 3.23 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.

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<sup>23</sup> "Protected convictions" and "protected cautions" are single, minor and elderly matters that do not appear on any DBS Certificates.

<sup>24</sup> See *Adamson v Waveney District Council* [1997] 2 All ER 898

<sup>25</sup> "For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children's Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2" DBS email 31st August 2017.

<sup>26</sup> As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

<sup>27</sup> *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)



- 3.24 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 Council. 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.
- 3.25 The Council recognises that 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, the Council also recognises the need to support the travelling public's confidence in the trade as a whole. Accordingly, all decisions made by the Council whether to grant or refuse an application, or to suspend or revoke any licence will be accompanied by clear and compelling reasons. Any departure from the Policy, including this document, will be in exceptional circumstances and the justifiable reasons provided.

### ***Private Hire Operators***

- 3.26 A Private Hire Operator is the person who takes a booking for a Private Hire vehicle, and then dispatches this vehicle driven by a licensed Private Hire driver to fulfil that booking. All three licences (operator, driver and vehicle) must have been granted by the same authority<sup>28</sup>. The Council cannot grant a Private Hire Operator licence unless the applicant has the right to work in the UK and is a fit and proper person<sup>29</sup>.
- 3.27 As with taxi drivers, the role of the Private Hire Operator goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the Private Hire Operator will obtain significant amounts of personal information. It is therefore vital that a Private Hire Operator is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney Carriages can also be pre-booked, but the Council it should be noted that where that booking is made by anybody other than a Hackney Carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.28 Spent convictions can be taken into account when determining suitability for a licence, but the Council can only ask the applicant (or licensee on renewal) to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.29 Nevertheless, this gives the Council a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee. Accordingly, the Policy contains the Councils' requirements as to the test of fitness and propriety for Private Hire Operators. It also adopts a suitable variation on the test for drivers:

"Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?"<sup>30</sup>

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<sup>28</sup> See *Dittah v Birmingham City Council*, *Choudhry v Birmingham City Council* [1993] RTR 356 QBD

<sup>29</sup> Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

<sup>30</sup> Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 12.35

- 3.30 There is a further point to consider in relation to Private Hire Operators and that concerns the staff used on the telephones, radios etc. Accordingly, the Council imposes a condition on Private Hire Operators requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are safe and suitable people to undertake that task and retain that information to demonstrate that compliance to the Council. Any failure on the part of the Private Hire Operator to either comply with this requirement, or act upon information that they obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the Private Hire Operator.

### ***Vehicle Proprietors***

- 3.31 Similar considerations apply to the vehicle proprietors, both Hackney Carriage and Private Hire (referred to generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.32 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 [and the Council has seen evidence of] a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.33 In relation to both Hackney Carriages and Private Hire vehicles, the Council has an absolute discretion over granting the licence<sup>31</sup>. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.34 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. Accordingly, the Policy contains requirements for vehicle proprietors – Basic Disclosure and Barring Service check, statutory declaration and consideration of spent convictions. It also adopts a suitable variation on the test for drivers:

"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?"<sup>32</sup>

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<sup>31</sup> S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

<sup>32</sup> Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98

## **4.0 Determination of applications and licence holders**

### **4.1 General**

- 4.1.1 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. It is therefore important that each case is determined on its merits.
- 4.1.2 Many members of the Borough use, and even rely on, Hackney Carriages and Private Hire vehicles to provide transportation services. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.1.3 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. 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.
- 4.1.4 This section of this document will set out the Council's approach to determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence.

### **4.2 Pre-application requirements**

- 4.2.1 The Council's pre-application requirements for all relevant licences are contained in the Policy. In relation to each of these licences, the Council has discretion as to whether or not to grant the licence. Drivers and operators cannot be granted a licence unless the Council is satisfied that they are a "fit and proper person" to hold that licence<sup>33</sup>.
- 4.2.2 There are no statutory criteria for vehicle licences, therefore the Council has an absolute discretion over whether to grant either a Hackney Carriage or Private Hire proprietor's licence. "Fit and proper" means that the individual (or in the case of a Private Hire operator's licence, the limited company together with its directors and secretary, or all members of a partnership<sup>34</sup>) is "safe and suitable" to hold the licence.

### **4.3 Safety and suitability**

- 4.3.1 In determining safety and suitability the Council is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that

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<sup>33</sup> Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators

<sup>34</sup> Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

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.

- 4.3.2 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction<sup>35</sup>. Fixed penalties and community resolutions will also be considered in the same way as a conviction<sup>36</sup>.
- 4.3.3 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 Council. This would also include intelligence received from other agencies that has not resulted in a criminal conviction, caution or other disposal. In addition, complaints where there was no police involvement will also be considered, as will non-compliance with licence conditions. Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- 4.3.4 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 Council to decide what action to take in the light of these guidelines.
- 4.3.5 In all cases, the Council will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of the Policy and this document.
- 4.3.6 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.
- 4.3.7 As the Council will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.3.8 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.

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<sup>35</sup> This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

<sup>36</sup> This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

- 4.3.9 The Council understands that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.
- 4.3.10 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 Council has powers to take action against the holder of all types of licence 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 normally lead to that licence being revoked.
- 4.3.11 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 normally result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 4.3.12 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.
- 4.3.13 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. However, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The Council is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will normally not be granted or renewed.
- 4.3.14 Where an applicant/licensee is convicted of an offence which is not detailed in this document, the Council will take that conviction into account and use this document as an indication of the approach that should be taken.
- 4.3.15 This document does not replace the duty of the Council 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 this document, the Council will consider the matter from first principles and determine the fitness and propriety of the individual.

#### **4.4 Drivers**

- 4.4.1 As the criteria for determining whether an individual should be granted or retain a Hackney Carriage driver's licence are identical to the criteria for a Private Hire driver's licence, the two are considered together.
- 4.4.2 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any

previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

- 4.4.3 As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will be given as to whether they are a safe and suitable person. 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.

## **RELEVANT OFFENCES**

### **4.5 Crimes resulting in death**

- 4.5.1 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 normally **not be licensed**.

### **4.6 Exploitation**

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

### **4.7 Offences involving violence**

- 4.7.1 Notwithstanding the information below, where an applicant or licensee has a conviction for an offence of violence, or connected with any offence of violence, a licence will normally not be granted until **at least 10 years** have elapsed since the completion of any sentence imposed.
- 4.7.2 Where the commission of an offence involved the loss of life, a licence will **normally be refused**.

### ***Offences of violence against children and young people***

- 4.7.3 An extremely serious view will be taken where an applicant or licensee 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.
- 4.7.4 Convictions of less than 10 years old prior to the date of application will be referred to a hearing. 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.

### ***Offence types***

4.7.5 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

4.7.6 Applicants or licensees with one or more convictions for very serious violence should expect the application/licence 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

4.7.7 Applicants or licensees with one or more convictions for serious violence should expect the application/licence to be refused until a period of at least 5 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
- 4.7.8 Applicants or licensees with one or more convictions for other offences of violence should expect the application/licence to be refused until a period of at least 3 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
  - Criminal damage
  - Similar offences
  - Offences which replace the above offences
- 4.8 **Possession of a weapon**
- 4.8.1 Where an applicant or licensee has a conviction for possession of a weapon or any other weapon related offence, a licence will normally not be granted until **at least 7 years** have elapsed since the completion of any sentence imposed.
- 4.9 **Sex and indecency offences**
- 4.9.1 The Council will normally not grant a licence to any applicant or licensee who is currently on the Sex Offenders Register or on any 'barred' list.
- 4.9.2 Where an applicant or licensee has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will **normally not be granted**, but 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.
- 4.9.3 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.
- Intelligence and other information which has not resulted in a criminal conviction***
- 4.9.4 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.



#### 4.10 Dishonesty

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

4.10.2 Notwithstanding the generality of this requirement, a licence will normally not be granted where a conviction for an offence listed below and the conviction is less than 7 years prior to the date of the application. Between 5 and 7 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

#### 4.11 Drugs

4.11.1 Where an applicant or licensee 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 normally not be granted until **at least 10 years** have elapsed since the completion of any sentence imposed. 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.

4.11.2 Where an applicant or licensee has a conviction for possession of drugs, or related to the possession of drugs, a licence will normally 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. 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.

- 4.11.3 If any applicant or licensee was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment.
- 4.11.4 An applicant or licensee will normally be refused where the applicant/licence holder 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.

#### 4.12 **Discrimination**

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

#### 4.13 **Motoring convictions**

- 4.13.1 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 normally 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.

#### ***Disqualification***

- 4.13.2 Where an applicant or licensee 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 **7 years** free from conviction has passed since the reinstatement of the DVLA licence.
- 4.13.3 Where several minor traffic offences have resulted in the applicant or licensee 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 **7 years** free from conviction must have elapsed from the restoration of the DVLA licence.
- 4.13.4 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 or licensee will normally be expected to show a period of **7 years** free from conviction from the date the Court made its finding of exceptional circumstances justifying the non-qualification.

#### ***Drink driving/driving under the influence of drugs***

- 4.13.5 Where an applicant or licensee has a conviction for drink driving or driving under the influence of drugs, a licence will normally not be granted until **at least 7 years** have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant or licensee will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

### ***Drink offences not in a motor vehicle***

- 4.13.6 An isolated conviction for drunkenness need not debar an applicant or licensee 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.

### ***Using a hand-held telephone or hand held device whilst driving***

- 4.13.7 Where an applicant or licensee has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will normally not be granted until **at least 5 years** have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

### ***Major motoring offences***

- 4.13.8 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 or licensee has a conviction for a major traffic offence or similar offence, a licence will normally not be granted until **at least 7 years** have elapsed since the completion of any sentence imposed. A list of offences to which this paragraph applies is attached as Table 1.

### ***Minor motoring offences***

- 4.13.9 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). A list of offences to which this section applies is attached as Table 2.
- 4.13.10 Isolated convictions for minor traffic offences should not prevent a person from obtaining a licence. The number, type and frequency of this type of offence will be taken into account. The applicant or licensee will normally be expected to show a period free of conviction of at least 6 months from the date of any isolated conviction.
- 4.13.11 Where an applicant or licensee has 7 or more live points on their DVLA licence for minor traffic or similar offences, a licence will normally not be granted until **at least 5 years** have elapsed since the completion of any sentence imposed.

### ***Hybrid Traffic Offences***

- 4.13.12 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.

### ***Hackney Carriage and Private Hire offences***

- 4.13.13 Where an applicant or licensee has a conviction for an offence concerned with or connected to Hackney Carriage or Private Hire activity (excluding vehicle use), a licence will normally not be granted until **at least 7 years** have elapsed since the completion of any sentence imposed.

### ***Vehicle use offences***

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

#### 4.14 **Private Hire Operators**

4.14.1 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.

4.14.2 As stated above, where an applicant or licensee has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.

4.14.3 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.

4.14.4 If an operator is found not to be applying the required standards and using staff that do not meet the Council’s overall criteria, that will lead to the operator’s licence being revoked.

#### 4.15 **Vehicle proprietors**

4.15.1 Vehicle proprietors (both Hackney Carriage and Private Hire) have two principal responsibilities. Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times. Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.

4.15.2 As stated above, where an applicant or licensee has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.

4.15.3 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.

#### 4.16 **General**

##### ***Spent Convictions***

4.16.1 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***

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

***Other relevant offences***

4.16.3 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.

4.16.4 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
<b><i>Aiding, abetting, counselling or procuring</i></b>	
Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)	
<b><i>Causing or permitting</i></b>	
Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)	
<b><i>Inciting</i></b>	
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
<b><i>Aiding, abetting, counselling or procuring</i></b>	
Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)	
<b><i>Causing or permitting</i></b>	
Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)	



<b><i>Inciting</i></b>
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



## 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
<b><i>Aiding, abetting, counselling or procuring</i></b>	
Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)	
<b><i>Causing or permitting</i></b>	
Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)	
<b><i>Inciting</i></b>	
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
<b><i>Aiding, abetting, counselling or procuring</i></b>	
Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)	
<b><i>Causing or permitting</i></b>	
Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)	

<b><i>Inciting</i></b>
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



## LICENSING & APPEALS COMMITTEE:

9 OCTOBER 2018

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**Report of: Director of Leisure and Environment**

**Contact for further information: Paul Charlson (ext 5246)**  
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**SUBJECT: THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (ENGLAND) REGULATIONS 2018**

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Wards affected: Borough wide

### **1.0 PURPOSE OF REPORT**

- 1.1 That the necessary action be taken to implement the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

### **2.0 RECOMMENDATIONS**

- 2.1 That the report be noted.
- 2.2 That the requirements to implement the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 be referred to Council including amended terms of reference of the Licensing and Appeals Committee, appropriate delegation to Officers and licence fees.
- 

### **3.0 BACKGROUND**

- 3.1 The Council has long had the responsibility to licence commercial activities involving animals and relevant establishments, which includes pet shops and animal boarding. However, much of this legislation is in excess of 50 years old and therefore does not adequately address present day needs, which has resulted in inconsistent application of the legislation by local authorities.
- 3.2 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (the Regulations) are made under the Animal Welfare Act 2006 (the Act), and replace, and in some circumstances extend, the existing legislation

governing the licensing of commercial activities involving animals and the relevant establishments. Specifically, this includes:

- The boarding of cat and/or dogs in catteries/kennels
- The boarding of dogs in domestic premises (home boarding)
- The temporary boarding of dogs in day care
- The hiring out of horses for the purpose of riding or instruction in riding
- The selling of animals as pets
- The exhibition of animals for educational or entertainment purposes

- 3.3 Given the aforementioned inconsistencies in application of the relevant legislation, the Regulations seek to improve welfare standards in such business by setting explicit requirements for each of the above activities, whilst also placing additional requirements on local authorities in respect of Officer training.
- 3.4 The Regulations also introduce a varied licence duration based on a risk assessment model, with each business receiving a star rating. The purpose of the model is to ensure consistency in implementation and operation by local authorities, and to ensure that consumers can be confident that the star rating applied to businesses is an accurate reflection of both their risk level and the animal welfare standards that they adopt. The system also incorporates safeguards to ensure fairness to businesses, which includes an appeal procedure and a mechanism for requesting a re-inspection for the purposes of re-rating when improvements have been made.
- 3.5 With the exception of the activity of “Keeping or Training Animals for Exhibition” (which is set at a 3 year licence on the basis that these activities have hitherto been subject to a registration system), the length of a licence is determined by a risk assessment that takes account of the animal welfare standards adopted by the business and the level of risk (based on elements such as past compliance). The businesses will be given a star rating, ranging from 1 to 5 stars. Licences can be issued for 1, 2 or 3 years, which will mean that compliant businesses can be issued with longer licences and will therefore receive fewer inspections and pay less fees as a result of their good compliance. The model is summarised in table 1 below.

**Table 1**

Scoring Matrix		Welfare Standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low Risk	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>3 Star</b> 2yr licence Min 1 unannounced visit within 24 month period	<b>5 Star</b> 3yr licence Min 1 unannounced visit within 36 month period
	Higher Risk	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>2 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>4 Star</b> 2yr licence Min 1 unannounced visit within 24 month period

- 3.6 The Regulations also contain transitional provisions whereby existing licence holders are assured that their licences will be unaffected by the Regulations until the expiry date of the existing licence. Upon expiry, the business will be inspected in accordance with the Regulations and new format licences issued accordingly.

## 4.0 ISSUES

- 4.1 The existing legislation has been delegated to Officers and added to the functions of this Committee. Accordingly, the functions of this Committee already include many of the animal welfare licensable activities outlined above, but not all. To ensure clarity of administration, it is proposed that the requirements of the Regulations be referred to Council including amended terms of reference to this Committee, appropriate delegation to Officers and licence fees. However, the Regulations are explicit in their requirements for each of the above named business activities and so [in contrast to the existing legislation] there is no requirement for the Council to agree specific licence conditions for each activity.
- 4.2 Furthermore, the Council is required to set a licence fee for each activity. The proposed fees contained in table 2 are based on the existing fees set for 2018/19 and follow the current requirements for licence fee setting. If the recommendations contained in this report are approved, these fees will be presented to Council for approval. However, assuming that Council approve the amended terms of reference of this Committee, these fees will be reviewed in December 2018 by this Committee as part of all locally set licence fees based on estimated budgets for 2019/20.

Table 2	Proposed fee	Proposed fee comprised of (a) initial fee; and (b) successful application (enforcement) fee
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Animal Welfare Licences – Cat/Dog Boarding (incl. dog day care / home boarding), Dog Breeding, Pet Shop, Animal Exhibition
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1 year licence New / renewal (+vet fee if required)	£152.87	(a) £97.23; (b) £55.64
2 year licence New / renewal (+vet fee if required)	£208.51	(a) £97.23; (b) £111.28
3 year licence New / renewal (+vet fee if required)	£264.15	(a) £97.23; (b) £166.92
<b>Animal Welfare Licences – Riding Establishment</b>		
1 year licence New / renewal (+ vet fee)	£200.00	(a) £112.31; (b) £87.69
2 year licence New / renewal (+ vet fee)	£287.69	(a) £112.31; (b) £175.38
3 year licence New / renewal (+ vet fee)	£405.38	(a) £112.31; (b) £293.07

## 5.0 SUSTAINABILITY IMPLICATIONS

- 5.1 The new legislation replaces the existing law by clarifying and extending the operational requirements for licensed businesses. The proposals will therefore impact on relevant licensed businesses and the wider public who will use these services of such businesses.

## 6.0 FINANCIAL AND RESOURCE IMPLICATIONS

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

## 7.0 RISK ASSESSMENT

- 7.1 The Council has a legal duty to carry out the functions of the Act and Regulations; therefore failure to do so is a breach under the Act. Accordingly, the Council must adopt a process to implement the legislation for all relevant businesses.

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### **Background Documents**

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

None.

### **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.

# Equality Impact Assessment Form



<b>Directorate: Leisure and Environment</b>		<b>Service: Licensing</b>
<b>Completed by: Paul Charlson</b>		<b>Date: 09/10/18</b>
<b>Subject Title: THE ANIMAL WELFARE (LICENSING OF ACTIVITIES INVOLVING ANIMALS) (ENGLAND) REGULATIONS 2018</b>		
<b>1. DESCRIPTION</b>		
Is a policy or strategy being produced or revised:	No	<i>*delete as appropriate</i>
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 ( <b>Eliminating unlawful discrimination/harassment, advancing equality of opportunity, fostering good relations</b> ):	No	
Details of the matter under consideration:		
<i>If you answered <b>Yes</b> to any of the above go straight to Section 3</i> <i>If you answered <b>No</b> to all the above please complete Section 2</i>		
<b>2. RELEVANCE</b>		
Does the work being carried out impact on service users, staff or Councillors (stakeholders):	Yes	<i>*delete as appropriate</i>
If <b>Yes</b> , provide details of how this impacts on service users, staff or Councillors (stakeholders): <i>If you answered <b>Yes</b> go to Section 3</i>	A new licence regime is being implemented for relevant commercial animal welfare activities	
If you answered <b>No</b> 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>		
<b>3. EVIDENCE COLLECTION</b>		
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)?	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?	<i>*delete as appropriate</i>
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
<b>4. DATA ANALYSIS</b>	
In relation to the work being carried out, and the service/function in question, who is actually or currently using the service and why?	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?	Compliance with the new Regulations is mandatory. The Council has already made routine contact with affected businesses advising them of the implications.
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?	Compliance with the new Regulations is mandatory, 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?	See above. N/A.
If any further data/consultation is needed and is to be gathered, please specify:	N/A
<b>5. IMPACT OF DECISIONS</b>	
In what way will the changes impact on people with particular protected characteristics (either positively or negatively or in terms of disproportionate impact)?	None.
<b>6. CONSIDERING THE IMPACT</b>	
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  <i>If no actions are planned state no actions</i>

**7. MONITORING AND REVIEWING**

When will this assessment be reviewed and who will review it?

Implementation and compliance issues will be reported to the Licensing and Appeals Committee when required.

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

Document is Restricted

