

Notice of Meeting



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Licensing Committee

Monday, 11th February, 2019 at 4.30 pm
in Roger Croft Room Council Offices
Market Street Newbury

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Date of despatch of Agenda: Friday, 1 February 2019

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser on (01635) 519045
e-mail: moira.fraser@westberks.gov.uk

Further information and Minutes are also available on the Council's website at www.westberks.gov.uk



To: Councillors Peter Argyle, Howard Bairstow, Jeff Beck (Vice-Chairman), Graham Bridgman, Paul Bryant, James Cole (Chairman), Richard Crumly, Billy Drummond, Sheila Ellison, Manohar Gopal, Tony Linden and Quentin Webb

Agenda

Part I

Page No.

1. **Apologies**
To receive apologies for inability to attend the meeting (if any).
2. **Minutes** 5 - 8
To approve as a correct record the Minutes of the meeting of this Committee held on 19 November 2018.
3. **Declarations of Interest**
To remind Members of the need to record the existence and nature of any personal, disclosable pecuniary or other registrable interests in items on the agenda, in accordance with the Members' [Code of Conduct](#).
4. **Hackney Carriage and Private Hire Licence Fees Consultation Responses** 9 - 34
Purpose: To allow Members to consider the responses received during the 28 day consultation period concerning the proposed fees in relation to hackney carriage and private hire licensing.
5. **Convictions Guidance** 35 - 88
Purpose: To propose replacing the Council's existing criminal convictions guidance document with a more comprehensive policy, which has been drafted to reflect the recently published 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades', produced and published by the Institute of Licencing ('IoL').
6. **Animal Licensing** 89 - 100
Purpose: To update the Committee on the changes that have taken place in the field of animal licensing following the commencement of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and what impact these changes have had on the authority.

Andy Day
Head of Strategic Support



Agenda - Licensing Committee to be held on Monday, 11 February 2019 *(continued)*

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.



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DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON MONDAY, 19 NOVEMBER 2018

Councillors Present: Peter Argyle, Howard Bairstow, Jeff Beck (Vice-Chairman), Graham Bridgman, Paul Bryant, James Cole (Chairman), Richard Crumly, Tony Linden and Quentin Webb

Also Present: Charlie Fletcher (Licensing Officer), Sean Murphy (Public Protection Manager) Julia O'Brien (Principal Licensing Officer) and Moira Fraser (Democratic and Electoral Services Manager)

Councillors Absent: Councillor Billy Drummond, Councillor Sheila Ellison and Councillor Manohar Gopal

PART I

7. Minutes

The Minutes of the meeting held on 25 June 2018 were approved as a true and correct record and signed by the Chairman.

8. Declarations of Interest

There were no declarations of interest received.

9. Statement of Licensing Policy (C3431)

The Committee considered a report (Agenda Item 4) which set out the revised Statement of Licensing Policy which was amended following a consultation exercise. The Council's policy had to be re-published by the 11 December 2018.

Prior to the item being discussed the Chairman noted that the Licensing and Gambling Policies did not follow a similar format. Charlie Fletcher explained that the documents were legally required to include different information. The Chairman requested that where possible the documents should be harmonised in future iterations.

Councillor Graham Bridgman requested some minor changes to the layout of the document. He also requested that the word 'borough' be replaced with 'district' throughout this policy and the Gambling Policy. In addition he requested that quotes be set out in italics to make them easily identifiable and that a standard format be used for setting out times. It was also requested that the words Safer Community Partnership be replaced with Building Communities Together.

It was noted that although work was being undertaken to align policies with Bracknell and Wokingham Councils each authority was required to adopt their own Statement of Licensing Policy.

The Committee considered the policy in great detail and requested that a number of typographical and grammatical changes be made to the document.

The following key changes were requested:

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- Reference be made to the ability to submit electronic submissions in the 'Making an Application' section (see paragraph 3.1);
- It be made clear in paragraph 6.3 that the provision of potable water was compulsory in premises licensed to sell alcohol;
- Amend paragraph 8.6 to state that Challenge 25 had to be included as an age-monitoring scheme except in exceptional circumstances;
- To include a list of the Responsible Authorities in the definitions which would remove the need to list them in other parts of the document e.g. paragraph 9.2;

In response to the comments made during the consultation exercise by Punch Taverns in relation to Agent of Change, the Committee noted that this concept was not currently enshrined in law. If it was legislated for the document would need to be revisited to see what, if any, changes were required. Councillor Bridgman requested that Officers ensure that the ability by Officers to make or accept minor variations to applications be covered in the Scheme of Delegation. Members noted the comments around licensing being a 'quasi judicial' or administrative process. They noted that there was a lot of debate about this by legal experts. The Committee agreed to retain the terminology 'quasi judicial' until this issue was resolved. It was agreed that Officers would send the amended policy to Punch Taverns so that they could see the impact their comments had had on the document. **(Sean Murphy to Action)**

It was noted that the comments from Holybrook Parish Council largely related to the original policy which had been amended. The Committee stated that they would not contact individual residents about licensing applications. Local Ward Members were already informed as was the Parish Council. In addition advertisements were placed in local newspapers, blue notices were put up on site and the applications were placed on the Council's website. The Committee were of the opinion that as the Council received objections to applications the system was working and they therefore decided that it would not be appropriate to add affected residents to the list of groups notified. It was agreed that Officers would respond directly to the Parish Council on the issue of the 'late night levy'. **(Sean Murphy to Action)**

The Committee noted the consultation response from Public Health and Wellbeing West Berkshire. In particular they considered the comments about the sale of 'beers, lagers and ciders over 6.5% which were sold in plastic bottles or metallic cans'. Officers stated that it would be difficult to adopt this principle without an evidence base that this issue was causing the licensing objectives to be contravened in a locality. There were other rules for dealing with the behaviours associated with this concern including not selling alcohol to people that appeared to be intoxicated.

RESOLVED that:

- **The requested amendments be made to the document;**
- **The amended document be circulated to the Committee prior to it being published in the Council agenda;**
- **The amended policy be recommended to full Council for approval at the 06 December 2018 meeting;**
- **The amended document to be circulated to those that had responded to the consultation;**
- **Authority be delegated to the Head of Legal Services in consultation with the Head of Public Protection and Culture to ensure the revised document was consistent with the Scheme of Delegation.**

10. Statement of Gambling Principles (C3430)

The Committee considered a report (Agenda Item 5) which set out West Berkshire Council's Statement of Gambling Principles under the Gambling Act 2005 which was required to be reviewed and republished by 31st January 2019.

The Statement would last for a maximum of three years and could be reviewed and revised by the authority at any time.

Councillor Graham Bridgman stated that his comments in terms of layout regarding the Statement of Licensing Policy should be applied to this document as well. The Committee requested that a number of typographical errors be corrected and that a number of grammatical changes be made to the report. In particular they requested that Licensing Authority (LA) be capitalised and that it be prefaced with the word 'the'. In addition they requested that a definition of the 'five times rule' be included in the glossary.

The Committee noted the comments from the consultees that were included in the paperwork. They noted that the final paragraph of section 2.4 provided some contextual information around the definition of vulnerable persons.

- **The requested amendments be made to the document;**
- **The amended document be circulated to the Committee prior to it being published in the Council agenda;**
- **The amended policy be recommended to full Council for approval at the 06 December 2018 meeting;**
- **The amended document to be circulated to those that had responded to the consultation;**
- **Authority be delegated to the Head of Legal Services in consultation with the Head of Public Protection and Culture to ensure the revised document was consistent with the Scheme of Delegation.**

11. Licensing Fees and Charges 2019 to 2020 (L3665)

The Committee considered a report (Agenda Item 6) which stated that each service was required to review the fees and charges it levied on behalf of the Council as part of the budget process. Appendix D set out the licensing fees and charges for the current year together with proposed changes for 2019/20.

Sean Murphy explained that at the meeting of the Joint Public Protection Committee (JPPC) in December 2017 it was agreed that as a matter of principle, all fees and charges should be set on the basis of full cost recovery. It was also agreed by the JPPC that, where appropriate, the fees would be aligned over the three areas covered by the partnership. It was recognised that due to complexities associated with areas such as street trading and animal establishment the same fees could not as yet be implemented across the partnership.

In 2018/19 the rate for the service was set at £55 per hour. The previous hourly rate that had been applied was closer to £35 per hour. Time and motion studies had been undertaken as well as time recording in the service to establish how long various activities that were charged for would on average take to complete. For 2019/20 in respect of all discretionary fees and the hourly rate, an inflationary rise of 2.5% had been applied.

(Councillor Peter Argyle left the meeting at 6.10pm).

Members were concerned that some of the increases were significantly higher than others. Officers stated that this was due to a number of factors including the change to the hourly rate for the service, more accurate assessments of the length of time activities

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took, the fact that the fees in West Berkshire not realistic and were significantly lower than in Bracknell. Officers were confident that the changes could be justified. The Joint Management Board had looked at the methodology applied and agreed it. It was agreed that the methodology for arriving at the figures should be explained in the consultation that would be undertaken prior to the fees being presented to full Council for approval in March 2019. Councillor Graham Bridgman also felt that it would be useful to explain that the fees had not been increased for six years.

(Councillors Graham Bridgman, Paul Bryant, Tony Linden and Howard Bairstow left the meeting at 6.20pm).

RESOLVED that:

- **the new fees, save for the vehicle and private hire operator licence fees. as set out in the report be consulted on;**
- **that the methodology for deriving the fees be explained as part of the consultation process;**
- **that if necessary a special Licensing Committee be arranged for mid-February 2019 to consider the consultation responses prior to the fees and charges being discussed at the March 2019 Council meeting.**
- **The proposed changes for operators and vehicle licence fees be advertised and if no objections are received be implemented on the 01 April 2019;**
- **If objections are received that they be considered by the Chairman who will set the fees and charges for any licences commencing on the 01 April 2019.**

12. Licensing Annual Report (L3668)

The Committee considered a report (Agenda Item 7) which detailed the activities carried out by the Licensing Service of the Public Protection Partnership in West Berkshire during the period 01 April 2017 to 31 March 2018.

Officers noted that the 2018/19 report would be brought to Committee in June 2019. The asked that Members notify them of any additional information they would like to see included in the report in future iterations.

RESOLVED that the report be noted.

(The meeting commenced at 4.30 pm and closed at 6.27 pm)

CHAIRMAN

Date of Signature

Hackney Carriage and Private Hire Licence Fees Consultation Responses - Summary Report

Committee considering report:	Licensing Committee
Date of Committee:	11 February 2019
Portfolio Member:	Councillor Richard Somner
Report Author:	Charlie Fletcher, Acting Principal Licensing Officer
Forward Plan Ref:	N/a

1. Purpose of the Report

- 1.1 To allow Members to consider the responses received during the 28 day consultation period concerning the proposed fees in relation to hackney carriage and private hire licensing.

2. Recommendation

- 2.1 Officers recommend that the consultation responses are taken into account and the fees are set, with or without modification, to come into effect on 1 April 2019.

3. Implications

- 3.1 **Financial:** There will be a financial implication if Members resolve to change the proposed fees. If fees as proposed are not introduced, this will impact the level of service provided in the West Berkshire area as a result of the requirement to achieve cost recovery for the licensing function. There is detail in this report of how the proposed fees were calculated and how they compare with other authorities.
- 3.2 **Policy:** Licensing policies and conditions have previously been approved by the Committee. The Council has a legal obligation to operate within its policies and to ensure that those who are licenced under the terms of the policies and conditions are compliant.
- 3.3 **Personnel:** The fees charged will be spent on the delivery of this aspect of the licensing function in accordance with the law and prevailing legal interpretation. This includes the employment of staff.
- 3.4 **Legal:** Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 requires all licensing authorities to publish a notice regarding any variation to the fees charged by the Council for vehicle and operator licences. As objections have been received, in accordance with the Act the Council is required to consider those objections and set a date on which any variation to the fees, with or without modification, shall come into force.

3.5 **Risk Management:** None

3.6 **Property:** None

3.7 **Other:** None

4. Other options considered

4.1 There are no alternative options, as the consideration of the objections and setting of the fees are legal requirements as outlined above.

Executive Summary

5. Introduction / Background

- 5.1 A new set of fees were presented to the Committee at their last meeting, in November 2018, where it was agreed to proceed with the statutory consultation process, with any objections received to be brought back before the Committee for further consideration.
- 5.2 A table showing the existing and proposed fees can be found at Appendix D.
- 5.3 The legal requirements in relation to amending fees are set out at section 70 of the Local Government (Miscellaneous Provisions) Act 1976. A public notice was published in the Newbury Weekly News on 20 December 2018 and a copy of this notice was available on the Council's public notice board from that date until 17 January 2019.
- 5.4 During the period available for making objections, seven objections were received. These objections raise points such as how the increases can be justified, increases that are above a percentage that is allowed and above inflation, and how the changes have been advertised.

6. Proposal

- 6.1 Officers recommend that the objections are considered and the fees are set, with or without modification. These will then be put forward to Full Council as part of the Council's budget setting process.

7. Conclusion

- 7.1 The Committee are requested to consider the objections in the context of this report and any further representations made at the meeting.

8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment
- 8.2 Appendix B – Equalities Impact Assessment
- 8.3 Appendix C – Supporting Information
- 8.4 Appendix D – Existing and proposed licence fees
- 8.5 Appendix E – Historical licence fees
- 8.6 Appendix F – Benchmarking information – vehicles
- 8.7 Appendix G – Benchmarking information - operators
- 8.8 Appendix H – Objections received (x 7)

Appendix A

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	Public Protection and Culture
Service:	Public Protection Partnership
Team:	Licensing
Lead Officer:	Julia O'Brien
Title of Project/System:	Licensing Fees and Charges 2019/2020
Date of Assessment:	17 January 2019

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p>Note – sensitive personal data is described as “<i>data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation</i>”</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be processing data on a large scale?</p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will your project or system have a “social media” dimension?</p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will any decisions be automated?</p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will your project/system involve CCTV or monitoring of an area accessible to the public?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be using the data you collect to match or cross-reference against another existing set of data?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be using any novel, or technologically advanced systems or processes?</p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

Appendix B

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Executive to make:	Set fees and charges for private hire and hackney carriage licences to take effect from 01/04/2019.
Summary of relevant legislation:	Local Government (Miscellaneous Provisions) Act 1976
Does the proposed decision conflict with any of the Council’s key strategy priorities?	No
Name of assessor:	Charlie Fletcher
Date of assessment:	17 January 2019

Is this a:		Is this:	
Policy	No	New or proposed	No
Strategy	No	Already exists and is being reviewed	Yes
Function	Yes	Is changing	Yes
Service	Yes		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To set fees and charges for private hire and hackney carriage licences to take effect from 01/04/2019.
Objectives:	Cost recovery for the licensing function
Outcomes:	An efficient and performing licensing function
Benefits:	No specific benefit

2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age	No impact	
Disability	No impact	
Gender	No impact	

Reassignment		
Marriage and Civil Partnership	No impact	
Pregnancy and Maternity	No impact	
Race	No impact	
Religion or Belief	No impact	
Sex	No impact	
Sexual Orientation	No impact	
Further Comments relating to the item:		
No further comments		

3 Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	No
Please provide an explanation for your answer: No evident contribution to inequality	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	No
Please provide an explanation for your answer: The income received from licence applicants covers the cost of providing the statutory licensing function.	

If your answers to question 2 have identified potential adverse impacts and you have answered ‘yes’ to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

4 Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name: Charlie Fletcher

Date: 17 January 2019

Hackney Carriage and Private Hire Licence Fees Consultation Responses – Supporting Information

1. Introduction/Background

- 1.1 The Council is required to set fees in respect of the licensing of private hire vehicles and hackney carriages, and private hire operators. As part of this, section 70 of the Local Government (Miscellaneous Provisions) Act 1976 requires all licensing authorities to publish a notice regarding any variation to the fees charged by the Council for vehicle and operator licences.
- 1.2 A new set of fees was presented to the Committee at the last meeting in November, where it was agreed to proceed with the statutory consultation process, with any objections received to be brought back before the Committee for further consideration.
- 1.3 This report requests allow Members to consider the seven responses received during the 28 day consultation period concerning the proposed fees for hackney carriage and private hire vehicle and operator licensing, and to set a date on which the variation to the fees, with or without further modification, shall come into force.

2. Supporting Information

- 2.1 The Joint Public Protection Committee is required by the Inter-Authority Agreement that set up the Public Protection Partnership shared service to recommend a draft set of fees and charges to each of the member Councils.
- 2.2 At the meeting of the Joint Public Protection Committee in December 2017 (when it considered the 2018/19 fees and charges) a number of matters were decided. It was agreed that as a matter of principle, all fees and charges should be set on the basis of full cost recovery. In 2018/19, the rate for the service was set at £55 per hour as the basis of cost recovery. It was also agreed that there should be a move to align fees across the former Bracknell licensing regime and the former Wokingham/ West Berkshire fee structure where appropriate.
- 2.3 In July 2018 the Joint Public Protection Committee received a further report asking it to consider the basis for setting fees and charges and the application of full cost recovery. That methodology was approved by the Committee. Based on these decisions, work has been carried out by officers to update and align fee structures to take effect from April 2019.
- 2.4 In respect of all discretionary fees and the hourly rate, an inflationary rise of 2.5% has been applied. This inflationary rise will balance the increase in cost of service provision such as the cost of living salary rise.
- 2.5 The Committee were advised at the meeting of 19 November 2018 that the existing fees structure was set based upon an hourly rate closer to £35 per hour, which was not reflective of the actual costs associated with delivering the service. The new

fees also take into account more accurate assessments of the amount of time invested to run the service.

2.6 Officer comments on the points raised within the objections are included within section 6 of this report.

3. Options for Consideration

3.1 There are no alternative options, as the consideration of the objections and setting of the fees are legal requirements as outlined above. Members may choose to modify the proposed fees at this stage, subject to the financial implications as identified above.

4. Proposals

4.1 Officers recommend that the objections are considered and the fees are set, with or without modification. These will then be put forward to Full Council as part of the Council's budget setting process.

5. Conclusion

5.1 In accordance with the relevant legislation, the Council is required to consider the objections received and set a date on which any variation to the fees, with or without modification, shall come into force.

6. Consultation and Engagement

6.1 The legal requirements in relation to amending fees are set out at section 70 of the Local Government (Miscellaneous Provisions) Act 1976. This section confirms that when they wish to vary the fees charges for vehicle or operator licences, Councils must publish a notice within a local newspaper and a copy of that notice must be deposited at the offices of the Council.

6.2 A public notice was published in the Newbury Weekly News on 20 December 2018 and a copy of this notice was available on the Council's public notice board from that date until 17 January 2019.

6.3 Seven objections were received during the consultation period, and these can be found at Appendix H.

6.4 The officer observations on some of the points raised within the objections are as follows:

- Fare increases. The Council sets fares that can be charged for hackney carriage journeys within West Berkshire. Prices for journeys taken in private hire vehicles are not set by the Council and are to be negotiated between the customer and the service provider. The Council can review the hackney carriage fare tariff if there is a call for this.
- Increases outside any percentage that is allowed. There are no maximum percentages governing increases. Councils can set fees at the level they deem appropriate as long as they have been advertised and approved via the appropriate channels and processes.

- Why has the same fee structure been adopted as another Council? The Public Protection Partnership is a shared service that operates across West Berkshire, Wokingham and Bracknell Forest Council areas. The Licensing function is operated by the same team across these three areas and hence why the costs encountered in running the service are equal across the PPP.
- Method of consultation. The fees increase has been advertised in line with the statutory requirements. It is important to note that the letters/emails mentioned within the objections are not a legal requirement, and come with associated costs. One comment suggests that the Council should follow the provisions within Section 70 of the Local Government (Miscellaneous Provisions) Act 1976. As per section 6.1 of this report, this is the section of legislation that details how the Council varies fees and it is confirmed that the requirements of that section have been met.
- Fees charged by other authorities. As the fees proposed have been calculated based upon the costs encountered in providing the service, it is not strictly relevant what other authorities are charging, however, benchmarking information is provided for reference at Appendix F and Appendix G.
- Financial hardship. As mentioned above, the fees have been set on a cost recovery basis, and to be set any lower would equate to a Council subsidy on the issuing of licences. The fees are the same for all businesses, large or small, and simply look to cover the cost of the licensing function.

Background Papers:

None

Yes: No:

The item is due to be referred to Council for final approval

Delays in implementation could have serious financial implications for the Council

Delays in implementation could compromise the Council's position

Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months

Item is Urgent Key Decision

Report is to note only

Wards affected:

All

Officer details:

Name: Charlie Fletcher
Job Title: Licensing Officer
Tel No: 01344 352550
E-mail Address: Charlie.fletcher@westberks.gov.uk

Appendix D

Existing and proposed licence fees

Type of vehicle licence	Existing / £	Proposed / £
Hackney Carriage Vehicle	161.00	282.00
Private Hire Vehicle Licence	161.00	282.00
Private Hire Vehicle Licence with dispensation	207.00	328.00
Temporary vehicle licence	162.00	226.00

Type of operator licence / £			
Existing			
1-4 vehicles (5 years)	545.00		
5-9 vehicles (5 years)	870.00		
9+ vehicles (5 years)	1356.00		
Proposed /£			
	1 year licence	3 year licence	5 year licence
1 vehicle:	183.00	439.00	559.00
2-5 vehicles:	318.00	772.00	923.00
6-10 vehicles:	533.00	1,279.00	1,845.00
11-15 vehicles:	738.00	1,773.00	2,768.00
16-20 vehicles:	999.00	2,400.00	3,690.00
More than 20 vehicles:	1,204.00	2,889.00	4,529.00

Appendix E

Historical fees – vehicles and operators

Vehicle fees by year

Year	Private hire vehicle / £	Hackney carriage vehicle / £
2011	141.00	150.00
2012	148.00	157.00
2013	148.00	157.00
2014	148.00	157.00
2015	148.00	157.00
2016	148.00	157.00
2017	148.00	157.00
2018	161.00	161.00

Operator fees by year

Year	1-4 vehicles / £	5-9 vehicles / £	9+ vehicles / £	Length of licence
2010	163.00	261.00	407.00	1 year
2011	168.00	269.00	240.00	1 year
2012	176.00	282.00	439.00	1 year
2013	176.00	282.00	439.00	1 year
2013	176.00	282.00	439.00	1 year
2015	176.00	282.00	439.00	1 year
2015	528.00	846.00	1317.00	5 years
2016	528.00	846.00	1317.00	5 years
2018	545.00	870.00	1356.00	5 years

Appendix F

Benchmarking information - vehicles

Council	Hackney carriage vehicle / £	Private Hire vehicle / £
PPP proposed fee	282.00	282.00
West Berkshire / Wokingham existing	161.00	161.00
Bracknell Forest	276.00	276.00
Slough	220.00	220.00
Wycombe	258.00	253.00
White Horse	120.00 - 395.00*	185.00 - 250.00*
Surrey Heath	295.00	265.00
South Oxfordshire	85.00 - 300.00*	85.00 - 210.00*
Reading	336.00 or 145.00 for electric	299.00 or 145.00 for electric
Basingstoke	168.00	168.00
Cherwell	350.00	240.00
Hart	237.00 or 118.50 for wheelchair accessible vehicles	237.00
RBWM	315.00	255.00

* Vale of White Horse and South Oxfordshire fees vary with age of vehicle and tax band

Appendix G

Benchmarking information – Operator licence fees

	Wokingham / West Berkshire	Bracknell	Slough	Wycombe	Valle of White Horse	Surrey/Heath	South Ox	Reading	Basingstoke & Deane	Cherwell	Hart	Windsor & Maidenhead
	N/A	1 Vehicle - £179	1 Vehicle - £137	1 Vehicle - £120	N/A	1 Vehicle - £95	N/A	1 Vehicle - £317	N/A	N/A		1-5 Vehicles - £286
	N/A	2-9 Vehicles - £310	Up to 5 Vehicles - £275	2-5 Vehicles - £185	N/A	More than 1 Vehicle - £215	N/A	2-5 Vehicles - £900	N/A	N/A		6 - 10 Vehicles - £440
		6-10 Vehicles - £520	Up to 15 Vehicles - £390	N/A	N/A	N/A	N/A	6 - 10 Vehicles - £1159	N/A	N/A		11-15 Vehicles - £615
		11-15 Vehicles - £720	Up to 25 Vehicles - £595	N/A	N/A	N/A	N/A	11-15 Vehicles - £1827.50	N/A	N/A		16-20 Vehicles - £790
	N/A	16-20 Vehicles - £975	Up to 35 Vehicles - £835	6-10 Vehicles - £235	N/A	N/A	N/A	16-20 Vehicles - £2006.50	N/A	N/A		21-30 Vehicles - £1035
1 Year	N/A	20+ Vehicles - £1175	Up to 45 Vehicles - £1070	11-20 Vehicles - £290	N/A	N/A	N/A	21-25 Vehicles - £2595	N/A	N/A	£116	30+ Vehicles - £1420
	N/A		Up to 55 Vehicles - £1310	21-40 Vehicles - £470	N/A	N/A	N/A	26-30 Vehicles - £2903	N/A	N/A		
	N/A		Up to 65 Vehicles - £1550	50+ Vehicles - £700	N/A	N/A	N/A	31-35 Vehicles - £3422.50	N/A	N/A		
	N/A		Up to 75 Vehicles - £1790	N/A	N/A	N/A	N/A	36-40 Vehicles - £3978	N/A	N/A		
	N/A		Up to 85 Vehicles - £1990	N/A	N/A	N/A	N/A	41-45 Vehicles - £4305.50	N/A	N/A		
	N/A		Up to 90 Vehicles - £2395	N/A	N/A	N/A	N/A	45+ Vehicles - £4796.50	N/A	N/A		
	N/A		100 and over Vehicles - £2395	N/A	N/A	N/A	N/A		N/A	N/A		
	N/A	1 Vehicle - £428	N/A	N/A	1-2 Vehicles - £432	N/A	1-2 Vehicles - £150	N/A	N/A	N/A		1-5 Vehicles - £795
	N/A	2-9 Vehicles - £753	N/A	N/A	3-4 Vehicles - £550	N/A	3-4 Vehicles - £250	N/A	N/A	N/A		6 - 10 Vehicles - £1320
	N/A	6-10 Vehicles - £1248	N/A	N/A	5-14 Vehicles - £888	N/A	5-14 Vehicles - £400	N/A	N/A	N/A		11-15 Vehicles - £1945
3 Years	N/A	11-15 Vehicles - £1730	N/A	N/A	15+ Vehicles - £956	N/A	15+ Vehicles - £560	N/A	N/A	N/A		16-20 Vehicles - £2370
	N/A	16-20 Vehicles - £2341	N/A	N/A		N/A		N/A	N/A	N/A		21-30 Vehicles - £3105
	N/A	20+ Vehicles - £2819	N/A	N/A		N/A		N/A	N/A	N/A		30+ Vehicles - £4200
	1-4 Vehicles - £545	1 Vehicle - £671	1 Vehicle - £411	1 Vehicle - £480	N/A	1 Vehicle - £425	N/A	N/A	N/A	N/A		N/A
	5-9 vehicles - £970	2-5 Vehicles - £1194	Up to 5 Vehicles - £825	2-5 Vehicles - £740	N/A	More than 1 Vehicle - £1075	N/A	Renewal up to 5 Vehicles - £295	N/A	New 1 Vehicle - £120	N/A	N/A
	8+ vehicles - £1398	6-10 Vehicles - £1956	Up to 15 Vehicles - £1080	6-10 Vehicles - £940	N/A	N/A	N/A	New over 5 Vehicles - £920	Additional Vehicle - £20	Renewal 1 Vehicle - £95	N/A	N/A
	N/A	11-15 Vehicles - £2712	Up to 25 Vehicles - £1785	11-20 Vehicles - £1170	N/A	N/A	N/A	Renewal over 5 Vehicles - £575	N/A	N/A	N/A	N/A
5 Years	N/A	16-20 Vehicles - £3970	Up to 35 Vehicles - £2505	21-50 Vehicles - £1890	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A	20+ Vehicles - £4419	Up to 45 Vehicles - £3210	50+ Vehicles - £2090	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A		Up to 55 Vehicles - £3930	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A		Up to 65 Vehicles - £4850	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A		Up to 75 Vehicles - £5370	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A		Up to 85 Vehicles - £5790	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A		Up to 90 Vehicles - £7095	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A		100 and over Vehicles - £7155	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A			N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	N/A			N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

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Cheryl Lambert

From:
Sent: 03 January 2019 09:24
To: Cheryl Lambert
Subject: Fees

This is an EXTERNAL EMAIL. STOP. THINK before you CLICK links or OPEN attachments.

Good Morning Cheryl,

I have been asked by Walter O'Brien to forward letter for Sean Murphy.

To: Sean Murphy
Public Protection Manager
West Berkshire Council

Dear Sir,

Re: Proposed Increase in Licence Fees

I refer to the notice published in the Newbury Weekly News on 20/12/2018 and now wish to register our strong objections to the published increases.

The Individual Hackney Carriage increase is 75% whilst our 5 year Private Hire Operator's Licence reflects a jaw-dropping increase of 340%.

Whilst were not against an inflationary increase we feel these proposed increases are extortionate. The trade has not

received a fare increase since 2013 and query how you can justify such an increase.

What benefit will trade receive – will there be a substantial improvement to the virtually non-existent enforcement procedures?

Or some other unknown benefit yet to be divulged?

Please consider this a formal objection on behalf of the 65 Hackney and Private Hire Vehicles operated by Cabco Ltd.

I trust you will acknowledge receipt of this objection.

Yours Faithfully

Walter O'Brien
Director

Cabco Limited

34A Kingfisher Court, Hambridge Road,
Newbury, Berkshire, RG14 5ST

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Cheryl Lambert

From: Cheryl Lambert
Sent: 14 January 2019 09:44
To: Licensing
Subject: Objection to private Hire vehicle with dispensation proposed price increase

This is an EXTERNAL EMAIL. STOP. THINK before you CLICK links or OPEN attachments.

Fao Sean Murphy

How on earth can you justify an increase from £207 to £328

I would like to see a justification for this!

An increase of 63.1% absolutely criminal!

Regards

Get [Outlook for Android](#)

Cheryl Lambert

From: Cheryl Lambert
Sent: 16 January 2019 15:33
To: Licensing
Subject: Fees increase

This is an EXTERNAL EMAIL. STOP. THINK before you CLICK links or OPEN attachments.

I would like to oppose these fee increases as I believe they are outside of any percentage that is allowed. I am also still awaiting the outcome of an earlier meeting where the committee asked The licensing team to show figures on how these charges were founded as they were "pie in the sky" figures. I think that these need to be spoken about as I do not understand why we need to have the same fee structure as another council to which as I see it nothing to do with West Berkshire Taxis and private hire whatsoever.

Yours
KENIKABS TAXI SERVICE

Cheryl Lambert

From: <info@atobexecutivecars.com>
Sent: 16 January 2019 17:00
To: Licensing
Subject: Proposed Licence Fee Increases

This is an **EXTERNAL EMAIL**. STOP. THINK before you **CLICK** links or **OPEN** attachments.

Dear Cheryl & Sharon,

I write with regards to the proposed increases in fees of Private Hire Vehicles and Operators that were in the NWN. I'm a little surprised that letters or an email weren't sent out to us where we could write a response if we so wished, rather than being informed by someone else in the trade of such a proposal. Not everyone buys/reads the Newbury Weekly News so it leads me to suggest that although you were essentially putting this in the public domain, it was done in such a way that perhaps for many it may not have been seen and replies not given to you, thus leading to little objection and an easier route to get this motion passed.

I feel that the increases proposed are quite staggering. For the additional charges that are mentioned what extra do we gain from you as a council? I'm presuming the certificates and licence plates given to us will be on the same paper and plastics as before. I struggle to find how you can justify and these increases? In recent times we as a company had one of our corporate clients move out of Newbury to Reading and as a result we have suffered losses to our income, the increases could/will prove even harder to stomach and account for...who knows where that leaves us financially and as a company.

Over the past 10 years of my career in the industry we have seen increases before but not on this kind of scale, don't forget the increases we have had on fuel duty, insurances of vehicles, corporation taxes and so on. Let me say the combined prices of all this put together isn't for the faint hearted (you could say to cover it all I woke for free at least a month of the year) and this proposal adds another nail in the proverbial coffin.

I finish by saying I feel that should these proposals gather speed or get passed this will lead to the possibility of either of these outcomes – private hire drivers and operators look at being licenced through other councils that will provide licences at a cheaper fee, or that people won't be licenced at all and will continue to work regardless (there are these people out there already bypassing the rules and not being caught) I don't feel that such increases will be beneficial for the industry and so object to them wholeheartedly.

Kind Regards

A to B Executive Cars Ltd

e-mail : info@atobexecutivecars.com
www.atobexecutivecars.com

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AutolinkExecutive Cars
10.Hazel Grove, Thatcham, RG18 3NH
autolinkexeccars@gmail.comYour Name



16th January 2019

Sean Murphy
Public Protection Manager
West Berkshire Council, Market Place, Newbury. RG14 5LD

Dear Sean Murphy,

We were notified on the 14th January by a third party that an advertisement was placed in the Newbury Weekly News under the Public notice outlining proposals for an increase in fees to the Hackney Carriage & Private Hire operators. Ourselves and other operators do not buy the paper and therefore would not know of the said proposed increase in fares. Most if not all operators have email addresses for which we could have been notified in this way.

I have looked at other council prices and for a 5 year operators license the costs vary from £400.00 to £445.00.

From what I understand is that from the last increase in 2018 the increase would vary in % up to 90% and from the 4 years since we renewed our license it has almost doubled.

After reducing your staff members and amalgamating with Wokingham Council to reduce costs where is the justification for such a high increase.

I have spoken with other private hire operators and they have said they know nothing of the proposals.

The price increase that is proposed by the Council is way above current inflation and with Brexit on the horizon business is getting very hard to find especially when companies are cutting back on travel due to uncertainty.



Sincerely,

Your Name

Excel Executive Chauffeurs Ltd

11 Sutton Road, Speen, Newbury, Berkshire, RG14 1UW

Telephone & Fax: 01635 45964

Mobile Phone:

E-Mail: info@excelexecutivechauffeurs.co.uk Website: www.excelexecutivechauffeurs.co.uk

Mr S Murphy

Public Protection Manager

West Berkshire Council

Market Street

Newbury

16th Jan 2019

Dear Mr Murphy

I read with interest and disgust at your intention to impose what can only be described as another extortionate increase to licence fees for both Hackney carriages and Private Hire.

Allow me to put this into context:

You imposed unjustified substantial increases in June 2018. These increases were based on inaccurate figures, as pointed out by the Licencing Committee and the Department was asked to provide accurate ones. I believe that these are still outstanding.

Those increases consisted of:

- A 3% increase to the cost of a private hire vehicle licence.
- A 40% increase to exempted vehicles
- A 3.25% increase in operator licence fees.

The increase for exempted vehicle was supposedly because the licensing team needs to carry out more checks on these vehicles. I'm sorry, but the additional information required is provided by the owner to confirm that he qualifies. It should take the department no more than 10 minutes to look at that information, despite the councils claim that this takes an hour. I wish I could claim £55 an hour.

Let's now look at the new revised prices:

- Vehicle Licence £282 - an additional increase of 85.5% (yes 85.5%) or 90.5% since May
- Vehicle with Exemption £328 – an additional increase 58.5% or 122% since May.

Interestingly, where the council originally claimed the additional cost needed to be £55 it now thinks that it only needs to be £46. I assume that all operator's that have paid the previous figure will be given a refund of the difference as it was quite obviously based on guesswork.

- 5-year operator's licence £545 an additional increase of 2.5% or 6% since May

I note with interest that other local Authorities around us do not feel the need to charge these exorbitant fee's and I am still waiting to see West Berkshire's justification.

According to National statistics the annual rate of inflation to November was 2.2%. I can only assume that you know something that the rest of us do not.

Yours

Mr S Murphy
Public Protection Manager
West Berkshire Council
Market Street
Newbury
RG14 5LD

Tuesday, 8th January 2019

Dear Mr Murphy

Public Notice December 20th 2018 with regards to the varying of fees.

I wish to object to the fees as advert, dated December 20th 2018, with regards to the financial year April 2019 to March 2020.

Although LG(MP)Act 1976, s53 contains no requirement for consultation, a local authority would be ill-advised not to embark upon some element of consultation, with those persons who would be affected by an increase in fees (eg, the drivers of both Hackney Carriages and Private Hire Vehicles).

Although it is not a statutory requirement, it would seem sensible a Local Authority to follow the same procedure, as contained in LG(MP)Act 1976, s70 for increases in fees under s53, so as to provide the consultation, which is required and to demonstrate that they are approaching the matter in a reasonable fashion.

I objected to the increase in fees, back in May 9th 2018, the Licensing Committee held its meeting 26th June 2018, and to this day, questions raised with regards to finances within the council have not been answered. Members asked management to be more transparent, and we see no results other than another increase.

Please refer to Hackney Carriage and Private Hire Licence Fees Consultation Responses Minutes of the below meeting.

*Meeting of Licensing Committee, Monday, 25th June, 2018 5.00 pm (Item 5.)
RESOLVED that the fees be set, without modification and implemented on the 26 June 2018. The increases to be monitored and reported back on to ensure they were justified. No justification given to objectors.*

Please use the best practice approach in dealing with the trade on fees. Going forward, please find time to have discussions' with the trade. In the past good communications have seen a smooth transition with policy's, looking back, recent objections after objections costing all time and money, just what you don't have, trying to recoup with one fee being 121.6% increase since 25th June 2018,

Please see the statement below:

*Laura Driscoll in introducing the item noted that the last time the fees had been increased was in April 2016. The fees had not been increased during the 2017 Council fee setting process. The proposed increase represented a circa 3% increase across the Board. In addition the Council was also proposing the introduction of a fee for 'dispensation vehicles' which were vehicles used to carry out contract work and which were therefore exempt from the requirement to **display the plate**.*

Play on words, The Plate **MUST** be displayed at all times, in the boot area of the vehicle, just not externally and two badges both displayed front and back windscreens.

Its money for nothing, as other costs, such as Temporary Vehicle Licence are well under-priced for the time taken, but you (The Council) don't listen?

Hackney Carriage New verses Renewal same price why?

To conclude I object to the fees of:

Hackney Carriage Licence! What is this Vehicle or Operators?

Private Hire Vehicle Licence

Temporary Vehicle Licence

Private Hire Dispensation

Regards

Convictions Guidance - Summary Report

Committee considering report:	Licensing Committee
Date of Committee:	11 February 2019
Portfolio Member:	Councillor Richard Somner
Report Author:	Charlie Fletcher, Acting Principal Licensing Officer
Forward Plan Ref:	N/a

1. Purpose of the Report

- 1.1 This report examines the criminal convictions element of the 'fit & proper' test. This test applies to existing licence holders and new applicants for Hackney Carriage driver licences, Private Hire driver licences, and Private Hire Operators licences.
- 1.2 It is proposed to replace the Council's existing criminal convictions guidance document with a more comprehensive policy, which has been drafted to reflect the recently published 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades', produced and published by the Institute of Licencing ('IoL').

2. Recommendations

- 2.1 That the Committee agrees that:
 - (a) the Guidance published by the IoL is noted.
 - (b) a consultation is carried out with the trade on the proposals that:
 - i. the new Guidance is adopted by the Council
 - ii. the new Criminal Convictions Policy is adopted, replacing the existing guidance notes
 - (c) the results of that consultation be brought back to this Committee for further consideration.

3. Implications

- 3.1 **Financial:** There are no specific financial implications arising from this report.
- 3.2 **Policy:** The Council's existing policy for considering licence holder and licence applicant criminal convictions is in need of an update and would be so updated following the analysis and consideration of any consultation responses, should the Committee be minded to proceed.
- 3.3 **Personnel:** There are no specific personnel implications arising from this report.
- 3.4 **Legal:** Section 51 and 55 of the Local Government (Miscellaneous Provisions) Act 1976 includes the provision for the fit and

proper person test.

3.5 **Risk Management:** There are no specific risk matters arising from the adoption of this policy. A risk would arise should the Council fail in its statutory duty to only licence individuals who are deemed fit and proper to hold a licence.

3.6 **Property:** None

3.7 **Other:** None

4. Other options considered

4.1 The Committee could decline to proceed with a consultation on the adoption of the guidance, meaning the Council would continue to utilise the existing guidance document.

Executive Summary

5. Introduction / Background

- 5.1 The Local Government (Miscellaneous Provisions) Act 1976 provides that a Licensing Authority must satisfy themselves, before a licence is granted, that the applicant for a driver or operator licence is a fit and proper person.
- 5.2 The Council includes a criminal records check (DBS) as part of its fit and proper person test, and has published guidance to assist applicants and decision makers in relation to interpreting any trace highlighted on this check.
- 5.3 The IoL has recently published a comprehensive guidance document in relation to determining applicant suitability, specifically in relation to any trace identified within criminal records checks, or other non-conviction information that comes to light.

6. Proposals

- 6.1 It is proposed to adopt the guidance produced by the IoL and to incorporate the timescales included therein into an updated and overhauled Hackney Carriage and Private Hire Licensing Criminal Convictions Policy.
- 6.2 A consultation shall be carried out with the trade and general public, the results of which shall be presented back to the committee for further consideration.

7. Conclusions

- 7.1 A comprehensive and robust policy will aid clarity for applicants, licence holders, Council officers, and elected Members.
- 7.2 The IoL guidance is also due to be adopted across the Public Protection Partnership, and whilst there may be some localised deviations in policy, they are only minor in nature, enabling the Council to benefit from economies of scale and resilience.

8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment
- 8.2 Appendix B – Equalities Impact Assessment
- 8.3 Appendix C – Supporting Information
- 8.4 Appendix D – Institute of Licensing guidance document
- 8.5 Appendix E – Current Council guidance on criminal convictions
- 8.6 Appendix F – Comparison of timescales between current and proposed conviction timescales
- 8.7 Appendix G – Draft Criminal Convictions Policy

Appendix A

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	Public Protection and Culture
Service:	Public Protection Partnership
Team:	Licensing
Lead Officer:	Julia O'Brien
Title of Project/System:	Criminal Convictions Policy
Date of Assessment:	11 January 2019

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p>Note – sensitive personal data is described as “<i>data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation</i>”</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be processing data on a large scale?</p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will your project or system have a “social media” dimension?</p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will any decisions be automated?</p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will your project/system involve CCTV or monitoring of an area accessible to the public?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be using the data you collect to match or cross-reference against another existing set of data?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be using any novel, or technologically advanced systems or processes?</p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

Appendix B

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Executive to make:	Agree to consult on the adoption of a new criminal convictions policy for licence holders and applicants
Summary of relevant legislation:	Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847
Does the proposed decision conflict with any of the Council's key strategy priorities?	No
Name of assessor:	Charlie Fletcher
Date of assessment:	11 January 2019

Is this a:		Is this:	
Policy	Yes	New or proposed	No
Strategy	No	Already exists and is being reviewed	Yes
Function	No	Is changing	Yes
Service	No		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To adopt a new criminal convictions policy
Objectives:	To ensure the protection of the public via a robust decision making process
Outcomes:	Strong and defensible decisions on licence holder suitability
Benefits:	Ensuring that only suitable persons are granted licences

2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.		
(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age	No impact	

Disability	No impact	
Gender Reassignment	No impact	
Marriage and Civil Partnership	No impact	
Pregnancy and Maternity	No impact	
Race	No impact	
Religion or Belief	No impact	
Sex	No impact	
Sexual Orientation	No impact	
Further Comments relating to the item:		
No further comments		

3 Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	No
Please provide an explanation for your answer: No evident contribution to inequality	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	No
Please provide an explanation for your answer: No evidence the adoption of a revised policy will have an adverse impact.	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

4 Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name: Charlie Fletcher

Date: 11 January 2019

Convictions Guidance – Supporting Information

1. Introduction/Background

- 1.1 The Local Government (Miscellaneous Provisions) Act 1976 provides that a Licensing Authority must satisfy themselves before a licence is granted that the applicant for a driver or operator licence is a fit and proper person. This has not been judicially defined but in the case of a suspension of a driver in Leeds City Council v Hussain it was said by the Judge:

“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”

- 1.2 There is no national or statutory guidance to assist local authorities in making a decision on whether a licence holder remains, or a new applicant is, fit and proper. As such, it is left up to individual authorities to make this decision.
- 1.3 In the absence of national or statutory guidance, the IoL have published a comprehensive guidance document, with the aim for it to be widely adopted to result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing.
- 1.4 The Council already publishes a guidance document which includes recommendations on the period of time before an individual may be deemed suitable to hold a licence following a conviction for given offences. However, some of these recommendations are significantly more lenient than those within the IoL guidance.
- 1.5 It is therefore felt to be an opportune time to revisit the Council’s guidance, with the aim to update and expand on, the information included.

2. Supporting Information

- 2.1 The guidance has been produced by the IoL in partnership with the Local Government Association, Lawyers in Local Government, and the National Association of Licensing and Enforcement Officers, and following widespread consultation. It is formally endorsed by all of those organisations.
- 2.2 The guidance published by the IoL is attached at **Annex D**. The Council’s current guidance at **Annex E**. A table showing a comparison between the time scales presented in these two documents is attached at **Annex F**. The draft policy proposed for adoption is at **Annex G**.
- 2.3 In each case in the IoL standards, the suggested time periods that should elapse before a licence would be granted are equal to, or longer than the existing periods in the Council’s guidance. In some cases, significantly longer periods are suggested, for example all violence offences are 10 years in the IoL guidance, whereas for a single violence offence, the period is 3 years in the current guidance.

- 2.4 Nationally, there have been a number of high profile incidents in recent years in relation to child sexual exploitation ('CSE') issues, and therefore it is felt to be very appropriate to specify that anyone who has been convicted of CSE or other exploitation offences (such as modern slavery), will not be licensed.
- 2.5 Both Hackney Carriage and Private Hire drivers are exempt from the Rehabilitation of Offenders Act 1974. This means that there are no 'spent' convictions and any and all criminal convictions can be taken into account by a Local Authority in assessing safety and suitability. Enhanced Disclosure and Barring Service (DBS) certificates are obtained by the authority in respect of a new applicant and these are renewed every 3 years.
- 2.6 Taxis are used by a large selection of the public but most regularly they are used by vulnerable groups such as children, the elderly, disabled people and the intoxicated. These groups in particular and lone females are placing themselves, and their personal safety, completely in the hands of a driver. As a passenger they may not have any control of what the driver does, be it drive badly, take them to a remote location, or assault them mentally or physically.
- 2.7 The Local Government Association Taxi and PHV licensing Councillors' handbook (from page 13, August 2017 edition) recommends that a Council's criminal convictions policy is reviewed and updated regularly. Councils are also recommended to take a particularly strong stance in relation to indecency, violence and dishonesty offences.
- 2.8 In addition to help in protecting the public, a robust policy will also engender public confidence in the trade, which can ultimately only be of benefit to the trade. This is a point that will be made in the consultation process.
- 2.9 It is suggested that the IoL guidance will help to add greater clarity for both the person making a decision, whether officers or Committee Members at a sub-Committee hearing, and for an applicant or licence holder who has criminal convictions or allegations made against them. The recommendation is therefore that a consultation is carried out in relation to the guidance. The results of this consultation shall be presented back to this committee with the suggestion that the IoL guidance is adopted along with the newly drafted current policy.

3. Options for Consideration

- 3.1 The Committee could decline to proceed with a consultation on the adoption of the IoL guidance, meaning the Council would continue to utilise the existing guidance document.

4. Proposals

- 4.1 That the Committee, subject to any amendments, agrees for the IoL guidance and draft Criminal Convictions Policy are approved to go out for consultation.

5. Conclusion

- 5.1 A comprehensive and robust policy will aid clarity for applicants, licence holders, Council officers, and elected Members.

5.2 The IoL guidance is also due to be adopted across the Public Protection Partnership, and whilst there may be some localised deviations in policy, they are only minor in nature, enabling the Council to benefit from economies of scale and resilience.

6. Consultation and Engagement

6.1 No consultation has been carried out at the time of writing the report. If the recommendations are accepted, a consultation shall be carried out with the licensed trade and the wider public on the adoption of the IoL guidance and the updated criminal convictions policy.

Background Papers:

Local Government Association Taxi and PHV licensing Councillors' handbook (August 2017)

Subject to Call-In:

Yes: No:

The item is due to be referred to Council for final approval

Delays in implementation could have serious financial implications for the Council

Delays in implementation could compromise the Council's position

Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months

Item is Urgent Key Decision

Report is to note only

Wards affected:

All

Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aim:

P&S – Protect and support those who need it

The proposals contained in this report will help to achieve the following Council Strategy priority:

P&S1 – Good at safeguarding children and vulnerable adults

Officer details:

Name: Charlie Fletcher
Job Title: Licensing Officer
Tel No: 01344 352550
E-mail Address: Charlie.fletcher@westberks.gov.uk

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



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:



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Foreword

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

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

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

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

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

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

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

Philip Kolvin QC
Cornerstone Barristers

April 2018

Chapter 1: Introduction

- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications¹. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

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

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

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

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.³ With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm⁴. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

³ DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

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

- 2.6 Flaud⁵ 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 place⁶.
- 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 future⁷. 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%⁸. 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 offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. 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 population¹¹. 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.

⁵ 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.

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

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

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

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

¹⁰ 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

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

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”¹².
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”¹³.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁴. 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 relationships¹⁵. 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 males¹⁶.
- 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 desist¹⁷. 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 desistance¹⁸. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

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

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

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

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

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

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

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

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

- 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.

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

Chapter 3: 'Taxi' Licensing Overview

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

Taxi Drivers

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

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

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*²³. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁴
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

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

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

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

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

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

- 3.18 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers' licence?
- 3.19 The local authority has the power to require an applicant to provide:
- “such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”²⁵
- This “information” can include any pre-conditions or tests that they consider necessary
- 3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:
- Enhanced DBS certificates and sign-up to the update service;
 - Knowledge tests;
 - Driving tests;
 - Disability Awareness;
 - Signed Declarations;
 - Spoken English tests.
- 3.21 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.
- 3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared²⁷) 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 maker²⁸.
- 3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks²⁹ and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

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

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

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

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

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

- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability³⁰.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account³¹. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been)

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

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

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

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

Private Hire Operators

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

authority³². A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person³³.

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

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

³³ Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

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

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

- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation³⁵. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence³⁶ and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.47 A suitable test would be:

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

³⁵ See s57(1)(c) of the 1976 Act.

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

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

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

Chapter 4: Guidance on Determination

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

Pre-application requirements

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

Vehicles:

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

Drivers:

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

Operators:

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

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership³⁸) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.

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

- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction³⁹. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴⁰.
- 4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

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

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

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

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

Drivers

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

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

Crimes resulting in death

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

Exploitation

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

Offences involving violence

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

Possession of a weapon

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

Sex and indecency offences

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

Dishonesty

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

Drugs

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

Discrimination

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

Motoring convictions

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

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

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

Other motoring offences

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

Hackney carriage and private hire offences

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

Vehicle use offences

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

Private Hire Operators

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

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

Vehicle proprietors

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

Acknowledgements

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

The core project group comprised:

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

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

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Institute of Licensing
Egerton House
2 Tower Road
Birkenhead
CH41 1FN
T: 0151 650 6984
E: info@instituteoflicensing.org



The Institute of Licensing (IoL) is the professional body for licensing practitioners across the UK.
www.instituteoflicensing.org



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www.local.gov.uk



Lawyers in Local Government (LLG). www.lawyersinlocalgovernment.org



National Association of Licensing and Enforcement Officers (NALEO). www.naleo.org.uk

Guidance Notes on the Relevance of Criminal Records in Respect of Applicants for a Licence to Drive a Hackney Carriage or Private Hire Vehicle

1. An applicant for a hackney carriage or private hire driver's licence ("Driver's Licence") will be required to undertake a check, in accordance with the Council's standard conditions, by applying to the Criminal Records Bureau for an enhanced disclosure. This will be required upon first application and upon each subsequent renewal of a Driver's Licence.
2. All parts of the Driver's Licence application form relevant to criminal convictions must be declared. Failure to do so may result in the refusal of a licence.
3. Any reference within this Guidance to convictions shall include cautions.
4. The Council will consider all convictions whether current or spent, in determining the fitness of a person to drive either a hackney carriage or a private hire vehicle.
5. Where any driver is convicted of an offence during the licensed period (whether or not the conviction is disclosed by the driver in accordance with the conditions of the taxi driver's licence), the Council may suspend or revoke the Driver's Licence, having had regard to the relevance of any such conviction.
6. Each case will be considered on its merits. However, examples of the relevance of convictions and the likely effect of such convictions in relation to the issue, suspension, revocation or refusal to grant a Driver's Licence are as follows:
 - (a) **Minor Traffic Offences**
Providing continuing current valid DVLA driver's licence maintained - formal written warning to be issued to the licence holder as to future conduct.
 - (b) **Major Traffic Offences**
Providing continuing current valid DVLA driver's licence maintained:-
 - (i) Single conviction within last two years – refusal of Driver's Licence until 1 year free of conviction.
 - (ii) More than one conviction within last two years – refusal of Driver's Licence until two years free of conviction and full DVLA drivers licence held for preceding two years.
 - (iii) Convictions related to alcohol or drugs – for example. Attempting to drive while under the influence, driving while under the influence, being in charge of a vehicle while under the influence, or refusal to provide a sample:-

- (a) Single conviction – refusal of Driver's Licence until three years have elapsed after restoration of a full DVLA driver's licence.
- (b) More than one conviction – refusal of Driver's Licence until five years have elapsed after restoration of a full DVLA driver's licence.

(c) Alcohol Related Offences

- (i) Single conviction of minor nature – formal written warning to be issued to licence holder as to future conduct.
- (ii) More than one conviction – refusal of Driver's Licence until three years have elapsed since date of conviction.

Note: If drunkenness is associated with any other offence the longer of the refusal period is to apply.

(d) Drugs related Offences

- (i) Single conviction – refusal of Driver's Licence until three years have elapsed since date of conviction.
- (ii) More than one conviction – refusal of Driver's Licence until five years have elapsed since date of last conviction.

Note: The above will apply (but is not limited to) the following offences;

Possession of a controlled drug
Production of a controlled drug
Supply of a controlled drug
Possession of a controlled drug with intent to supply
Permitting activities (drug related) to take place on premises

(e) Indecency Offences

- (i) Single conviction – refusal of Driver's Licence until five years have elapsed since date of conviction.
- (ii) More than one conviction – refusal of Driver's Licence.

NOTE: Notwithstanding the Guidance at paragraph 6(e) (i) above, the Council may refuse to issue a licence to a person who has convictions which fall within this category.

(f) Violence

- (i) Single conviction for any offence of violence against a person - refusal of Driver's Licence for a period of three years free of conviction.
- (ii) More than one conviction for any offence of violence against a person - refusal of Driver's Licence for a period of five years free of conviction.
- (iii) Single conviction for minor criminal damage to property – formal written warning to licence holder as to future conduct.
- (iv) More than one conviction for criminal damage to property – refusal of Driver's Licence for a period of two years free of conviction.

(g) Dishonesty

- (i) Single conviction for minor incident – refusal of Driver's Licence for a period of one year free from conviction.
- (ii) Two convictions for minor incidents – refusal of Driver's Licence for a period of three years free from conviction.
- (iii) More than two convictions for minor incidents or one or more convictions for a significant act of dishonesty – refusal of Driver's Licence for a period of five years free of conviction.

NOTE: The above list is not exhaustive and the Council will have regard to any convictions whether or not they fall within any of the categories detailed above.

7. In clarification of the above the recorded date of the court conviction is to be taken as the period to remain free of conviction from, unless a sentence of imprisonment or corrective training exceeding 30 months has been imposed, when the period is to commence from the date of release from imprisonment.
8. It should be noted that the above penalties apply to all applications for hackney carriage and private hire driver's licences and that all convictions whether current or spent, may be considered in accordance with Rehabilitation of Offenders Act 1974 (exceptions) Order 1975 as amended.
9. Notwithstanding these penalties, the Council will consider those rehabilitation periods specified in the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended.

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Summary comparison between existing guidance on criminal records and IoL standards

Offences	Period of time in which a licence would be granted, from completion of sentence or from date of conviction	
	Current	IoL
Violence		
Violence offences	At least 3 years for one offence, 5 years for more than one conviction	At least 10 years
Criminal damage to property	Written warning for one offence, at least 2 years for more than one conviction	
Any crimes resulting in death	Not currently specified	Never
Possession of a weapon	Not currently specified	At least 7 years
Sexual and indecency offences such as rape, assault by penetration, sexual assault, etc.	At least 5 years for a single conviction (depending upon the offence committed). Never for serious offences	Never
Dishonesty		
Offences such as theft, burglary, fraud, benefit fraud, handling or receiving stolen goods, etc.	Single conviction for minor incident - at least 1 year. Two convictions for minor incidents - at least three years. More than two or major incidents - at least 5 years	At least 7 years
Drugs		
Offences for supply	At least 3 years for one offence, 5 years for more than one conviction	At least 10 years
Offences for possession		At least 5 years, plus drug testing
Driving		
• Causing death by dangerous driving	Not currently	Never

<ul style="list-style-type: none"> • Causing death by careless driving whilst under the influence of drink or drugs • Causing death by driving: unlicensed, disqualified or uninsured drivers • Or any similar offences 	specified	
Drink/drug driving	At least 3 years	At least 7 years
More than one conviction for drink/drug driving	At least 5 years	
Major traffic offences	At least 1 year for a single conviction, 2 years for 2 convictions	
Minor traffic offences	Licence allowed with written warning, providing DVLA licence maintained	If there are 7 or more points on DVLA licence - at least 5 years since completion of sentence
Not currently included in West Berkshire Council guidance		
Exploitation, e.g. slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse		Never
Discrimination		At least 7 years
Licensing offences, e.g. plying for hire, over charging, refusing to carry disabled persons		At least 7 years



Hackney Carriage and Private Hire Licensing Criminal Convictions Policy

1. Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an **applicant** or an **existing licence holder** is a fit and proper person to hold a hackney carriage and/or private hire vehicle driver's licence or a private hire vehicle operator's licence.
- 1.2 The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:
- That a person is a fit and proper person
 - That the person does not pose a threat to the public
 - That the public are safeguarded from a dishonest person
 - That children, young persons and vulnerable adults are safeguarded.
- 1.3 This policy provides guidance to any person with an interest in hackney carriage and private hire licensing; in particular, but not exclusively:
- Applicants for drivers and operator licences
 - Existing licensed persons whose licences are being reviewed
 - Licensing officers
 - Members of the licensing committee/sub-committee (or other relevant decision making body)
 - Magistrates hearing appeals against local authority decisions.
- 1.4 Where licensing officers or the sub-committee have delegated powers to grant, revoke or suspend licences, they will utilise these guidelines when making their decision. Whilst officers and the panel will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits and, where the circumstances demand, the committee/officer may depart from the guidelines.** Clear cogent reasons would be set out in any decision letter where there is a departure from the guidance.

2. General policy

- 2.1 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances, or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.2 A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
- a) remain free of conviction for an appropriate period; and
 - b) show adequate evidence that he or she is a fit and proper person to hold a licence

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The onus is on the applicant to produce such evidence and simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

- 2.3 **Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction** [Nottingham City Council v. Mohammed Farooq (1998)].

3. Pre-requisites to making an application

- 3.1 It is the policy of the licensing authority that every application for a licence to drive a hackney carriage and/or private hire vehicle must be accompanied by satisfactory evidence of the following matters and that applications that are incomplete will not be deemed to have been made until such time as they are complete:

- That the applicant has the right to live and work in the country.
- An enhanced criminal record check (DBS) and evidence that they are not on a child and/or vulnerable adult barring list.
- A certificate of their current medical fitness to DVLA Group 2 standard.
- That the applicant is authorised to drive a vehicle of the same classification as that which the licence will allow them to drive.
- That the applicant meets the required post-qualification driving experience and demonstrates the required level of competency.
- That the applicant has sufficient ability to speak English and to understand spoken English to provide the service that they wish to be licensed for.
- That where specified the applicant has completed safeguarding awareness training specific to the service that they wish to be licensed to provide.
- For persons who seek to be authorised to drive a wheelchair accessible vehicle, that the applicant has the ability to safely load and secure wheelchair users in a wheelchair accessible vehicle whilst in their wheelchair.

- 3.2 If an applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries covering the period before a licence application can be made.

4. Appeals

- 4.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].
- 4.2 Any applicant refused an operator licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.
- 4.3 Any licensee whose licence is suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice of suspension or revocation.

5. Powers

- 5.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 5.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 5.3 In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

6. Consideration of disclosed criminal history

- 6.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operators licence is a 'fit and proper' person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:
- How relevant the offence(s) are to the licence being applied for
 - How serious the offence(s) were
 - When the offence(s) were committed
 - The date of caution/conviction
 - Circumstances of the individual concerned
 - Sentence imposed by the court
 - The applicant's age at the time of caution/conviction.
 - Whether they form part of a pattern of offending
 - Any other character check considered reasonable (e.g. personal references)
 - Any other factors that might be relevant.
- 6.2 Existing licence holders are required to notify the licensing authority in writing within 28 days of being arrested, receiving a driving licence endorsement, fixed penalty notice, caution or criminal conviction.
- 6.3 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the licensing team in confidence for advice.
- 6.4 Applicants for the grant of a driver licence will be required to obtain an enhanced disclosure from the Disclosure and Barring Service (DBS). Existing licensed drivers are required to obtain an enhanced disclosure every 3 years or as required by the licensing authority.

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- 6.5 Applicants for the grant of an operator licence, where that person is not the holder of a current driver licence issued by the Council, will be required to obtain a basic criminal record disclosure. Existing licensed operators are required to obtain a basic criminal record disclosure every 3 years or as required by the licensing authority.
- 6.6 The licensing authority follows the DBS's Code of Practice on the fair use of disclosure information, and the DBS's policy on the secure storage, handling, use, retention and disposal of disclosure information. Copies of these documents are available on request. More information about the DBS can be found on their website at: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>.
- 6.7 The licensing authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police.
- 6.8 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.
- 7. Crimes resulting in death**
- 7.1 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 not be licensed.
- 8. Exploitation**
- 8.1 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 not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.
- 9. Offences involving violence**
- 9.1 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 10. Possession of a weapon**
- 10.1 Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.
- 11. Sex and indecency offences**
- 11.1 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

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

12. Dishonesty

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

13. Drugs

- 13.1 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

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

14. Discrimination

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

15. Motoring convictions

- 15.1 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 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.

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

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

17. Other motoring offences

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

18. Hackney carriage and private hire offences

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

19. Vehicle use offences

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

20. Outstanding charges or summonses

- 20.1 If an individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.
- 20.2 If the outstanding charge or summons involves a serious offence or the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

21. Non-conviction information

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

22. Cautions

- 22.1 Admission of guilt is required before a caution can be issued. Every case will be considered

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on its own merits including the details and nature of the offence.

- 22.2 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. Fixed penalties and community resolutions will also be considered in the same way as a conviction.

23. Once a licence has been granted

- 23.1 If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect serious consideration to be given to the suspension or revocation of their licence.
- 23.2 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]
- 23.3 A suspension or revocation of the licence of an operator takes effect at the end of the period of 21 days beginning with the day on which notice is given to the operator.

24. Licences issued by other licensing authorities

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

25. Summary

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

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Animal Licensing - Summary Report

Committee considering report:	Licensing Committee
Date of Committee:	11 February 2019
Portfolio Member:	Councillor Richard Somner
Report Author:	Charlie Fletcher, Acting Principal Licensing Officer
Forward Plan Ref:	N/a

1. Purpose of the Report

- 1.1 This report aims to update the Committee on the changes that have taken place in the field of animal licensing following the commencement of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and what impact these changes have had on the authority.

2. Recommendation

- 2.1 That the Committee notes the content of the report.

3. Implications

- 3.1 **Financial:** The current set of fees no longer cover the costs associated with processing, issuing, and enforcing licences. A new schedule of fees is presently being worked on and shall be presented to the Committee later this year with a recommendation for adoption.
- 3.2 **Policy:** There are no specific policy implications arising from this report.
- 3.3 **Personnel:** Officers conducting inspections are now required to be suitably qualified. Consequently, the Council will need to train existing officers, hire suitably qualified inspectors, or continue to outsource these inspections.
- 3.4 **Legal:** The new Regulations are statutory and replace a number of pieces of legislation that were previously enforced by the authority. Licence conditions are now also set by statute and replace those that were previously set by the authority.
- 3.5 **Risk Management:** None
- 3.6 **Property:** None
- 3.7 **Other:** None

4. Other options considered

- 4.1 No alternative options considered.

Executive Summary

5. Introduction / Background

- 5.1 On 1 October 2018 the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 ('the Regulations') came into force. These Regulations are made under powers conferred under the Animal Welfare Act 2006, and replace a number of pieces of legislation under which the Council previously issued licences and registrations.

6. Proposal

- 6.1 That the committee note the contents of the report.

7. Conclusion(s)

- 7.1 The new Regulations have made a number of changes to the way that licences are applied for and granted, and have also created new licensable activities. These changes have presented challenges both to the Licensing Authority and to businesses carrying out licensable activities. It is hoped that following reading this report and following discussion at the Committee meeting, there will be an increased understanding of the new Regulations and their impact.

8. Appendices

- 8.1 Appendix A – Data Protection Impact Assessment
- 8.2 Appendix B – Equalities Impact Assessment
- 8.3 Appendix C – Supporting Information

Appendix A

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	Public Protection and Culture
Service:	Public Protection Partnership
Team:	Licensing
Lead Officer:	Julia O'Brien
Title of Project/System:	Animal licensing update
Date of Assessment:	15 January 2019

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p>Note – sensitive personal data is described as “<i>data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation</i>”</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be processing data on a large scale?</p> <p>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will your project or system have a “social media” dimension?</p> <p>Note – will it have an interactive element which allows users to communicate directly with one another?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will any decisions be automated?</p> <p>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will your project/system involve CCTV or monitoring of an area accessible to the public?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be using the data you collect to match or cross-reference against another existing set of data?</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Will you be using any novel, or technologically advanced systems or processes?</p> <p>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

Appendix B

Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
 - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
 - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Executive to make:	Note the contents of the report, updated the Committee on the new animal licensing regulations
Summary of relevant legislation:	The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018
Does the proposed decision conflict with any of the Council's key strategy priorities?	No
Name of assessor:	Charlie Fletcher
Date of assessment:	15 January 2019

Is this a:		Is this:	
Policy	No	New or proposed	Yes
Strategy	No	Already exists and is being reviewed	No
Function	Yes	Is changing	Yes
Service	Yes		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To ensure the Committee understand changes in the legislation
Objectives:	Provide information on the changes in animal licensing
Outcomes:	Increased awareness and understanding
Benefits:	A well informed and knowledgeable Committee who understand the work of the Licensing team.

2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.		
(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)		
Group Affected	What might be the effect?	Information to support this
Age	No impact	
Disability	No impact	

Gender Reassignment	No impact	
Marriage and Civil Partnership	No impact	
Pregnancy and Maternity	No impact	
Race	No impact	
Religion or Belief	No impact	
Sex	No impact	
Sexual Orientation	No impact	
Further Comments relating to the item:		
No further comments		

3 Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	No
Please provide an explanation for your answer: No evident contribution to inequality	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	No
Please provide an explanation for your answer: No evidence the Regulations will have an adverse impact.	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

4 Identify next steps as appropriate:	
Stage Two required	
Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name: Charlie Fletcher

Date: 15 January 2019

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Animal Licensing – Supporting Information

1. Introduction/Background

- 1.1 On 1 October 2018 the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force. These Regulations are made under powers conferred under the Animal Welfare Act 2006, and replace a number of pieces of legislation, dating back as far as 1925.
- 1.2 Activities licensable under the Regulations are selling animals as pets, providing or arranging for the provision of boarding for cats or dogs, hiring out horses, breeding dogs, or keeping or training animals for exhibition.
- 1.3 The local authority also issues licences for zoos and dangerous wild animals, with the legislation for these activities unaffected by the Regulations.
- 1.4 The aim of the new Regulations is to raise and modernise the welfare standards for businesses involving animals, as well as to streamline the licensing system, for example, by allowing operators who are carrying on more than one activity to have multiple activities authorised under one licence.

2. Supporting Information

- 2.1 Conditions attached to licences and the standards that must be met before a licence can be granted are now set within the Regulations, rather than by individual authorities. These are therefore national standards, and cannot be amended or added to by the local authority. Further guidance on each of the licensable activities is published by DEFRA and available on the Council's website.
- 2.2 Transitional provisions within the Regulations allow any unexpired licence to continue in force for the remainder of their term. Existing performing animal registrations shall continue in force for a period of six months, meaning they will lapse at the end of March 2019.
- 2.3 The new Regulations include provisions for businesses to be issued a star rating, based upon the findings when the business is inspected and risk rated. A higher star rating indicates higher welfare standards and that the authority has a higher confidence in the business. A high star rating also means the licence can be issued for up to 3 years, potentially reducing the administrative burden on the licence holder and the authority, and reducing the frequency that well run businesses need to be inspected.
- 2.4 Other changes include matters such as:
 - Requirements that dog breeders must show puppies alongside their mother before a sale is made.
 - Reduced the litter threshold for dog breeders before a licence is needed, from 5 litters per year to 3.

- Requirements that puppy sales are completed in the presence of the new owner – preventing online sales where prospective buyers have not seen the animal first.
- A ban on licensed sellers dealing in puppies and kittens under the age of eight weeks of age.
- New regulation of adverts, including on the internet, to ensure licensed sellers of all pets include the seller’s licence number, country of origin and country of residence of the pet in any advert for sale.
- New licensable activity of ‘arranging for arranging for the provision of boarding for cats or dogs’, meaning businesses who do not provide boarding themselves but act as a ‘middle man’ must now be licensed.

2.5 One of the key impacts on the local authority and how the Public Protection Partnership administers applications and licences is that persons conducting inspections on licences premises or prospective licensed premises must be ‘suitably qualified’. This means an inspector must be someone who is either:

- A person holding a Level 3 certificate or equivalent in inspecting and licensing animal activities businesses, granted by a body recognised and regulated by OFQUAL, or
- Any person holding a formal veterinary qualification, or
- Until October 2021, any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses

Inspections are currently contracted to City of London who provide suitably qualified inspectors.

2.6 One challenge to PPP that has been created has been the number of enquiries received from members of the public and licence holders in relation to the new Regulations. The principle questions have been ‘do I now need a licence?’ and ‘what are the changes I need to make to meet the new Regulations?’. Other necessary work has included the creation of new application forms and licence templates for each licensable activity.

2.7 Moving forward, a new set of fees will be calculated based upon the costs associated with processing applications and ongoing enforcement costs. The new fees will also take into account the fact that licences can now be issued for 1, 2 or 3 years. This is likely to result in an increase of the fees charged to licence holders, however, licence holders granted a higher star rating will encounter reduced inspection costs.

2.8 It is noted that the Regulations do not include the ban of third party sales of puppies and kittens known as ‘Lucy’s Law’. The Government has confirmed that following their consultation on Lucy’s Law, a ban will come in to force, and will be introduced separately “when parliamentary time allows”.

Background Papers:

DEFRA Guidance notes and conditions – available via

www.gov.uk/government/publications/animal-activities-licensing-guidance-for-local-authorities

Subject to Call-In:

Yes: No:

- The item is due to be referred to Council for final approval
- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only
-

Wards affected:

All

Officer details:

Name: Charlie Fletcher
Job Title: Licensing
Tel No: 01344 352550
E-mail Address: Charlie.fletcher@westberks.gov.uk

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