

# Notice of Meeting

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## Licensing Committee

**Monday, 24th June, 2019 at 4.30 pm**  
in Council Chamber Council Offices  
Market Street Newbury

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Date of despatch of Agenda: Friday, 14 June 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](mailto:moira.fraser@westberks.gov.uk)

Further information and Minutes are also available on the Council's website at [www.westberks.gov.uk](http://www.westberks.gov.uk)



To: Councillors Adrian Abbs, Peter Argyle, Phil Barnett (Vice-Chairman), Jeff Beck, Dennis Benneyworth, Graham Bridgman, James Cole (Chairman), Billy Drummond, Gareth Hurley, Tony Linden, David Marsh and Martha Vickers

# Agenda

## Part I

	Page No.
1. <b>Apologies</b> To receive apologies for inability to attend the meeting (if any).	
2. <b>Minutes</b> To approve as a correct record the Minutes of the meeting of this Committee held on 21 February 2019 (Special) and 21 May 2019.	5 - 10
3. <b>Declarations of Interest</b> 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' <a href="#">Code of Conduct</a> .	
4. <b>Convictions Guidance</b> <i>To consider 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.</i>	11 - 68
5. <b>Licensing Annual Report</b> <i>To set out the work of the Licensing Committee in 2018/19 as well as the work of the Licensing Service as delivered through the Public Protection Partnership.</i>	69 - 80
6. <b>Licensing Committee Forward Plan</b> <i>That the Committee notes the Forward Plan and provides comments to the Chairman on both the scheduled items and any further items they would like to see considered at forthcoming Committee meetings.</i>	81 - 82

Sarah Clarke  
Head of Legal and Strategic Support

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



## DRAFT

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

### LICENSING COMMITTEE

#### MINUTES OF THE MEETING HELD ON THURSDAY, 21 FEBRUARY 2019

**Councillors Present:** Peter Argyle, Howard Bairstow, Jeff Beck (Vice-Chair, in the Chair), Graham Bridgman, Paul Bryant, Richard Crumly, Billy Drummond, Tony Linden and Quentin Webb

**Also Present:** Charlie Fletcher (Licensing Officer), Sean Murphy (Public Protection Manager), Julia O'Brien (Principal Licensing Officer) and Amanda Ward (Licensing Officer), Moira Fraser (Democratic and Electoral Services Manager) and Councillor Richard Somner (Portfolio Holder)

**Apologies for inability to attend the meeting:** Councillor James Cole

**Councillors Absent:** Councillor Sheila Ellison and Councillor Manohar Gopal

#### PART I

##### 18. Minutes

The Minutes of the meeting held on 11 February 2019 were approved as a true and correct record and signed by the Chairman.

Councillor Jeff Beck welcomed members of the trade, the press and the Committee Members to the meeting.

##### 19. Declarations of Interest

There were no declarations of interest received.

##### 20. Hackney Carriage and Private Hire Licence Fees Consultation Responses

The Committee considered a report (Agenda Item 4) which provided additional information in relation to proposed fees for hackney carriage and private hire licensing.

The Chairman proposed conducting the meeting as follows:

- Charlie Fletcher (the Acting Principle Licensing Officer) be asked to introduce the item;
- Members would then have the opportunity to raise any points of clarification with the Officer;
- Standing orders would be suspended in accordance with paragraphs 7.6.2 and 7.12.4 of the Constitution (Part 7 – Regulatory and Other Committees Rules of Procedure) to allow members of the trade to address the Committee.
- Members would then have the opportunity to clarify any issues with the trade representatives
- Standing order would then be reinstated;
- Members would then debate the matter.

The Committee supported this approach.

## LICENSING COMMITTEE - 21 FEBRUARY 2019 - MINUTES

Charlie Fletcher stated that at the 11 February 2019 meeting the Committee had requested additional information relating to hackney carriage and private hire licence fees. In particular Members had requested additional information as to how the Public Protection Partnership (PPP) hourly rate of £55 had been derived and this was set out in paragraph 2.1 of Appendix C. He noted that the rate had already been agreed by the Joint Public Protection Committee. Officers reported that the standard fee was based on five hours of the PPP hourly rate.

Officers recognised that concern had been expressed about the significant increase in the operator licence fees and they were therefore proposing that a working group be set up to develop the fees to be introduced the following year. It was proposed that the working group would comprise Members, Officers and representatives from the trade. The group could also potentially consider taxi tariffs.

It was proposed that the fees for operator's licences which would come into effect on the 01 April 2019 would be based on the present fees but would be subject to a 2.5% increase in line with inflation. The fees would be rounded to the nearest pound.

It was agreed that the trade would be asked to put forward representatives to sit on the working group. The Chairman would nominate Members to sit on the group.

Members voted to suspend standing orders in order to allow representatives of the trade to speak.

Graham Cox stated that despite asking for the information it was still not clear how the hourly rate had been arrived at. In his opinion it would take no more than ten minutes to undertake an operator check. Julie O' Brien stated that the figures were based on time recording and time and motion studies. The fees were designed to recoup costs and could not be a profit making exercise. They were based on activity for both West Berkshire and Wokingham Councils as it was not possible to separate them out.

Mr Cox stated that miscellaneous provision checks had not been undertaken in the last five years and he was not convinced that that would change. Sean Murphy stated that he would be happy to meet with the trade to discuss this issue. He was also happy to discuss the issue of dispensations with them.

Councillor Quentin Webb asked if the trade was happy to be part of the working group as set out in the recommendations. Mr Cox stated that it made sense for the trade to participate and that it would be good to get involved with the process.

As there were no further issue that the trade wished to raise it was agreed standing orders would be reinstated.

Councillor Howard Bairstow asked if there was a set procedure for doing searches which time could be set against. Julie O' Brien stated that the database had numerous fields that had to be completed and the time taken to do so could be recorded. The information had to be manually inserted from scanned or paper documents.

Sean Murphy noted that the figure in Appendix D relating to Private Hire Vehicle Licence with dispensation needed to be amended to reflect five hours work at £55 per/hour plus a 2.5% uplift based on inflation. It was therefore agreed that this figure should be amended to read £282.00. Councillor Paul Bryant queried if decreasing the figure from £328 to £282 would have a negative impact on the budget. Officers noted that this would only affect circa 18 licences and would not have a significant impact on the budget.

Councillor Graham Bridgman thanked officers for the work that they had done and he was pleased that they were proposing to set up a working group. He supported the Officer's proposals including the amended licence fee for private hire vehicles with a dispensation. He also supported the holding position of increasing the fees by 2.5% so

## LICENSING COMMITTEE - 21 FEBRUARY 2019 - MINUTES

that they could be fully considered and that revised proposals be brought back to the Committee in the fullness of time.

Councillor Richard Crumly stated that he agreed with Councillor Bridgman. He believed that more time was needed to consider the fees especially given that they had not been revised for some time. Councillor Paul Bryant stated he supported an algorithmic approach to increasing costs. Councillor Peter Argyle urged Officers to get the working group up and running as soon as possible so that the fees could be agreed in a transparent fashion. Councillors Graham Bridgman and Peter Argyle offered to join the working group subject to the agreement of the Chairman. It was proposed that the trade identify three representatives and let Licensing know who they were putting forward.

Councillor Graham Bridgman proposed suspending standing orders again to allow Councillor Richard Somner, the Portfolio Holder responsible for Licensing, to address the Committee. The Committee voted in favour of this proposal.

Councillor Somner stated that he had noted the concerns raised and wished to add his support to the proposal to set up a working group to discuss issues and hopefully agree a way forward.

Standing orders were reinstated.

Councillor Jeff Beck stated that he would be happy to make the recommendations to full Council as set out in the report subject to the amendment of the fee in Appendix D. Councillor Beck thanked all parties for attending.

### **RESOLVED that:**

**The consultation responses be taken into account and that:**

- 1. The Committee would recommend to Council that the Hackney Carriage and Private Hire Vehicles Licensing Fees for 2019/20 be set at the rates proposed at Appendix D subject to the inclusion of the amendments made at the meeting.**
- 2. The Committee would recommend to Council that the Private Hire Operators Licensing Fees for 2019/20 be set at the rates proposed at Appendix E**
- 3. A joint working group be set up between Officers / Members and representatives of licenced operators and the wider trade to consider the fee structure for Private Hire Operators and the proposals of the trade relating**

*(The meeting commenced at 5.30 pm and closed at 6.10 pm)*

**CHAIRMAN** .....

**Date of Signature** .....

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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 TUESDAY, 21 MAY 2019

**Councillors Present:** Peter Argyle, Phil Barnett, Jeff Beck, Dennis Benneyworth, Graham Bridgman, James Cole, Billy Drummond, Tony Linden, David Marsh, Joanne Stewart and Martha Vickers

**Apologies for inability to attend the meeting:** Councillor Adrian Abbs

#### PART I

**1. Apologies**

An apology for inability to attend the meeting were received from Councillor Adrian Abbs.

**2. Election of Chairman**

**RESOLVED that** Councillor James Cole be elected Chairman of the Licensing Committee for the 2019/20 Municipal Year.

**3. Appointment of Vice-Chairman**

**RESOLVED that** Councillor Phil Barnett be appointed Vice-Chairman of the Licensing Committee for the 2019/20 Municipal Year.

*(The meeting commenced at 8.43 pm and closed at 8.45 pm)*

**CHAIRMAN** .....

**Date of Signature** .....

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## Convictions Guidance - Summary Report

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<b>Committee considering report:</b>	Licensing Committee
<b>Date of Committee:</b>	24 June 2019
<b>Portfolio Member:</b>	Councillor Hilary Cole
<b>Date Portfolio Member agreed report:</b>	
<b>Report Author:</b>	Suzanne McLaughlin
<b>Forward Plan Ref:</b>	N/a

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### 1. Purpose of the Report

- 1.1 This report examines the criminal convictions element of the 'fit & proper' test. It sets out the proposals that have been consulted upon since the Committee Meeting on the 11 February 2019 authorised officers to go out consultation.
- 1.2 The report invites officers to consider the responses and consider adoption, amendment or otherwise of the Institute of Licensing guidance in light of these consultation responses or any other considerations the Committee feels are appropriate.
- 1.3 This test applies to existing licence holders and new applicants for Hackney Carriage driver licences, Private Hire driver licences, and Private Hire Operators licences.
- 1.4 The results of the consultation as agreed by the Committee at their meeting on 11 February 2019 are presented for discussion and consideration.
- 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:
  - (a) Considers the results of the consultation;
  - (b) Determines whether the Council should adopt the Institute of Licensing guidance document in whole, part or amended form as its policy position on the relevance of criminal convictions in determining whether someone is 'fit or proper' to hold Taxi or Private Hire Drivers Licence or Private Hire Operators Licence.

### 3. Implications

- 3.1 **Financial:** There are no specific financial implications arising from this report.
- 3.2 **Policy:** If adopted in whole or amended form the draft policy would be used as part of the Council's 'fit and proper' test when considering licence applicants or existing licence holders. The policy would be used to inform decision making on the relevance of previous criminal history on applicants suitability.
- 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 adopt the guidance document and new policy, meaning the Council would continue to utilise the existing guidance at Appendix E.
- 4.2 The Committee could establish alternative timescales, other than those within the IoL guidance document, and amend the draft policy as they see fit.

## 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. Proposal

- 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.

### 7. Conclusions

- 7.1 A comprehensive and robust policy will aid clarity for applicants, licence holders, Council officers, and elected Members. It will also provide assurance to the general public that the Council has an up to date clear position on the relevance of previous convictions which is good for consumer protection, personal safety, consumer confidence and ultimately the trade.
- 7.2 The Institute of Licensing guidance has been formulated in conjunction with the Local Government Association amongst others and is being considered in the other Public Protection Partnership Member Authority Committees. Ultimately though it remains a local issue for local policy determination.

### 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
- 8.8 Appendix H – Consultation responses

## Appendix A

### Data Protection Impact Assessment – Stage One

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

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

	Yes	No
<p><b>Will you be processing SENSITIVE or “special category” personal data?</b></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><b>Will you be processing data on a large scale?</b></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><b>Will your project or system have a “social media” dimension?</b></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><b>Will any decisions be automated?</b></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><b>Will your project/system involve CCTV or monitoring of an area accessible to the public?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using the data you collect to match or cross-reference against another existing set of data?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using any novel, or technologically advanced systems or processes?</b></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"/>

**Appendix B**

**Equality Impact Assessment - Stage One**

<b>What is the proposed decision that you are asking the Executive to make:</b>	Adoption of new criminal convictions policy and guidance document for licence holders and applicants
<b>Summary of relevant legislation:</b>	Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847
<b>Does the proposed decision conflict with any of the Council's key strategy priorities?</b>	No
<b>Name of assessor:</b>	Suzanne McLaughlin
<b>Date of assessment:</b>	11 June 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		

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

<b>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.</b>		
(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.)		
<b>Group Affected</b>	<b>What might be the effect?</b>	<b>Information to support this</b>

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	
<b>Further Comments relating to the item:</b>		
No further comments		

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

<b>4 Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	No
<b>Owner of Stage Two assessment:</b>	
<b>Timescale for Stage Two assessment:</b>	

Name: Suzanne McLaughlin

Date: 11 June 2019

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# Convictions Guidance – Supporting Information

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## 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 **Appendix D**. The Council’s current guidance at **Appendix E**. A table showing a comparison between the time scales presented in these two documents is attached at **Appendix F**. The draft policy proposed for adoption is at **Appendix G**. The full responses received to the consultation are attached at **Appendix H**.
- 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 adopt the guidance document and new policy, meaning the Council would continue to utilise the existing guidance at Appendix E.
- 3.2 The Committee could establish alternative timescales, other than those within the IoL guidance document, and amend the draft policy as they see fit.

### **4. Proposals**

- 4.1 That the Committee agrees to adopt the IoL guidance document as a document of reference and, subject to any amendments, agrees to the adoption of the Criminal Convictions Policy as drafted.

## 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 A consultation was carried out for six weeks, between 25 March 2019 and 31 May 2019.
- 6.2 Details of the consultation were sent by email to all licence holders for whom we have an email address, totalling 371 email addresses, and was available via the Council's online consultation portal for anyone to review and respond.
- 6.3 During the consultation period, a total of 11 responses were submitted. The full details of all responses received, with personal information redacted, is attached at **Appendix H** of this report.

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### Background Papers:

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

### Subject to Call-In:

Yes:  No:

Report is to note only

### Wards affected:

Non-specific

### 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**

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### Officer details:

Name: Suzanne McLaughlin  
Job Title: Principle Officer, Policy and Governance  
Tel No: 01635 519851  
E-mail Address: Suzanne.McLaughlin@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:

 **LLG**  
Lawyers in Local Government

 **NALEO**

 **Local Government Association**

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## Foreword

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

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

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

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

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

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

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

Philip Kolvin QC  
Cornerstone Barristers

April 2018



## Chapter 1: Introduction

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

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



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

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

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

## Chapter 2: Offenders and Offending - An Overview

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

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

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

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

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

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

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

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

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

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

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

### Risk of re-offending:

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

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

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

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

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

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

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

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

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

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

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

## Chapter 3: 'Taxi' Licensing Overview

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

### Taxi Drivers

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

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

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person<sup>20</sup>.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK<sup>21</sup>.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.<sup>22</sup>
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*<sup>23</sup>. Silber J said:

“... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”

- 3.16 This is reflected in a test widely used by local authorities:

‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’<sup>24</sup>

- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

## Private Hire Operators

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

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

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

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

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

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

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

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

## Vehicle Proprietors

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

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

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

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

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

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

## Chapter 4: Guidance on Determination

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

### Pre-application requirements

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

#### Vehicles:

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

#### Drivers:

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

#### Operators:

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

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

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

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

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

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



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

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

## Drivers

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

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

#### Crimes resulting in death

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

#### Exploitation

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

#### Offences involving violence

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

#### Possession of a weapon

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

#### Sex and indecency offences

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

### Dishonesty

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

### Drugs

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

### Discrimination

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

### Motoring convictions

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

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

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

### Other motoring offences

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

### Hackney carriage and private hire offences

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

### Vehicle use offences

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

## Private Hire Operators

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

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

## Vehicle proprietors

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

## Acknowledgements

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

The core project group comprised:

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

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

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- Jenna Parker, Institute of Licensing

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## **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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## Appendix F

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
<b>Violence</b>		
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
<b>Dishonesty</b>		
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
<b>Drugs</b>		
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

<b>Driving</b>		
<ul style="list-style-type: none"> <li>• Causing death by dangerous driving</li> <li>• Causing death by careless driving whilst under the influence of drink or drugs</li> <li>• Causing death by driving: unlicensed, disqualified or uninsured drivers</li> <li>• Or any similar offences</li> </ul>	Not currently specified	Never
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
<b>Not currently included in West Berkshire Council guidance</b>		
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

## Unrestricted

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.

## Unrestricted

- 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.

## Unrestricted

- 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

## Unrestricted

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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Consultation responses

<b>Question 1: Details of licences held by responder</b>	
<b>Responder</b>	<b>Consultee response</b>
1	Hackney Carriage and Private Hire driver (dual driver) and Hackney Carriage vehicle proprietor
2	Hackney Carriage and Private Hire driver (dual driver), Private hire driver and Private Hire vehicle proprietor
3	Hackney Carriage and Private Hire driver (dual driver)
4	Hackney Carriage and Private Hire driver (dual driver), Private Hire driver and Private Hire vehicle proprietor
5	Hackney Carriage and Private Hire driver (dual driver), Hackney Carriage vehicle proprietor, Private Hire vehicle proprietor and Private Hire operator
6	Hackney Carriage and Private Hire driver (dual driver)
7	Hackney Carriage and Private Hire driver (dual driver)
8	Hackney Carriage and Private Hire driver (dual driver) and Hackney Carriage vehicle proprietor
9	Hackney Carriage and Private Hire driver (dual driver)
10	Hackney Carriage and Private Hire driver (dual driver), Hackney Carriage vehicle proprietor, Private Hire vehicle proprietor and Private Hire operator
11	Councillor

**Question 2: Do you have any comments on the Institute of Licensing’s “Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades” (see supporting documents). It is proposed for this guidance to be adopted as a document of reference by the Council.**

<b>Responder</b>	<b>Consultee response</b>
1	Ten years seems severe for criminal damage to property. 7 or more points - 5 years ban. Strongly disagree as it is not too difficult to get 3xSP30'S in a 3 year period for doing 34 in a 30 zone for instance. Penalty should be in line with DVLA terms. 7 years for discrimination and licensing offences (first offence) seems extreme.

2	Should not be allowed to be licensed until Full checks are carried out regardless of timescales. E.g failed driving Test awaiting 're test.
3	Time scales for Non UK should be a minimum of 10 years with three references.
4	I strongly agree with everything that keeps taxi users safe and secure
5	I do think the term to be excluded for applying to become part of the trade is too long, as it stops a person from starting a new life, with restrictions to what work they are already excluded from.
6	<i>Not answered</i>
7	I feel the timeframe for applying for license after reaching 7 points is a bit too severe
8	I agree with the proposal
9	I agree with all the proposed terms.
10	Speeding? In my opinion Dvsa have set the bar why Change it Committee should address drivers on situations
11	Re the conviction for possession of drugs, or related to the possession of drugs - any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs. – I would like to have this expanded to include a list of approved bodies that are considered ok by the council and add that all testing needs to have been done in person – No postal testing! Re motoring convictions - I would like to see and emphasis put on offenses that occur whilst on duty and state that any such offence committed whilst carry passengers would be reviewed with an eye to automatic suspension. i.e. to encourage the most careful driving possible.

**Question 3: Do you have any comments on the changes in the suggested time scales before an individual would be considered for a licence? (see supporting documents). For example, under the current policy, a person convicted of a drugs related offence would be expected to be free of conviction for at least 3-5 years for a possession offence, and at least 5 years for a supply offence.**



**Under the proposal, the time scales would be at least 5 years for a possession offence and at least 10 years for a supply offence.**

Responder	Consultee response
1	I believe we require a firm policy across all regions that protects both the public and licensed drivers. We need to ensure that licences are not granted to unsuitable candidates and there is uniformity in the sentencing guidelines across all regions. Other than the issues pointed out on the previous page I am mostly in agreement with the draft policy.
2	How will you judge current drivers who were convicted of say Drink Driving got banned and you have licences them to drive Taxis. Also where one has committed an offence when they are holding a currency Taxi license BUT you will not know off there offence in till the next Check I.e. 5 years later. Drivers are out there who drive but cars or plates are not in there names. Offences are committed and plate holders get penalised...How do you or will you check??
3	That the Possession of a weapon should be never. In light of what is happening in the country today.
4	<i>Not answered</i>
5	Reading the policy it starts with an "applicant", a fit and proper person. As I read it, I then wonder, who is who, the content needs to be clearer. The applicant becomes he/she, person, they, individual, licensee, applicant/licence holder, their. It would read better if one word was used. Gives me the impression there has been a lot of cut and paste, also many people involved, where clarity of "Who" has been lost. Reference to 3.1 speak English and to understand spoken English to provide the service that they wish to be licensed for.....please explain what part of the trade allows applicant/person not to speak and understand English. Wheelchair accessible vehicle, this paragraph does not read correctly. Suggests to me I have to sit in the wheelchair users wheelchair, whilst also safely loading and securing passenger in the wheelchair accessible vehicle. This should be rewritten. 4.1. Do you actually mean a normal drivers licence? (This has repeats). Whilst many crimes are awful, seems to read weapon crime has a shorter exclusion time. Suspension/revocation starts 21 days later, why not straight away. Person has 21 days to carry on with what has been the cause of suspension/revocation. Many reports are open to translation, but I feel some wording needs to be changed for clarity.

<b>6</b>	What happens to drivers/operators that currently fall outside of current rules but have convictions that fall within the proposed rules? Who is going to investigate overcharging and refusal of carrying disabled passengers? Will there be a robust system in place instead of the current 'hearsay' policy?
<b>7</b>	<i>Not answered</i>
<b>8</b>	No
<b>9</b>	No
<b>10</b>	<i>Not answered</i>
<b>11</b>	<p>Why 7 years when other crimes of equal status are 5 years? i.e. 5 years for drugs but 7 for discrimination. Either 7 for both or 5 for both. I would have 7 for drugs and 5 for discrimination myself.</p> <p>I would like to see an emphasis put on offenses that occur whilst on duty and state that any such offence committed whilst carry passengers would be reviewed with an eye to automatic suspension. i.e. to encourage the most careful driving possible.</p> <p>Re other motoring offences - 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. Should this not be related to when points disappear from the license?</p>

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## Licensing Annual Report

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<b>Committee considering report:</b>	Licensing Committee on 24 June 2019
<b>Portfolio Member:</b>	Economic Development and Planning
<b>Date Portfolio Member agreed report:</b>	
<b>Report Author:</b>	Suzanne McLaughlin
<b>Forward Plan Ref:</b>	N/a

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### 1. Purpose of the Report

- 1.1 To set out the work of the Licensing Committee in 2018/19 as well as the work of the Licensing Service as delivered through the Public Protection Partnership.

### 2. Recommendation

- 2.1 That the Committee **NOTES** the content of this report and licensing Committee and Service related activity for 2018/19.

### 3. Implications

- 3.1 **Financial:** The Licensing Service operates on a cost recovery basis except where statutory fees are set. The Committee considers discretionary fees before they are considered by Full Council as part of the budget setting process.
- 3.2 **Policy:** The Licensing Committee is responsible for setting the policy direction that sets the basis of licensing activity. Over the 2018/19 period the Licensing Committee considered a number of matters (including the Statements of Licensing Policy and Gambling Principles) and adopted a number of other matters and .
- 3.3 **Personnel:** None
- 3.4 **Legal:** Under the Licensing Act 2003 and the Gambling Act 2005 there is a legal obligation for the Council to set key policies. In other areas the Council has a range of powers to set licence conditions and adopt sector specific policy positions.
- 3.5 **Risk Management:** The Public Protection Partnership has moved to a more risk based approach for their inspection programme.
- 3.6 **Property:** None
- 3.7 **Other:** None

### 4. Other options considered

- 4.1 N/A

## Executive Summary

### 5. Introduction / Background

- 5.1 The Licensing Service considers and issues a range of licences and permits required by businesses in order that they can deliver a range of services and goods to residents and visitors to West Berkshire. Legislation requiring a licence/permit for a business activity is generally enacted on health and/or safety grounds to protect users of a service or those that might be affected due to their proximity to the licensed premises or their interaction with a licensed person.
- 5.2 It is acknowledged by the trade that an effective licensing regime, effectively administered and founded on sensible and effective policies can be good for the license holder in that it creates confidence. The service is aware that the licensing function, whilst offering protection, can also act as a barrier to others who wish to deliver services or supply goods and every effort is made to assist businesses to understand and progress rapidly through the licensing process. The service therefore has a number of functions including business advice, processing of applications, monitoring compliance and where necessary taking enforcement action.
- 5.3 The role played by the Committee is key to sound decision making in day to day delivery. The Committee also have a crucial role in overseeing the effectiveness of the licensing regime through the setting of key policy directions and delivery related policies.
- 5.4 This report sets out the work of the Licensing Committee and Sub-Committee and the Licensing Service in 2018/19.

### 6. Appendices

- 6.1 Appendix A – Data Protection Impact Assessment
- 6.2 Appendix B – Equalities Impact Assessment
- 6.3 Appendix C – Supporting Information
- 6.4 Appendix D – Number of applications received by year and comparison with Wokingham Borough and Bracknell Forest.

## 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](mailto:dp@westberks.gov.uk)

Directorate:	Public Protection and Culture
Service:	Public Protection Partnership
Team:	Case Management and Governance
Lead Officer:	Julia O'Brien
Title of Project/System:	Annual Report
Date of Assessment:	24 April 2019

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

	Yes	No
<p><b>Will you be processing SENSITIVE or “special category” personal data?</b></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><b>Will you be processing data on a large scale?</b></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><b>Will your project or system have a “social media” dimension?</b></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><b>Will any decisions be automated?</b></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><b>Will your project/system involve CCTV or monitoring of an area accessible to the public?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using the data you collect to match or cross-reference against another existing set of data?</b></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><b>Will you be using any novel, or technologically advanced systems or processes?</b></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

<b>What is the proposed decision that you are asking the Executive to make:</b>	Note contents only
<b>Summary of relevant legislation:</b>	Various
<b>Does the proposed decision conflict with any of the Council's key strategy priorities?</b>	No
<b>Name of assessor:</b>	Suzanne McLaughlin
<b>Date of assessment:</b>	11 June 2019

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

<b>1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?</b>	
<b>Aims:</b>	To advise the Committee on the work of the department
<b>Objectives:</b>	To advise the Committee on the work of the department
<b>Outcomes:</b>	Understanding of the work conducted
<b>Benefits:</b>	Understanding of the work conducted

<b>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.</b>		
(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	
<b>Further Comments relating to the item:</b>		
No further comments		

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

<b>4 Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	No
<b>Owner of Stage Two assessment:</b>	
<b>Timescale for Stage Two assessment:</b>	

Name: Suzanne McLaughlin

Date: 11 June 2019



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# Statement of Licensing Policy – Supporting Information

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## 1. Introduction/Background

- 1.1 Attached as Appendix Dare figures for the number of applications received for the different licences, registrations, permits and consents administered by the department, for the period 1 April 2018 – 31 March 2019. This is a single indicator of the number of transactions that the Licensing Section has with businesses operating within the District.

## 2. Supporting Information

- 2.1 Officers use a risk based assessment programme to visit licensed premises to check compliance and provide assistance and advice for those businesses. In 2018/2019 officers carried out 172 inspections, compared to 202 in 2017/2018 and 179 in 2016/2017.
- 2.2 Over the course of the year, the following licences and applications were considered by Licensing Sub-Committees:
- (1) 1 Premises licence variation – outcome: licence granted
  - (2) 1 Premises licence review –outcome: licence revoked
  - (3) 1 Premises licence transfer – outcome: transfer refused
  - (4) 1 new Premise licence – outcome: licence granted
- 2.3 A further aspect is that of assisting businesses to grow whilst complying with the legal requirements and conditions. The service provides a range of advice and information sheets via the Council's website. Additionally officers regularly meet with applicants or licence holders to give guidance, such as attendance at Pubwatch meetings run by the trade, and meeting private hire operators at their offices and taxi drivers at the ranks. The Licensing Section dealt with 199 complaints and requests for service in 2018/2019 (compared with 210 in 2017/2018 and 181 in 2016/2017). These figures do not include general telephone enquiries, only matters which have been logged for further response.
- 2.4 The service had set itself a baseline for 2018/19 for the first time to issue licences within statutory timescales or 5 working days from receipt of a complete and valid application. The service achieved 75.7%. This will be reviewed in 2019/20, including the increase in resources required to improve this delivery percentage.
- 2.5 Officers use a risk based assessment programme to visit licensed premises to check compliance and provide assistance and advice for those businesses. In 2018/19 officers carried out 172 inspections. A number of these visits were carried out with Home Office Immigration Compliance and Enforcement, in their role as a responsible authority under the Licensing Act 2003.

2.6 The 172 inspections were made up as follows:

- 126 inspections of premises licensed under the Licensing Act 2003
- 14 private hire operator base checks
- 5 scrap metal site checks
- 17 animal licensed premises
- 10 special treatment premises

2.7 In 2018/19, 38 spot checks were carried out on licensed vehicles, through school checks, taxi rank visits and checks carried out with Thames Valley Police.

2.8 Data for the other Public Protection Partnership member authorities is included for comparison purposes, Wokingham Borough Council at Appendix E and Bracknell Forest Borough Council at Appendix F.

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**Background Papers:**

None

**Subject to Call-In:**

Yes:  No:

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

**Wards affected:**

All

*Please put a cross in the appropriate box(es) by double-clicking on the box and selecting 'Checked':*

**Strategic Aims and Priorities Supported:**

The proposals will help achieve the following Council Strategy aim(s):

- BEC – Better educated communities**
- SLE – A stronger local economy**
- P&S – Protect and support those who need it**
- HQL – Maintain a high quality of life within our communities**
- MEC – Become an even more effective Council**

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

- BEC1 – Improve educational attainment**
- BEC2 – Close the educational attainment gap**
- SLE1 – Enable the completion of more affordable housing**
- SLE2 – Deliver or enable key infrastructure improvements in relation to roads, rail, flood prevention, regeneration and the digital economy**
- P&S1 – Good at safeguarding children and vulnerable adults**
- HQL1 – Support communities to do more to help themselves**

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**MEC1 – Become an even more effective Council**

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**Officer details:**

Name: Suzanne McLaughlin  
Job Title: Principle Officer, Policy and Governance  
Tel No: 01635 519851  
E-mail Address: [Suzanne.McLaughlin@westberks.gov.uk](mailto:Suzanne.McLaughlin@westberks.gov.uk)

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## Appendix D

## Number of applications received by year, with application outcome – West Berkshire Council

Type	2018/2019					2017/2018				
	Total	I	W	R	P	Total	I	W	R	P
Private Hire Operators	9	8	1			4	4			
Private Hire Vehicles	187	185	1		1	182	182			
Private Hire Drivers	57	52			5	53	50	2		1
Dual (Hackney Carriage and Private Hire) Drivers	79	73	1		5	153	151	1		1
Hackney Carriage Vehicles	194	193	1			197	196	1		
Animal Boarding Establishments	15	13			2	17	16	1		
Home Boarders of Dogs	45	38	3		4	46	44	2		
Dog Breeder	8	8				3	3			
Dangerous Wild Animal	1	1				0	0			
Riding Establishments	13	13				12	12			
Performing Animals	3	1			2	0	0			
Pet Shops	4	3			1	4	4			
Scrap Metal Site	0					2	2			
Scrap Metal Mobile Collectors	2	2				3	3			
Hairdressers	1	1				0	0			
Personal Licences	99	97			2	118	118			
Premises licence - variation/vary DPS	121	118	1	1	1	124	122	2		
Premises licence - minor variation	16	14		2		10	10			
Premises licence - transfer	26	24		1	1	37	37			
Premises licence - new	24	21	1		2	16	16			
Temporary Event Notices	559	546	7	6		576	562	3	11	
Club Premises Certificates - new	1	1				0	0			
Club Premises Certificates - minor variation	1	1				0	0			
Street Traders - mobile	14	13	1			9	9			
Street Traders - site	36	35	1			35	34	1		
Street Collections	92	92				92	92			
House to House Collections	37	35			2	42	42			
Lotteries	35	35				36	36			
Licensed Premises Gaming Machine Permits	3	3				3	3			
Gaming Machine Notifications	5	5				5	5			
Skin Piercing - individual	13	12			1	11	11			
Skin Piercing - premises	7	6			1	8	8			
Occasional Use Notice	0					1	1			
Family Entertainment Centre	1	1				2	2			
Betting Premises	5				5	0	0			

Key: I = licences issued, W = applications withdrawn, R = applications refused or rejected,  
P = applications pending decision, e.g. awaiting documentation before licence issued

## Comparison data– Wokingham Borough Council

	WOKINGHAM 18/19 TOTALS					WOKINGHAM 17/18 TOTALS				
	Received	Issued	W/Drawn	Refused	Pending	Received	issued	W/Drawn	Refused	Pending
Animal Boarding	3	3	0	0	0	2	2	0	0	0
Dog Breeding	3	3	0	0	0	0	0	0	0	0
Home Boarding	30	25	2	0	3	26	23	3	0	0
Pet Shop	3	3	0	0	0	2	2	0	0	0
Horses for Hire	1	1	0	0	0	2	2	0	0	0
Street Trading	24	22	2	0	0	17	16	1	0	0
Club Gaming Permits (Fast Track)	0	0	0	0	0	0	0	0	0	0
Club Gaming Machine Permits (Fast Track)	0	0	0	0	0	0	0	0	0	0
Alcohol licenced Premises Gaming Machine Permits	0	0	0	0	0	2	2	0	0	0
Club Gaming Machine Permits (Non Fast Track)	0	0	0	0	0	0	0	0	0	0
Small Society Lottery	27	27	0	0	0	20	20	0	0	0
Personal Licence Application	83	83	0	0	0	73	73	0	0	0
Scrap Metal Dealer - Site	0	0	0	0	0	3	3	0	0	0
Scrap Metal Dealer - Mobile	0	0	0	0	0	0	0	0	0	0
Premises Licence Application	18	16	1	0	1	19	18	1	0	0
Premises Licence Application (No Alcohol)	3	3	0	0	0	2	2	0	0	0
Club Premises Certificate Appl	0	0	0	0	0	0	0	0	0	0
Dual Driver's Licence	27	24	0	0	3	11	8	3	0	0
PH Driver's Licence	24	22	1	0	1	14	11	2	1	0
PH Operator's Licence	10	10	0	0	0	12	11	1	0	0
Hackney Carriage Vehicle Licence	48	48	0	0	0	48	48	0	0	0
PH Vehicle Licence	101	98	2	1	0	112	110	2	0	0
School And Community Services Driver Licence	8	8	0	0	0	6	6	0	0	0
School And Community Services Vehicle Licence	42	42	0	0	0	36	36	0	0	0
School And Community Services Operator Licence	0	0	0	0	0	0	0	0	0	0
Private Hire Vehicle Application (with Dispensation)	47	47	0	0	0	41	41	0	0	0
Gambling Premises Licence	0	0	0	0	0	0	0	0	0	0
Dermal Treatments Registration	18	15	0	0	3	20	20	0	0	0
<b>TOTALS</b>	<b>520</b>	<b>500</b>	<b>8</b>	<b>1</b>	<b>11</b>	<b>468</b>	<b>454</b>	<b>13</b>	<b>1</b>	<b>0</b>

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## Comparison data - Bracknell Forest Borough Council

Type	2018/2019					2017/2018				
	Total	I	W	R	P	Total	I	W	R	P
Private Hire Operators	34	34				44	43	1		
Private Hire Vehicles	236	233	2		1	228	226	2		
Private Hire Drivers	86	74	1		11	99	91	7		1
Dual (Hackney Carriage and Private Hire) Drivers	65	62			3	82	81	1		
Hackney Carriage Vehicles	106	104			2	102	102			
Home to School Drivers	15	13			2	7	6	1		
Home to School Vehicles	42	41			1	33	32	1		
Animal Boarding Establishments	5	4			1	6	6			
Home Boarders of Dogs	55	48	1		6	41	41			
Dog Breeder	3	3				0				
Riding Establishments	6	6				9	9			
Performing Animals	3	2			1	2	2			
Pet Shops	5	2			3	8	8			
Scrap Metal Site	0					0				
Scrap Metal Mobile Collectors	0					1	1			
Hairdressers	5	5				3	3			
Personal Licences	83	83				77	76	1		
Premises licence - variation	5	4	1			6	4	2		
Premises licence - minor variation	11	10		1		19	19			
Premises licence - vary DPS	76	73			3	56	56			
Premises licence - transfer	9	9				14	14			
Premises licence - new	15	11	1	3		16	15		1	
Late Temporary Event Notices	53	50	1	2		42	39		3	
Temporary Event Notices	231	230			1	225	224	1		
Club Premises Certificates	0					0				
Street Traders	49	40		3	6	44	41	2	1	
Street Collections	33	29	3		1	30	30			
House to House Collections	22	19			3	29	26	3		
Lotteries	9	9				7	7			
Licensed Premises Gaming Machine Permits	1	1				2	2			
Gaming Machine Notifications	0					1	1			
Club Machine Permits	1	1				0				
Club Gaming Permits	0					0				
Bingo Premises	0					0				
Adult Gaming Centres	0					0				
Betting Premises	4	4				0				

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## Licensing Committee Forward Plan

No.	Ref No	Item	Purpose	Lead Officer	Lead Member
18 November 2019					
1.	LIC3789	Licensing Fees and Charges (including The Animal Welfare (Licensing of Activities Involving Animals) Regulations 2018)	To consider a range of fees and charges.	Suzanne McLaughlin	Economic Development and Planning
2.	LIC3790	Reducing Environmental Impact of Licensable Activities	To discuss ways in which licensable activities could potentially be encouraged to reduce pollution.	Suzanne McLaughlin	Environment

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