

Licensing Committee 6 July 2015

REVIEW OF COUNCIL'S POLICY ON TAXIS AND PRIVATE HIRE

1 Purpose

- 1.1 For Licensing Committee to consider proposed changes to the Council's policy on taxis and private hire.

2 Recommendations/for decision

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| 2.1 | For Members to consider the proposed revised policy in respect to the unacceptable behaviour and criminal conduct of taxi drivers and new applicants and the fit and proper test; and |
| 2.2 | To authorise the Licensing Manager to embark on a consultation of its contents and bring a further report back to Licensing Committee to approve a final and acceptable policy; and |
| 2.3 | For the Licensing Manager to seek alternative schemes to ensure that drivers are medically fit and suitably qualified to drive safety. |

3 Supporting information

- 3.1 The Local Government (Miscellaneous Provisions) Act 1976 prohibit the district council from licensing a person as a private hire or hackney carriage driver unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence. The phrase 'fit and proper' has never been judicially defined and can cause local authorities some difficulties. It is possible for a council 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'.
- 3.2 This information can include any pre-conditions or tests they consider necessary to assist in determining the fitness of an applicant. Within AVDC for example new drivers are required to pass a medical and the Driving Standards Agency (DSA) taxi driving test. This information satisfies the Council that a person has the skills to hold a licence. However an assessment of 'fit and proper' extends beyond mere skills and medical clearance. A judgement of character has to be made and in particular whether someone has a propensity towards dishonesty or even crime.
- 3.3 All applications for a taxi and private hire driver licence, whether new or on renewal require the applicant to provide an enhanced criminal disclosure from the Disclosure and Barring Service (formally known as the Criminal Record Bureau). Both taxi and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974, meaning that there are no 'spent convictions' and all criminal convictions can be taken into account. The enhanced criminal disclosure reveals not just convictions but other court

disposals such as cautions, reprimands and warnings and, on occasions intelligence/suspicious.

- 3.4 In an attempt to provide a consistent, transparent and proportionate assessment of the information provided, the Council currently have a policy on relevance of criminal conduct and complaints against licence holders and applicants. This policy has proved to be very useful over the last few years. Based on this policy not a single decision to refuse or revoke a licence has been overturned on appeal. However since its original publication there has been changes in case law and the Council's licensing service have acquired considerable practical experience in decision making and assessment. Attached as Appendix 1 is a draft new policy on criminal conduct and unacceptable behaviour. By way of comparison our existing policy is attached as Appendix 2.
- 3.5 This latest draft has been updated to reflect the practical experience of officers and is largely based on the policy adopted by Kirklees Borough Council who are generally held in high esteem in respect to their regulatory services. Having agreed the draft policy it is the intention to consult with the trade and other interested parties such as the police and children's services. Based on feedback from consultation a final policy will be brought back to Licensing Committee for discussion and recommendation for Cabinet Member approval.
- 3.6 In respect to the pre-conditions applied, i.e. DSA taxi test and medical approval these can be problematical to the trade and have had limited impact in terms of improving standards. At the moment the Council's policy requires all new applicant's and existing drivers on renewal to have a Group II medical examination from a doctor from their own surgery. This arrangement has proved to be a 'post code lottery' in that depending on the particular surgery the driver is registered with the cost can vary between £65 and £125 and the waiting time can differ from weeks to several months. Likewise the waiting times for a DSA test can be several months.
- 3.7 Invariably all drivers receive medical clearance and on the very few occasions the licensing service have had to deal with complaints about drivers whose health appears to be affecting their driving, they have all had medical clearance. Similarly the DSA taxi test has not seen a reduction in complaints relating to poor driving.
- 3.8 It is recommended that the licensing service identify alternative schemes to assist the trade but achieving the same assurances. For example medicals could be restricted to those over the age of 45 years or drivers could be allowed to obtain medical clearance but not necessarily from their own doctor. The council may wish to retain the DSA taxi test but also accept alternative driving awards. Should Members agree it is intended that the licensing services discuss proposals with the trade and bring back acceptable alternatives to Licensing Committee.
- 3.9 Some Members may recall that the Licensing Committee introduced a penalty points system for taxi enforcement last year. The system is targeted at low level non-compliance and is proving to be very successful. Standards have noticeably improved with, for example, drivers readily wearing their badges and maintaining first aid kits and first extinguishers.

4 Options considered

- 4.1 None

5 Reasons for Recommendation

- 5.1 To keep up to date the Council's taxi policy on criminal conduct and unacceptable behaviour.

6 Resource implications

- 6.1 There are little or no cost implications to the recommendations. In any event any costs can be covered by licensing fee income.

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Background Documents	None

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Appendix 10 - POLICY ON RELEVANCE OF CRIMINAL CONDUCT & UNACCEPTABLE BEHAVIOUR (The fit and proper test)**1. Introduction**

In exercising its discretion in carrying out its regulatory functions the Council will have regard to these guidelines in determining whether drivers and operators are fit and proper persons to obtain licences. They will also be referred to in assessing the suitability of licensed drivers and operators to continue to hold their licence. However each application or enforcement measure will be considered on its own merits.

The Council is concerned to ensure:

- That a person is a fit and proper person
- That the person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children and young and vulnerable people

The aim of the licensing regime to which these guidelines relate is not to punish the applicant or licensee twice for an offence (which includes a conviction, caution, reprimand, warning, fixed penalty notice or any other out of court disposal) but to ensure that public safety and confidence in the trade is not compromised. The objective of the licensing regime is to ensure that, as far as possible those licensed to drive hire cars are suitable persons to do so. Namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

These guidelines will be taken into account by the Licensing Authority when dealing with new applications. They will not be applied retrospectively in relation to renewal applications. The policy may be applied retrospectively, however if any additional convictions or other court disposals are incurred or brought to the attention of the Licensing Authority that would call into question a persons suitability to hold a licence.

Clearly, some adjustments may need to be made when applying these guidelines to operators as opposed to drivers because they carry out a different role and their contact with the public is different. Nevertheless the Council need to be satisfied that they are fit and proper persons to obtain licences. If an operator is found guilty of aiding and abetting other offences his operator licence will be revoked immediately and prevented from holding a licence for 3 years.

There may be occasions where it is appropriate to depart from the guidelines, for example where there are exceptional mitigating circumstances or alternatively where there are many or continuous, albeit minor offences which may show a pattern of offending and unfitness. Where an applicant has been convicted of a criminal offence, the Council cannot review the merits of the conviction (*Nottingham City Council v Mohammed Farooq (1998)*). The Council also cannot take into consideration the impact of losing (or not being granted) a driver's licence on the applicant and his family (*Leeds City Council v Hussain* and *Cherwell District Council v Anwar*). It is the responsibility of the applicant/licence holder to satisfy the Licensing Authority that they

are a 'fit and proper person' to hold a licence. The applicant/licence holder must ensure that all convictions, cautions, warnings, reprimands, fixed penalty notices, arrests and summonses are disclosed to the Licensing Authority. Failure to disclose this information, where it exists will be taken into consideration in determining an application.

2. Powers

Section 61 and Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Council to suspend, revoke or refuse to renew a licence if the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

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.

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 deduction in the period of disqualification.

3. Consideration of disclosed criminal history

Under the provisions of Section 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 private hire vehicle drivers licence and/or private hire operator's licence is a 'fit and proper person' to hold such a licence. A key test in evaluating this is whether they have been involved in criminal activity. Convictions, cautions, fixed penalties, speeding offences and other criminal sanctions may be relevant indicators of a person's suitability to hold a licence. The disclosure of any conviction or other court disposal will not necessarily prevent an applicant from being issued a licence. However all convictions, spent or live will be assessed. It should also be borne in mind that a caution is given where there is sufficient evidence for a prosecution and guilt has been admitted. Fixed penalties are issued for a wide range of traffic offences. Some are non-endorsable fixed penalties and do not result in points being imposed on a person's licence. Others are endorsable fixed penalties and allow an opportunity for an alleged offender to forgo a prosecution and accept points on their licence. Fixed penalty notices are similar to fixed penalties but are issued for a wide range of offences of an anti-social nature e.g. drunken disorderly, possession of cannabis. In considering the suitability of a person the Council will look into:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) were

- When the offence(s) were committed
- The date of conviction
- Circumstances of the individual concerned
- Sentence imposed by the court
- The applicant's age at the time of conviction
- Whether they form part of a pattern of offending
- Any other character check considered reasonable (e.g. personal references)
- Any other factors that might be relevant

Existing holders of drivers' licences are required to notify the Licensing Authority in writing within 7 days of receiving a driving licence endorsement, fixed penalty notice, an arrest or criminal conviction (including cautions).

The Licensing Authority conducts enhanced disclosures from the Disclosure & Barring Service (DBS) formerly the Criminal Records Bureau (CRB) of any applicant for a driver licence. The Licensing Authority follows the DBS's Code of Practice on the fair use of disclosure information.

Applicants applying for the grant or a renewal of a drivers' licence will be required to obtain an enhanced disclosure at their expense. The Licensing Authority abides by the DBS's policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.

More information about the DBS can be found on their website at <http://www.gov.uk/government/organisations/disclosure-and-barring-service>

The Licensing Authority is 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 under the Home Office scheme for reporting offences committed by notifiable occupations.

DBS disclosures will not include detail of any foreign convictions or cautions unless they have been recorded on the UK National Computer. Any applicant who has resided outside the UK for any period longer than 3 months within the preceding 3 years will be required to produce a 'Certificate of Good Conduct' from the relevant countries which details any cautions or convictions arising against the applicant while resident in that country. It shall be the applicant's responsibility to obtain this documentary evidence and to bear the cost of such. The requirements is in addition to the DBS disclosure.

Where an applicant is unable to obtain the above, a discussion will take place with the Licensing Manager to ascertain what alternative evidence should be provided. This may include character references from appropriate individuals or other bodies as to the applicants conduct whilst resident in the other country.

4. Non-conviction information

If an applicant has, on one or more occasions 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. Such offences would include but is not limited to serious violent offences, offences involving child sexual exploitation and sex offences. This equally applies to existing licence holders to which revocation or suspension may follow.

It should be noted that the Licensing Authority considers regulatory sanctions such as refusals, suspensions and revocations to the civil burden of proof i.e. 'a balance of probabilities'. That is one party's case need only be more probable than the other. It is therefore able to make decisions on alleged offences regardless of whether a criminal conviction followed the offence or whether it comes up to proof 'beyond reasonable doubt'.

In assessing the action to take, the safety of the travelling public must be the paramount concern.

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 false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

The following lists are not exhaustive and any offences not covered by this policy will not prevent the Licensing Authority from taking into account those offences. All references to 'conviction' also include other court disposals such as cautions, reprimands, warnings, fixed penalty notices.

5. Sex and indecency offences

As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely scrutinised. Those with convictions for the more serious sexual offences will normally be refused, regardless of the period of time elapsed after the date of conviction. Although not exhaustive, examples of serious sexual offences include:

- Rape
- Assault by penetration
- Sexual offences involving children, young persons or vulnerable adults
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- Sexual assault
- Abuse of position of trust
- Familial child sex offences
- Possession of indecent photographs of children
- Abuse of children and young persons through prostitution or pornography
- Trafficking for sexual exploitation
- Preparatory offences

For other offences, applicants will be expected to show a substantial period (usually between 7 and 12 years) free of conviction for such offences before a licence is granted. Other sexual or indecency offences include indecent exposure, soliciting (kerb crawling) and any similar offences (including attempted or conspiracy to commit) offences.

In addition to the above the Licensing Authority will not grant a licence to any applicant who is currently on the Sex Offenders Register. A licence will not normally be granted if an applicant has more than one conviction for a sex or indecency offence.

Any current licence holder who is arrested/charged for a sexual offence will be subject to investigation and subject to the facts and circumstances the above standards will be applied in determining their suitability to continue to hold a licence.

6. Serious offences involving violence

Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life or serious injury or intent to cause serious harm regardless of the period of time elapsed after the date of conviction. Although not exhaustive examples include:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

In other cases anyone who has committed a serious violence offence will be expected to show a substantial period (usually between 7 and 12 years) free of conviction for such offences before a licence is granted. Although not exhaustive examples of serious violence offences include:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of a firearm
- Riot
- Assault on a police officer
- Common assault which is racially aggravated
- Violent disorder
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

All other violence offences will be treated seriously and depending on the facts and circumstances will require a reasonable period (usually 3 and 5 years) free of conviction for such offences before a licence is required. Although not exhaustive example include:

- Common assault
- Battery
- Assault occasioning actual bodily harm
- Affray
- Causing harassment, alarm or distress
- Causing fear of provocation of violence
- Intentional harassment, alarm or distress
- Obstruction

- Criminal damage

A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

Any current licence holder who is arrested/charged for a violence offence will be subject to investigation and subject to the facts and circumstances the above standards will be applied in determining their suitability to continue to hold a licence.

7. Dishonesty

Licensed drivers are expected to be trustworthy. They deal with cash transactions and valuable property may be left in their vehicles. All drivers are required to deposit such property with either the licensing authority or the police within 24 hours. The practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons a serious view is taken of any conviction involving dishonesty and depending on the facts and circumstances will require a reasonable period (usually 3 and 5 years) free of conviction for such offences before a licence is required. Offences involving dishonesty include:

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- Or similar offences (including attempted or conspiracy to commit) offences which replace the above
- Perverting the course of justice

Any current licence holder who is arrested/charged for a dishonesty offence will be subject to investigation and subject to the facts and circumstances the above standards will be applied in determining their suitability to continue to hold a licence.

8. Drug offences

A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered. A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and has not been free of conviction for 5 years. A licence will not normally be granted where an applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.

An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a licence, but serious consideration should be given to the nature and quality of the drugs. If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) maybe required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

Any current licence holder who is arrested/charged for a drug related offence will be subject to investigation and subject to the facts and circumstances the above standards will be applied in determining their suitability to continue to hold a licence.

9. Drink driving/driving under the influence of drugs

As licensees are professional, vocational drivers, a serious view is taken of convictions for driving or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA driving licence but he should be warned as to the significant risk to his licence status in the event of re-offending. More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public. At least 3 years, after the restoration of the driving licence following a drink driving conviction should elapse before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent a satisfactory medical report must be provided before the application can be allowed to proceed.

10. Outstanding charges or summonses

If the individual is subject to an outstanding charge or summons their application may continue to be processed but the application will need to be reviewed at the conclusion of proceedings. Where information is received through the notifiable Occupations Scheme on existing licence holders, consideration will be given to the information in accordance with this policy.

If the outstanding charge or summons involves a serious offence then in the interest of public safety the application may be put on hold until proceedings are concluded or the licence may be refused. In the case of existing drivers their licence will be revoked.

A suspension or revocation of a drivers licence takes effect at the end of 21 days beginning with the day on which notice is given to the driver. If it appears that the interest of public safety require the suspension or revocation of the licence to have immediate effect and the notice 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. A decision to either immediately suspend or revoke or give 21 days notice will be made on a case by case basis.

11. Licensing offences - convictions

Convictions for certain licensing offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons or assistance dogs would normally prevent a licence being granted or renewed until a period of 3 years has passed since conviction.

12. Insurance offences

A serious view will be taken on convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for 3 years. However strict warning should be given as to future behaviour. More than one conviction for these offences would normally

prevent a licence being granted or renewed. At least 3 years should elapse (after the restoration of the DVLA driving licence), before a licence would normally be granted for a hackney carriage or private hire drivers licence. An operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance will have his operator's licence revoked immediately and prevented from holding a licence for three years.

13. Motoring offences and penalty points

Existing drivers who have accumulated 9 or more points on their DVLA driving licence will have their private hire/hackney carriage licence suspended until the driver has successfully undertaken a private hire or hackney carriage DSA driving test, at their own expense. Driving offences resulting in disqualification will not be licensed for 3 years following the restoration of the DVLA licence.

14. Licensing Offences and breaches of conditions of licence – regulatory sanctions

Breaches of the relevant legislation or conditions attached to driver, operator and vehicle licences may come to light following complaint, enforcement actions or investigations. The action to be followed in response to such matters will be determined on their own merits. Depending on the facts and circumstances the Council reserve the right to prosecute.

The Council's penalty point system for enforcement targets specific offences and identifies a number of points for each offence. If a driver accrues 12 points his/her suitability to continue to drive will be assessed and the licence maybe suspended.

More serious braches such as unlawfully plying for hire and refusing to carry disabled persons or assistance dogs may result in a suspension as an alternative to prosecution.

Appendix 10 - POLICY ON RELEVANCE OF CRIMINAL CONDUCT AND COMPLAINTS AGAINST LICENCE HOLDERS AND APPLICANTS

1. Introduction

In exercising its discretion in carrying out its regulatory functions the Council will have regard to these guidelines. However each application or enforcement measure will be considered on its own merits.

The aim of the licensing regime to which these guidelines relate is not to punish the applicant or licensee twice for an offence (which includes a conviction, caution, reprimand, warning, fixed penalty notice or any other out of court disposal) but to ensure that public safety and confidence in the trade is not compromised. The objective of the licensing regime is to ensure that, as far as possible those licensed to drive hire cars are suitable persons to do so. Namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

These guidelines will be taken into account by the Licensing Authority when dealing with new applications as well as renewal applications for an existing private hire/hackney carriage driver's licence, private hire/hackney carriage vehicle licence and a private hire operator's licence and also when considering whether to suspend or revoke an existing licence.

Clearly, some adjustments will need to be made when applying these guidelines to operators as opposed to drivers because they carry out a different role and their contact with the public is different.

2. Criminal and other unacceptable conduct

Licensed drivers must be 'fit and proper' and a key test in evaluating this is whether they have been involved in criminal activity. Convictions, cautions, fixed penalties, speeding offences and other criminal sanctions may be relevant indicators of a person's suitability to hold a licence. The disclosure of any conviction will not necessarily prevent an applicant from being issued a licence. However all convictions, spent or live will be assessed. It should also be borne in mind that a caution is given where there is sufficient evidence for a prosecution and guilt has been admitted. Fixed penalties are issued for a wide range of traffic offences. Some are non-endorsable fixed penalties and do not result in points being imposed on a person's licence. Others are endorsable fixed penalties and allow an opportunity for an alleged offender to forgo a prosecution and accept points on their licence. Fixed penalty notices are similar to fixed penalties but are issued for a wide range of offences of an anti-social nature e.g. drunken disorderly, possession of cannabis.

In this policy references to convictions or cautions includes, wherever appropriate, other criminal sanctions too.

Although this policy mainly concerns criminal conduct or activity, other unacceptable conduct, even if not criminal in nature may also justify a regulatory sanction depending as always on the facts and circumstances of the case.

3. Patterns

A series of incidents of criminal conduct over a period of time is more likely to give cause for concern than an isolated incident. A serious view will be taken when applicants show a pattern of offending. Other considerations will be the period of time over which the criminal conduct occurred and the nature, seriousness and relevance of the criminal activity.

4. Periods free from conviction

The principles of the Rehabilitation of Offenders Act 1974 do not apply to applicants for hackney carriage and private hire driver's licences. This is because the driving of taxis is listed as 'regulated occupation' in relation to which questions may be asked as to the suitability of individuals to be granted a licence. Greater or less weight will be attached to each incident depending on:

- The nature of the offence,
- The penalty imposed,
- The length of time since the offence or conviction,
- Any relevant aggravating or mitigating circumstances

5. Period following revocation / refusal or appeal

If a licence is revoked or refused it is reasonable to expect a period of time to elapse before a re-application will be entertained. That period will depend on the facts and circumstances leading to the revocation or refusal but in any case will be a minimum of three years from the date of revocation / refusal. Similarly should a revocation or refusal be appealed against and the appeal is dismissed the three year period of time before a re-application would be entertained will begin from the date of the appeal decision.

6. 'Fit and proper person'

Assessing someone's fitness to drive a licensed vehicle is ultimately a subjective decision. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind. For example elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property. Examples of areas that might give rise for concern include:

- 6.1 **Honesty and trustworthiness** – any passenger would expect to be charged the correct fare for a journey and given the right change, they would expect a driver to hand in any article left by a passenger in a vehicle
- 6.2 **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour but this cannot excuse any aggressive or abusive conduct on behalf of the driver. Drivers are expected to avoid confrontation and to address disputes through the proper legal channels. Under no circumstances should they take the law into their own hands.

6.3 A good and safe driver – drivers are expected to be professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to their licences.

The overriding consideration is the protection of the public and whether regulation is required in the interests of public safety.

7. Written Warnings

In some circumstances rather than issue a formal regulatory sanction the Council may issue a written warning as to the driver's conduct. If a driver receives two or more written warnings within a period of a year, serious consideration will be given to the use of a regulatory sanction such as suspension or revocation. In some circumstances where poor driving standards are repeatedly displayed, or a driver is seen driving otherwise in accordance with the highway code, this Authority may request that the licensed driver attend the Driving Standards Agency (DSA) Taxi test. Failure to pass within a reasonable time (Usually 3 months) would result in the suspension of the licence until such time as the DSA test is successfully passed.

8. General Offences

The offences mentioned in this policy are not intended to be exhaustive. If an offence is not specifically mentioned in this policy its treatment will depend on the factors already outlined above.

9. Driving Offences

If an applicant has committed traffic offences this should not necessarily prevent them from proceeding with an application. However the number, type and frequency of offences will be taken into account.

Convictions for minor offences such as obstruction, waiting in a restricted street and, depending on the circumstances, speeding would not necessarily prevent a person obtaining a licence. If sufficient points have accrued to require a period of disqualification of an applicant's driving licence, a taxi or private hire driver's licence may be granted after its restoration depending on the facts and circumstances. However a written warning would be issued as to future conduct. A similar approach would be made in the case of an existing licensed driver accruing sufficient points to warrant a disqualification.

An isolated conviction for a more serious traffic offence such as reckless driving or driving without due care and attention or using a vehicle with defective tyres or steering or brakes would at least result in a written warning as to future conduct. Depending on the facts and circumstances it might result in refusal, suspension or revocation. More than one conviction of this type of offence within the last two years would normally warrant refusal or revocation.

Any new applicant who has more than six penalty points should expect that their application will be subject to further scrutiny and maybe granted, granted with a written warning, granted with the condition that they complete the Driving Standards Agency Taxi test, or refused.

10. Motor Insurance Offences

The Council takes a serious view of motor insurance offences. An isolated incident in the past should not necessarily bar a new applicant from being issued a licence but their application will be subject to particular scrutiny. More than one conviction or caution for these offences should raise serious doubts as to an applicant's suitability to hold a hackney carriage or private hire licence. In this instance, at least three years should elapse (after restoration of the DVLA driving licence) before an applicant who has been disqualified from driving for insurance offences, is considered for a hackney carriage or private hire licence. Should that person not have been disqualified, at least three years should elapse from the date of the last conviction.

Should an existing licence holder commit a motor insurance offence they should expect for the matter to be investigated and the possible outcomes maybe that no further action is taken, they are given a written warning, their licence is suspended normally for a period of one month or the licence is revoked.

11. Sexual Offences

As hackney carriage and private hire drivers often carry unaccompanied passengers, any new applicants with convictions, or cautions, for any sexual offence should expect their application to receive particular scrutiny. New applicants will normally be refused a licence until they can show a substantial period (usually between seven and twelve years) free from conviction. However in the case of some sexual offences the Licensing Authority may refuse to licence an applicant regardless of the period of time elapsed after the date of conviction. Any current licence holder who commits a sexual offence will be subject to investigation which may result in no further action, a written warning, a suspension or the revocation of the licence.

Licence holders should also be aware that if the Licensing Authority receive notification from the police that a driver is being investigated for a serious sexual offence, their licence may be suspended immediately depending on the facts and circumstances. An allegation of a sexual offence whilst a driver is on duty and/or involves an abuse of a position of trust will usually be considered serious.

12. Drunkenness Offences

12.1 With a Motor Vehicle

The Council views driving or being in charge of a vehicle whilst under the influence of alcohol as a serious offence. Although an isolated incident will not necessarily debar an applicant, a single conviction for any drink driving offence will normally require a period of two years to elapse after the date of conviction or the restoration of their DVLA licence, whichever is the latter, before being considered for a licence. More than one incident should raise grave doubts as to future behaviour and the applicant's fitness to hold a licence.

In relation to existing drivers the Council considers the safety of the public to be paramount and will not tolerate existing drivers committing drink driving offences particularly if committed whilst on duty. Existing licence holders who commit drink

driving offences should expect to have their licence revoked except in exceptional circumstances.

If a driver has been disqualified from driving by a court for offences relating to drink driving, then any application to renew a hackney carriage or private hire driver's licence should not be considered until a period of two years from the restoration of their DVLA licence has elapsed.

12.2 Without a motor vehicle

An isolated incident of drunkenness not associated with a motor vehicle will not necessarily result in an application not being granted, however any new applicant or current licensee should expect their application/licence be subject to particular scrutiny. One or two convictions, cautions and/or fixed penalty notices for disorder and/or drunkenness not confined to a year should result in a written warning as to future conduct. Two convictions, cautions and/or fixed penalty notices for disorder for drunkenness within a year, then a current licence might be suspended to enable the Licensing Authority to make further enquiries. Where the Licensing Authority receive a new application in these circumstances, it may be refused or granted with a written warning. In relation to three or more convictions, cautions and/or fixed penalty notice for disorder for drunkenness, then any current licence will normally be revoked except in exceptional circumstances. Any new application should be refused until a period of twelve months free of conviction.

In all cases more than one conviction, caution and/or fixed penalty notice for disorder and/or drunkenness or refusal to provide a specimen may indicate a medical problem and the applicant/licence holder may be asked to submit to a medical examination by a medical practitioner nominated by the Council at the applicant's/licence holder's own expense. If the examination shows the person to be an alcoholic, a period of five years should elapse after treatment is complete before a further application is considered.

13. Drug Offences

A serious view is taken of any drug related offence. An applicant who has committed a drug related offence (including supplying or trafficking of drugs) should be required to show a period of at least three years free of convictions before an application is considered.

If the applicant was required to undergo detoxification treatment, a period of five years free from conviction is required after the end of treatment. More than one conviction and/or caution for a drugs related offence should prevent a successful application for at least seven years from the date of the most recent conviction. In both instances before a further application is considered, a specialist medical examination will be required with negative urine screen for drugs.

Any new applicant who has served a custodial sentence for a period of five years or more for supplying controlled drugs and has submitted an application should not be considered for a licence.

The Council consider the safety of the public as paramount and will not tolerate existing drivers committing any drug-related offence. Existing licence holders who commit drug related offences will be subject to investigation and, if sufficiently serious their licence will be revoked

except in exceptional circumstances. In serious cases, at least seven years should elapse from conviction before a new application by that person will be considered.

14. Violence Offences

As hackney carriage and private hire drivers maintain close contact with the public any previous convictions and/or cautions for violence will be taken seriously by the Council. Any new applicants with convictions or cautions for any violence offence should expect their application to receive particular scrutiny. Depending on the seriousness of the offence and the facts and circumstances new applicants are likely to be refused unless they can show a substantial period (usually five to ten years) free from conviction. Any current licence holder who commits a violence offence will be subject to investigation which may result in no further action, a written warning, a suspension or the revocation of the licence. A particularly serious view will be taken where the victim of a violence offence is a public official such as a Council Officer or Police Officer as a result of carrying out their duties.

An application will be refused or existing licence revoked where the applicant has received a conviction for any of the following offences, regardless of the period of time lapsed after the date of conviction:

- Murder and attempted murder
- Manslaughter
- Causing death by reckless driving
- Rape

The guidelines above are applicable to new applicants and existing licence holders who have committed one offence. If a new applicant or existing licence holder has committed two or more violence related offences, the licence should normally be revoked or refused. If an applicant has a history of violence (three or more offences of any type of violence) their application will be refused, or in the case of an existing driver their licence will be revoked.

15. Dishonesty

Drivers of hackney carriages and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to cheat or defraud the public, for example by demanding more than the legal fare or giving incorrect change. Similarly any customer can be defrauded by a driver taking them by any other than the shortest route or by retaining any lost property left in their vehicle. Members of the public entrust themselves to the care of drivers both for their safety and for fair dealing. For these reasons a serious view is taken of any offences involving dishonesty. A new application would normally be refused or an existing licence revoked where a person has committed an offence of:

- Theft
- Burglary
- Fraud
- Benefit Fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining property and/or services by deception

16. Guidelines for dealing with licensing offences or breaches of conditions of licence

Breaches of the relevant legislation or conditions attached to driver, operator and vehicle licences may come to light following complaints, enforcement actions or investigations. The action to be followed in response to such matters will be determined on their own merits. The licensee has the right to appeal to the Magistrates' Court any decision to suspend or revoke a licence. Set out below are the general principles which are to be followed

All Criminal offences committed under The Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976, The Transport Act 1980 or any other relevant legislation will fall within this category. The following guidelines will apply but will not be a fetter to any decision to prosecute. This list is not intended to be exhaustive.

Failure to comply with a lawful requirement or instruction from an authorised officer of the council or a Police Officer

The holders of licences are legally obliged, under the relevant legislation, to comply with a number of requirements or instructions given to them by an authorised officer of the Council or a Police Officer. These would include, for example, the production of licences, vehicle inspection reports and insurance certificates or the surrender of licences or plates following suspension or revocations or failure to attend a pre-booked appointment without a reasonable excuse. Where the offender has failed to produce a document on time but subsequently does so, the Licensing Authority will normally issue a written warning. Where, however the offender does not produce the documents, despite reasonable attempts to make him do so the Licensing Authority may suspend, revoke or refuse to renew the licence.

17. Failure to display plates, door signs or badges

In relation to badges, depending on the circumstances, on the first occasion this may be dealt with informally by the roadside. It should also be noted that it is an offence for a private hire driver not to wear the badge issued to him/her without reasonable excuse. A failure to comply with this requirement on two or more occasions may therefore result in both regulatory and/or criminal sanctions.

In the case of missing or inappropriately fitted plates or missing door signs, the vehicle licence will be suspended until such time as the matter is rectified. Refusal to rectify or repeat breaches may lead to revocation.

In addition, it is an offence not to display a hackney carriage or private hire vehicle plate and therefore a failure to comply may result in both regulatory and/or criminal sanctions. The use of an 'executive vehicle' other than in accordance with the rules for 'executive vehicles' will automatically constitute an offence and may also result in the exemption being removed and the vehicle having to comply with standard conditions on door signs and display a plate.

18. Refusal to carry a passenger in a Hackney Carriage

In these circumstances the driver will be invited to state the reasons for his action and if the Licensing Authority is satisfied that the driver had a justifiable reason then no action will be taken. If, however, there appears to be no acceptable justification for the refusal, the issue of a written warning will normally deal with the matter. Any further offences within a twelve-month calendar period could result in suspension, revocation or refusal to renew the licence.

19. Failure to report a conviction, caution, warning, fixed penalty notice, arrest.

All drivers and operators are required to notify the Council of not only convictions, cautions, fixed penalty notices, warnings and arrests. But also if they have been charged with a criminal offence, arrested or even if they are the subject of a criminal investigation. Failure to do so in writing within seven days will normally be dealt with by issuing a written warning in addition to any further actions which may be warranted by the nature of the offence. Depending on the severity of the offence, or alleged offence, this breach of a licence condition will be taken into consideration in respect to any decision to subsequently suspend or revoke a driver's or operator's licence. Even if a failure to report an offence, or alleged offence, itself does not result in any enforcement action, if part of a pattern of breaching conditions over a period of time, it could result in suspension, revocation or refusal to renew the licence.

20. Disqualification from driving following the 'totting up' procedure or for drink driving

There are numerous reasons why a DVLA licence might be revoked or become invalid. If a driver ceases to have a valid DVLA licence, then the hackney carriage or private hire driver's licence is also invalid. Depending on the facts and circumstances the Licensing Authority may revoke the hackney carriage or private hire licence or simply require the badge to be returned immediately.

21. Confirmed complaints of rude or aggressive behaviour

In less serious cases a written warning as to future conduct will be given by the Licensing Authority. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety this may result in the suspension of the driver's licence pending further investigation and may subsequently result in revocation of the licence.

22. Defective Vehicle

If during routine enforcement work or following the investigation of a complaint, the Licensing Authority identify a defect on a licensed vehicle that could affect safety (such as a worn tyre) then the licence will be suspended with immediate effect. This will stop the vehicle being used as a hackney carriage or private hire vehicle until the defect is repaired.

23. Exceeding the allowed number of passengers

This will normally result in the issue of a written warning by the Licensing Authority. Any subsequent breach of conditions may result in suspension, revocation or refusal to renew the licence.

24. Illegal or non approved advertising on vehicles

This will normally result in the issue of a written warning. Any subsequent breach of condition within a twelve-month period of the original may result in suspension, revocation or refusal to renew the licence. The offending advertisement must be immediately removed.

25. Failure to report an accident

The failure to report an accident involving a licensed vehicle to the Licensing Authority will normally be dealt with by issuing a written warning. Any subsequent failure may result in a suspension, revocation or refusal to renew the licence.

26. Hackney Carriage Driver overcharging a passenger

It is relatively easy for a driver to defraud the public because of the nature and complexity of the tariff system. Overcharging should, therefore, be considered a serious breach of trust that should be dealt with by imposing a significant penalty. A suspension or even revocation of a licence will, therefore, generally be justified.

27. Private Hire drivers plying for hire

In the case of a first offence the driver would normally be offered a simple caution or prosecuted depending on the circumstances. In the case of a second offence the Council would more readily prosecute. In both cases the Licensing Authority will consider the necessity of a short suspension of the driver's licence or alternatively revocation. Depending on the facts and circumstances, the Licensing Authority reserve the right to suspend or revoke a driver's licence without the need to prosecute or even caution.

28. Touting for Business

In the case of a first offence the driver would normally be offered a simple caution or prosecuted depending on the circumstances. In the case of a second offence the Council would more readily prosecute. In both cases the Licensing Authority will consider the necessity of a short suspension of the driver's licence or alternatively revocation. Depending on the facts and circumstances, the Licensing Authority reserve the right to suspend or revoke a driver's licence without the need to prosecute or even caution.