

**Licensing Committee  
7 September 2015**

**REVIEW OF POLICY ON CRIMINAL CONDUCT AND  
UNACCEPTABLE BEHAVIOUR OF TAXI DRIVERS AND  
NEW APPLICANTS AND THE FIT AND PROPER TEST**

**1 Purpose**

- 1.1 For Licensing Committee to note the findings arising from the consultation process and recommend the policy attached to this report for Cabinet Leader approval.

**2 Recommendations/for decision**

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| 2.1 | For Members to note the comments arising from the consultation of a draft policy on criminal conduct and unacceptable behaviour of taxi drivers and new applicants and the fit and proper test; |
| 2.2 | To note and, if necessary discuss any changes made to the draft based on the consultation exercise;   |
| 2.3 | To recommend Cabinet Leader approval and implementation.  |

**3 Supporting information**

- 3.1 In July earlier this year Members received and discussed a report relating to the licensing of taxis and private hire drivers and operators and the need to ensure that the Council are satisfied that they are 'fit and proper'. Members will recall that licensing officers in relation to new applicants are predominantly reliant on information provided by an enhanced criminal disclosure from the Disclosure and Barring Service. The licensing services also receive information, intelligence and complaints relating to existing drivers. In order to provide a consistent, transparent and proportionate assessment of the information supplied, officers refer to the Council's policy on criminal conduct and inappropriate behaviour.
- 3.2 A revised policy was noted and discussed with Members and a number of changes made to it. The Licensing Manager was authorised to consult upon it before drafting a final policy for approval. The draft policy was sent to Thames Valley Police, the Local Authority Designated Officer Children and Family Services, the Safeguarding and Compliance Manager with AMEY and the District Council's Safeguarding Board and of course the taxi and private hire trade. As requested by Licensing Committee, in consulting with the police attention was drawn to the use of 'certificates of good character' where a Disclosure and Barring Service (DBS) were unavailable.
- 3.3 The Local Police Area Commander Oliver Wright provided some helpful advice in relation to the section on 'non-conviction information' and in particular the disclosure of arrests and the section has been re-written. On the issue of 'certificates of good character', the police have no experience or opinion. Their use though is consistent with other licensing authorities.

- 3.4 The only other comments made during the consultation period were from Lindsey Hone, the Environmental Health and Licensing Manager who provided some helpful drafting advice. The policy attached as Appendix 1 includes all relevant suggestions and Members are asked to recommend Cabinet Member approval.
- 3.5 Once approved this revised policy will replace the current one appended to our Taxi and Private Hire Policy as Appendix 10. The remainder of the policy which set out the Council's hackney carriage limitation policy for the town of Aylesbury and all standards and conditions for drivers, vehicles and operators will be reviewed over the next few months and brought back to Licensing Committee.

#### **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

## Appendix 1

### Appendix 10 - POLICY ON RELEVANCE OF CRIMINAL CONDUCT & UNACCEPTABLE BEHAVIOUR (The fit and proper test) – *reviewed 2015*

#### 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 any other relevant information is 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. Operators are required to keep specific records relating to drivers, vehicles and journeys booked which sometimes are invaluable when investigating complaints. The cooperation of the operator with the police and Council officers is essential and failure on their part to cooperate will be seen as obstruction and may result in action against them. 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. If an operator is convicted of a criminal offence or his licence is refused or revoked serious consideration will be given to ensuring that the trading name is not continued by any other operator so as to ensure faith of the Council's licensing services and avoid confusion amongst the taxi travelling public.

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 a number of, 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 existing licensed driver or operator 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 will be given to revoking the licence. Such offences would include but is not limited to serious violent offences, offences involving child sexual exploitation and sex offences. This equally applies to other information, intelligence or complaints received that suggests that he could be a danger to the public.

In respect to new applicants the decision to grant or refuse will be dependent upon what the DBS disclosure reveals. It should be noted that in certain situations, Chief Constables can disclose information when an applicant has not been convicted or cautioned. There are strict procedures for this set out by the DBS. On occasions where a Chief Constable does decide to disclose such information, then it will be treated entirely relevant and likely result in a refusal.

**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'. Decisions may also be made based on other unacceptable behaviours that do not in themselves necessarily amount to a criminal offence.**

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 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
- Sexual assault
- Abuse of position of trust
- Familial child sex offences
- Possession of indecent images of children
- Abuse of children and young persons through prostitution or pornography

- Trafficking for sexual exploitation
- Preparatory offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

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 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 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 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 or another offensive weapon
- Riot
- Assault on a police officer or local authority 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 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 48 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
- Perverting the course of justice



- Or similar offences (including attempted or conspiracy to commit) offences which replace the above

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. A particularly serious view will be taken in relation offences relating to the supply of drugs. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered. A licence will not 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 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 quantity 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 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 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.