

Cyngor Sir CEREDIGION County Council

Item No.

Report To:	Licensing Committee (Non Statutory Committee)
Date:	16 th September 2021
Time:	10:00 am
Location:	Virtual Meeting
Title:	Hackney Carriage and Private Hire Licensing – Review of Current Policy - Determining the Suitability of Applicants and Current Licence Holders.

Purpose of report: to seek the Licensing Committee's approval for the Licensing Service to begin a formal public consultation, on changing the Council's Suitability Policy relating to applicants and holders of hackney carriage, private hire vehicle, driver's licences and operator licences.

Background

Under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 (the Act) and the Town Police Clauses Act 1847, the Council is responsible for the licensing of hackney carriage and private hire drivers. The primary concern when licensing drivers is public safety. Members of this committee regularly sit on Licence Review Panels or sub-committee meetings to consider applications or licence holders in the Hackney Carriage and Private Hire trade. Sometimes, it is the applicant's criminal convictions that are being considered. However, bearing in mind the overall aim of the Licensing Authority is to protect the public, it is more often the case that other matters such as allegations, charges, complaints, a licence holder's compliance record and/or conduct that need to be considered in order to determine whether they are a 'fit and proper' or 'safe and suitable' person to be issued with a licence, or to retain one.

Since 2015, the Authority has used a policy/guidance document based on guidance produced by the Home Office to assist Members to determine applicants' and licence holders' fitness/suitability. Over time, this document has evolved. The current policy is attached as (**Appendix A**).

The Policy has been updated over the years, and it was last reviewed in 2014 when the Wales Licensing Expert Panel produced a guidance document/policy that was approved and promoted for all the Welsh authorities to adopt, thereby ensuring consistency across Wales when considering the suitability of drivers and operators.

Requirement to Review Current Suitability/Fitness Policy

In April 2018, the Institute of Licensing published a new document '*Guidance on determining the suitability of applicants and licensees in the hackney and Private Hire Trades*'. This document was produced by the Institute in collaboration with the Local Government Association (LGA), National Association of Licensing and Enforcement

Officers (NALEO) and Lawyers in Local Government (LLG) and has been subject of widespread consultation nationally.

At recent meetings of the Wales Licensing Expert Panel this document was considered and endorsed with the recommendation that all Welsh authorities approve and implement the Institute of Licensing Guidance, replacing their current guidelines/policy. Many authorities in England and Wales have already adopted the new policy and others are in the process of doing so.

Chapter 4 of this document from paragraph 4.6 onwards forms the key guidance to Members on determining suitability and this has been lifted from the document as the basis for a new Cyngor Sir Ceredigion Policy/Guidance document (**Appendix B**) for Members to use in future for determining the suitability of applicants and licensees.

Whilst Members can refer to the guidance/policy, each case should be determined on its own merits having taking into account all of the facts and oral representations from the applicant, leaving the Committee free to depart from the policy where circumstances warrant it.

It is recommended that members approve that the Licensing Service carry out a consultation on the proposed revised policy that will contain all the recommendations of the 'Guidance in determining the suitability of applicants and Licensees in the Hackney Carriage and Private Hire trades for Hackney Carriage and Private Hire Drivers' document.

Requirement for Consultation

It is proposed that a 4 week consultation will take place on a draft Suitability/Fitness Policy in order that Stakeholders in the Taxi trade, other interested parties, interested organisations and members of the public will have an opportunity to comment on the proposed Policy. The proposed policy is attached at (**Appendix C**).

Responses from the consultation will be taken into consideration and the final policy along with any comments received will be reported.

Legal Implications

All decisions taken by or on behalf of the Council must

- a. be within the legal powers of the Council;
- b. comply with any procedural requirement imposed by law;
- c. be within the powers of the body or person exercising powers on behalf of the Council;
- d. be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations;
- e. be fully and properly informed;
- f. be properly motivated;
- g. be taken having regard to the Council's fiduciary duty to its taxpayers; and
- h. be reasonable and proper in all the circumstances.

Recommendations

It is recommended that the Committee considers the content of this report and resolve to:

- a) Approve the review of its Suitability Policy for Hackney Carriage and Private Hire Licensing,
- b) Approve the need to consult with the trade and the wider public (including relevant local organisations) on the draft Suitability/Fitness Policy (Hackney and Private Hire Drivers and owners) Policy.

Policy: The Council will provide services that contribute to a healthy environment, healthier lives and protect those who are vulnerable in the County.

Budget: Within budget

Human Rights Act: Compliant

Integrated Impact Assessment: Not yet completed. Following the consultation on the review of the suitability policy, a first stage impact assessment will be undertaken to assist the Authority in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

Statutory powers: Licensing Act 2003, Gambling Act 2005

Background papers: Institute of Licensing Guidance in determining the suitability of applicants and Licensees in the Hackney Carriage and Private Hire trades (April 2018)

Service area: Policy, Performance and Public Protection

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Designation: Trading Standards & Licensing Manager

Date of report: 31st August 2021

Appendix A - Ceredigion County Council's current Suitability Policy

Appendix B - Guidance on determining the suitability of applicants and licensees in the hackney and Private Hire Trades

Appendix C - Draft Ceredigion County Council Suitability Policy

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Hackney Carriage and Private Hire Licensing Policy

Fitness Criteria for Drivers and Operators

DATE: 1st July 2014

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1.0 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 driver, private hire driver or private hire operator's licence.

1.3 The aim of this policy is to protect the safety of the public. The Licensing Authority is concerned to ensure that a person is a fit and proper person to hold a licence. In doing so it will consider various factors including the following:

- 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 persons;
- The safeguarding of vulnerable persons;
- That the public have confidence in their use of licensed vehicles.

1.3 This policy aims to provide guidance to any person with an interest in public and private hire licensing, in particular, but not exclusively:

- Applicants for driver / operator licences
- Existing licensed drivers / operators whose licences are being reviewed
- Licensing Officers
- The Police
- Members of the Licensing Committee (or other relevant decision making body)
- Magistrates and Crown Court hearing appeals against local authority decisions

1.4 The grant, renewal or suspension of an application for a hackney carriage and/or private hire driver's licence will normally be delegated to an authorised officer of the Licensing Authority. Licensing officers will utilise these guidelines when making a decision to grant a licence. In appropriate cases, applications for licences will be referred to the Licensing Committee (or other relevant decisionmaking body). Whilst officers and the Committee/Sub-Committee 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.

1.5 Where applicants/licence holders fail to disclose any previous convictions; cautions; warnings; penalty notices, orders or reprimands on their application

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form including any pending court proceedings or other matters they may be referred to the Licensing Sub-Committee for determination.

2.0 General policy

2.1 Each case will be decided on its own merits.

2.2 A person with a conviction for an offence need not be automatically barred from obtaining a licence, but would normally be expected to:

- c. Remain free of conviction for an appropriate period (as set out below); and
- d. Show evidence that he or she is a fit and proper person to hold a licence the onus is on the applicant to produce such evidence.

2.4 For the purposes of this Policy, “other matters to be considered” may include but are not limited to the following:

- a) Criminal / motoring convictions;
- b) Court Martial;
- c) Cautions;
- d) Fixed penalty notices or other penalty notices;
- e) Anti-social behaviour orders or other similar orders;
- f) Breach of licensing conditions;
- g) Formal Warnings or Reprimands;
- h) Charges or matters awaiting trial;

2.4 Where an applicant has a conviction(s) or other matter(s) the Council cannot review the merits of the conviction or other matter.

2.5 Where an applicant / licence holder has a conviction or other matter to be considered for an offence of aiding, abetting, attempting, conspiring, counselling, procuring, causing, permitting or inciting any of the criminal or motoring convictions / matters specified in this guidance, they will be considered relevant for the substantive matter.

3.0 Appeals

3.1 Any applicant who has been refused a hackney driver, private hire driver and/or private hire operator’s licence, or a licensed driver / operator whose licence has

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been suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of receipt of the decision notice.

4.0 Powers

- 4.1 Powers to grant driver / operator licences are contained within Section 51, Section 55 and Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act). The Local Authority shall not grant a licence to drive a hackney carriage, private hire vehicle or an Operator's Licence unless they are satisfied the applicant is a fit and proper person to hold such a licence.
- 4.2 Powers to suspend, revoke or refuse to renew a driver's licence are contained within Section 61 of the Act, where the applicant/licence holder has been convicted of an offence involving dishonesty, indecency or 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.
- 4.3 Section 61 (2B) allows the Licensing Authority, if it appears in the interests of public safety, to suspend or revoke a driver's licence with immediate effect. A Decision Notice explaining why this decision has been taken will be served on the driver and will take effect when the notice is given to the driver. The driver may appeal this decision but may not drive during the appeal period.
- 4.4 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator's licence if the applicant/licence holder has been convicted of an offence under or non-compliance with the provisions of Part II of the Act; or grounds of any conduct on the part of the operator which appears to the Council to render him unfit, or due to any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or any other reasonable cause.
- 4.5 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.

5.0 Consideration of disclosed criminal history

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5.1 Under the provisions of Sections 51, 55, and 59, of the Act, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a driver / operator licence is a 'fit and proper' person to hold such a licence. However, if an applicant / licence holder has any matters to be considered, the Licensing Authority may take into account:

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- 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 and age of applicant at time of conviction;
- Sentence imposed by the court;
- Whether they form part of a pattern of offending;
- Any other factors that might be relevant.

6.0 Violence

6.1 Licensed drivers have close regular contact with the public. An application will normally be refused or existing licence suspended or revoked if the applicant / licence holder has a conviction for an offence that involved the loss of life.

6.2 In other cases, anyone who demonstrates a propensity to violence is unlikely to be licensed until **at least 3 years** free of such conviction(s) or other matter(s) to be considered. However, given the range of the offences that involve violence, consideration must be given to the nature of the offence.

6.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 5 years** prior to the date of application:

- Affray;
- Assault occasioning actual bodily harm;
- Common assault;
- Criminal damage;
- Assaulting or Obstructing an authorised officer;
- Resisting arrest
- Possession of a weapon (or imitation weapon) or any other weapon related offence other than a firearm;
- S5 Public Order Act 1986 offence (harassment, alarm or distress);
- S.4 Public Order Act 1986 offence (fear of provocation of violence);
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress);

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Similar offences or offences which replace the above:

6.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 10 years** prior to the date of application:

- Any aggravated offences relating to hate crime, i.e. with violence
- Arson;
- Grievous bodily harm with intent;
- Malicious wounding or grievous bodily harm which is racially aggravated; □
Possession of firearm;
- Riot;
- Robbery;
- Violent disorder;
- Similar offences or offences which replace the above.

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6.5 An application will normally be refused or existing licence suspended or revoked where the applicant / licence holder has a conviction for an offence such as:

- Murder;
- Manslaughter;
- Manslaughter or culpable homicide while driving;
- Terrorism offences;
- Or any similar offences or offences which replace the above.

6.6 An application will normally be refused if an applicant has more than one conviction or other matter to be considered in the last **10 years** for an offence of a violent nature.

6.7 The Licencing Sub-Committee will normally revoke a private hire or hackney carriage driver's licence where the holder has been convicted of an offence involving obstruction towards or, the use of violence or threatening behaviour towards a police officer or authorised officer of the licensing authority

7.0 Sex and indecency offences

7.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence such as:

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- Assault by penetration;
- Exploitation of prostitution;
- Indecent assault;
- Offences involving children or vulnerable adults;
- Possession of indecent photographs, child pornography etc;
- Rape;
- Sexual assault;
- Trafficking for sexual or other exploitation;
- Similar offences or offences that replace the above.

7.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 7 years** prior to the date of application:

Indecent exposure;

- Soliciting (kerb crawling);
- Similar offences or offences which replace the above.

7.4 The Licensing Authority is unlikely to grant a licence to any applicant who is currently on the Sex Offenders Register.

7.5 An application will normally be refused if an applicant has more than one conviction or other matter to be considered of a sexual nature.

8.0 Dishonesty

8.1 An applicant or existing licence holder is expected to be a trustworthy person. Licensed drivers deal with cash transactions and valuable property which may be left in their vehicles. Licence holders are required to deposit such property with police within 24 hours. The widespread 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 the local currency and may be vulnerable to an unscrupulous driver. For all these reasons, an applicant's/licence holder's character must be beyond reproach.

8.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction or other matter to be considered is **less than 5 years** prior to the date of application:

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- Benefit fraud;
- Burglary
- Conspiracy to defraud;
- Forgery;
- Fraud;
- Handling or receiving stolen goods;
- Obtaining money or property by deception;
- Other deception;
- Taking a vehicle without consent;
- Theft;
- Similar offences or offences which replace the above.

- 8.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for any of the above offences and has not been free of conviction(s) or other matters to be considered for at least 3 years for
- Making a false declaration or statement to an authorised officer undertaking his/ her duties in order to gain a licence.

9.0 Drugs

9.2 A serious view is taken of any drug related offence. The Licensing Authority will consider the nature and quantity of the drugs involved within the following offences:

- Cultivation of a controlled drug;
- Importation of a controlled drug;
- Production of a controlled drug;
- Supply of a controlled drug; □ Possession of a controlled drug
- Or similar offences.

9.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for any of the above offences and has not been free of conviction(s) or other matters to be considered for **at least 5 years**.

9.3 An application will normally be refused or an existing licence suspended or revoked where the applicant has more than one conviction or other matter to be considered for offences related to the possession of drugs and has not been free of conviction or other matter to be considered for **at least 5 years**.

9.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has an isolated conviction or other matter to be considered for an offence related to the possession of drugs within **the last 3 years**. Consideration should be given to the nature and quantity of the drugs involved.

9.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required. If the applicant was an addict then they would normally be required to show evidence of **3 years** free from drug taking.

9.6 If there is evidence of persistent alcohol use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards or similar) may be required. Evidence would normally be required to show a period of **3 years** free from alcohol use.

10.0 Driving offences involving the loss of life

10.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for any of the offences listed below and has not been free of conviction or other matter to be considered for **10 years**.

- Causing death by careless driving whilst under the influence of drink or drugs;
- Causing death by dangerous driving;
- Or any similar offences.

10.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for any of the offences listed below and has not been free of conviction or other matter to be considered for **7 years**.

- Causing death by careless driving;
- Causing death by driving: unlicensed, disqualified or uninsured drivers.
- Or any similar offences

11.0 Driving with excess alcohol / Drunk in charge/ Driving whilst under the influence of Drugs

11.1 A single conviction or other matter to be considered may not result in an application being refused or an existing licence being suspended or revoked, provided that **at least 3 years** have elapsed since the ending of the disqualification. A conviction or other matter to be considered for 'refusing or failing to provide a specimen' will be treated in the same way.

11.3 Applicants with more than one conviction or other matter to be considered for driving or being in charge of a vehicle under the influence of alcohol / drugs or refusing or failing to provide a specimen are unlikely to be granted a licence unless a period of **10 years** has elapsed after the restoration of the driving licence following the last conviction or other matter to be considered.

12.0 Motoring Offences & Penalty points

As professional drivers with the potential of carrying fare paying passengers, in vehicles licensed by the Local Authority, it is essential that the standard of driving of applicants or licence holders is beyond reproach.

Points on DVLA Licence	Application process
1 - 3 points	Will not usually result in refusal or revocation and will not be referred to Licensing Sub-Committee
4 - 6 points	Will not usually result in refusal or revocation but may be referred to

	Licensing Sub_Committee and/or other sanctions imposed
7 -12 points	Will be referred to Licensing SubCommittee
12 points +	Will be referred to Licensing SubCommittee - Unlikely to be granted

12.1 Major Traffic Offences

12.2 For the purposes of this Policy, other than those described at paras. 10 and 11 of this policy above, the following motoring offences are described as 'Major Traffic Offences':

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of Court
BA30	Attempting to drive while disqualified by order of Court
DD40	Dangerous driving
DD90	Furious driving
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

- 12.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction or other matter to be considered for a Major Traffic Offence and has not been free of the conviction or other matter to be considered for **at least 12 months**.
- 12.4 An applicant with more than one Major Traffic Offence, within the last 5 years will normally be refused and no further application should be considered until a period of **at least 3 years** free from such convictions or other matters to be considered have elapsed.
- 12.5 If any conviction or other matter to be considered for a Major Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled "disqualification from driving" below.
- 12.6 Disqualification from driving (excluding drink driving / driving under the influence of drugs)**
- 12.7 The Licensing Authority will treat a period of a disqualification as being that which a driver would have been eligible to serve, and may disregard the decision of a court to waive or reduce a disqualification period either on the grounds of exceptional hardship under S.35 of the Road Traffic Offenders Act 1988 or for "special reasons" under S.34 of the Road Traffic Offenders Act 1988.
- 12.8 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of less than 56 days unless a period of **at least 6 months** has elapsed from the end of the disqualification period.
- 12.9 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of up to 12 months unless a period of **at least 12 months** has elapsed from the end of the disqualification period.
- 12.10 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matters to be considered resulting in a period of disqualification of 12 months or more, unless a period of **at least 24 months** has elapsed from the end of the disqualification period.
- 12.11 The Licensing Authority will not normally grant an application for a private hire or hackney carriage driver's licence from a person who has been disqualified from

driving for a period of 5 years or more, unless a period of at least **7 years** has elapsed from the end of the disqualification period.

13.0 Minor Traffic Offences

13.1 Other Traffic Offences not listed within this policy will be treated as 'Minor Traffic Offences'. A Minor Traffic offence is one that incurs between 1 and 3 penalty points.

13.2 Where an applicant / licence holder has one conviction or other matter to be considered for a Minor Traffic offence, this will not usually result in refusal or suspension / revocation.

13.3 More than one Minor Traffic offence conviction or other matter to be considered may result in a refusal, particularly where there are several convictions or other matters to be considered for the same offence e.g. speeding. A licensed driver may be referred to the Licensing Sub-Committee.

14.0 Outstanding charges or summonses

14.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but in the interest of public safety the application may be deferred for determination until those proceedings are concluded.

15.0 Non-conviction information

15.1 If an applicant or existing licence holder has been arrested or charged, but not convicted, for a serious offence which suggests he/she could be a public safety risk, consideration should be given to refusing or suspending / revoking the application / licence.

16.0 Repeat offending

16.1 While it is possible that an applicant may have a number of convictions or other matters to be considered that individually meet the above guidelines, an application will normally be refused where an applicant has a record of repeat offending unless a period of **at least 10 years** has elapsed since the most recent conviction or other matters to be considered.

17.0 Breach of Licensing Legislation, Byelaw or Condition

17.1 An applicant who has a conviction or other matters to be considered for a breach of licensing legislation, byelaw or condition is unlikely to be granted a licence unless a period of **at least 12 months** has elapsed since the most recent breach.

17.2 An existing licence holder found to be in breach of legislation, byelaw or condition is on the first occasion, likely to be warned in writing as to future conduct, provided that the breach did not compromise the safety of passengers or that the public were not put at risk.

17.3 Where an existing holder is found to have more than one breach of licensing legislation, byelaw or licence condition, or a single serious breach, the Licensing Sub-Committee may suspend or revoke the licence.

17.4 The above applies irrespective of any legal proceedings which may be pending or have been taken.

Licences issued by other Authorities

Where an application for a hackney carriage and/or private hire driver's licence has been referred to the Licensing Sub-Committee for determination, and the applicant already holds such a similar licence granted by another Local Authority, the guidance in this policy shall take precedence over any decision of another Authority.

Overseas Residents

If an applicant has spent 6 or more months overseas, the Licensing Authority will expect to see evidence of a criminal record check from the country or countries covering that period.

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

- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications¹. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.

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

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

Chapter 2: Offenders and Offending - An Overview

² [2007] 1 WLR 2067

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

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

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

- 2.6 Flaud⁵ noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place⁶.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future⁷. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%⁸. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population^{11,12}. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

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

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

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

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

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

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

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

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”¹³.
- 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”¹⁴.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁵. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships¹⁵. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males¹⁶.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist¹⁷. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more

¹³ National Offender Management Service (2016). Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

¹⁴ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

¹⁵ Serin, R, C. and Lloyd, C.D (2008). Examining the process of offender change: the transitions to crime desistance. 347-364. ¹⁵ Nash, M. (1999) Police, Probation and Protecting the Public. London: Blackwell Press.

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

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

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one comes to see the benefits of desistance¹⁸¹⁹. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past”²⁰.

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.

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

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²⁰ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

Chapter 3: 'Taxi' Licensing Overview

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

Taxi Drivers

3.10 The term “taxi driver” encompasses two different occupations: hackney carriage drivers and private hire drivers. “Taxi driver” is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.

3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²¹.

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 UK²².

3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²³

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*²⁴. 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

²¹ Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

²² 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.

²³ “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1st December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-rightto-work-checks>

²⁴ [2002] EWHC 1145 (Admin), [2003] RTR 199

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partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁵

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.

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.”²⁶

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

3.20 Some of these are universal, such as medical assessments²⁷. 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 declared²⁸) can be taken

²⁵ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 10.21

²⁶ Local Government (Miscellaneous Provisions) Act 1976 s57(1)

²⁷ See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

²⁸ “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.

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into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker²⁹.

- 3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks³⁰ 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.
- 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 suitability³¹.
- 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 account³². 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

²⁹ See *Adamson v Waveney District Council* [1997] 2 All ER 898

³⁰ "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.

³¹ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³² *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

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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) 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 authority³³. 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 person³⁴.
- 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

³³ See *Dittah v Birmingham City Council, Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³⁴ Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

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knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”³⁵

- 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 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 organisation³⁶. 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 licence³⁷ 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.

³⁵ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 12.35

³⁶ See s57(1)(c) of the 1976 Act.

³⁷ S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

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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 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?”³⁸

³⁸ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98

Chapter 4: Guidance on Determination

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

Pre-application requirements

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

Vehicles:

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

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- 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 partnership³⁹) 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.

³⁹ 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 conviction⁴⁰. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴¹.
- 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.

⁴⁰ This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

⁴¹ 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.

hire trades

- 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 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

hire trades

vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or other unacceptable purposes.

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

4.48 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be effected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority's overall criteria, that will lead to the operator's licence being revoked.

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

Vehicle proprietors

4.50 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.

4.51 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.

4.52 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.

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

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

Acknowledgements

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

The core project group comprised:

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

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

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



Cyngor Sir
CEREDIGION
County Council

**STATEMENT OF POLICY REGARDING THE SUITABILITY OF
APPLICANTS AND LICENSEES IN THE HACKNEY CARRIAGE AND
PRIVATE HIRE TRADES**

DRAFT

Draft 20/08/2021

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1.0 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, or safe and suitable (refer to section 3.13) person to hold a licence.
- 1.1 This document aims to provide guidance to any person with an interest in hackney carriage and private hire licensing. In particular, but not exclusively:
- Applicants for driver / operator licences
 - Existing licensed drivers / operators whose licences are being reviewed
 - Licensing Officers and Police
 - Members of the Licensing Committee/ Panel (or other relevant decision making body)
 - Magistrates and Crown Court hearing appeals against local authority decisions
- 1.2 This policy is largely based on the 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' produced by the Institute of Licensing (2018). As a result, some sections of this policy will read as a form of 'guidance for all', and the rationale for keeping this information within this policy is simple; the reasoning employed by decision makers should be consistent and transparent. The additional information provided therefore serves to 'set the scene' and better inform all of those involved or interested in this area.
- 1.3 Additionally, this policy is closely aligned to the Institute of Licensing's guidance because this authority recognises that a consistent approach is required across the country to ensure that public safety is at the forefront of decision making.
- 1.4 The only amendments that have been made from the guidance produced by the Institute of Licensing are to reflect specific Ceredigion County Council requirements or to give definitive statements.
- 1.5 This policy will be immediately applied to all new licences. In addition, any existing licensees that have been considered as "fit and proper" under the previous conviction policy, will have "grandfather rights". However, should any existing licensee re-offend (either criminal or motoring), all previous convictions will be taken into account at the time of renewal or when the Council has been notified of such offence.
- 1.6 The Council reserves the right to overturn a decision that has previously been made, or refuse a renewal of a licence, where clear errors are discovered which result in an individual no longer being considered fit and proper.
- 1.7 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.

- 1.8 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. 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.
- 1.9 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.
- 1.10 This policy takes a 'bright line approach' and says "never", but it should be noted that it remains a policy, and as such does not amount to any fetter on the discretion of the 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* (2007).
- 1.11 Section 2 this policy 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 1.10 and elsewhere in this document.
- 1.12 This policy 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.

2.0 Offenders and Offending – An Overview

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public. 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 reoffending and harm. 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.

Risk of re-offending

- 2.6 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 (Maguire et al, 2002). Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past” (Kurlychek et al, 2007).
- 2.7 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.

3.0 ‘Taxi’ Licensing Overview

- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver’s hands.

- 3.2 Local authorities 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 Department for Transport (DfT) "Taxi and Private Hire Licensing – Best Practice Guide", paragraph 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 and additional information on the requirements for Ceredigion can be found within the full Hackney Carriage and Private Hire Policy.
- 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.

Taxi Drivers

- 3.9 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 this licensing authority issue "dual" or "combined" licences to cover driving both types of vehicle.
- 3.10 The specific requirements of an application for this authority are outlined within the Hackney Carriage and Private Hire guidance attached to the application form. This includes the requirement to hold a full DVLA licence, have the right to work in the UK and pass a knowledge test. In addition to this, the individual must also be a "fit and proper" person.
- 3.11 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* (2003). 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.”

- 3.12 This is reflected in a test widely used by a number of local authorities, including Ceredigion County Council:

‘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?’

- 3.13 This authority recognises 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.

- 3.14 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.” Local Government (Miscellaneous Provisions) Act 1976 s57(1)). All requirements are detailed within the Hackney Carriage and Private Hire Driver application form.

- 3.15 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.

- 3.16 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared) 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. **NOTE:** “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates. In all cases an enhanced DBS Certificate is required on first application and on a three yearly cycle thereafter.

- 3.17 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.

- 3.18 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 (Leeds City Council v Hussain, 2002).

- 3.19 It is vital that Councillors recognise that this 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.
- 3.20 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) to assault another sexually has demonstrated completely unacceptable standards of behaviour.
- 3.21 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.
- 3.22 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.
- 3.23 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.

Private Hire Operators

- 3.24 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. 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.
- 3.25 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.

- 3.26 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.
- 3.27 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?"
- 3.28 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 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.
- 3.29 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. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

Vehicle Proprietors

- 3.30 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.
- 3.31 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.

- 3.32 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence 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.
- 3.33 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process is applied as for private hire operators – Basic disclosure, statutory declaration and consideration of spent convictions. This will then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.34 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 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?”.

4.0 Guidance on Determination

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

Pre-application requirements

- 4.5 This authority has its own specific pre-application requirements for drivers, vehicles and operators and they can be seen within the relevant sections of the hackney carriage and private hire policy and/or on the appropriate application form.

- 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) 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.
- 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. This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution. Fixed penalties and community resolutions will also be considered in the same way as a conviction. This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.
- 4.12 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 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 or disclose convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution. Licence holders must be aware of this and the requirement to notify the Council, in writing, within 72 hours, of any conviction, caution, arrest etc, whether it be motoring or criminal etc.
- 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 policy, 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.
- 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 imposed upon conviction (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, physical 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 disclosure 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 system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.