

Licensing and Safety Committee

13 September 2023 at 6.00pm

Conference Room 2 at the Council House, Lichfield Street, Walsall

Livestream link: <http://www.walsallcouncilwebcasts.com>

Membership:

- Councillor N. Gandham (Chair)
- Councillor S. Cooper (Vice-Chair)
- Councillor B. Bains
- Councillor C. Bott
- Councillor P. Gill
- Councillor A. Hussain
- Councillor K. Hussain
- Councillor P. Kaur
- Councillor R. Martin
- Councillor S. Nasreen
- Councillor A. Nawaz
- Councillor W. Rasab
- Councillor K. Sears
- Councillor R. Worrall

Quorum: Five Members

Democratic Services, The Council House, Lichfield Street, Walsall, WS1 1TW
Contact Name: Helen Owen Telephone: (01922) 654522
www.walsall.gov.uk

**If you are disabled and require help to and from the meeting room,
please contact the person above**

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Specified pecuniary interests

The pecuniary interests which are specified for the purposes of Chapter 7 of Part 1 of the Localism Act 2011 are the interests specified in the second column of the following:

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by a member in carrying out duties as a member, or towards the election expenses of a member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Regulations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to a member's knowledge):</p> <p>(a) the landlord is the relevant authority;</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to a member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either:</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

A G E N D A

Public Session

1. **Apologies**
2. **Minutes 7 June 2023**
To approve the minutes of the last meeting as a correct record
 - Copy **enclosed**
3. **Declarations of Interest**
4. **Local Government (Access to Information) Act, 1985 (as amended):**
There are no items for consideration in the private session of the agenda.
5. **Taxi and Private hire Licensing – fit and Proper Test for Licensed Drivers, Operators and Proprietors.**
 - Report of the Director, Resilient Communities - **enclosed**
6. **Taxi and Private Hire Licensing – Convictions Policy**
 - Report of the Director, Resilient Communities – **enclosed**
7. **Date of next meeting**
 - 22 November 2023

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Schedule 12A to the Local Government Act, 1972 (as amended)

Access to information: Exempt information

Part 1

Descriptions of exempt information: England

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:
 - (a) to give any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
8. Information being disclosed during a meeting of a Scrutiny and Performance Panel when considering flood risk management functions which:
 - (a) Constitutes a trades secret;
 - (b) Its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the risk management authority);
 - (c) It was obtained by a risk management authority from any other person and its disclosure to the public by the risk management authority would constitute a breach of confidence actionable by that other person.

Licensing and Safety Committee

Minutes of the meeting held on Tuesday 6 June 2023 in a Conference Room at the Council House, Lichfield Street, Walsall at 6.00pm.

Present: Councillor N. Gandham (Chair)
Councillor S. Cooper (Vice-Chair)
Councillor B. Bains
Councillor P. Gill
Councillor A. Hussain
Councillor K. Hussain
Councillor P. Kaur
Councillor R. Martin
Councillor S. Nasreen
Councillor A. Nawaz
Councillor W. Rasab
Councillor K. Sears
Councillor R. Worrall

In Attendance: Mr P Gordon, Director Resilient Communities
Mr S. Alom, Team Leader, Licensing
Mrs H. Owen, Democratic Services Officer

001 Welcome and changes in membership

Introductions took place. and a quorum of members present in-person was established.

002 Apologies

An apology for non-attendance was received from Councillor C. Bott.

003 Minutes of the last meeting

Resolved:

That the minutes of the last meeting held on 5 April 2023, copies having previously been circulated to each member of the Committee, be approved and signed by the Chair as a correct record.

004 Declarations of Interest

There were no declarations of interest

005 Local Government (Access to Information) Act, 1985

There were no items to be considered in private session

006 **Establishment of Licensing Sub Committee**

A report was submitted which sought approval to establish a Licensing Sub-committee for the 2023/24 Municipal Year

(see annexed)

It was **Moved** by Councillor Gandham, duly seconded and upon being put to the vote was:

Resolved

- 1) That a Licensing Sub-committee be established for the 2023/24 Municipal Year in accordance with Section 9 of the Licensing Act, 2003 to determine applications under that legislation in circumstances as set out in Appendix 1 attached to this report and under the Gambling Act 2005 in the circumstances detailed in Appendix 2 to the report.
- 2) That the membership of the Sub-Committee shall comprise three members of the Licensing and Safety Committee on a rota basis, subject to availability.
- 3) To note that the Chair of the Sub-committee shall be appointed at each meeting of the Licensing Sub-committee.
- 4) that the Director of Resilient Communities be authorised to determine applications under the Licensing Act 2003 and the Gambling Act 2005, in the circumstances identified in appendix 1 and 2 to the report.

007 **Establishment of Taxi Licensing Sub Committees**

A report was presented which sought approval to establish two taxi licensing Sub Committees and to appoint members thereto.

(see annexed)

Members were minded to approve the establishment of the sub committees following political balance and the following members were nominated accordingly:

Taxi Licensing Sub Committee 'A'

Councillors Cooper, Gandham, Bains, Martin, K Hussain, Nawaz and Nasreen.

Taxi Licensing Sub Committee 'B'

Councillors Rasab, A Hussain, Gill, Kaur, K. Hussain, Nawaz and C. Bott.

Councillor Worrall asked if he as an Independent would be eligible to sit on one or both sub committees. The Democratic Services Officer, Mrs H. Owen, advised that as the sub committees would follow political balance rules it would be for the Labour Group to give up one of their seats to enable him to sit on a sub committee. The Leader of the Labour Group, Councillor Nawaz, indicated that he was not minded to do so.

The Chair then asked for nominations for the Chair and Vice Chair of each sub committee. At this point, Councillor Hussain raised a point of order in that the was of the view that the Chair and Vice-Chair should be appointed by the Sub Committee at the first meeting rather than the main committee and asked whether this was normal practice. Mrs Owen advised that it would be acceptable either way and that both methods of appointing the Chair and Vice-Chair had been used in the past.

Councillor Nawaz asked for the minutes to record the opposition of the Labour Group to the main committee choosing the chairs and vice-chairs of the sub committees as they considered that this did not follow the convention of many years.

Councillor Gandham asked for nominations for Chair and Vice-Chair of each sub-committee and the following nominations were received:

Taxi Licensing Sub Committee 'A'

Chair: Councillor Cooper Vice-Chair: Councillor Bains

Taxi Licensing Sub Committee 'B'

Chair: Councillor Rasab Vice-Chair: Councillor A. Hussain.

It was **Moved** by Councillor Gandham, duly **seconded** and upon being put to the vote was:

Resolved

1) That Taxi Licensing Sub Committee 'A' and Taxi Licensing Sub Committee 'B' be established to deal with taxi licensing applications under the Local Government (Miscellaneous Provisions) Act 1976 for the 2023/24 Municipal Year.

2) That in accordance with political balance rules, the following members of the Licensing and Safety Committee be appointed to each of the Sub Committees:

Taxi Licensing Sub Committee 'A'

Councillors Cooper, Gandham, Bains, Martin, K Hussain, Nawaz and Nasreen.

Taxi Licensing Sub Committee 'B'

Councillors Rasab, A Hussain, Gill, Kaur, K. Hussain, Nawaz and C. Bott.

3) That the following members be appointed Chair and Vice-Chair of the Taxi Licensing Sub Committees:

Taxi Licensing Sub Committee 'A'

Chair: Councillor Cooper Vice-Chair: Councillor Bains

Taxi Licensing Sub Committee 'B'

Chair: Councillor Rasab Vice-Chair: Councillor A. Hussain.

4) To note that Taxi Licensing Sub Committee 'A' shall convene at 10.00 a.m. and that Taxi Licensing Sub Committee 'B' shall convene at 6.00 p.m.

008 **Establishment of Taxi/Private Hire Liaison Group**

A report was submitted which suggested the re-establishment of the Taxi/Private Hire Liaison Group

(see annexed)

It was **Moved** by Councillor Gandham, duly seconded and upon being put to the vote was:

Resolved:

That a Taxi/Private Hire Liaison Group be established in accordance with the terms of reference set out in the appendix to the report and that the membership should include all members of the Licensing and Safety Committee.

009 **Street Trading Review – Change of Designation to Consent Streets**

The Team Leader, Licensing, Mr S. Alom presented a report which informed members of the intention to change the designations of the streets in the borough to consent streets and sought approval to commence statutory consultation.

(see annexed)

A lengthy discussion took place on the proposal, during which time members expressed concerns regarding the ability to control the location occupied by vendors in such streets to ensure public safety, the protection of the local environment and the protection of established local businesses which were premises based. Members did however recognise the changing dynamics of high streets and that the proposals could provide a balance by positively encouraging businesses in low economy areas. Members also asked that the list of streets assigned to Wards be checked for accuracy.

Mr Alom and the Director of Resilient Communities, Mr P. Gordon, responded to members concerns and gave assurances that whilst all streets would be consent streets, this was primarily to provide flexibility for both the Licensing Authority and vendors and that a formal application would need to be submitted which would be consulted upon in the usual way with Responsible Authorities. Members were reminded that this proposal was the first stage in a two-stage approach to the review of street trading in the borough and that the controls on determining applications would be dealt with at stage two when the associated policy was formulated.

In response to a question regarding rights of appeal by applicants, Mr Alom confirmed that currently applications for licensed streets had a right of appeal and that there was no similar right of appeal for consent streets.

Mr Gordon said that he had heard the genuine concerns raised by members and advised that this report was seeking consent to consult and that a further report would be submitted in due course following the conclusion of the consultation.

It was **Moved** by Councillor Gandham, duly seconded and upon being put to the vote was:

Resolved:

- 1) That in pursuance of the powers conferred upon it by virtue of Section 3 and schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the Licensing and Safety Committee authorises the commencement of the procedure under Schedule 4 paragraph 2 of the Local Government (Miscellaneous Provisions) Act 1982 that all streets in the controlled borough of Walsall be designated as consent streets, such designation coming into fore on a date determined by the Council and that the Head of Community Safety and Enforcement be authorised to make the necessary statutory advertisements and undertake the necessary consultations.
- 2) That, in re-designating the streets from licence and prohibited to consent, for existing licence holders, no changes to existing permits be made until the next renewal as set out in paragraph 4.4
- 3) That a further report be submitted following the consultation.

Date of next meeting: 13 September 2023

The Meeting terminated at 18:57pm

Chair:

Date:



REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

LICENSING AND SAFETY COMMITTEE

13 SEPTEMBER 2023

**TAXI AND PRIVATE HIRE LICENSING – FIT AND PROPER TEST FOR
LICENSED DRIVERS, OPERATORS AND PROPRIETORS.**

1.0 Summary of report

In the statutory guidance issued by the Department for Transport in July 2020 a recommendation was made that all licensing authorities make publicly available a cohesive policy document bringing together all their procedures on taxi and private hire vehicle licensing. It recommended that this should include but not be limited to policies on convictions, a fit and proper person test, licence conditions and vehicle standards. This report sets out a Fit and Proper Policy drafted by the Licensing Service for future use in relation to private hire and hackney carriage licensing.

2.0 Recommendations

- 2.1 Members of the Licensing & Safety Committee consider the Fit and Proper Policy and agree that public consultation should be started.
- 2.2 That the result of the consultation be reported back to this Committee at a future meeting.

3.0 Background information

- 3.1 The Council as the licensing authority requires applicants and licence-holders to conduct themselves appropriately and honestly in their dealings both with the public, statutory agencies and the Council. It cannot grant (or allow a licence to remain in force) a hackney carriage or private hire driver or operator's licence unless they determine that the applicant is a fit and proper person.
- 3.2 It is the responsibility of the applicant or licence holder to satisfy the licensing authority that they are a fit and proper person by complying with various requirements. Previously in Walsall these requirements were part of the authority's application, renewal and compliance processes and included checks such as the following

- Right to work in the UK
- Driving licence and endorsements
- Enhanced DBS
- Medical fitness
- Practical driving test
- Driver Training Course
- Hackney Carriage Drivers test
- Tax code check
- National Register for Refusals, Revocations and Suspension.
- Data protection Requests to other Local Authorities
- Relevant insurance documents

These checks and tests are now being brought together in one policy as recommended by the Department for Transport. The draft policy is attached at Appendix 1. It will be used in conjunction with the 'Convictions Policy'

- 3.3 There is no statutory definition of Fit & Proper Person but within the Department for Transport Statutory Standards it is suggested that the basis for such a definition would be.

'Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is no, the individual should not hold a licence.'

- 3.4 In a legal case relied upon by many within the licensing regime *McCool v Rushcliffe Borough Council* (1998) the decision arrived at included the following:

'it is for the applicant to establish that he is a fit and proper person on the balance of probabilities. The real question to be decided is whether or not, on the balance of probabilities, the applicant is a fit and proper person to be granted a licence. This does not require the view to be formed as to whether the person had, in all likelihood, committed a specific offence'

- 3.5 Another key case includes *Leeds City Council v Hussain* (2002) where the following was determined:

"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.”

- 3.6 In a letter to Chief Executives from Baroness Kramer, Minister of State for Transport in November 2014 she said “In the interests of public safety and the reputation of the licensed trade, I encourage you all to use all the tools available to ensure that all licensed drivers have undergone a thorough vetting process, their conduct is monitored once licensed and all available information is fully considered when making licensing decisions.”
- 3.7 In February 2015 a report was published on the review of Rotherham Council on its handling of child sexual exploitation. A section of the report written by Louise Casey, a Director General working for the Department for Communities and Local Government, commented “In our view, the reliance on convictions alone will not provide a strong message to the trade on acceptable standards or reassure parents and the public that drivers are safe to transport their children.”
- 3.8 In April 2018, the Institute of Licensing (IOL) put together some guidance in determining the suitability of applicants and licensees in the hackney and private hire trades. The IOL is a leading institute that work together with the Local Government Association (LGA) and local authorities on licensing matters. Local Authorities throughout the country have adopted the relevant parts of the guidance within their policies. A copy of the guidance is attached as **Appendix 3**.
- 3.9 It is clear that Members and Officers, in reaching decisions, should have regard not only to convictions but to any other information which would not make the applicant a fit and proper person to hold a licence. Protection of the public and their safety is of paramount consideration in such matters. Decisions are made on the civil standard of proof which is ‘on the balance of probabilities’ rather than the higher criminal threshold. Again, as stated by the Department for Transport in its Statutory Standards:

Licensing authorities have to make difficult decisions but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given the benefit of doubt. If the committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

- 3.10 **Appendix 2** is a table showing the types of Disclosure and Barring Service checks that are available and what they include.

4.0 Resource considerations

4.1 **Financial:** The costs involved in carrying out the consultation will be met from existing budgets held by the licensing service.

4.2 **Legal:** Members of the public, the trade or responsible authorities can appeal against the policy. The policy could also be judicially reviewed.

4.3 The Department for Transport Statutory taxi and private hire vehicle standards were published in July 2020 under section 177(1) of the [Policing and Crime Act 2017](#) following consultation in accordance with section 177(5). The document states in the chapter Consideration of the statutory taxi and private hire vehicle standards: -

The document sets out a framework of policies that, under section 177(4), licensing authorities must have regard to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. Having regard is more than having a cursory glance at a document before arriving at a preconceived conclusion.

Having regard to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated. It is not a question of box ticking, the standards must be considered rigorously and with an open mind.

Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the statutory taxi and private hire vehicle standards might be drawn upon in any legal challenge to an authority's practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority's defence. In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in statutory taxi and private hire vehicle standards, and the policies and delivery plans that stem from these. The department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).

The statutory taxi and private hire vehicle standards does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

4.4 Section 51 (1) of The Local Government (Miscellaneous Provisions) Act 1976 states that a district council shall, on receipt of an application from any person for the grant to that person of a licence to drive Private Hire vehicles, grant to that person a driver's licence: -

Provided that a district council shall not grant a licence.

- (a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence or
- (b) to any person who has not for at least twelve months been authorised to drive a motor car or is not at the date of the application for a driver's licence so authorised.

4.5 A district council may attach to the grant of a licence such conditions as they may consider reasonably necessary.

4.6 Section 52 of the 1976 Act states that any person aggrieved by: -

- (1) The refusal of the district council to grant a licence under Section 51 of the Act, or
- (2) Any conditions attached to the grant of a driver's licence, may appeal to a Magistrates Court.

Any appeal must be made to the Magistrates Court within 21 days of notification of such a decision.

5.0 Staffing:

Nothing arising from this report.

6.0 Citizen Impact

6.1 Walsall Councils Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines state that: -

The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:

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

6.2 As set out by Phillip Kolvin QC in his foreword to the Institute of Licensing document 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trade' (April 2018) stated

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 maybe 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.

- 6.3 The Department for Transport Statutory Standards make clear the impact on citizens form adopting these policies including

The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday – and the term vulnerable individual has the same meaning as the definition of a vulnerable adult for the purpose of Section 42 of the Care Act 2014, which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):

- has needs for care and support (whether or not the authority is meeting any of those needs)
- is experiencing, or is at risk of, abuse or neglect
- as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it

7.0 Community Safety

- 7.1 The introduction of the policy is for the benefit of the community and people of Walsall. As set out in section 6 the impact on individuals and whole communities is significant particularly vulnerable members of the community.
- 7.2 The development of this Policy is of particular interest to partners such as Walsall Police, Childrens Services, Adult Services, Public Health, Community Safety and others. This is because Community Safety strategic and operational issues including exploitation, violence, county lines, human trafficking and a host of other social ills have been associated with the taxi trade historically in other areas of the country.
- 7.3 The taxi trade in Walsall consists of many honest and diligent individuals who we must work with to drive out poor performers, criminals and others who spoil the reputation of the trade and have detrimental impacts on our communities.

8.0 Environmental Impact

There is little environmental impact as a consequence of this report or policy adoption.

9.0 Performance and Risk Management Issues

- 9.1 The statutory standards were published in 2020 and the authority is now seeking to develop and publish its policy changes as a result of those standards. Since 2020 in all decision making either at officer level or committee/subcommittee level due regard has been paid to the standards and relevant extracts have been included in all relevant decision making.
- 9.2 To ensure the council's decision making is formally updated and to ensure any challenges to decision making can be robustly defended it is important this Policy receives due consideration and is published expeditiously.

10.0 Equality Implications

None arising from this report

11.0 Consultation

- 11.1 The Statutory Standards state with regard to Consultation

Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (such as the Campaign for Better Transport and other transport providers), women's groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy's activities.

Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and private hire vehicle sector in neighbouring areas – and licensing authorities should engage with these areas to identify any concerns and issues that might arise from a proposed change. Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings – this should be adopted by all authorities.

11.2 The service will ensure this consultation meets the requirements of this and any other corporate consultation requirements.

12.0 Appendices

Appendix 1 – Draft Fit & Proper Policy

Appendix 2 – Types of checks available

Appendix 3 – IOL guidance in determining the suitability of applicants and licensees

13.0 Contact Officer:

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Walsall Council

Private Hire and Hackney Carriage Licensing

FIT AND PROPER PERSON POLICY

Introduction

The primary and overriding aim of Walsall Council when carrying out its functions as a licensing authority is the protection of the public.

Licences for drivers of hackney carriages, private hire vehicles or private hire operators may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence. Local Government (Miscellaneous Provisions) Act 1976 S51 (1)(a) and S59 (1)(a)

This policy is intended to show which tests and checks Walsall Council will use to determine the suitability of an applicant to be granted a licence. If a licence holder falls short of this fit and proper standard at any time, Walsall Council will give consideration based on all the evidence available to it as to whether the licence will be, suspended, revoked or not renewed on application.

In considering whether an applicant or licence holder is fit and proper, those making the decision on behalf of the Council will ask themselves the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

All decisions on the suitability of an applicant or licence holder are made on the balance of probability. This means that an applicant or licence holder will not be 'given the benefit of doubt'. If the committee or authorised officer is only "50/50" as to whether the applicant or licence holder is 'fit and proper', they will not grant a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

If an applicant or current licence holder is not satisfied with a decision made by an authorised officer they may appeal the decision to the Licensing and Safety Committee. The appeal should be set out in writing clearly explaining why the decision is unreasonable or what the exceptional circumstances are surrounding the case. The appeal should be addressed to the Director of Resilient Communities as Walsall Council.

Licence holders or applicants may also have the right to appeal to the Magistrates Court against certain decisions made by the licensing authority. The applicant or licence holder should take legal advice as to the most appropriate procedure to follow in these circumstances as appeals to the Magistrates Court are time limited and incur costs.

Unless specified elsewhere all checks and tests are undertaken at the applicants own risk and must be paid for by the applicant.

1 Fit and Proper Person test at the application stage

- 1.1 Walsall Council requires applicants for all types of licence to complete the process relevant to their specific application as described in this policy.
- 1.2 In determining whether an applicant or licence holder is fit and proper, those making the decision on behalf of the Council will consider:
- Whether an applicant has met the Council's application requirements
 - Any information revealed by DBS certificates relating to the applicant / licence holder
 - Any information revealed under Common Law Police Disclosure provisions
 - Any information revealed by checks undertaken on the applicant or licence holder's DVLA driving licence records
 - Any information revealed on the medical fitness certificate
 - Any information revealed during checks on NR3s
 - Any information regarding complaints received about an applicant or licence holder
- 1.3 An application will normally be refused or action will be taken in relation to an existing licence if the applicant:-
- Fails any of the checks listed below.
 - Is in breach of the Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines (otherwise referred to as the Convictions Guidelines).
 - Has previously been a licence holder in this or any other borough and that licence has been revoked, suspended or refused.
 - Has exhibited behaviour which is inconsistent with that expected of a Walsall licence holder.
 - Is in breach of any conditions/legislation relating to their licence.
- 1.4 Walsall Council's Convictions Guidelines assist in determining whether an applicant is fit and proper. While each application must be determined on its individual merits, the Convictions Guidelines set out a recommended minimum period free of conviction for offences falling into broad categories.
- 1.5 Where an applicant has previous convictions, cautions or other relevant matters held against their name and these are within the parameters set in the Convictions Guidelines, authorised officers are delegated to determine whether to grant or refuse a licence.
- 1.6 Where a refusal, suspension or revocation decision is made either by an

authorised officer or Licensing and Safety Committee or Sub Committee the details of this refusal, suspension, or revocation will be placed on the National Register of Taxi and Private Hire Licence Revocations and Refusals (NR3s). In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for staff to make referrals to the DBS for example where a decision is made to refuse, suspend or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult.

- 1.7 Any applications that are not within the parameters set in the Convictions Guidelines or this Policy will normally be refused. The Head of Community Safety & Enforcement or a Team Leader may determine that an application within Policy should be referred to the Licensing and Safety Committee if it is contentious in any way.
- 1.8 On a case by case basis and only in exceptional circumstances the Licensing and Safety Committee may resolve to set aside or amend the standard conditions or policies in circumstances where the committee considers that not to do so would be unjust or unfair. The setting aside or amendment of the condition or policy will be specific to that case alone.
- 1.9 Applicants and licence holders are required to disclose if they hold or have previously held a private hire or hackney carriage licence with another authority. An applicant should also disclose if they have had an application for a licence refused, or a licence revoked or suspended by Walsall Council or any other licensing authority.
- 1.10 In these cases the application will normally be placed before a Licensing and Safety Sub Committee to determine whether in light of all evidence placed before them the applicant is a fit and proper person to be granted a licence.
- 1.11 The applicant must follow and complete the process to be considered a fit and proper person at their own risk. If the licence is ultimately not granted or if the applicant fails any part of the process the applicant will not be entitled to any refund of the costs of the various tests and assessments carried out.
- 1.12 The licensing service will inform applicants of the approved contractor, individual or organisation that carries out the various tests on behalf of the licensing authority. The council may change the contractor, individual or agency it uses as long as the decision is constitutionally correct. The authority will seek assurances as to the quality of service provided and that it provides value for money for the trade.
- 1.13 Applicants who have never been licensed by Walsall Council previously must provide all valid documentation requested below and must have undertaken and passed all tests listed below.
 - A Home Office entitlement to work. This may be either a valid British Passport or documents listed in the Home Office Guidance confirming the entitlement to remain and work in the UK.

- A full UK driving licence or equivalent held for no less than 12 months.
- Completed and passed the most current version of the Driver Training Course.
- Provide to the licensing authority a valid medical certificate completed by their GP, who has seen the applicants medical history. The medical must declare the applicant is fit to drive private hire/hackney carriage vehicles and be signed within the last 2 months prior to the date of submission of the application.
- Have passed the practical driving assessment and provided relevant documents.
- For Private Hire and Hackney Carriage Vehicle Drivers – they must provide evidence that they have completed the online DBS application as instructed by the licensing authority prior to the submission of their application.
- Vehicle Proprietors and Base Operators who do not hold a hackney carriage & private hire drivers licence issued to them by Walsall Council, must provide a Standard Disclosure (Basic Disclosure) from the Disclosure and Barring Service. The disclosure must be dated no more than 12 months prior to the date of the submission of the vehicle application. Where the certificate discloses information, a determination will be required to be made by Licensing Sub-Committee or the Head of Community Safety & Enforcement as to whether the individual is fit and proper.
- Provide a valid DVLA sharing code so that the status of the driving licence and any endorsements can be checked by the Licensing Authority using that code. The code must be provided to the Licensing Authority within 21 days of obtaining the code.
- Have passed the language and maths tests stipulated by the authority.
- Have passed the Hackney Carriage knowledge test where appropriate.
- The trading name of base operators must be approved by Walsall Council before a licence is issued.

Walsall Council Licensing Service will check with other agencies such as the Walsall Safeguarding Partnership or any other organisation, local authority Walsall Council feel they need to check with.

1.14 Any allegations, complaints or concerns raised by other persons, authorities or agencies will be suitably investigated during the application process and before a decision is made on the issuing of a licence.

1.15 An applicant who has previously been licensed by Walsall Council but who has allowed their licence to expire or has had their licence revoked will need to complete a new application and undertake and pass all tests listed above. That is unless Head of Community Safety & Enforcement is satisfied that the tests

previously undertaken were suitable and sufficient to warrant waiving the requirement for them to be retaken as part of the new application.

This decision will only relate to:

1. The most current version of the Driver Training Course
2. The current practical driving assessment
3. Any language and maths tests stipulated by the Authority
4. The Hackney Carriage knowledge test where appropriate

1.16 The Licensing Service will use information obtained through the application process to send and communicate information relating to the licence, including reminders of the expiry of time limited tests and certificates, notifications of changes to policy or procedure and other information which is deemed beneficial for the trade.

2. Home Office Entitlement to Work

This check is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers Base Operators
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- 2.1 The Immigration Act 2016 was brought in to prevent illegal working and is directly relevant to the private hire and hackney carriage trade. The provisions of the Act prohibit all Licensing Authorities across the UK issuing licences to anyone who is disqualified by reason of their immigration status.
- 2.2 An applicant's right to work in the UK will be checked as part of their licence application, this includes checking an applicant's immigration status with the Home Office. Walsall Council may also share information with the Home Office. An applicant must therefore provide a document or document combination that is stipulated as being suitable for this check. The list of documents is set out in the Home Office document 'Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales' or any successive document.
- 2.3 An applicant will be asked to provide the original document(s), such as their passport or biometric residence permit, as indicated in the published guidance, so that the check can take place. The document(s) will be copied and the copy retained by Walsall Council Licensing Service. The original document will be returned to the applicant. An application will not be considered valid until all the necessary information and original document(s) have been produced and the relevant fee has been paid.
- 2.4 If there are restrictions on the length of time an applicant may work in the UK, their licence will not be issued for any longer than this period. In such circumstances the check will be repeated each time they apply to renew their licence. If, during this period, the applicant is disqualified from holding a licence

because they have not complied with the UK's immigration laws, the licence will lapse and must be returned to Walsall Council Licensing Service. Failure to do so is a criminal offence.

3. Driver Training Course

This assessment will be carried out in relation to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers Base Operators
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3.1 This course aims to teach attendees about:

- Licence conditions and legislation that apply to the trade
- Enforcement issues and road safety
- Personal safety for drivers
- Customer care
- Safeguarding, including identifying and reporting vulnerable persons, children at risk of sexual exploitation and county lines
- Disability awareness and protecting vulnerable people e.g. older people,
- Demonstration on how to load and secure a wheelchair and wheelchair user in a vehicle and otherwise assisting wheelchair users

3.2 The applicant must pass the examination at the end of this training in order to fulfil the fit and proper person test and continue with their application. Should an applicant fail the test they will be required to pay for a re-test. Should the applicant fail the re-test, they will be required to pay for a full training day again and be booked on to the next available day the training will be provided.

3.3 From time to time existing or currently licensed drivers may be asked to take part in update or refresher training. A determination as to content, cost and location will be considered and consulted on prior to implementation.

3.4 As a consequence of any Committee resolution following a review of their licence or application a licence holder may be required to attend this training and pass the test at their own expense.

4. Medical Assessment

This check is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers
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- 4.1 It is important that those who choose to drive for a living are medically fit to drive so that they do not pose a hazard to themselves, passengers and other road users. The applicant/driver's medical history must be assessed as well as their current health status. Applicant's/licence holders will be required to meet the DVLA's Group 2 Medical Standards.
- 4.2 Medical assessments will be carried out by the applicant's GP. Where the applicants GP is unable to undertake medical assessments or refuses, the applicant will inform the Licensing Authority who will then confirm with the GP Surgery and inform the applicant on the next steps to take.
- 4.3 The applicant/licence holder or GP must provide satisfactory evidence to the Licensing Service of the outcome of the assessment prior to the application being processed (for example a signed certificate from their GP).
- 4.4 Failure to supply the Council with an up to date copy of a medical assessment (or medical certificate where appropriate) or providing an incomplete or false medical assessment may also result in refusal to licence the individual or suspension, revocation of the licence and may lead to enforcement action being taken.
- 4.5 The medical assessment must be undertaken every 5 years for persons under the age of 65 and annually for persons aged 65 and above. The medical must be carried out within the last 3 months following the receipt of the application.
- 4.6 The Licensing Authority may make a request for a medical assessment outside of the normal requirement mention in 4.5, should they have valid reasons to do so.

5. Practical Driving Assessment

This check is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers
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- 5.1 Applicants must have held a full UK driving licence for no less than 12 months from the date of first issue by the DVLA.
- 5.2 Walsall Council also requires that professional drivers who are spending a considerable amount of time driving themselves and passengers should have an additional practical assessment carried out by Walsall Council approved instructor, to ensure their driving is safe and suitable.
- 5.3 As a consequence of any committee resolution following a review of their licence a driver may be required to attend this assessment and pass the test at their own expense.

6. Disclosure and Barring Service Checks

ENHANCED DBS CHECK This check is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers
STANDARD DBS CHECK This check is relevant to	All Vehicle Proprietors Base Operators Other workers at a private hire base

- 6.1 As a Licensing Authority Walsall Council is entitled to request an enhanced criminal record certificate with check of the barred lists from the DBS for all driver licence holders or applicants at first application or every 6 months.
- 6.2 All individuals applying for or renewing a taxi or private hire vehicle driver's licence will be subject to a check of the children and adult Barred Lists in addition to being subject to an enhanced DBS check prior to a new licence being issued. Once licensed all drivers will be required to evidence continuous registration with the DBS update service to enable Walsall Council to routinely check for new information every six months. Drivers that do not subscribe to the update service will still be subject to a check every six months at their own expense. A licence holder who fails to remain subscribed to the DBS Update Service or fails to co-operate with obtaining a new DBS certificate will be subject to a review to determine if they remain a fit and proper person to hold a licence, which could lead to the suspension or revocation of their licence
- 6.3 Following the grant of the renewal and submission of the enhanced DBS, the Enhanced DBS and Barring list check returns and subsequently there is information received that in the opinion of the Licensing Service makes that person unfit to hold a licence consideration will be given to the revocation of the licence.
- 6.4 Where convictions are reported to the Licensing Service in relation to a currently licensed driver and these convictions have not previously been considered an Authorised officer or the Taxi Licensing Sub Committee or full Licensing & Safety committee will determine whether action is necessary in relation to the continuance of that licence.
- 6.5 Once information on the Enhanced DBS has been considered by the Licensing Service or the Taxi Licensing Sub Committee it need not be reconsidered each time the licence is reapplied for unless it shows a pattern of offending that calls into question whether the person is fit and proper or breaches the Convictions Guidelines.
- 6.7 Vehicle proprietors have two principal responsibilities, to ensure their vehicle is maintained to an acceptable safe standard at all times and to ensure their vehicle is not used for illegal or illicit purposes.

- 6.8 Applicants for a vehicle licence will therefore have to undertake an annual standard Disclosure from the DBS. If the standard disclosure shows relevant convictions Walsall Council will give consideration as to whether the applicant should be granted a licence (see Convictions Guidelines for relevant convictions). A standard Disclosure will be accepted up to 12 months from the date of issue of the certificate.
- 6.9 If the vehicle proprietor is also a licensed vehicle driver compliant with points 6.2 and 6.3 above then there will be no need to undertake a standard disclosure check. This does not apply to businesses hiring vehicles to drivers in the event of an accident. Where the vehicle is owned jointly, in partnership or by a company, all partners, directors of the company will be required to undertake the standard disclosure.
- 6.10 Where a vehicle proprietor owns more than 1 vehicle it is sufficient for one Basic Disclosure to be undertaken annually and not each time each vehicle is licensed.
- 6.8 Private Hire Base Operators are in a position whereby they have access to significant amounts of personal information regarding their customers. Therefore it is essential Base Operators are trustworthy and reliable. Base Operators will therefore have to undertake a Standard Disclosure prior to the issue of any licence and upon any renewal.
- 6.9 Private hire vehicle operators must demonstrate to Walsall Council that all staff that have contact with the public and/or oversee the dispatching of vehicles do not pose a risk to the public. Base Operators must therefore keep a register of all staff that will take bookings or dispatch vehicles.
- 6.10 Operators must be able to provide evidence to Walsall Council that they have had sight of a Standard DBS check on all INDIVIDUALS LISTED ON THEIR REGISTER OF BOOKING AND DISPATCH STAFF and to ensure that Standard DBS checks are conducted on any individuals added to the register and that this is compatible with their policy on employing ex-offenders. DBS certificates provided by the individual should be recently issued when viewed, alternatively the operator could use a 'responsible organisation' to request the check on their behalf. When individuals start taking bookings and dispatching vehicles for an operator they should be required, as part of their employment contract, to advise the operator of any convictions while they are employed in this role.
- 6.11 The register should be a 'living document' that maintains records of all those in these roles for the same duration as booking records are required to be kept, this will enable cross-referencing between the two records. A record that the operator has had sight of a standard DBS check certificate (although the certificate itself should not be retained) should be retained for the duration that the individual remains on the register. Should an employee cease to be on the register and later re-entered, a new standard DBS certificate should be requested and sight of this recorded.

6.12 Failure by the Base Operator to carry out suitable checks will call into question their own suitability and may result in the refusal to licence or enforcement action taken against the operators which may lead to a revocation of the operators licence. Walsall Council Licensing Service will ask for evidence these checks have been carried out at least upon application and if necessary during the currency of the licence through a formal request or visits to the operators.

7 DVLA mandate/code check

This check is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers
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- 7.1 Driver licences issued by the DVLA will need to be checked by the local authority to ascertain the date of the licence expiry, disqualification and any endorsements at the time of application.
- 7.2 For subsequent applications ('renewals'), the applicant will utilise the DVLA share-code. Failure to supply the Council with an up to date DVLA share-code may result in a delay in the issue of the licence. Where endorsements are recorded following the DVLA licence check a decision will be taken as to whether the driver is a fit and proper person and whether they can proceed in their application, further information is also contained in the Convictions Guidelines.
- 7.3 Where a currently licensed driver receives a motoring conviction during the currency of their licence a review will be undertaken of the conviction and the matter may be placed before the Licensing and Safety Sub Committee or the Head of Community Safety & Enforcement for a decision as to the continuance of the Licence.

8 English/Maths test

This check is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers
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- 8.1 All new applicants must attain a satisfactory level of English Reading, English Listening and Mathematics as part of Walsall Councils pre licensing fit and proper person test. This ensures prospective drivers can communicate effectively with passengers in terms of their requirements and their fares. The details of the nominated organisation administering these tests will be made available to the applicant during the application process together with the types of qualification(s) that will be acceptable.
- 8.2 A valid GCSE in English Reading, English Listening and Mathematics (or any other equivalent qualification approved by the Head of Community Safety & Enforcement) would be acceptable would be accepted providing the Licensing Authority are satisfied.

9 Knowledge Test for Hackney Carriage Drivers

This check is relevant to	Hackney Carriage Vehicle Drivers
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- 9.1 It is important that Hackney Carriage drivers have a good knowledge of the Borough so that as they pick up customers, they can effectively find their way around the Borough without undue delay and by taking the most appropriate direct route.
- 9.2 This test gives the Licensing Service the opportunity to ascertain the driver's knowledge of Hackney Carriage conditions, byelaws that are not covered in the Driver Training Course, geographical knowledge and shortest routes.

10 Base Operators – Trading Name

This is relevant to	Base Operators
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- 10.1 The Licensing Office shall have the right to refuse to register any trading name that is likely to cause confusion to the general public or is similar to a trading name registered to another licensed operator.

11 Other Sources of Information

This is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers Vehicle proprietors Base Operators
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- 11.1 Walsall Council is entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence.
- 11.2 This may include information held by the Council, other Licensing Authorities, held on the National Register of Taxi and Private Hire Licence Revocations and Refusals (NR3s) and information disclosed by the police for example under the Home Office scheme for reporting offences committed by notifiable occupations. It should also be noted that the determination of whether an applicant is "fit and proper" includes consideration of conduct falling short of a criminal conviction.
- 11.3 Walsall Council may also be asked to share the information it holds in respect of those persons or companies licensed by it. The information will only be shared with those entitled to request it and in accordance with statutory guidelines. In terms of licence refusals, revocations or prosecutions information may be shared on national databases developed and implemented by national agencies or central government such as the NR3s.

12 Complaints

This is relevant to	Private Hire Vehicle Drivers Hackney Carriage Vehicle Drivers Vehicle proprietors Base Operators
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12.1 Walsall Council may become aware of a complaint from residents, businesses, partner agencies etc about the conduct of an applicant or licence holder. In this case the evidence submitted will be scrutinised and the matter fully investigated. Subsequently a determination about whether the licence holder or applicant is a fit and proper person will be made by the relevant Authorised Officer or Committee of Elected Members. The authority will follow the code of practise and enforcement policy.

13 Legal Requirements

The law relating to 'Fit and Proper' persons is contained within

- The Local Government (Miscellaneous Provisions) Act 1976 s51(1) (private hire drivers)
- The Local Government (Miscellaneous Provisions) Act 1976 s55(1) (operators).
- The Local Government (Miscellaneous Provisions) Act 1976 s59(1) (hackney carriage drivers)

In producing this Policy regard has been had to the Statutory Taxi & Private Hire Vehicle Standards issued by the Department for Transport in July 2020

From time to time case law or guidance in relation to the Private Hire and Hackney Carriage licensing regime may change. Walsall Council will always take into consideration these changes when determining individual licences.

Disclosure and Barring Service Information

The table below shows the information that will be disclosed on the different level of checks:

Information Included	Type of Check			
	Basic DBS Check	Standard DBS Check	Enhanced DBS Check	Enhanced DBS (including barred list) check
Unspent convictions	Yes	Yes	Yes	Yes
Unspent Convictions (1)	Yes	Yes	Yes	Yes
Spent Convictions (2)	No	Yes	Yes	Yes
Spent cautions (1&2)	No	Yes	Yes	Yes
Additional Police information (3)	No	No	Yes	Yes
Barred List(s) information (4)	No	No	No	Yes

1. Does not include fixed penalty notices, penalty notices for disorder or any other police or out of court disposals.
2. Spent convictions and cautions that have become protected under the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975, as amended, are not automatically disclosed on any level of certificate.
3. This is any additional information held by the police which a chief officer reasonably believes to be relevant and ought to be disclosed.
4. This is information as to whether the individual concerned is included in the children's or adult's barred lists maintained by the DBS

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:



Contents

Foreword	2
Chapter 1: Introduction	3
Chapter 2: Offenders and Offending - An Overview	5
Risk of re-offending:	7
Chapter 3: 'Taxi' Licensing Overview	9
Taxi Drivers	9
Private Hire Operators	13
Vehicle Proprietors	15
Chapter 4: Guidance on Determination	17
Pre-application requirements	17
Vehicles:	17
Drivers:	18
Operators:	18
Drivers	20
Crimes resulting in death	21
Exploitation	21
Offences involving violence	21
Possession of a weapon	21
Sex and indecency offences	21
Dishonesty	22
Drugs	22
Discrimination	22
Motoring convictions	22
Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving	22
Other motoring offences	23
Hackney carriage and private hire offences	23
Vehicle use offences	23
Private Hire Operators	23
Vehicle proprietors	24
Acknowledgements	25

Foreword

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

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

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

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

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

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

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

Philip Kolvin QC
Cornerstone Barristers

April 2018

Chapter 1: Introduction

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

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

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

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

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

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

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

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

- 2.6 Flaud⁵ noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place⁶.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future⁷. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%⁸. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population¹¹. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

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

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

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

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

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

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

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

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”¹².
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”¹³.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁴. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships¹⁵. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males¹⁶.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist¹⁷. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance¹⁸. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

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

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

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

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

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

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

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

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

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

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

Chapter 3: 'Taxi' Licensing Overview

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

Taxi Drivers

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

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

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

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

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

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

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

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

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

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

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

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

3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:

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

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

3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared²⁷) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker²⁸.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks²⁹ and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

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

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

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

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

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

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

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

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

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

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

Private Hire Operators

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

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

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

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

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

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

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

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

Vehicle Proprietors

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

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

³⁵ See s57(1)(c) of the 1976 Act.

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

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

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

Chapter 4: Guidance on Determination

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

Pre-application requirements

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

Vehicles:

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

Drivers:

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

Operators:

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

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

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

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

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

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

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

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

Drivers

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

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

Crimes resulting in death

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

Exploitation

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

Offences involving violence

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

Possession of a weapon

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

Sex and indecency offences

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

Dishonesty

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

Drugs

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

Discrimination

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

Motoring convictions

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

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

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

Other motoring offences

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

Hackney carriage and private hire offences

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

Vehicle use offences

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

Private Hire Operators

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

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

Vehicle proprietors

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

Acknowledgements

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

The core project group comprised:

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

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

The Institute is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

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- Louise Scott Garner
- Jenna Parker, Institute of Licensing

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



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



REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

LICENSING AND SAFETY COMMITTEE

13 SEPTEMBER 2023

TAXI AND PRIVATE HIRE LICENSING – CONVICTIONS POLICY

1.0 Summary of report

- 1.1 In the statutory guidance issued by the Department for Transport in July 2020 a recommendation was made that all licensing authorities make publicly available a cohesive policy document bringing together all their procedures on taxi and private hire vehicle licensing. It recommended that this should include but not be limited to policies on convictions, a fit and proper person test, licence conditions and vehicle standards.
- 1.2 Walsall Council has for many years used as a mainstay of its decision-making process its Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines. It is however right that periodically and particularly following changes in national guidance that these policies are reviewed and updated. The existing policy is contained at **Appendix 1**.

2.0 Recommendations

- 2.1 Members of the Licensing & Safety Committee consider the draft Convictions Policy and agree that public consultation should be started.
- 2.2 That the result of the consultation be reported back to this Committee at a future meeting.

3.0 Background information

- 3.1 The Local Government (Miscellaneous Provisions) Act 1976 provides that in considering applications for taxi driver and operator licences the Council must not issue a licence unless it is satisfied that the applicant is 'fit and proper'. In this regard the consideration of an applicant's criminal convictions and other relevant character or behaviour information is a key part of the 'fit and proper' assessment.

- 3.2 The taxi trade is vital to the UK's transport infrastructure and the majority of drivers are honest and hard working. However there have in recent years been cases across the country of licensed drivers and operators being involved in criminal activity including the sexual exploitation of children. It is important that as a licensing authority Walsall Council take appropriate steps to prevent future cases occurring in its area by ensuring that licensed drivers are 'fit and proper.' Consideration of a person's criminal convictions and other relevant character or behaviour information is a key part of the 'fit and proper' assessment.
- 3.3 Walsall Council, in common with many other licensing authorities, has for many years used a convictions policy based upon Home Office guidance dating from the 1990s. The Department for Transport published its latest statutory taxi and private hire vehicle standards guidance document in July 2020 and the part of the document relevant to the assessment of previous convictions is contained at Appendix 3.
- 3.4 The use of the Department for Transport statutory guidance will mean Walsall Council's convictions policy is based upon the same statutory framework as other local authorities. This type of standardisation is always useful in ensuring consistent decisions are made across the country and not encouraging applicants to choose the 'softest' council to apply for a licence. The draft policy is contained at Appendix 2.
- 3.5 The Department for Transport's statutory guidance makes the following points clearly.

In considering an individual's criminal record, licensing authorities must consider each case on its merits, but they should take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime. In order to achieve consistency, and to mitigate the risk of successful legal challenge, licensing authorities should have a clear policy for the consideration of criminal records. This should include, for example, which offences would prevent an applicant from being licenced regardless of the period elapsed in all but truly exceptional circumstances. In the case of lesser offences, a policy should consider the number of years the authority will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.

- 3.6 The Institute of Licensing have also published guidance on Convictions in which they say,

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.

3.7 Walsall Councils current Convictions policy states

...if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:

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

This is sensible way to approach decision making and consistent with statutory guidance.

3.8 The importance of a licensing regime and convictions policy which takes into account a great many factors not just the convictions themselves has been highlighted by a number of key documents.

3.9 In a letter to Chief Executives from Baroness Kramer, Minister of State for Transport in November 2014 she said "In the interests of public safety and the reputation of the licensed trade, I encourage you all to use all the tools available to ensure that all licensed drivers have undergone a thorough vetting process, their conduct is monitored once licensed and all available information is fully considered when making licensing decisions.

3.10 In February 2015 a report was published on the review of Rotherham Council on its handling of child sexual exploitation. A section of the report written by Louise Casey, a Director General working for the Department for Communities and Local Government, commented "In our view, the reliance on convictions alone will not provide a strong message to the trade on acceptable standards or reassure parents and the public that drivers are safe to transport their children.

3.11 The Department for Transport in its Statutory Standards states;

Licensing authorities have to make difficult decisions but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of

probability. This means that an applicant or licensee should not be given the benefit of doubt. If the committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

4.0 Resource considerations

- 4.1 **Financial:** The costs involved in carrying out the consultation will be met from existing budgets held by the licensing services.
- 4.2 **Legal:** Members of the public, the trade or responsible authorities can appeal against the policy. The policy could also be judicially reviewed.
- 4.3 The Department for Transport Statutory taxi and private hire vehicle standards were published in July 2020 under section 177(1) of the Policing and Crime Act 2017 following consultation in accordance with section 177(5).

The document sets out a framework of policies that, under section 177(4), licensing authorities must have regard to when exercising their functions. These functions include developing, implementing and reviewing their taxi and private hire vehicle licensing regimes. Having regard is more than having a cursory glance at a document before arriving at a preconceived conclusion.

Having regard to these standards requires public authorities, in formulating a policy, to give considerations the weight which is proportionate in the circumstances. Given that the standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, the importance of thoroughly considering these standards cannot be overstated. It is not a question of box ticking, the standards must be considered rigorously and with an open mind.

Although it remains the case that licensing authorities must reach their own decisions, both on overall policies and on individual licensing matters in light of the relevant law, it may be that the statutory taxi and private hire vehicle standards might be drawn upon in any legal challenge to an authority's practice, and that any failure to adhere to the standards without sufficient justification could be detrimental to the authority's defence. In the interest of transparency, all licensing authorities should publish their consideration of the measures contained in statutory taxi and private hire vehicle standards, and the policies and delivery plans that stem from these. The department has undertaken to monitor the effectiveness of the standards in achieving the protection of children and vulnerable adults (and by extension all passengers).

The statutory taxi and private hire vehicle standards does not purport to give a definitive statement of the law and any decisions made by a licensing authority remain a matter for that authority.

- 4.4 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operators licence is a 'fit and proper' person to hold such a licence.
- 4.5 A district council may attach to the grant of a licence such conditions as they may consider reasonably necessary.
- 4.6 Section 52 of the 1976 Act states that any person aggrieved by:-
 - (1) The refusal of the district council to grant a licence under Section 51 of the Act, or
 - (2) Any conditions attached to the grant of a driver's licence, may appeal to a Magistrates Court.

Any appeal must be made to the Magistrates Court within 21 days of notification of such a decision.

- 4.7 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 4.8 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he/she is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].
- 4.9 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.
- 4.10 There is no statutory definition of Fit & Proper Person but within the Department for Transport Statutory Standards it is suggested that the basis for such a definition would be.

'Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is no, the individual should not hold a licence.'

- 4.11 In a legal case relied upon by many in the licensing regime *McCool v Rushcliffe Borough Council* (1998) the decision arrived at included the following

'it is for the applicant to establish that he is a fit and proper person on the balance of probabilities. The real question to be decided is whether or not, on the balance of probabilities, the applicant is a fit and proper person to be granted a licence. This does not require the view to be formed as to whether the person had, in all likelihood, committed a specific offence'

- 4.12 Another key case includes *Leeds City Council v Hussain* (2002) where the following was determined

"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."

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

5.0 Staffing:

Nothing arising from this report.

6.0 Citizen Impact

- 6.1 Walsall Councils Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines state that:-

The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:

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

- 6.2 As set out by Phillip Kolvin QC in his foreword to the Institute of Licensing document 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trade' (April 2018) stated

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 maybe 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.

- 6.3 The Department for Transport Statutory Standards make clear the impact on citizens form adopting these policies including

The Policing and Crime Act 2017 enables the Secretary of State for Transport to issue statutory guidance on exercising taxi and private hire vehicle licensing functions to protect children and vulnerable individuals who are over 18 from harm when using these services. For the purposes of this document, a child is defined as anyone who has not yet reached their 18th birthday – and the term vulnerable individual has the same meaning as the definition of a vulnerable adult for the purpose of Section 42 of the Care Act 2014, which applies where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there):

- has needs for care and support (whether or not the authority is meeting any of those needs)
- is experiencing, or is at risk of, abuse or neglect
- as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it

7.0 Community Safety

- 7.1 The introduction of the policy is for the benefit of the community and people of Walsall. As set out in section 6 the impact on individuals and whole communities is significant particularly vulnerable members of the community.
- 7.2 The development of this Policy is of particular interest to partners such as Walsall Police, Childrens Services, Adult Services, Public Health, Community Safety and others. This is because Community Safety strategic and operational issues including exploitation, violence, county

lines, human trafficking and a host of other social ills have been associated with the taxi trade historically in other areas of the country. The taxi trade in Walsall consists of many honest and diligent individuals who we must work with to drive out poor performers, criminals and others who spoil the reputation of the trade and have detrimental impacts on our communities.

8.0 Environmental Impact

There is little environmental impact as a consequence of this report or policy adoption.

9.0 Performance and Risk Management Issues

9.1 The statutory standards were published in 2020 and the authority is now seeking to develop and publish its policy changes as a result of those standards. Since 2020 in all decision making either at officer level or committee/subcommittee level due regard has been paid to the standards and relevant extracts have been included in all relevant decision making.

9.2 To ensure the council's decision making is formally updated and to ensure any challenges to decision making can be robustly defended it is important this Policy receives due consideration and is published expeditiously.

10.0 Equality Implications

None arising from this report

11.0 Consultation

11.1 The Statutory Standards state with regard to Consultation

Licensing authorities should consult on proposed changes in licensing rules that may have significant impacts on passengers and/or the trade. Such consultation should include not only the taxi and private hire vehicle trades but also groups likely to be the trades' customers. Examples are groups representing disabled people, Chambers of Commerce, organisations with a wider transport interest (such as the Campaign for Better Transport and other transport providers), women's groups, local traders, and the local multi-agency safeguarding arrangements. It may also be helpful to consult with night-time economy groups (such as Pubwatch) if the trade is an important element of dispersal from the local night-time economy's activities.

Any decision taken to alter the licensing regime is likely to have an impact on the operation of the taxi and private hire vehicle sector in neighbouring areas – and licensing authorities should engage with these

areas to identify any concerns and issues that might arise from a proposed change. Many areas convene regional officer consultation groups or, more formally, councillor liaison meetings – this should be adopted by all authorities.

- 11.2 The service will ensure this consultation meets the requirements of this and any other corporate consultation requirements.

12.0 Appendices

Appendix 1 Current Walsall Council Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines

Appendix 2 Draft Convictions Policy

Appendix 3 Department for Transport Statutory taxi and private hire vehicle standards annex assessment of previous convictions

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Walsall Council

Taxi and PHV Licensing, Motoring and Criminal

Convictions Guidelines

Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines

1. Introduction

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

2. General guidelines

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

- b. Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.
- 2.3 Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].

3. Appeals

- 3.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he/she is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].

4. Powers

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

5. Consideration of disclosed criminal history

- 5.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private

- hire vehicle drivers' licence and/or private hire vehicle operators licence is a 'fit and proper' person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:
- How relevant the offence(s) are to the licence being applied for.
 - How serious the offence(s) were.
 - When the offence(s) were committed.
 - The date of conviction.
 - Circumstances of the individual concerned.
 - Sentence imposed by the court.
 - The applicant's age at the time of conviction.
 - Whether they form part of a pattern of offending.
 - Any other character check considered reasonable (e.g. personal references).
 - Any other factors that might be relevant.
- 5.2 Existing holders of driver licences are required to notify the licensing authority in writing within seven days of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions).
- 5.3 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the licensing officer [01922 653581] in confidence for advice.
- 5.4 The licensing authority conducts disclosures from the Criminal Records Bureau (CRB) for any applicant for a driver licence. The licensing authority follows the CRB's Code of Practice on the fair use of disclosure information. A copy is available on request.
- 5.5 Applicants applying for the grant or a renewal of a drivers' licence will be required to obtain a disclosure at their expense. The licensing authority abides by the CRB's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request. The Council will expect that all applicants/existing drivers consent to full disclosure of the contents of the report.
- 5.6 More information about the CRB can be found on their website at www.direct.gov.uk.
- 5.7 The licensing authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police under the Home Office scheme for reporting offences committed by notifiable occupations.

- 5.8 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.
- 5.9 It should be noted that the determination of whether an applicant is “fit and proper” includes consideration of conduct falling short of a criminal conviction.

6 Offences involving violence, disorder and damage to property

- 6.1 Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence disorder or criminal damage. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 6.2 Any one with a conviction for an offence involving violence, disorder or damage to property will normally be expected to remain free of such convictions for a period of at least 3 years. However, given the range of the offences, consideration must be given to the nature of the conviction. A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence involving violence or disorder.
- 6.3 In the most serious cases, an application will be refused unless there are exceptional circumstances. A licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder.
 - Manslaughter.
 - Manslaughter or culpable homicide while driving.
 - Terrorism offences.
 - Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.
- 6.4 An application will normally be refused if the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date on which the application is determined by the authority:
- Arson.
 - Malicious wounding or grievous bodily harm.
 - Actual bodily harm.
 - Grievous bodily harm with intent.
 - Robbery.
 - Possession of firearm.
 - Riot.
 - Violent disorder.

- Any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

6.5 An application will normally be refused if the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date on which the application is determined by the authority:

- Common assault.
- Assault occasioning actual bodily harm.
- Affray.
- Aggravated criminal damage.
- Any racially aggravated offence.
- Resisting arrest.
- Assault police.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

6.6 An application will normally be refused if an applicant has a conviction for an offence or similar offences(s) which replace the offences below and the conviction is less than 3 years prior to the date on which the application is determined by the authority:

- S.5 Public Order Act 1986 offence (harassment, alarm or distress).
- S.4 Public Order Act 1986 offence (fear of provocation of violence.)
- S.4A Public Order Act 1986 offence (intentional harassment, alarm or distress).
- Obstruction.
- Criminal damage.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above..

6.7 A person bound over to keep the peace or be of good behaviour will not normally be granted a licence within the period of the recognizance e.g. where a person is bound over for 6 months, they will not normally be licensed within that 6 month period

6.8 In the event of a licence being granted, a strict warning both verbally and in writing should be administered.

7. **Possession of a weapon**

7.1 A conviction for possession of a weapon or any other weapon related offence will raise serious concerns as to the fitness of the applicant to carry the public.

7.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted.

8. Sex and indecency offences

8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely scrutinised. Those with convictions for the more serious sexual offences will normally be refused. For other offences, applicants will be expected to show a substantial period (normally at least 5 years) free of conviction for such offences before a licence will be granted.

8.2 Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:

- Rape.
- Assault by penetration.
- Offences involving children or vulnerable adults.
- Or any similar offences (including attempted or conspiracy to commit) which replace the above.

8.3 An application will normally be refused if the applicant has a conviction for an offence listed below and the applicant has not been free of such conviction for at least 10 years or, at least 3 years have passed since the completion of any sentence, whichever is longer.

- Sexual assault.
- Indecent assault.
- Possession of indecent photographs, child pornography etc.
- Exploitation of prostitution.
- Trafficking for sexual exploitation.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

8.4 An application will normally be refused if the applicant has a conviction for an offence listed below and the applicant has not been free of such conviction for at least 3 years, or at least 1 year has passed since the completion of any sentence, whichever is longer.

- Indecent exposure.
- Soliciting (kerb crawling).
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

8.5 In addition to the above the licensing authority will not normally grant a licence to any applicant who is currently on the Sex Offenders Register.

8.6 A licence will not normally be granted if an applicant has more than one conviction for a sex or indecency offence.

9. Dishonesty

9.1 A licensed PHV or taxi driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. 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 our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

9.2 In general, a minimum period of 3 years free of conviction or at least 3 years from completion of a sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

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

10. Drugs

10.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.

10.2 An application will normally be refused where the applicant has a conviction for an offence related to the **supply of drugs** and has not been free of such conviction for 10 years.

- 10.3 An application will normally be refused where the applicant has more than one conviction for offences related to the **possession of drugs** and has not been free of conviction for 5 years.
- 10.4 An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.
- 10.5 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 before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

11 **Minor and Major Traffic Offences**

Minor

- 11.1 Convictions for minor traffic offences e.g. obstruction, waiting in a restricted street, speeding etc. may prevent a person from being granted a hackney carriage or private hire drivers licence if they have received more than 2 motoring convictions within the last 2 years.
- 11.2 The accumulation of 9 or more penalty points will cast grave doubts on the suitability of the applicant and could lead to the refusal of the application.

Major

- 11.3 A serious view will be taken of any conviction for a major traffic offence, this includes:
- Causing death by dangerous driving.
 - Dangerous driving.
 - Causing death by careless driving whilst under the influence of drink or Drugs.
 - Causing death by careless or inconsiderate driving.
 - Careless and inconsiderate driving.
 - Driving under the influence of drink or drugs etc.
 - Driving whilst disqualified.
 - Using a vehicle without insurance.
 - Offences contrary to the taxi licensing legislation.
 - Or any similar offences (including attempted or conspiracy to commit) or an offence which replaces the above.

These guidelines make specific provision for certain types of major traffic offences and to reflect the seriousness of those convictions

In the case of major traffic offences where no such specific provision is made and paragraph 14 (Disqualification) does not apply, an application will normally be refused unless a period of at least 3 years free from conviction of such offences has elapsed

12 Driving offences involving the loss of life

12.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted unless the applicant is free of conviction for 7 years or (or at least 3 years must have passed since the completion of sentence, whichever is longer) if he/she has a conviction for:

- Causing death by dangerous driving.
- Causing death by careless driving whilst under the influence of drink or drugs.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

12.2 Before a licence is granted, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for:

- Causing death by careless driving.
- Causing death by driving: unlicensed, disqualified or uninsured drivers.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

13 Drink driving/driving under the influence of drugs

13.1 As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs.

13.2 An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA driving licence but he should be warned as to the significant risk to his licence status in the event of re-offending and he must comply with the rehabilitation period below.

13.3 More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public.

13.4 At least 3 years free of conviction, after the restoration of the driving licence following a drink drive conviction should elapse before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.

14 Disqualification

14.1 Where an applicant has been disqualified from driving following a conviction for a major traffic offence and no specific provision is made above regarding the appropriate rehabilitation period, the application will generally be refused unless a period of between three and five years free from conviction has elapsed from the restoration of the DVLA licence.

14.2 Where convictions for a number of minor traffic offences have resulted in the applicant being disqualified from driving for a period of time this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 12 months free from conviction must have elapsed from the restoration of the DVLA licence.

14.3 In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver, the Council is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

14.4 Any period of disqualification will lead to the suspension/ revocation of a licence.

15 Insurance offences

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

15.2 An operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance will have his operators' licence revoked immediately and prevented from holding a licence for three years.

16 Cautions

- 16.1 Admission of guilt is required before a caution can be issued. Every case will be considered on its own merits including the details and nature of the offence.
- 16.2 If an applicant has received a caution for a traffic offence, given the nature of the offence and the profession of a taxi driver, the applicant may be given a warning as to his/her future conduct.
- 16.3 Cautions for more serious offences could lead to refusal of an application or the suspension or revocation of a licence

17 Outstanding charges or summonses

- 17.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings. Where information is received through the Notifiable Occupations Scheme on existing licence holders, consideration will be made at committee.
- 17.2 If the outstanding charge or summons involves a serious offence, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.
- 17.3 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

18 Licensing offences

- 18.1 Convictions for offences contrary to taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed unless the applicant has been free of such convictions for a period of at least 3 years.

19 Licences issued by other licensing authorities

- 19.1 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will always be decided on its own merits.

20 **Summary**

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



Walsall Council

Private Hire and Hackney Carriage Licensing

CRIMINAL CONVICTIONS GUIDELINES

1 Introduction

- 1.1 The purpose of these guidelines is to provide guidance on the criteria taken into account by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver, proprietor or operator licence.
- 1.2 It is the responsibility of Walsall Council under the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847. In exercising this duty the Council will consider the safety of the public as its primary consideration. This Policy gives guidance to those exercising the Council's powers in relation to Hackney Carriage and Private Hire licensing in determining whether or not an applicant or existing licence holder is fit and proper to hold such a licence.
- 1.3 The overriding aim of the Licensing Authority is to protect the safety of the public. The Licensing Authority is concerned to ensure:
- That a person is a fit and proper person in accordance with Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II).
 - 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 and vulnerable adults.
- 1.4 This document provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
- Applicants for driver's licences.
 - Existing licence driver's, operators and vehicle proprietors whose licences are being renewed or reviewed.
 - Applicants for operator licences.
 - Applicants for vehicle licences.
 - Magistrates hearing appeals against local authority decisions.
- 1.5 Where powers to grant licences have been delegated to licensing officers or managers, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Committee.

- 1.6 The discharge of licensing functions will be undertaken in accordance with the following general principles:
- policies should be used as internal guidance, and should be supported by a member/officer code of conduct.
 - any implications of the Human Rights Act should be considered.
 - the rules of natural justice should be observed.
 - decisions must be reasonable and proportionate.
 - where a hearing is required it should be fairly conducted and allow for appropriate consideration of all relevant factors.
 - decision makers must avoid bias (or even the appearance of bias) and predetermination.
 - data protection legislation
 - Consideration will also be given to the Regulatory Services Enforcement Policy and any other relevant guidance or legislation.
- 1.7 Applicants and licence holders will be treated fairly and impartially, each case will be considered on its individual merits and, where the circumstances demand, the Committee or officer may depart from the guidelines.

2 General guidelines

- 2.1 There may be occasions where it is appropriate to depart from the guidelines, for example where there are mitigating or aggravating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.2 A person with a conviction for a serious offence may challenge being automatically barred from obtaining a licence and in so doing would normally be expected to:
- a. Remain free of conviction for an appropriate period; and
 - b. Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.
- 2.3 Where an applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].
- 2.4 Officers from the licensing section will, where appropriate, contact other agencies for any other information which they may hold for instance, the Council's Children Services, Walsall's Exploitation hub and West Midlands Police. Information received from the Disclosure Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no

longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the application is determined or any appeal against such determination is decided.

- 2.5 The disclosure of a criminal conviction or other relevant information relating to an individual's conduct will not necessarily debar an individual from being granted, retaining or renewing a licence but clearly the conviction will be an important consideration in whether a licence is granted.

3 Appeals

- 3.1 Any applicant refused a licence on the grounds that the Licensing Authority is not satisfied he/she is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the receipt of the notice of refusal [Local Government (Miscellaneous Provisions) Act 1976, s 77 (1)].

4 Powers

- 4.1 Section 61 and Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 sets out the legal basis for licensing authorities to suspend, revoke or refuse to renew a licence following a conviction for various offences or any other reasonable cause.
- 4.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 4.3 In this policy the term "disqualification" refers to the period served. In order to take account of the fact that a court may reduce the period of disqualification from driving, an applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.
- 4.4 It should be noted that "any reasonable cause" includes conduct falling short of a criminal conviction(s).

5 Consideration of disclosed criminal history

- 5.1 The Local Government (Miscellaneous Provisions) Act 1976 (s51, 55 and 59) require licensing authorities to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operator licence is a 'fit and proper' person to hold such a licence.

- 5.2 Walsall Council will take a particularly cautious view of any convictions, warnings, cautions or charges awaiting trial for offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime.
- 5.3 The following will also be given consideration prior to any decision being made.
- How relevant the offence(s) are to the licence being applied for.
 - How serious the offence(s) are.
 - When the offence(s) were committed.
 - The date of conviction.
 - Circumstances of the individual concerned.
 - Sentence imposed by the court.
 - The applicant's age at the time of conviction.
 - Whether they form part of a pattern of offending.
 - Any other character check considered reasonable (e.g. personal references).
 - Any other factors that might be relevant.
- 5.4 Licence holders are required to notify Walsall Council if they have been
- arrested and released,
 - charged or reported for summons for any offence
 - questioned by the police and given a date to return to the police station, known as being on bail
 - convicted of an offence
 - cautioned for an offence
 - issued a Fixed Penalty Notice
- 5.5 Where the matters listed in 5.4 relate to any sexual offence, any offence involving dishonesty or violence and any motoring offence then the Licence holder must make the notification within 48 hours.
- 5.6 Where the matters listed in 5.4 relate to any other matter the licence holder must make the notification within seven days.
- 5.7 The notification should be made in writing, email, e-form or other official record.
- 5.8 Once a notification is received in relation to 5.3 or 5.4 Walsall Council will carry out a review as to whether the licence holder is fit to continue to do so.

- 5.9 This does not mean that the licence will be revoked it does however mean consideration as to what, if any, action in terms of the licence should be taken based on the balance of probabilities.
- 5.10 Where Walsall Council has not been or has no evidence of being advised of circumstances as set out in 5.3 and 5.4 then this will be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.
- 5.11 The Licensing Authority carries out a Disclosure and Barring Service (DBS) check for any applicant for any licence.
- 5.12 The Licensing Authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Licensing Authority or other licensing authorities, National Register of Revocations, Refusals and Suspension (NR3s) and information disclosed by the police under the Home Office scheme for reporting offences committed by notifiable occupations.
- 5.13 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required as part of the application process. Where an applicant has made a false statement or a false declaration as part of their application for the grant or renewal of a licence, the licence will normally be refused or revoked.

6 Crimes Resulting in Death.

- 6.1 A licence will not be granted where the applicant has a conviction for an offence such as:
- Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Terrorism offences
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.2 Where a licence holder 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 the licence will be revoked or refused to be renewed.

7 Exploitation

- 7.1 Where an applicant or licence holder 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 Abuse
- Exploitation
- Grooming
- Psychological,
- Emotional or financial abuse

This list is not exhaustive.

8 Offences involving violence against the person

- 8.1 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:

- Arson
- Malicious wounding
- Actual bodily harm which is racially aggravated
- Grievous bodily harm
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit), or offences which replace the above

- 8.2 A licence will not be granted where the applicant has been convicted for more than one of the above offences. Where a licence holder has been convicted of one or more of the above offences, the licence will be revoked or refused to be renewed.

- 8.3 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction

is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage
 - Racially-aggravated offence
 - Common assault
 - Assault occasioning actual bodily harm
 - Affray
 - 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)
 - Obstruction
 - Possession of offensive weapon
 - Criminal damage
 - Or any similar offences (including attempted or conspiracy to commit offences which replace the above
- 8.4 A licence will not normally be granted if an applicant has more than one conviction for an offence of a violent nature. Where a licence holder has been convicted of one or more of the above offences, the licence will be revoked or refused to be renewed.

9 Possession of a weapon

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

10 Sexual Offences

- 10.1 Where the applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted.
- 10.2 Walsall Council will not grant a licence to any applicant who is currently on the Sex offenders Register or on any barred list.
- 10.3 Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years), where the commission of a sexual offence involves a child or young person an application will normally be refused or an existing licence will normally be revoked, irrespective of the date of offence, conviction or end of sentence.
- 10.4 The Council will sometimes be made aware of other intelligence or lower level information about an individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate

consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Any additional information gathered through this process may then be taken into account at any subsequent committee meeting.

- 10.5 Individuals with a conviction for rape, indecent assault, or other similar offences contrary to the Sexual Offences Act 2003, will normally be refused a licence, or existing licence holders will have their licence(s) revoked, irrespective of the date of offence, conviction or end of sentence.
- 10.6 Applications from Individuals with a conviction relating to sexual offences such as soliciting, importuning, indecent exposure or other similar offences contrary to the Sexual Offences Act 2003, will normally be refused or an existing licence will normally be revoked if the date of conviction or the date on which any custodial sentence is completed is less than 10 years prior to the date of application. Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

11 Dishonesty

- 11.1 Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed for a first offence. Where a Hackney Carriage or Private Hire driver has been convicted for any offence where dishonesty is an element of the offence, a licence will be revoked or refused to renew.
- 11.2 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 or failure to disclose in full information requested by the licensing authority, to include on the application for a licence) will normally result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 11.3 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.
- 11.4 Offences involving dishonesty include (but are not limited to):
- Theft
 - Burglary

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

11.5 A Licence will not normally be granted if an Applicant has more than one conviction for a dishonesty offence. Applicants or existing licence holders that are found to have intentionally misled the Council, or lied as part of the application process, will not be issued with a licence.

12 Drugs

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

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

13 Discrimination

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

14 Motoring convictions.

14.1 Hackney carriage and private hire vehicle drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants

with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

14.2 Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

14.3 **Minor Traffic Offences** - Convictions for minor traffic offences e.g. obstruction, waiting in a restricted street, speeding etc. may prevent a person from being granted a hackney carriage or private hire drivers licence if they have received more than 2 motoring convictions within the last 2 years. Below is a list of Minor Traffic Offences:

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyres
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
CU80	Breach of requirements as to control of the vehicle mobile phones etc
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration of other road users
MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
SP30	Exceeding statutory speed limit on a public road resulting in a fixed penalty
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road – summons (not fixed penalty)
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Exceeding speed limit offence
TS10	Failing to comply with traffic light signals

TS20	Failing to comply with double white lines
TS30	Failing to comply with a “Stop” sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding “Stop” sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

14.4 The accumulation of 9 or more points will cast grave doubts on the suitability of the applicant and could lead to the refusal or revocation of the application/licence.

14.5 **Major Traffic Offences** – Is a road traffic offence that can result in 4 or more penalty points and/or a period of disqualification and/or imprisonment. A serious view will be taken of any conviction for a major traffic offence, this includes:

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
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for alcohol analysis
CD71	Causing death through careless driving the failing to supply a specimen for drug analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive when unfit through drugs
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving / attempting to drive
DR61	Failure to provide specimen for drug analysis in circumstances other than driving / attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs

DR90	In charge of a vehicle when unfit through drugs
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

14.6 These guidelines make specific provision for certain types of major traffic offences and to reflect the seriousness of those convictions. In the case of major traffic offences where no such specific provision is made and paragraph 15 (Disqualification) does not apply, an application will normally be refused unless a period of at least 7 years free from conviction of such offences has elapsed

15 Disqualification

15.1 Where an applicant has been disqualified from driving following a conviction for a major traffic offence and no specific provision is made above regarding the appropriate rehabilitation period, the application will generally be refused unless a period of 7 years free from conviction has elapsed from the restoration of the DVLA licence.

15.2 Where convictions for a number of minor traffic offences have resulted in the applicant being disqualified from driving for a period of time this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 7 years following the expiration of the disqualification period must have elapsed from the restoration of the DVLA licence. A new licence will not normally be granted. Existing licence will be revoked.

15.3 In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver, the Council is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 5 years free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification. Current Hackney Carriage & Private Hire vehicle driver's licence will be revoked.

15.4 Any period of disqualification will lead to the suspension/ revocation of a licence.

16 Insurance offences

16.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily prevent a licence being granted provided he/she has been free of such conviction for 3 years; however a strict warning should be given as to future behaviour.

16.2 More than one conviction for these offences would normally prevent a licence being granted or renewed.

16.3 An operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance will have his operators' licence revoked immediately and prevented from holding a licence for three years.

17 Drink driving/driving under the influence of drugs

17.1 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. Where a licensed Hackney Carriage or Private Hire vehicle driver, proprietor or operator has been convicted of this offence the licence will be revoked or refused to be renewed.

17.2 In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

17.3 A new licence will not normally be granted for 12 years following the expiration of the last disqualification period or if not disqualified 12 years from the date of the conviction, caution or in the absence of these the date of the offence or relevant incident. A existing licence will normally be revoked or refused to renew for repeat offences.

18 Using a hand-held device whilst driving

18.1 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 five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

19 Cautions

- 19.1 Admission of guilt is required before a caution can be issued. Every case will be considered on its own merits including the details and nature of the offence. A caution is regarded exactly the same way as a conviction.
- 19.2 If an applicant has received a caution for a traffic offence, given the nature of the offence and the profession of a taxi driver, action may be taken after consideration of this policy and the Regulatory Services Enforcement Policy.
- 19.3 Cautions for more serious offences could lead to refusal of an application or the suspension or revocation of a licence

20 Outstanding charges or summonses

- 20.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings. Where information is received through the Notifiable Occupations Scheme on existing licence holders, consideration will be made at committee.
- 20.2 If the outstanding charge or summons involves a serious offence, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.
- 20.3 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

21 Licensing offences

- 21.1 Convictions for offences contrary to taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed unless the applicant has been free of such convictions for a period of at least 3 years. Where an existing licence holder receives such a conviction their licence may be revoked or suspended.
- 21.2 Where a licensed driver, proprietor or operator fails to adhere to the conditions of the licence, the Head of Community Safety & Enforcement or Licensing & Safety Committee/sub-committee may decide to review the licence which could result in suspension or revocation of the licence.

22 Licenses issued by other licensing authorities

22.1 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will always be decided on its own merits.

22.2 Walsall Council has a duty to ensure that any person to whom it grants a licence is a 'fit and proper' person. A useful test when considering whether an applicant or licensee is fit and proper is to pose the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.

22.3 All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

22.4 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

23 Private Hire Operators

23.1 A private hire operator ("an operator") in performing their duties obtains and holds 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.

23.2 Operators shall 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 may lead to the operator's licence being revoked.

24 Vehicle Proprietors

- 24.1 As well as the suitability of the vehicle, in determining whether to grant a licence to use a vehicle as a hackney carriage / private hire vehicle, those making the decision on behalf of the Council will consider whether the applicant is a fit and proper person to be issued such a licence.
- 24.2 The licensing authority will take into account any information/intelligence shared by Walsall Council's safeguarding board. West Midlands Police and other Responsible authority or local authority's licensing service when reviewing a licence or granting of a new one.

25. Anti-Social Behaviour and Public Order Offences

- 25.1 Hackney Carriage and Private Hire drivers should behave in a calm and measured manner in the face of provocation and difficult situations. Where licensed drivers fail to meet this:
- (a) First offence – will normally result in a suspension for up to 6 months or refuse to renew. A new licence will not normally be granted for 2 years following the date of conviction, caution or in the absence of these the date of offence or relevant incident.
- (b) Repeat offences – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction, caution or in the absence of these the date of offence or relevant incident.

26 Obstruction of Police Officer/Authorised Officer

- 26.1 A licensed Hackney Carriage or Private Hire Driver will normally be suspended for up to 6 months or refuse to renew on a first offence. A new licence will not normally be granted for 6 months following the date of conviction, caution, expiry of a prison sentence or in the absence of these the date of offence or relevant incident. Repeat offences – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction, caution, expiry of a prison sentence or in the absence of these the date of offence or relevant incident.

STATUTORY TAXI & PRIVATE HIRE VEHICLE STANDARDS

Authorities must consider each case on its own merits, and applicants/licenseses are entitled to a fair and impartial consideration of their application. Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

Crimes resulting in death

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

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 abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

Offences involving violence against the person

Where an applicant has a conviction for an offence of violence against the person, 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

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 seven years have elapsed since the completion of any sentence imposed.

Sexual offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted.

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

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

Drugs

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.

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 five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

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

Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

Drink driving/driving under the influence of drugs

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 seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Using a hand-held device whilst driving

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 five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.