

PUBLIC PROTECTION COMMITTEE: 5th August 2014

Report of the Head of Regulatory and Supporting Services

FITNESS CRITERIA FOR DRIVERS AND OPERATORS

1. Background

- 1.1 The Authority has adopted a policy to provide guidance on the treatment of convictions, cautions and criminal charges in respect of new applicants and existing hackney carriage/private hire drivers. The current policy has been in place since 2008.
- 1.2 The Directors of Public Protection Wales (DPPW) Licensing Technical Panel (LTP) has adopted a new 'Fitness Criteria for Drivers and Operators', and it is anticipated that this policy will replace existing conviction policies and be adopted across Wales to promote consistency.
- 1.3 This report outlines the LTP's Fitness Criteria (Detailed in Appendix A) and recommends that the policy is issued to the Trade with a view to adoption in 2014.

2. Details.

- 2.1 The Authority has a responsibility to ensure that those who are granted licences as Hackney Carriage / Private Hire Vehicle Drivers and existing licensed drivers are fit and proper persons to carry out that role. An applicant's criminal background is therefore checked as a part of the application determination policy.
- 2.2 The Authority's current 'conviction policy' provides guidance to the Public Protection Committee when determining whether an existing driver or a new applicant is a fit and proper person in respect of any convictions, cautions, or criminal charges they may have. The main aim of the policy is to protect the safety of the public.
- 2.3 Historically there has been little consistency across local authorities with regards to conviction policies. It is possible that an applicant may be refused a licence by one local authority, but guidelines in a neighbouring authority may recommend a licence is granted. The LTP has developed a Fitness Criteria which has been approved by the DPPW and Welsh Heads of Environmental Health Group and it is anticipated it will be adopted by all Welsh authorities to promote consistency.

- 2.4 The following local authorities have confirmed that they are planning to adopt the policy in the next 12 months; Neath Port Talbot, Swansea, Vale of Glamorgan, Anglesey, Torfaen, Ceredigion, Gwynedd, Wrexham, Blaenau Gwent, Merthyr Tydfil, Denbighshire, Conway.

3. **Differences between Current & Proposed Policy**

- 3.1 The main difference between Cardiff's existing conviction policy and the LTP's Fitness Criteria is that the current policy only applies to drivers, whereas the LTPs policy applies to both drivers and private hire operators.
- 3.2 The existing policy refers to convictions, cautions and criminal charges, whereas the LTPs policy refers to:
- a) Criminal / motoring convictions;
 - b) Court Martial;
 - c) Cautions;
 - d) Fixed penalty notices or other penalty notices;
 - e) Anti-social behaviour orders or other similar orders;
 - f) Breach of licensing conditions;
 - g) Formal Warnings or Reprimands;
 - h) Charges or matters awaiting trial;
 - i) Fitness and propriety.

4. **Achievability**

This report contains no equality personnel or property implications.

5. **Consultation**

- 5.1 The trade consultation procedure was undertaken in accordance with the consultation procedure on any policy matters. The draft reports intended for consideration were made available at the licensing offices for any interested party to provide written submissions. Consultation responses are detailed in Appendix B of this report.
- 5.2 It is recommended that further detailed trade consultation regarding the content of the policy takes place before it is approved.

6. **Legal Implications**

- 6.1 The Local Government (Miscellaneous Provisions) Act 1976 states that the Council shall not grant a hackney carriage or private hire driver's licence unless it is satisfied that the applicant is a fit and proper person to hold such a licence.

- 6.2 The same Act permits the Council to suspend, revoke, or refuse to renew a driver's licence if, since the grant of the licence, the driver has been convicted of an offence involving dishonesty, indecency, or violence; or has been convicted of an offence under, or failed to comply with, certain licensing statutory provisions; or for any other reasonable cause.
- 6.3 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator's licence if the applicant/licence holder has been convicted of an offence under or non compliance with the provisions of Part II of the Act; or grounds of any conduct on the part of the operator which appears to the Council to render him unfit , or due to any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or any other reasonable cause.

7. Financial Implications.

- 7.1 This report contains no financial implications

8. Recommendation

- 8.1 It is recommended that the LTPs Fitness Criteria for Drivers and Operators is approved in principle for consultation with the Taxi Trade, and that a further report is presented to Committee following consultation.

Dave Holland
HEAD OF REGULATORY AND SUPPORTING SERVICES

5 June 2014

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: None



Cardiff Council

Taxi and Private Hire Licensing Policy Fitness Criteria for Drivers and Operators

DRAFT

DATE:

1.0 Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage/ private hire driver and or private hire operator's licence.
- 1.2 The aim of this policy is to protect the safety of the public. The Licensing Authority is concerned to ensure:
- That a person is a fit and proper person;
 - That the person does not pose a threat to the public;
 - That the public are safeguarded from dishonest persons;
 - The safeguarding of children and young persons;
 - The safeguarding of vulnerable persons;
 - That the public have confidence in their use of licensed vehicles.
- 1.3 This policy aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:
- Applicants for driver / operator licences
 - Existing licensed drivers / operators whose licences are being reviewed
 - Licensing Officers and Police
 - Members of the Public Protection Sub-Committee
 - Magistrates and Crown Court 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 Public Protection Sub-Committee. Whilst officers and the Sub-Committee will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits** and, where the circumstances demand, the Sub-Committee/officer may depart from the guidelines.
- 1.5 Where applicants fail to disclose any previous convictions; cautions; warnings; penalty notices, orders or reprimands on their application form including any pending court proceedings or other matters they may be referred to the Public Protection Sub-Committee for determination.

2.0 General policy

- 2.1 Each case will be decided on its own merits.
- 2.2 A person with a conviction for 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 (as set out below); and
 - b. Show evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).
- 2.3 For the purposes of this Policy, “other matters to be considered” may include but are not limited to the following:
- a) Criminal / motoring convictions;
 - b) Court Martial;
 - c) Cautions;
 - d) Fixed penalty notices or other penalty notices;
 - e) Anti-social behaviour orders or other similar orders;
 - f) Breach of licensing conditions;
 - g) Formal Warnings or Reprimands;
 - h) Charges or matters awaiting trial;
 - i) Fitness and propriety.
- 2.4 Where an applicant has a conviction(s) or other matter(s) to be considered for a criminal offence, the council cannot review the merits of the conviction or other matter.
- 2.5 Where an applicant / licence holder has a conviction or other matter to be considered for an offence of aiding, abetting, attempting, conspiring, counselling, procuring, causing, permitting or inciting any of the criminal or motoring convictions / matters specified in this guidance, they will be considered relevant for the substantive matter.

3.0 Appeals

- 3.1 Any applicant who has been refused a driver / operator licence, or a licensed driver / operator whose licence has been suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of receipt of the notice.

4.0 Powers

- 4.1 Powers to grant driver / operator licences are contained within Section 51, Section 55 and Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act).
- 4.2 Powers to suspend, revoke or refuse to renew a driver's licence are contained within Section 61 of the Act, where the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 4.3 Section 61 (2B) allows the Licensing Authority, if it appears that in the interests of public safety, to suspend or revoke a driver's licence with immediate effect. A Decision Notice explaining why this decision has been taken will be issued to the driver and will have effect when the notice is given to the driver. The driver may appeal this decision but may not drive during the appeal period.
- 4.4 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator's licence if the applicant/licence holder has been convicted of an offence under or non compliance with the provisions of Part II of the Act; or grounds of any conduct on the part of the operator which appears to the Council to render him unfit , or due to any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or any other reasonable cause.
- 4.5 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

5.0 Consideration of disclosed criminal history

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

:

- How relevant the offence(s) are to the licence being applied for;
- How serious the offence(s) were;
- When the offence(s) were committed;
- The date of conviction and age of applicant at time of conviction;
- Sentence imposed by the court;
- Whether they form part of a pattern of offending;
- Any other factors that might be relevant.

6.0 Violence

6.1 Licensed drivers have close regular contact with the public. A serious view will be taken with those who have a conviction(s) or other matter(s) to be considered involving violence. An application will normally be refused or existing licence suspended or revoked if the applicant / licence holder has a conviction for an offence that involved the loss of life.

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

6.3 Unless there are exceptional circumstances, an application will normally be refused or existing licence suspended or revoked where the applicant / licence holder has a conviction for an offence such as:

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

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

- Actual bodily harm which is racially / religiously aggravated;
- Arson;
- Assault Police;
- Common assault which is racially / religiously aggravated;
- Criminal damage which is racially / religiously aggravated;
- Grievous bodily harm with intent;

- Malicious wounding or grievous bodily harm which is racially aggravated;
- Possession of firearm;
- Resisting arrest;
- Riot;
- Robbery;
- Violent disorder;
- Similar offences or offences which replace the above.

6.5 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction(s) or other matter(s) to be considered is **less than 3 years** prior to the date of application:

- Affray;
- Assault occasioning actual bodily harm;
- Common assault;
- Criminal damage;
- Obstruction;
- Possession of a weapon (or imitation weapon) or any other weapon related offence other than a firearm;
- S5 Public Order Act 1986 offence (harassment, alarm or distress);
- S.4 Public Order Act 1986 offence (fear of provocation of violence);
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress);
- Similar offences or offences which replace the above.

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

7.0 Sex and indecency offences

7.1 As licensed drivers often carry unaccompanied and vulnerable passengers, a firm line is to be taken with those who have convictions or other matters to be considered for sexual offences. An application will normally be refused or existing licence suspended or revoked for convictions or other matters to be considered for the more serious sexual offences. For other offences, applicants will be expected to show a substantial period free of conviction or other matter to be considered for such offences before an application will be approved.

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

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

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

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

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

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

8.0 Dishonesty

8.1 An applicant or existing licence holder is expected to be a trustworthy person. They deal with cash transactions and valuable property which may be left in their vehicles. Licence holders are required to deposit such property with police within 48 hours. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

8.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matter(s) to be considered for an offence listed below and the conviction or other matter to be considered is **less than 3 years** prior to the date of application:

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

9.0 Drugs

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

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

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

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

9.4 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has an isolated conviction or other matter to be considered for an offence related to the possession of

drugs within **the last 3 years**. Consideration should be given to the nature and quantity of the drugs involved.

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

10.0 Driving offences involving the loss of life

- 10.1 A very serious view is to be taken of any applicant or existing licence holder who has a conviction or other matter to be considered for a driving offence that resulted in the loss of life.

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

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

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

- Causing death by careless driving;
- Causing death by driving: unlicensed, disqualified or uninsured drivers.

11.0 Drink driving/driving under the influence of drugs

- 11.1 A serious view will be taken of a conviction(s) or other matter(s) to be considered for driving or being in charge of a vehicle while under the influence of alcohol / drugs. A single conviction or other matter to be considered may not result in an application being refused or an existing licence being suspended or revoked, provided that **at least 3 years** have elapsed since the ending of the disqualification. A conviction or other matter to be considered for 'refusing or failing to provide a specimen' will be treated in the same way.

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

12.0 Motoring Convictions

12.1 Major Traffic Offences

12.2 For the purposes of this Policy the following motoring offences are classed as 'Major Traffic Offences':

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

12.3 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction or other matter to be considered for a major traffic offence and has not been free of the conviction or other matter to be considered for **at least 6 months**.

- 12.4 An applicant with more than one Major Traffic Offence, within the last 5 years will normally be refused and no further application should be considered until a period of **at least 3 years** free from such convictions or other matters to be considered have elapsed.
- 12.5 If any conviction or other matter to be considered for a Major Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled "disqualification".
- 12.6 **Disqualification from driving**
- 12.7 The Licensing Authority will treat a period of a disqualification as being that which a driver would have been eligible to serve, and may disregard the decision of a court to waive or reduce a disqualification period either on the grounds of exceptional hardship under S.35 of the Road Traffic Offenders Act 1988 or for "special reasons" under S.34 of the Road Traffic Offenders Act 1988.
- 12.8 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of less than 56 days unless a period of **at least 6 months** has elapsed from the end of the disqualification period.
- 12.9 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matter to be considered resulting in a period of disqualification of up to 12 months unless a period of **at least 12 months** has elapsed from the end of the disqualification period.
- 12.10 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a recent conviction or other matters to be considered resulting in a period of disqualification of 12 months or more, unless a period of **at least 18 months** has elapsed from the end of the disqualification period.
- 12.11 The Licensing Authority will not normally grant an application for a private hire or hackney carriage driver's licence from a person who has been disqualified from driving for a period of 5 years or more, unless a period of **at least 7 years** has elapsed from the end of the disqualification period.

13.0 Minor Traffic Offences

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

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

13.3 More than one minor traffic conviction or other matter to be considered may result in a refusal, particularly where there are several convictions or other matters to be considered for the same offence e.g. speeding. A licensed driver may be referred to the Public Protection Sub-Committee where there are more than two offences.

14.0 Outstanding charges or summonses

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

15.0 Non-conviction information

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

16.0 Repeat offending

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

17.0 Breach of Legislation, Byelaw or Licence Condition

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

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

- 17.3 Where an existing holder is found to have more than one breach of licensing legislation, byelaw or licence condition, or a single serious breach, the Public Protection Sub-Committee may suspend or revoke the licence.
- 17.4 The above is irrespective of any legal proceedings which may be pending or have been taken.

DRAFT

Final version: Dated

Appendix B

Dear Claire Hartrey,

Thank you for the copy of the Taxi and Private hire Licensing Policy, Fitness criteria for drivers and operators.

However having had a cursory look at it, it must be said that some of it's recommendation is very arbitrary if not illegal.

Therefore before getting it approved by the Licensing Committee on 5 August 2014 may be it would be expedient to get it re-examined by a good barrister who is qualified to ensure that the recommendation made by the Solicitor employed by the Council is compatible with European Court of Human Rights Laws.

The paragraphs which I consider arbitrary or incompatible is as follows; 13.3 and 15.1 and 16.1 on page 12 of the draft report.

By the way please note I am hoping to attend the meeting on 5 August if everything goes according to plan, however if for any reason I fail to attend the meeting, then I would like the committee members to consider my views as if, I am at present.

Yours sincerely

Mathab Khan.

NB please note I'll forward copy of this e-mail to Cllr Manzoor Ahmed, who I believe is the chair of licensing committee and also the Vice chair Cllr S Goddard.