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## AGENDA

- Pwyllgor** PWYLLGOR DIOGELU'R CYHOEDD
- Dyddiad ac amser y cyfarfod** DYDD MAWRTH, 9 EBRILL 2019, 10.30 AM
- Lleoliad** YSTAFELL BWYLLGORA 1 - NEUADD Y SIR
- Aelodaeth** Cynghorydd Mackie (Cadeirydd)  
Cynghorwyr Dilwar Ali, Davies, Derbyshire, Goddard, Jacobsen, Lancaster, Robson, Simmons, Taylor a/ac Wood
- 1 Ymddiheuriadau am Absenoldeb**  
Derbyn ymddiheuriadau am absenoldebau.
  - 2 Datganiadau o Fuddiant**  
Dylid gwneud hyn ar ddechrau'r eitem agenda dan sylw, yn unol â'r Cod Ymddygiad Aelodau.
  - 3 Cofnodion (Tudalennau 3 - 10)**  
Cymeradwyo cofnodion y cyfarfod blaenorol fel cofnod cywir.
  - 4 Cais Cadarn am Gerbydau - Telsa Model S (Tudalennau 11 - 26)**
  - 5 Canllawiau Adolygedig ar Benderfynu ar Addasrwydd Ceiswyr a Thrwyddedigion yn y Masnachau Hacni a Llogi Preifat (Tudalennau 27 - 68)**
  - 6 Materion Brys (os o gwbl)**

**Davina Fiore**

**Cyfarwyddwr Llywodraethu a Gwasanaethau Cyfreithiol**

Dyddiad: Dydd Mercher, 3 Ebrill 2019

Cyswllt: Graham Porter, 02920 873401, [g.porter@caerdydd.gov.uk](mailto:g.porter@caerdydd.gov.uk)



PUBLIC PROTECTION COMMITTEE

5 MARCH 2019

Present: Councillor Mackie(Chairperson)  
Councillors Dilwar Ali, Derbyshire, Lancaster, Robson, Taylor,  
Wood and Simmons

25 : APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors T Davies and Goddard.

26 : DECLARATIONS OF INTEREST

A Declaration of Interest was received from Councillor Rhys Taylor, this was a personal interest as he works for a charity in connection with air quality.

27 : MINUTES

The minutes of the Public Protection Committee held on 29 January 2019 and the Public Protection Sub-Committee held on 29 January 2019 were agreed as a correct record and signed by the Chairperson.

28 : PRESTIGE VEHICLE APPLICATION

RESOLVED: to approve the Hyundai i40 as a prestige vehicle with a ten year age restriction.

29 : AGE, EMISSION AND TESTING REQUIREMENTS

Members were advised that this report outlines current issues around air quality in Cardiff, the current policies in relation to the age and testing of licensed vehicles, and proposes changes to the current regime to deal with the air quality challenges faced by the City.

To meet its requirements under the EU Ambient Air Quality Directive (AAQD), through the Department for Environment Food and Rural Affairs (DEFRA) the UK government published its air quality plan to tackle roadside nitrogen dioxide (NO<sub>2</sub>) concentrations in July 2017<sup>2</sup>. The document identified the Cardiff Urban Agglomeration area as a problematic area in terms of continued non-compliance with the EU limit value, for NO<sub>2</sub>.

Modelled projections from Defra using its national Pollution Climate Mapping (PCM) model indicated a number of road links in Cardiff that would continue to exceed the EU Limit Value for NO<sub>2</sub> beyond 2021. This modelling projected continued non-compliance of the national annual average NO<sub>2</sub> standard beyond 2021 along the A48, Eastern Avenue and the A4232 near the Cardiff Bay Retail Park.

Welsh Government exercised powers conferred to it under section 85(5) of the Environment Act 1995 and issued a legal direction titled Environment Act 1995

(feasibility study for Nitrogen Dioxide Compliance) Air Quality Direction 2018, to Cardiff Council.

This has required the Council to undertake the following as part of the feasibility study: 30th September 2018 at the latest submit the Initial Plan to set out the case for change and develop options for measures that the local authority will implement to deliver compliance in the shortest possible time; 30th June 2019 at the latest submit the Final Plan to identify in detail the preferred option for delivering compliance in the shortest possible time, including a full business case.

To date the Council has met the first requirement detailed above by submitting an Initial Plan to Welsh Government by the 30<sup>th</sup> September 2018. The report presented the results of detailed local transportation and air quality modelling which presented significantly different results to the national modelling. The results of the local modelling has indicated that beyond 2021, only the A4161 Castle Street in the City Centre will exceed NO<sub>2</sub> limit value under the AAQD.

There are over 2,000 licensed vehicles in Cardiff, which contribute to roadside NO<sub>2</sub> levels, with the vast majority of these vehicles not meeting the latest Euro 6 diesel emissions standard. As part of the Council's ongoing commitment to improving air quality in Cardiff, it is important that this is considered when reviewing and renewing vehicle policies. A NO<sub>x</sub> pollution source apportionment exercise was undertaken on Castle Street which identified that by 2021, 6% of the NO<sub>2</sub> pollution will be from diesel Taxis.

Work is currently ongoing to finalise an Outline Business Case to identify a preferred option(s) which will enable the Council to implement a solution to ensure that compliance with the limit value is achieved in the shortest possible time. One measure being assessed as part of a package of measures in the Outline Business Case is the implementation of the revised age and emission policy proposed within this report. As part of a combined package which also includes improvements to bus emissions and active travel, the Council has been able to model the impact of this proposed policy in improving air quality in Castle Street and elsewhere across Cardiff.

In addition to meeting the requirements of the AAQD, under the Local Air Quality Management (LAQM) regime, Cardiff Council has 4 Air Quality Management Areas (AQMAs) declared for exceedances of the NO<sub>2</sub> air quality standard. Monitoring data for 2017 indicates that annual mean concentrations of nitrogen dioxide recorded at sites of relevant exposure, within the already established AQMAs, continue to be elevated or exceed the annual mean NO<sub>2</sub> Air Quality Standard (40µg/m<sup>3</sup>). Coinciding with the projections of non-compliance identified in the feasibility study's initial plan, the LAQM regime and location of the City Centre AQMA also incorporates the A4161 Castle Street link.

There are 3 types of vehicle currently licensed by the authority; saloon/MPV vehicles, saloon/MPV vehicles designated as 'prestige', and purpose built hackney carriages, which are vehicles constructed specifically as hackney carriages that can carry a person whilst sitting in a wheelchair.

Existing Vehicle Licensing Requirements were outlined to Members.

In order for a vehicle to be classed as 'prestige', it must undergo a subjective assessment made by Members of the Public Protection Committee. A variety of vehicles are currently licensed as prestige and include MPV style vehicles such as the Fiat Doblo, Peugeot Euro 7, and Citroen Berlingo, and saloon type vehicles such as the Ford Mondeo, Toyota Avensis, Audi A8, and Jaguar XF. A full list of prestige vehicles is attached at Appendix B.

There are currently 946 hackney carriages and 1,264 private hire vehicles licensed in Cardiff. Of those licensed, the average age of a hackney carriage is 8.5 years old, with 32% of the fleet over 10 years old. The average age of a private hire vehicle is 5.9 years old, with 8.7% of the private hire fleet over 10 years old. Of the vehicles that are currently licensed, there is 1 vehicle that meets the Euro 2 standard, 3.5% meet Euro 3 standard, 42% meet Euro 4 standard, 42% meet Euro 5 standard and 12.5% meet Euro 6 standard. Therefore, more than 87% of the current fleet does not meet the latest emission standards.

It is proposed that:

- All applications for the grant of a new vehicle licence, or for the change of vehicle on a current licence, must comply with the draft Age/Emission Policy Guidelines attached at Appendix C.;
- The prestige status classification for vehicles is removed; and.
- The following paragraph will be inserted into the Exceptional Condition policy:

*Consideration for an exemption from the age restrictions will only be given to vehicles that meet or exceed the Euro 6 emission standard, or Ultra Low Emission Vehicles (ULEV). Alternative fuel vehicles must meet the equivalent of the Euro 6 emission standard.*

Members were advised of the details of the proposed policies in relation to the vehicle types, the maximum age at which they can be licensed and the frequency that they are tested.

The proposed policy changes will affect the way in which a significant number of hackney carriage and private hire vehicles will be licensed and tested. Therefore, the draft policy changes will need to be consulted on extensively with the public, trade and other stakeholders.

The proposals detailed in this report provide an opportunity to:

- Improve the fleet of licensed vehicles in the city;
- Help to ensure that the public travel in vehicles with the latest safety technology;
- Contribute to assisting the Council in complying with the legal direction to achieve compliance with the EU Limit Value for NO<sub>2</sub> in the shortest possible time, and reduce CO<sub>2</sub> emissions;
- Ensure a supply of suitable modern vehicles for customers;
- Continue to provide affordable options to the trade.

The Chairperson invited questions and comments from Members;

Members noted that Castle Street has slow moving traffic and asked if anything was proposed to address this. Officers explained that discussions were being held with the Cabinet Member on a number of measures to address issues in Castle Street and Westgate Street to reduce traffic and its impact and to make things easier for cyclists too.

Members noted that a lot was being predicted on European Standards and asked how the UK would stand legally if treaties were to fall after Brexit. Officers advised that any legislative change would become part of UK legislation and there was no intention to make any changes in the short term; Members attention was drawn to paragraph 2.4 of the report that states that the legislation is already enshrined in UK law and passed to Welsh Government; however in the long-term as legislation changes things may change. Officers added that this was a consultation, the information from which would then need to be collated and brought back to committee, this would not happen until after the Brexit deadline and more likely to be around May time.

Members asked if any work was being done with other Local Authorities about cross border flows. Officers advised that there was a Welsh Government White Paper on National Standards and work was being undertaken across local authorities to address the cross border issues. The Shared Regulatory Service will also feedback Members views.

Members asked if there was anything the Council could do in regard to lobbying for additional funding, such as a Scrappage Scheme to help. Officers advised that lots of options were being explored to tap into funding to assist the trade including cleaner vehicles and also infrastructure in the City to support electric vehicles; an incremental approach was being taken.

Overall Members welcomed the report and were pleased to part of moving the issue forward.

Resolved to:

- a) Carry out a consultation with the public, trade and other stakeholders on the proposed policy changes;
- b) Reject the proposed policy changes and continue with the existing licensing framework.

### 30 : NATIONAL REGISTER OF TAXI LICENCES

Members were advised that the Local Government Association (LGA) has commissioned the development of a national register of hackney carriage/private hire driver licence refusals and revocations. The aim is to assist local authorities in determining whether applicant's are 'fit and proper' to obtain a licence.

Until the establishment of the register, unless disclosed by the applicant, the Licensing Authority had no consistent way of knowing if that applicant had previously been refused or revoked by another Licensing Authority. This means in determining whether an applicant is a 'fit and proper' person to hold a licence, vital information in the interest of public safety could have been missed.

For example if a driver was revoked by a local authority following a complaint about inappropriate behaviour towards a passenger, that driver could apply for a licence with another licensing authority. If the driver failed to disclose the revocation to the new licensing authority, they would not know that the applicant had been considered unfit to hold a licence by another authority and would have no knowledge of his previous behaviour.

When a grant or renewal application for a hackney carriage/private hire driver's licence is received, Licensing Authority officers will undertake a search of the NR3 register.

All new application forms will be amended to reflect the use of the NR3 register, and anyone added to the register will be informed in writing. A draft policy on the use of NR3 is detailed in Appendix B. The text to be added to Cardiff's Taxi Licensing Policy and Fitness Criteria for Drivers and Operators is detailed in Appendix C.

Members were advised this would only apply to Reprisal and Revocation not Suspensions.

The Chairperson invited questions and comments from Members;

Members asked if this was just for Wales and were advised that no it was a UK wide initiative.

Members asked how long people would remain on the register and were advised it would be for 25 years.

Members requested that Local Authorities take a consistent approach to data entry on the Register and were advised that the format was very controlled.

Resolved to determine the following:

- a) The use of the NR3 register, and if approved:
- b) The NR3 Policy detailed in Appendix B
- c) The amendment to the Taxi Licensing Policy and Fitness Criteria for Drivers and Operators as detailed in Appendix C

## 31 : WELSH GOVERNMENT TRANSPORT WHITE PAPER

Members were advised that as part of the new devolved settlement for Wales, introduced through the Wales Act 2017, the licensing of taxis, private hire vehicles, drivers and private hire operators became a matter within the legislative competence of the National Assembly for Wales.

The Welsh Government published a White Paper on 10 December 2018 which outlined a number of proposals to legislate for reforming the planning and delivery of local bus services and licensing of taxis and private hire vehicles. This document also included a further consultation, by way of a questionnaire, on the proposed changes to the licensing framework. Part 2 of the White Paper is contained in Appendix A.

The Welsh Government are therefore seeking views on a further proposal to transfer all licensing functions which exist in law (including licencing, fee- and fare-

setting, enforcement, hearing appeals arising from licensing decisions, prosecutions and deciding matters such as whether to apply quantity controls to taxis) away from local authorities and into a Joint Transport Authority. This is referred to in the White Paper as Option A.

The Welsh Government recognise however the significant scale of Option A and the potential for unintended consequences. Therefore, the White Paper also outlines an alternative Option B; to introduce provisions to deal with the issues outlined in the three areas above, but to retain the current 22 Welsh licensing authorities.

Officers advised Members that this topic had been taken to the Bridgend and Vale of Glamorgan Public Protection Committees to obtain Members views; both want Public Protection Committees to continue to look after taxis and keep a local control; therefore they would be recommending Option B back to the Welsh Government. They all welcomed proposals on National Standards, Enforcement and Information Sharing but wanted to retain local decisions and not give all control over to the JTA.

The Chairperson invited questions and comments from Members;

Members welcomed the consultation and considered that the National Standards made sense.

Members asked about the timeframe and were advised that the consultation was until 27 March and there would be a further consultation in the autumn.

Members considered whether all 22 licensing authorities were required and wondered whether a SRS approach could be taken. Officers advised that this would require a whole policy change; Members considered this could be part of the new Local Government Bill in this Welsh Assembly term and that this could be an Option C.

Members agreed that there could be a regional fit especially with the number of taxis coming into Cardiff from neighbouring authorities, there could be an opportunity for some sort of collaboration. Members considered this should be part of this Council's response.

Members asked where the consultation document could be found and were advised that it was on the Welsh Assembly website.

Resolved to:

- a) Note the contents of the report.
- b) Authorise the Head of Shared Regulatory Services to draft a response to the consultation as regards taxi licensing, and incorporate that response into the full Cabinet reply.

32 : URGENT ITEMS (IF ANY)

None received.

The meeting terminated at 11.20 am



## PUBLIC PROTECTION SUB COMMITTEE

5 MARCH 2019

Present: Councillor Mackie(Chairperson)  
Councillors Lancaster and Taylor

13 : EXCLUSION OF THE PUBLIC

14 : HACKNEY CARRIAGE/PRIVATE HIRE MATTERS

RESOLVED – That the following matters be dealt with as indicated:

(1) Application 1

The Sub Committee were asked to consider a complaint made against a driver from a member of the public. Members were advised that the passenger alleged that upon entering the vehicle the driver accused her of giving him a counterfeit £20 note at the end of a previous journey. It was alleged that the driver was shouting abuse at the passenger and he forced her out of the vehicle leaving her abandoned on Newport Road.

The driver stated that he recognised the name of the passenger. He advised the passenger that on the previous occasion she had given him a counterfeit £20 note. The driver denied shouting or forcibly removing the passenger from the vehicle.

RESOLVED – That no further action be taken as based on the evidence the Sub Committee was unable to be satisfied that on the balance of probabilities there was any inappropriate behaviour.

(2) Application 2

The Sub Committee was advised that a driver had a conviction and penalty points for a driving offence. The driver also failed to advise the Licensing Authority of the conviction at the time. The conviction was declared upon renewal of the Hackney Carriage/Private Hire drivers licence. The Sub Committee heard that the driver was involved in an altercation and collision with another driver. The driver left the scene.

RESOLVED – That the driver receive a written warning for driving offences and non-disclosure of the conviction.

(3) Application 3

The Sub Committee was advised that a driver declared a caution for battery on his renewal application form. The caution was not disclosed at the time. The driver stated that he was involved in an argument with another man. He felt threatened and he had struck the other man as an act of self-defence. The driver stated that he had not disclosed the caution at the time because there was no mechanism to do so. Responding to

questions from the Sub Committee the driver confirmed that he had not made any enquiries with the Licensing Authority in relation to reporting such matters and he was unaware that a protocol was in place.

RESOLVED – That the driver receive a written warning for battery and subsequent non-disclosure, plus an additional requirement that the driver completes the BTEC qualification within 3 months.

(4) Application 4

Adjourned sine die

(5) Application 5

The Sub Committee was advised that a driver had failed to disclose a caution upon renewal of his licence. Members were advised that the driver had no recollection of the incident in question. He woke up in Police custody with a head injury and three broken ribs. The driver was advised that he had abused members of the emergency services who were trying to help him.

Members were advised that the driver was living in temporary accommodation at the time following the breakdown of his marriage. He was suffering with anxiety and depression. When asked why he didn't disclose the caution the driver stated that he 'put his head in the sand' as he felt ashamed and could not deal with the issue at the time. However, he was now living in a new home and he was attempting to put his life back together. He has been a cabbie for 25 years and he was good at his job.

RESOLVED – That the driver receive a written warning for non-disclosure of a caution.

(6) Application 6

RESOLVED – That the application for a Hackney Carriage/Private Hire drivers licence be refused as the Sub Committee did not consider the applicant to be a fit and proper person to hold a licence.

(7) Application 7

RESOLVED – That the application for a Hackney Carriage/Private Hire drivers licence be refused as the Sub Committee did not consider the applicant to be a fit and proper person to hold a licence.

The meeting terminated at 2.00 pm

CARDIFF COUNCIL  
CYNGOR CAERDYDD

**PUBLIC PROTECTION COMMITTEE: 9<sup>th</sup> April 2019**

REPORT OF THE HEAD OF REGULATORY & SUPPORTING SERVICES

**HACKNEY CARRIAGE/PRIVATE HIRE APPLICATIONS**

The Committee is requested to determine the following application:-

**1. Mr Khalil Morad – Tesla Model S (BV16 HHK)**

Application to have the Tesla Model S to be approved as a prestige vehicle with a ten year age restriction. This is an electric vehicle and does not have an internal combustion engine.

Please note that this vehicle will not be available for inspection at the meeting. However, details of the advert and pictures of the vehicle will be made available.

Mae'r dudalen hon yn wag yn fwriadol

4/2/2019

2016 Black TESLA MODEL S 235kW 70kWh 5dr [Nav] Electric Hatchback for sale for £41056 in Glasgow, Glasgow City

USED CAR

## Tesla Model S 235kW 70kWh 5dr [Nav] Electric Hatchback 1.0

£41,056

SAT NAV, REVERSING CAMERA



Glasgow South Nissan

★★★★★ 4.6 (850 reviews)

(0141) 376 8291

### Overview

|  |   |   |   |
|--|---|---|---|
| <br>2016 (16 reg) | <br>Saloon   | <br>45,742 miles | <br>1.0L |
| <br>Automatic     | <br>Electric | <br>5 doors      |   |

MOT 2020, 2 KEYS, ALL VEHICLE HANDBOOKS., , Words cant describe how beautiful this car is and you must experience this through a test drive. Sat nav with Google street view as standard will ensure you find your way in those tricky journeys. Auto pilot is a fantastic peace of technology and will give ensure you have great fun when taking on the roads in your new car. Panoramic glass roof is an added extra from new, this will give you great views and night. Electric leather seats will give you the comfort that you desire. Reverse camera, front and rear sensors will ensure you don't damage your pride and joy. 21 inch alloys finish this car off perfectly. Black, £41,056

Mae'r dudalen hon yn wag yn fwriadol





Tudalen 16













Tudalen 19



Tudalen 20



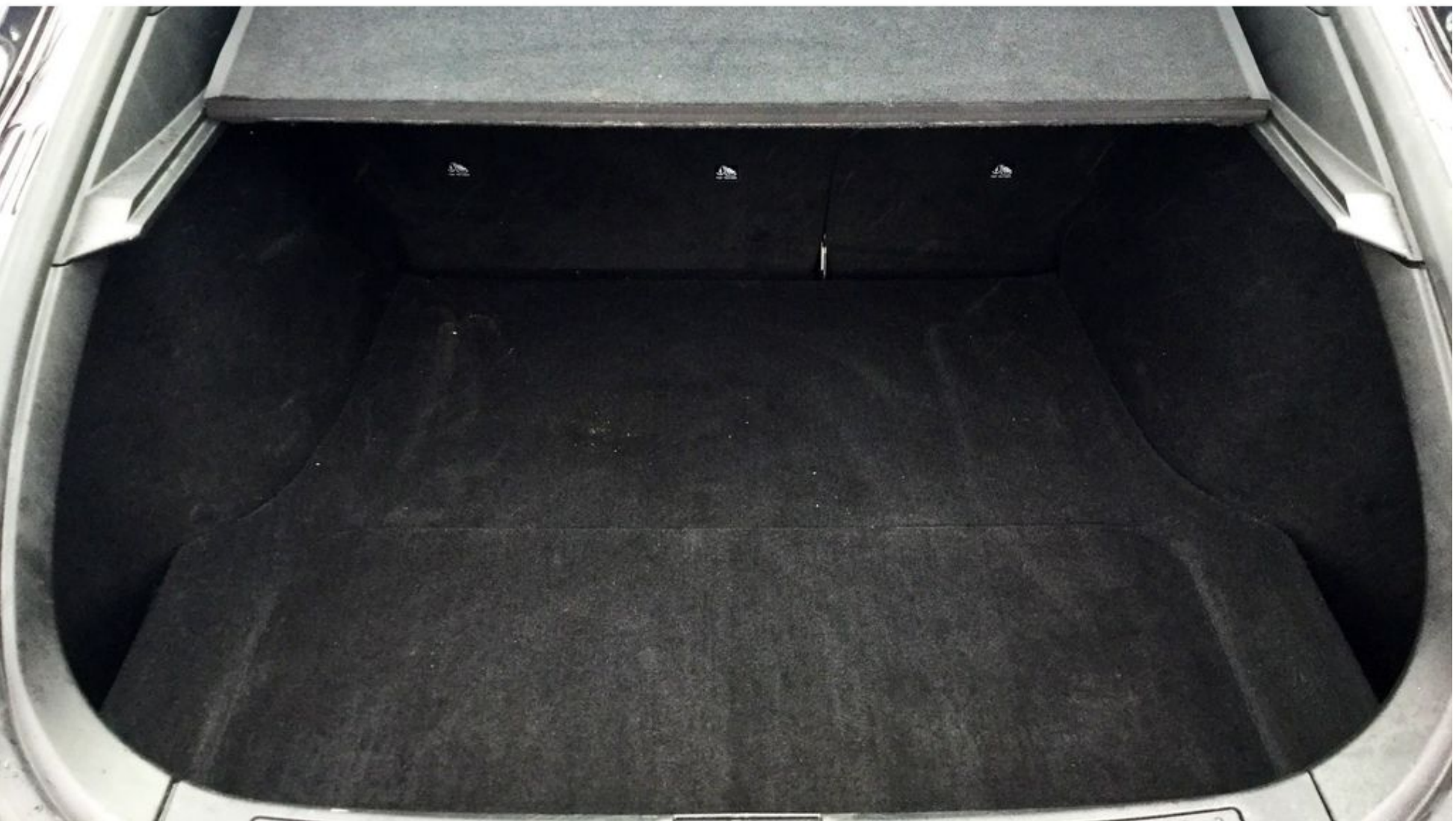


Tudalen 21



Tudalen 22





Tudalen 23

Mae'r dudalen hon yn wag yn fwriadol



# Prestige Vehicle Assessment Form

Completed by: Councillor

Date: 5<sup>th</sup> March 2019

Vehicle Type: Tesla Model S

| <u>Measure</u>                  | <u>Score</u>         |
|---------------------------------|----------------------|
| Accessibility (1-10)            | _____                |
| External Appearance (1-10)      | _____                |
| Internal Passenger Space (1-10) | _____                |
| Passenger Comfort (1-10)        | _____                |
| Quality of Interior (1-10)      | _____                |
| Luggage Space (1-10)            | _____                |
| <b>Total</b>                    | <input type="text"/> |

MAXIMUM SCORE 60

A high score, perhaps in excess of 43, may indicate Prestige status

Mae'r dudalen hon yn wag yn fwriadol

**CARDIFF COUNCIL  
CYNGOR CAERDYDD**

**Agenda No.**

**PUBLIC PROTECTION COMMITTEE: 9 April 2019**

**Report of the Head of Shared Regulatory Services**

**REVISED GUIDANCE ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADES**

**1. Background**

- 1.1 Members of this committee regularly sit on sub-committee meetings to consider the fitness and propriety of new applicants or current licence holders in the Hackney Carriage and Private Hire trade. It is sometimes the applicant's criminal convictions being considered; however, it may also include other matters such as allegations, charges, complaints or conduct which may be considered in order to determine whether they are 'fit and proper', bearing in mind the overall aim of the licensing authority is to protect the public.
- 1.2 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 and operators. The current policy has been in place since 2015.

**2. Details**

- 2.1 In April 2018, the Institute of Licensing published a document titled "Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades" ("the Guidance"). A copy of the Guidance is attached at Appendix A.
- 2.2 The Guidance has been produced in conjunction with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO) following widespread consultation.
- 2.3 At a recent meeting of the Wales Licensing Expert Panel this document was considered and endorsed with the recommendation that all Welsh authorities approve and implement the Institute of Licensing Guidance, replacing their current guidelines/policy. Many authorities in England and Wales have already adopted the new policy and others are in the process of doing so.
- 2.4 Chapter 4 of this document from paragraph 4.6 onwards forms the key guidance to members on determining suitability and this has been lifted from the document as the basis for the draft policy document attached at Appendix B.

2.5 It must be remembered that whilst members will refer to the guidance/policy each case should be determined on its own merits having taking into account all of the facts and oral representations from the applicant, leaving the committee free to depart from the policy where circumstances warrant it.

2.6 The content of the document has already been subject to widespread national consultation with stakeholders in the taxi trade, however, this has not been consulted on locally.

### **3. Achievability**

3.1 This report contains no equality personnel or property implications.

### **4. Legal Implications**

4.1 The Local Government (Miscellaneous Provisions) Act 1976, allows a Local Authority to determine the suitability of an applicant for the grant of taxi and private hire vehicle Licenses and to request such information as it considers reasonably necessary from the applicant in order to determine if a licence should be granted/revoked.

### **5. Equality Impact Assessment.**

5.1 An Equality Impact Assessments screening on the licensing of those in the taxi and private hire trade was completed. The assessment highlighted that there is no adverse or negative impact of opportunity for any equality target group for any reasons.

### **6. Well-being of Future Generations (Wales) Act 2015 implications**

6.1 The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff's Corporate Plan 2018-21.

When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well-being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

6.2 An assessment has been carried out in consideration of the Cardiff Well-being Objectives. A summary of the implications from the assessment:

- Safe, Confident and Empowered Communities
  - Persons working in the taxi and private hire trade are in a unique position, and it is important that the public can trust that they will be able to travel safely and their belongings are secure;
  - Stakeholders within the taxi trade will have the opportunity to consider the proposals and respond to the consultation.

## **7. Financial Implications.**

7.1 There are no immediate financial implications arising directly from this report.

## **8. Recommendations**

8.1 To authorise the Licensing Department to consult with the local taxi trade on the draft policy attached at Appendix B.

## **9. Reasons for Recommendation**

9.1 The draft policy has been widely consulted on nationally and helps ensure consistency throughout Wales. It has been produced in conjunction with the standards as prepared by the Institute of Licensing in collaboration with the Local

Government Association (LGA), National Association of Licensing and Enforcement Officers (NALEO), Lawyers in Local Government (LLG) and the Wales Licensing Expert Panel.

**Dave Holland**

**12 February 2019**

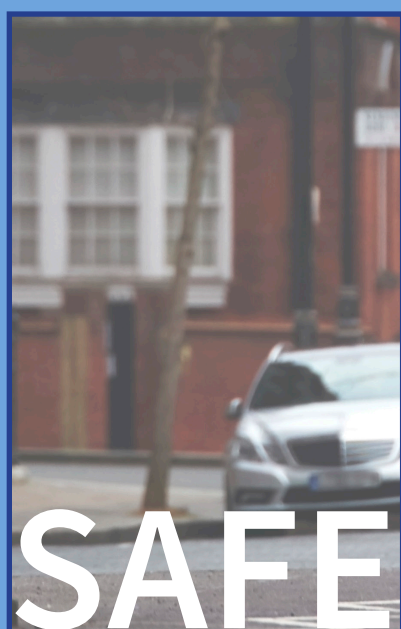
**HEAD OF SHARED REGULATORY SERVICES**

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

Background Papers:

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

# 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:



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## Foreword

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

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

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

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

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

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

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

Philip Kolvin QC  
Cornerstone Barristers

April 2018

## Chapter 1: Introduction

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- 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 qualifications<sup>1</sup>. 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

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<sup>1</sup> 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*<sup>2</sup>.

- 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.

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<sup>2</sup> [2007] 1 WLR 2067

## Chapter 2: Offenders and Offending - An Overview

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- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.<sup>3</sup> 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 harm<sup>4</sup>. 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.

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<sup>3</sup> DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

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

- 2.6 Flaud<sup>5</sup> 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 place<sup>6</sup>.
- 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 future<sup>7</sup>. 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%<sup>8</sup>. 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 offences<sup>9</sup>.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity<sup>10</sup>. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population<sup>11</sup>. 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.

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<sup>5</sup> 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.

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

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

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

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

<sup>10</sup> 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

<sup>11</sup> 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”<sup>12</sup>.
- 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”<sup>13</sup>.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over<sup>14</sup>. 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 relationships<sup>15</sup>. 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 males<sup>16</sup>.
- 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 desist<sup>17</sup>. 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 desistance<sup>18</sup>. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

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

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

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

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

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

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

<sup>18</sup> Maguire, M., Morgan, R. and Reiner, R. (2002). The Oxford Handbook of Criminology. 3<sup>rd</sup> 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”<sup>19</sup>.

- 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.

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<sup>19</sup> 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

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- 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” person<sup>20</sup>.
- 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 UK<sup>21</sup>.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.<sup>22</sup>
- 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*<sup>23</sup>. 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?’<sup>24</sup>
- 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.

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

<sup>21</sup> 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.

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

<sup>23</sup> [2002] EWHC 1145 (Admin), [2003] RTR 199

<sup>24</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> 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.”<sup>25</sup>

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

3.20 Some of these are universal, such as medical assessments<sup>26</sup>. 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 declared<sup>27</sup>) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker<sup>28</sup>.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks<sup>29</sup> 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.

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<sup>25</sup> Local Government (Miscellaneous Provisions) Act 1976 s57(1)

<sup>26</sup> See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

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

<sup>28</sup> See *Adamson v Waveney District Council* [1997] 2 All ER 898

<sup>29</sup> “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 suitability<sup>30</sup>.
- 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 account<sup>31</sup>. 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)

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

<sup>31</sup> *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

authority<sup>32</sup>. A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person<sup>33</sup>.

- 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?”<sup>34</sup>
- 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

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

<sup>33</sup> Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

<sup>34</sup> Button on Taxis – Licensing Law and Practice 4<sup>th</sup> 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 organisation<sup>35</sup>. 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 licence<sup>36</sup> 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

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<sup>35</sup> See s57(1)(c) of the 1976 Act.

<sup>36</sup> 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?”<sup>37</sup>

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

## Chapter 4: Guidance on Determination

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- 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 partnership<sup>38</sup>) 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.

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<sup>38</sup> 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 conviction<sup>39</sup>. Fixed penalties and community resolutions will also be considered in the same way as a conviction<sup>40</sup>.
- 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

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

<sup>40</sup> 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

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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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- Councillors Catriona Morris and Mick Legg, Milton Keynes Council
- Louise Scott Garner
- Jenna Parker, Institute of Licensing

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The Local Government Association (LGA) is the national voice of local government.  
[www.local.gov.uk](http://www.local.gov.uk)



Lawyers in Local Government (LLG). [www.lawyersinlocalgovernment.org](http://www.lawyersinlocalgovernment.org)



National Association of Licensing and Enforcement Officers (NALEO). [www.naleo.org.uk](http://www.naleo.org.uk)



**Cardiff Council**

**Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades**

DRAFT

**2019**

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## **1. Introduction**

- 1.1 The purpose of this document is to provide guidance on the criteria taken into account by the council when determining whether or not an applicant or an existing licence holder is a fit and proper or safe and suitable person to hold a licence.
- 1.2 The purpose of hackney carriage and private hire licensing is to protect and ensure the safety of the travelling public; there are many instances where an application will be refused, or a licence or revoked or suspended if the person falls short of the fit and proper test. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account.
- 1.3 The Licensing Authority makes decisions on the balance of probabilities rather than beyond reasonable doubt.
- 1.4 It is recognised that these guidelines are not legislation, it is however, the authority's baseline for acceptability. As such, it will only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 1.5 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 (or other relevant decision-making body).

## **2. Powers**

- 2.1 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).
- 2.2 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.
- 2.3 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.
- 2.4 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.

- 2.5 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.

### **3. 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. Considerations**

- 4.1 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation.

Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been) to assault another sexually has demonstrated completely unacceptable standards of behaviour.

- 4.2 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.
- 4.3 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.

## **5. Guidance on Determination**

- 5.1 There are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage driver, private hire driver (this authority adopts a dual badge for drivers that permits them to drive a private hire vehicle and a hackney carriage vehicle) and private hire operator. In relation to all of these licences, the authority has the discretion to grant, revoke and suspend a licence.
- 5.2 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 s51 and s59 in respect of drivers; s55 in respect of operators).
- 5.3 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.
- 5.4 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership) is “safe and suitable” to hold the licence.
- 5.5 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.
- 5.6 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction. Fixed penalties and community resolutions will also be considered in the same way as a conviction.
- 5.7 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) may still 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.
- 5.8 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.

- 5.9 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.
- 5.10 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.
- 5.11 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.
- 5.12 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.
- 5.13 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.
- 5.14 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.
- 5.15 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.
- 5.16 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.
- 5.17 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.

- 5.18 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.
- 5.19 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**

- 5.20 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.
- 5.21 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.
- 5.22 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.
- 5.23 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**

- 5.24 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**

- 5.25 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**

- 5.26 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**

- 5.27 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**

- 5.28 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.
- 5.29 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**

- 5.30 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**

- 5.31 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.
- 5.32 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**

- 5.33 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**

- 5.34 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**

- 5.35 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.
- 5.36 Where an applicant has a conviction for using a hand-held 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**

- 5.37 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.
- 5.38 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**

- 5.39 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**

- 5.40 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**

- 5.41 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.
- 5.42 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.
- 5.43 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.
- 5.44 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**

- 5.45 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 5.46 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times. Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 5.47 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 to be granted or retain a vehicle licence.

- 5.48 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.

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