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AGENDA

Committee PUBLIC PROTECTION COMMITTEE

Date and Time of Meeting TUESDAY, 5 NOVEMBER 2019, 10.30 AM

Venue COMMITTEE ROOM 1 - COUNTY HALL

Membership Councillor Mackie (Chair)
Councillors Sattar, Asghar Ali, Derbyshire, Goddard, Jacobsen,
Lancaster, Robson and Wood

1 Apologies for Absence

To receive apologies for absence.

2 Declarations of Interest

To be made at the commencement of the agenda item in question, in accordance with the Members' Code of Conduct.

3 Minutes (*Pages 3 - 12*)

To approve as a correct record the minutes of the meetings held on 3 September and 9 October 2019.

4 Prestige Vehicle Application (*Pages 13 - 14*)

5 Determining the Suitability of Applicants and Licensees (*Pages 15 - 72*)

6 Urgent Items (if any)

Davina Fiore
Director Governance & Legal Services
Date: Wednesday, 30 October 2019
Contact: Graham Porter,
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PUBLIC PROTECTION COMMITTEE

3 SEPTEMBER 2019

Present: Councillor Mackie(Chairperson)
Councillors Sattar, Dilwar Ali, Goddard, Lancaster, Robson and
Wood

1 : APOLOGIES FOR ABSENCE

Apologies were received from Councillors Ali, Derbyshire and Jacobsen.

2 : DECLARATIONS OF INTEREST

No declarations of interest were received.

3 : MINUTES

The minutes of the meetings held on 7 May, 4 June, 2 and 23 July and 6 August 2019 were approved by the Committee as a correct record and were signed by the Chairperson.

The Committee wished to record their thanks to Claire Hartrey, Group Leader Licensing for her service to the Committee and gave her their best wishes for her impending career move.

4 : PRESTIGE VEHICLE APPLICATION - VW JETTA

RESOLVED – That the application for the grant of prestige status to VW Jetta GF64 YWO be approved.

5 : URGENT ITEMS (IF ANY)

No urgent items were received.

6 : DATE OF NEXT MEETING

The next meeting will take place on 1 October 2019.

The meeting terminated at 10.40 am

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PUBLIC PROTECTION SUB COMMITTEE

3 SEPTEMBER 2019

Present: Councillor Mackie(Chairperson)
Councillors Robson and Wood

- 1 : EXCLUSION OF THE PUBLIC
- 2 : HACKNEY CARRIAGE/PRIVATE HIRE MATTERS

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

- (1) Application 1

The Sub Committee considered a complaint received from a member of the public. Members were advised that four passengers caught a taxi from Duke Street and asked to be taken to Rhyd-y-Penau Road via Pentwyn Drive. The passengers wished to pick up a meal from a Chinese take-away on route. The driver stated that the journey would cost 'at least £25'. The complaint stated that she advised the driver she would pay whatever the fare was at the destination but that it wouldn't normally cost that much. The driver had started the journey at the point.

The complainant gave the driver directions and noted that the driver had not started the meter and requested him to do so. The driver refused and stated that he had already said the fare would be £25. The complainant disputed this and repeatedly asked the driver to start the meter. The driver refused saying 'No I've already driven half a mile' and 'love, love, I've got a headache, I'm not taking you, you can get out'. The driver pulled in at the Welsh College of Music and Drama. As the passengers were about to get out the driver aggressively said 'no no I will return you to where you came from. The complainant stated that the driver then u-turned on North Road and drove very fast and in an aggressive manner.

During the return journey the complainant asked the driver for his badge number. He pointed to the windscreen. The driver stopped outside Burger King on Castle Street. The complainant took photographs of the vehicle.

The complainant stated that the passengers were not intoxicated and they had been civil at all times. Responding to questions from the drivers representative the complainant denied that the party had been abusive towards the driver. It was also disputed that the meter was on and partly obscured.

The driver stated that he picked up 3 women and 1 man. They asked to be taken to pick up a Chinese meal, then onto Aldi in Pentwyn and finally Pontprennau. The driver advised them that it would be around £25. The driver stated that the meter was started and he did not ask the passengers for payment upfront. The driver also denied refusing to provide his badge number and denied being aggressive. The complainant stated that the

party were 4 women. They were a group of primary school and they were all staying at her house.

The driver stated that he refused the fare because the passengers were intoxicated and he did not want any trouble. He advised that he always uses the meter.

Members of the Committee asked the driver to explain the sequence of events. The driver stated that the passengers got out of the vehicle on North Road at the Welsh Colleague of Music and Drama. He was unable to explain how the complainant had taken a photograph of his vehicle on Castle Street.

Both parties were asked to sum up. The complainant stated that she considered it was important to bring the matter to the authority's attention because some else, perhaps someone more vulnerable, could be exploited. It was also important that passengers were treated safely at all times. The complainant stated that driver's representations were 'completely fabricated'.

The driver's representative stated that the passengers had direct abuse towards the driver. The meter had been used and no payment upfront was asked for. The driver was recently suspended for another disciplinary matter. However, that matter had been dealt with by way of a suspension. Both incident has happened around the same time. This complaint was not received after the driver had served his suspension.

RESOLVED – That the hackney carriage/private drivers licence be revoked for refusal of a fare, refusing to use the meter and for aggressive behaviour and conduct. The Sub Committee considered the witness statements to be credible and the driver's version of events to be inconsistent and unreliable.

(2) Application 2

The Sub Committee received representations from a driver who did not advise the Licensing Authority that he had received a caution for battery.

Members were advised that his daughter had helped him completed his licence renewal form and that neither of them had fully understood the question. The caution related to a domestic incident that occurred in 2016. The driver also stated that he was unaware that he was required to advise the authority at the time he received the caution.

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

(3) Application 3

Members received representation from a driver had received a caution for battery. The driver explained the circumstances relating to the incident for which he was cautioned. Responding to a question from the Sub Committee, the driver stated that he was not aware he was required to

advise the authority that he was issued with a caution but he was now aware.

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

(4) Application 4

The Committee received representation from a driver who had received 6 penalty points for a driving offence. The driver had appeared before the Sub Committee previously and at that time he had no recollection of the offence.

Members were advised that the driver had been out of the country on holiday. Notification of a speeding offence was received during that time. The driver's wife put the letter away and did not remember to tell him upon his return. The driver received 6 points for not providing the identity of the driver.

No further action.

(5) Application 5

Members were advised that a driver had received 6 penalty points for using a vehicle that was uninsured. The driver stated that the offence related to the use of a motorcycle. The driver using the motorcycle for leisure purposes. He was stopped by Police on a routine stop. The driver was unaware that the motorcycle was untaxed.

No further action.

(6) Application 6

The Sub Committee were asked to consider a driver who had received 9 penalty points for driving without due care and attention.

Members were advised that the penalty points had been issued as a result of an accident that had occurred when the driver was carrying passengers in his vehicle. The driver's representative stated that at the time of the accident the driver's wife was terminally ill. With hindsight the driver realised that he perhaps should not have been working at the time. Since the incident the driver had completed a medical and had an eyetest. He has changed his working pattern and now works only evenings.

Members were advised that the driver had previously been working at a taxi driver for 28 years without incident. Any further driving offences would result in him being disqualified from driving for totting up.

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

(7) Application 7

The Sub Committee received representations from a driver who had received 6 penalty points for 2 speeding offences. The driver explained the circumstances for each offence. The driver was not on duty at the time of the offences and previously he had 30 years without any offences.

No further action.

(8) Application 8

Application for grant of a hackney carriage/private hire drivers licence approved.

(9) Application 9

Application for the grant of a hackney carriage/private hire drivers licence refused as the Sub Committee did not consider the applicant to be a fit and proper person to hold a licence.

(10) Application 10

Application for the grant of a hackney carriage/private hire drivers licence 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 1.30 pm

PUBLIC PROTECTION SUB COMMITTEE

9 OCTOBER 2019

Present: Councillor Mackie(Chairperson)
Councillors Jacobsen and Derbyshire

1 : EXCLUSION OF THE PUBLIC

The following item is confidential and exempt from publication as it contains exempt information of the description contained in paragraph 14 of Part 4 and paragraph 21 of Part 5 Schedule 12A of the Local Government Act 1972. The public may be excluded from a meeting by resolution of the Committee pursuant to Section 100A (4) of the Local Government Act 1972 during discussion of this item.

RESOLVED - That the public be excluded.

2 : HACKNEY CARRIAGE/PRIVATE HIRE MATTERS

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

(1) Application 1

The Sub Committee heard representations from a driver who had been involved in a dispute with a member of the public. Members were advised that the dispute had occurred because the driver was parked in a loading bay whilst waiting for a customer. The driver stated that he had written to the complainant and provided a written apology. The witness did not attend the meeting. The driver gave his account of the events on that day.

RESOLVED – That no further action be taken.

(2) Application 2

Deferred for 1 month

(3) Application 3

The Sub Committee received representations from driver who had found a mobile phone in the back of his vehicle. The driver explained that the phone was found by two customers. The female customer advertised the lost phone on social media and included his vehicle's plate number. The driver said that the phone was lost on a Saturday night. He kept the phone in a safe place. He did not work on Sunday or the following Bank Holiday Monday. On the Tuesday a man approached his vehicle and claimed that the phone belonged to him. He was able to describe the phone make and appearance. The driver stated that he gave the phone to this person.

Members asked the driver why he had not handed the phone to the Police as instructed to do so in the conditions of licence. The driver stated that he was planning to go to Cardiff Bay Police Station that day. He confirmed

that he was aware that any lost property should be handed in at a Police Station.

RESOLVED – That the driver be required to complete the BTEC qualification in Transporting Passengers within 3 months.

(4) Application 4

Deferred for 1 month

(5) Application 5

The Sub Committee received representations from a driver who had received 6 penalty points for a driving offence. The driver advised that he had been driving his personal vehicle and using his phone to play music. The phone was secured in a stand on the dashboard. The driver was unaware that he needed to disclose the conviction at the time but did so upon renewal of his licence.

RESOLVED – That the driver receive a verbal warning for receipt and non-disclosure of a driving offence.

(6) Application 6

Members were asked to consider the case of a driver who had received a caution for sending malicious communications. The driver had also received 3 penalty points for a driving offence. The driver explained the circumstances for the convictions. The caution was received as a result of messages posted on social media. The messages related to a family dispute. The speeding offence occurred when the driver was using his vehicle in a private capacity.

RESOLVED – That the driver receive a written warning for receipt and non-disclosure of a driving offence and for receiving a caution for sending malicious communications.

(7) Application 7

Deferred for 1 month

(8) Application 8

Deferred for 1 month

(9) Application 9

The driver did not attend the hearing.

RESOLVED – That the hackney carriage/private hire drivers licence be revoked as the driver has not produced a DBS certificate.

(10) Application 10

Deferred for 1 month.

(11) Application 11

A driver had received penalty points for two speeding offences. The driver stated that he runs a private chauffeur company and travels between 50,000 and 70,000 miles each year. The two offences occurred when he was taking clients to their destinations. Members were advised that the offences were lapses in concentration. The driver did not condone speeding and apologised. His business specialised in driving sports people and business people and the business would not be successful if he was reckless. The offences were declared when he came to renew his licences as he was unaware that he was required to declare the offences at the time.

RESOLVED – That the driver receive a verbal warning for two driving offences and for not declaring the offences at the time of conviction.

(12) Application 12

RESOLVED – That the application for the grant of a Hackney Carriage/Private Hire drivers licence be approved.

The meeting terminated at 2.30 pm

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CARDIFF COUNCIL
CYNGOR CAERDYDD

PUBLIC PROTECTION COMMITTEE: 5th November 2019

REPORT OF THE HEAD OF SHARED REGULATORY SERVICES

HACKNEY CARRIAGE/PRIVATE HIRE APPLICATIONS

The Committee is requested to determine the following application:-

1. Mr Brian McDowell – Ford Focus

Application to have the Ford Focus to be approved as a prestige vehicle with a ten year age restriction.

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**CARDIFF COUNCIL
CYNGOR CAERDYDD**

Agenda No.

PUBLIC PROTECTION COMMITTEE: 5 November 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 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.
- 1.3 At the Public Protection Committee meeting on 9 April, Officers of Shared Regulatory Services presented a report seeking authorisation to consult with the local taxi trade on proposed guidance on determining the suitability of applicants and licensees in the hackney and private hire trades. If implemented, this would replace the current policy. A copy of the proposed guidance is attached at Appendix A.

2. Details

- 2.1 In April 2018, the Institute of Licensing (IoL) published a document titled "Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades" ("the IoL Guidance"). A copy of the IoL Guidance is attached at Appendix B.
- 2.2 The IoL Guidance was 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 During the consultation period, the Licensing Department received 2 responses from the local hackney carriage and private hire trade, below is summary of the responses:

- Response 1 is from a hackney carriage/private hire driver who considers the proposed motoring conviction suggestions to be unreasonable.
- Response 2 is from the Cardiff Hackney Alliance, calling for a full Equality Impact Assessment to be carried out and the findings discussed before proceeding with any implementation. They also state that given the potential for the recent Welsh Government White Paper to introduce National Standards, any proposed changes would be better suited to that process, due to their being different standards across Wales and licensed vehicles from neighbouring authorities can carry out private hire work in Cardiff.

The full responses are attached at Appendix C.

2.5 The proposed timescales following a conviction contained within Chapter 5 of the proposed guidance have been copied in full from the IoL Guidance. This was produced in partnership with the Local Government Association, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government following widespread consultation.

2.6 If implemented, the proposed guidance would apply equally to all applicants and licence holders within the hackney carriage and private hire trade, irrespective of their background. If the Authority were to favour one group over another, this could give rise to discrimination issues, which would not be conducive to the main aim of the proposed guide, which is the protection of the public.

2.7 Following on from consultations undertaken by the Law Commission from 2011-2014, and a Welsh Government consultation in 2017, the Welsh Government are considering proposals to reform the taxi and private hire licensing regime in Wales. One of their proposals is to confer a power on the Welsh Ministers to create national standards, which the licensing authority will have to have regard to when issuing licences. Whilst National Standards for hackney carriage and private hire drivers are currently being considered, there are no timescales in place at present and no certainty that they will be introduced.

2.8 In February 2019, the Department for Transport (DfT) published a consultation document, titled Taxi and Private Hire Vehicle Licensing: Protecting Users Statutory Guidance for Licensing Authorities (consultation version). Annex A of

the document relates to previous convictions guidance and recommends local authorities adopt the IoL Guidance.

Paragraph 2.50 of the consultation document states:

“In response to concerns raised by stakeholders and to assist in greater consistency in licensing, Annex A provides the Department’s recommendations on this issue. This draws on the work of the Institute of Licensing, in partnership with the LGA, the National Association of Licensing Enforcement Officers (NALEO) and Lawyers in Local Government, in publishing its guidance on determining the suitability of taxi and PHV licensees. These periods should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstance. The Department’s view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain a licence. Authorities are however reminded that each case must be considered on its own merits, and applicants are entitled to a fair and impartial public hearing of their application if required.”

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 Assessment was carried out in relation to the proposed guidance. A copy of the assessment is attached at Appendix D

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 replace the current Taxi and Private Hire Licensing Policy - Fitness Criteria for Drivers and Operators and replace it with the guidance document detailed at Appendix A. This will apply to all transgressions not yet considered with immediate effect.

9. Reasons for Recommendation

- 9.1 The draft policy has been widely consulted on nationally and helps ensure consistency throughout Wales and the UK. 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) and Lawyers in Local Government (LLG).

Dave Holland
HEAD OF SHARED REGULATORY SERVICES

30 September 2019

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](#)
- [Department for Transport - Taxi and Private Hire Vehicle Licensing: Protecting Users Statutory Guidance for Licensing Authorities \(February 2019 - consultation version\)](#)

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Cardiff Council

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

5 November 2019

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 fit and proper, or a 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 suspended or revoked 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.

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

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

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

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

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

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

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

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

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

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

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

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

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

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

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

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

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

Risk of re-offending:

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

¹² National Offender Management Service (20160. Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin, October 2015 to December 2015

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

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

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

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

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

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



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

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

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

Chapter 3: ‘Taxi’ Licensing Overview

- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver’s hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in the DfT “*Taxi and Private Hire Licensing – Best Practice Guide*” para 8 which states:

“The aim of local authority licensing of the taxi and PHV trades is to protect the public.”
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage driver; private hire driver and private hire operator.
- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.
- 3.8 In each case, the authority has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

Taxi Drivers

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

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

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*²³. Silber J said:

“... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”

- 3.16 This is reflected in a test widely used by local authorities:

‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁴

- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Private Hire Operators

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

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

- 3.36 As with taxi drivers the role of the PHO goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
 - 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
 - 3.39 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.
 - 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:

“Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”³⁴
- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they

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

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

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

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

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

Vehicle Proprietors

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

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

³⁵ See s57(1)(c) of the 1976 Act.

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

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

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

Chapter 4: Guidance on Determination

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

Pre-application requirements

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

Vehicles:

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

Drivers:

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

Operators:

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

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

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

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

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

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

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

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

Drivers

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

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

Crimes resulting in death

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

Exploitation

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

Offences involving violence

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

Possession of a weapon

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

Sex and indecency offences

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

Dishonesty

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

Drugs

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

Discrimination

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

Motoring convictions

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

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

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

Other motoring offences

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

Hackney carriage and private hire offences

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

Vehicle use offences

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

Private Hire Operators

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

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

Vehicle proprietors

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

Acknowledgements

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

The core project group comprised:

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

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

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

The Institute is also grateful to others who have contributed to the work of the project group, including former probation officer Hannah Jones (now Housing Officer at Flintshire Council) who has assisted the group in providing the chapter on 'Offenders and Offending'.

This project has been further enhanced by invaluable contributions from the following individuals and organisations:

- Ellie Greenwood and Rebecca Johnson, Local Government Association
- Tim Briton, Lawyers in Local Government
- Ben Atrill
- Suzy Lamplugh Trust
- Councillor Richard Wright, North Kesteven District Council
- Professor of Criminology Fiona Measham, Durham University
- Councillor Philip Evans, Conwy County Borough Council
- 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



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



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

Appendix C

Response 1

From: [REDACTED]
Sent: 26 June 2019 11:55
To: Cook, Daniel <Daniel.Cook2@cardiff.gov.uk>
Subject: Re: New Fitness Criteria for Drivers/Proprietors/Operators

Hi Dan, with reference the new proposed suitability criteria.

I believe the proposed motoring convictions suggestions to be unreasonable.

[REDACTED]

Response 2



Response to the 'Proposed Suitability Guidance' document

Members of Unite the Union within Hackney Cardiff Alliance firmly believe that a documented Equality Impact Assessment should have been carried out on the proposed changes to this policy.

We do not wish to be drawn into a discussion about whether it is fair or just to increase penalties and exclusions for criminal convictions that are referred to in the proposals, as the Rehabilitation of Offenders Act 1974 already exists and its principles should apply.

What's being proposed is being done so in the name of Cardiff Council and Cardiff Licensing. We are aware that it is something that other Local Authorities are considering it. Some have adopted it, some have not. The Hackney Trade within Cardiff is populated overwhelmingly by members from BAME communities. While there may be varying reasons as to why this is, discrimination in the wider field of employment is one potential reason. The trade can be perceived as one where an individual works as all other doors have been closed to them. The 'Proposed Suitability Guidance' document itself implies this, albeit purely from the perspective of having a criminal record, stating;

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.

The Lammy Review from 2017 states;

BAME people make up:

- *14% of the general population*
- *25% of the prison population*
- *40% of young people in custody.*

In addition:

- *Arrest rates are higher for BAME people*

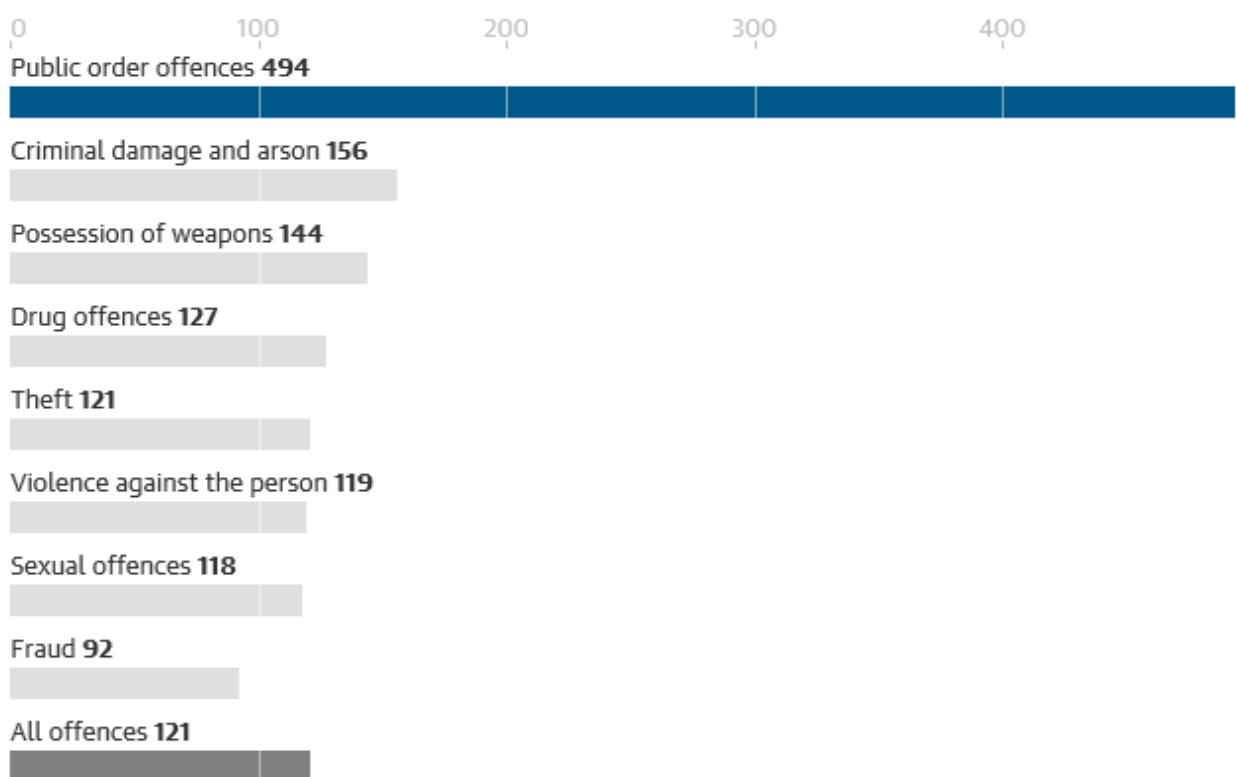
- BAME people are more likely to plead not guilty
- BAME people are more likely to receive prison sentences for drugs offences

The Lammy Review highlights findings from a MoJ study of Crown Court sentencing showing higher odds of imprisonment for defendants from black, Asian and Chinese or other backgrounds compared to white defendants. In particular, the odds of receiving a prison sentence for drug offences were 240% higher for BAME defendants.

Further examples of the disproportionate impact on BAME men can be seen in the following table,

For every 100 white men convicted of public order offences, there were 494 BAME convictions

Number of BAME men placed in high-security prison, for every 100 white men convicted of the same type of offence, 2015



The review itself refers to those in the taxi trade, stating;

Over the last five years 22,000 BAME children have had their names added to the Police National Database. This includes for minor offences, such as a police reprimand. The result in adulthood is that their names could show up on criminal record checks for careers ranging from accountancy and financial services to plumbing, window cleaning and driving a taxi.

and

The key legislation governing past convictions are The Rehabilitation of Offenders Act 1974 (ROA) and legislation establishing the Disclosure and Barring Service (DBS). The ROA sets out how long

offenders must wait after a conviction or prison sentence before a criminal record is ‘spent’ and need no longer be disclosed on a job application. For example, any adult serving a prison sentence of more than 30 months but less than four years must wait seven years after their sentence has been complete for their criminal record to be spent. Sentences of more than four years will never be ‘spent’ for either adults or children. In addition, there are some jobs for which offences may be ‘spent’, but will still show up on standard and enhanced criminal record checks – known as DBS checks. These include working in the care sector or becoming a licensed taxi driver.

Also

People can change quickly but their criminal record does not. For example, an 18 year-old serving a seven-month sentence will wait until their mid-20s before their conviction is spent – and even then, only for some jobs.

Selling drugs as a teenager could prevent you becoming a plumber or licensed taxi driver in your thirties. Often young adults can find a criminal record holding them back in the key period in their working lives.

We feel that this highlights that there is a clear disproportionality when comparing the likelihood of criminal convictions between those from BAME communities and those from white communities, and given the trade is overwhelmingly from BAME communities there is a clear risk that this policy change will have a disproportional impact.

We demand that a full and thorough EIA is carried out and consulted upon before any changes to this policy are made.

We also believe that given the potential for the recent White Paper to introduce National Standards, any proposed changes to policies such as this would be better suited to that process.

There is further concern in the process taken in Public Protection Committee hearings.

The ‘Proposed Suitability Guidance’ document states;

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

It is the experience of drivers and their representatives that this is not the case. Some cases have been decided merely on the basis that the witness has made a complaint, where there is absolutely no physical evidence to make a decision on a balance of probability to suspend someone from their only means of income for 10 days.

**Equality Impact Assessment
Corporate Assessment Template**



Policy/Strategy/Project/Procedure/Service/Function Title:
--

New/Existing/Updating/Amending:
--

Who is responsible for developing and implementing the Policy/Strategy/Project/Procedure/Service/Function?

Name: Daniel Cook	Job Title: Team Manager
Service Team: Licensing	Service Area: Shared Regulatory Services
Assessment Date: 30.09.2019	

1. What are the objectives of the Policy/Strategy/Project/ Procedure/ Service/Function?

To introduce revised guidance on the criteria taken into account by the council's Licensing Committee, when determining whether or not an applicant or an existing licence holder within the taxi and private hire trade is fit and proper to hold a licence.

2. Please provide background information on the Policy/Strategy/Project/Procedure/Service/Function and any research done [e.g. service users data against demographic statistics, similar EIAs done etc.]

The Local Government (Miscellaneous Provisions) Act 1976 allows a Local Authority to determine the suitability of an applicant or an existing licence holder within the Taxi and Private Hire trades.

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.

In April 2018, the Institute of Licensing (IoL) published a document titled "Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades".

The guidance was, 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.

3 Assess Impact on the Protected Characteristics

3.1 Age

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Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on younger/older people?

	Yes	No	N/A
Up to 18 years	x		
18 - 65 years	x		
Over 65 years	x		

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

The proposed Guidance could have an impact on drivers aged 18 years and more if convicted of a criminal offence or serious motoring offences. Young BME people are more likely to have interaction with the criminal justice system than their White counterparts, thereby affecting their ability to hold a licence

What action(s) can you take to address the differential impact?

Ensure that all Drivers / Licensees are aware of the revised Guidance on Determining the Suitability of Applicants and Licensees in the Hackney and Private Hire Trades

3.2 Disability

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on disabled people?

	Yes	No	N/A
Hearing Impairment		x	
Physical Impairment		x	
Visual Impairment		x	
Learning Disability		x	
Long-Standing Illness or Health Condition		x	
Mental Health		x	
Substance Misuse	x		
Other			

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

The Guidance criteria refers to an individuals' attitude, character and whether they are 'fit and proper' to hold a Taxi Driver licence. The criteria does not refer to Disability specifically, but if an individual has difficulties with substance misuse this would be a breach of the guidance and likely result in the withdrawal of their licence.

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What action(s) can you take to address the differential impact?
No differential impact identified in relation to Disability. All drivers or licensees should be made aware of the revised guidance and the consequences of committing a criminal offence or repeated motoring offences.

3.3 Gender Reassignment

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on transgender people?

	Yes	No	N/A
Transgender People (People who are proposing to undergo, are undergoing, or have undergone a process [or part of a process] to reassign their sex by changing physiological or other attributes of sex)		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.
There is no differential impact identified in relation to Transgender people, unless convicted of a criminal offence or repeated motoring offences.
What action(s) can you take to address the differential impact?
Panel Members should attend mandatory Equality Training to help them understand the discrimination faced by Trans people. All drivers and licensees should be made aware of the revised guidance and the consequences of committing a criminal or repeated motoring offence.

3.4. Marriage and Civil Partnership

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on marriage and civil partnership?

	Yes	No	N/A
Marriage		x	
Civil Partnership		x	

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Please give details/consequences of the differential impact, and provide supporting evidence, if any.

The guidance has no impact on marital or Civil Partnership status

What action(s) can you take to address the differential impact?

No impact identified no action necessary

3.5 Pregnancy and Maternity

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on pregnancy and maternity?

	Yes	No	N/A
Pregnancy		x	
Maternity		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

The guidance has no impact on people who are pregnant or who have given birth in the last 26 weeks.

What action(s) can you take to address the differential impact?

No impact identified no action necessary

3.6 Race

Will this Policy/Strategy/Project//Procedure/Service/Function have a **differential impact [positive/negative]** on the following groups?

	Yes	No	N/A
White	X		
Mixed / Multiple Ethnic Groups	X		
Asian / Asian British	X		
Black / African / Caribbean / Black British	X		
Other Ethnic Groups	X		

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Please give details/consequences of the differential impact, and provide supporting evidence, if any.

It is widely accepted that BME people are over-represented in the Criminal Justice System and receive harsher sentencing than their White counter-parts.

The Ministry of Justice produced a report in 2017, titled "**Statistics on Race and the Criminal Justice System 2016** – A Ministry Of Justice publication under section 95 of the Criminal Justice Act 1991"

The following has been taken from the above report:

Arrests –

In 2016/17, compared with the White ethnic group, arrests proportionate to population size were more likely to be carried out on the Black (8 times as likely), Mixed (between 2 and 3 times as likely), Asian (just over 2 times as likely) and Chinese or Other (1 ½ times as likely) ethnic groups.

Prosecution –

Relative to the population, the rates of prosecution for indictable offences for Black and Mixed ethnic groups were 4 and 2 times higher than for the White ethnic group. For every 1,000 population members, 16 Black and 9 Mixed defendants were prosecuted compared to 4 White defendants.

Ethnic Make-up of Practitioners –

Non-White ethnic groups were under-represented relative to the population among the Police, National Offender Management Service, Judiciary and Magistracy, with proportions increasing slowly or remaining the same over the last 5 years.

Non-White ethnic groups were over-represented relative to the population among the Ministry of Justice and Crown Prosecution Service, with proportions increasing over the last 5 years.

As a large number of Cardiff Taxi Drivers come from a BME or non-White background, the Guidance has the potential to have a differential impact on Race.

What action(s) can you take to address the differential impact?

Panel Members should attend mandatory Equality Training so decisions made are fair and can be seen to be fair. Equality Training will help Panel Members understand cultural differences and the discrimination faced by people with one or more Protected Characteristics. The guidance states "the entire character of the individual will be considered" and "the individual's attitude and temperament" so cultural awareness will be vital to the process of determining an individual's suitability.

It is equally important that the new guidance is disseminated amongst all existing and new Drivers and Licensees, so they are aware of the consequences possible criminal offences will have their ability to work as a Taxi Driver or Licensee.

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3.7 Religion, Belief or Non-Belief

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on people with different religions, beliefs or non-beliefs?

	Yes	No	N/A
Buddhist		X	
Christian		X	
Hindu		x	
Humanist		X	
Jewish		X	
Muslim		X	
Sikh		X	
Other		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

The Guidance has no impact on an individuals' as a result of Faith, Belief or Non-belief

What action(s) can you take to address the differential impact?

No impact identified no action necessary

3.8 Sex

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on men and/or women?

	Yes	No	N/A
Men		X	
Women		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

The criteria set out in the Guidance will be applicable to both male and female applicants and Licensees. However, there are currently more male drivers / licensees than female so any impact would affect men more than women.

What action(s) can you take to address the differential impact?

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No action necessary.

3.9 Sexual Orientation

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive/negative]** on the following groups?

	Yes	No	N/A
Bisexual		x	
Gay Men		x	
Gay Women/Lesbians		x	
Heterosexual/Straight		x	

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

The Guidance does not have a differential impact in relation to Sexual Orientation.

What action(s) can you take to address the differential impact?

No action necessary in relation to Sexual Orientation

3.10 Welsh Language

Will this Policy/Strategy/Project/Procedure/Service/Function have a **differential impact [positive]** on Welsh Language?

	Yes	No	N/A
Welsh Language			

Please give details/consequences of the differential impact, and provide supporting evidence, if any.

Once approved, the Guidance will be produced in the Welsh Language to comply with the requirements of the Welsh Language Act 1993.

As we treat the Welsh Language on an equal footing with English, any request to conduct proceedings with the Taxi Licensing committee through the medium of Welsh should be met.

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What action(s) can you take to address the differential impact?
No action necessary once document is translated into Welsh Language

4. Consultation and Engagement

What arrangements have been made to consult/engage with the various Equalities Groups?

In Cardiff there is a formally recognised trade organisation that represents the interests of the licensed trade. The Cardiff Hackney Alliance were consulted as part of the consultation and were given an opportunity to comment.

Details of the new guidance will be issued to the trade via quarterly forum and through the Cardiff Hackney Alliance.

5. Summary of Actions [Listed in the Sections above]

Groups	Actions
Age	Arrange programme of Equality Training for Taxi Licence Committee Members so they can make well informed decisions
Disability	As above
Gender Reassignment	As above
Marriage & Civil Partnership	As above
Pregnancy & Maternity	As above
Race	As above
Religion/Belief	As above
Sex	As above

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Sexual Orientation	As above
Welsh Language	As above. Also ensure translation of guidance into Welsh Language
Generic Over-Arching [applicable to all the above groups]	

6. Further Action

Any recommendations for action that you plan to take as a result of this Equality Impact Assessment (listed in Summary of Actions) should be included as part of your Service Area's Business Plan to be monitored on a regular basis.

7. Authorisation

The Template should be completed by the Lead Officer of the identified Policy/Strategy/Project/Function and approved by the appropriate Manager in each Service Area.

Completed By : Caryle Alleyne	Date: 30/09/2019
Designation: Equality Officer	
Approved By: Sian Sanders	
Designation: Operational Manager- Cohesion & Community Engagement	
Service Area: Policy & Partnerships	

- 7.1 On completion of this Assessment, please ensure that the Form is posted on your Directorate's Page on CIS - ***Council Wide/Management Systems/Equality Impact Assessments*** - so that there is a record of all assessments undertaken in the Council.

For further information or assistance, please contact the Citizen Focus Team on 029 2087 2536 / 3262 or email equalityteam@cardiff.gov.uk

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