



## **TAXI AND GENERAL COMMITTEE – 23RD SEPTEMBER 2019**

**SUBJECT: ADOPTION OF GUIDANCE ON DETERMINING SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADES**

**REPORT BY: INTERIM CORPORATE DIRECTOR, COMMUNITIES**

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### **1. PURPOSE OF REPORT**

1.1 To recommend the adoption of new guidance on determining the suitability of applicants and licensees in the hackney and private hire trades in the County borough.

### **2. SUMMARY**

2.1 The Institute of Licensing (IOL) in partnership with the Local Government Association, Lawyers in Local Government and the National Association of Licensing Enforcement Officers (NALEO) have produced guidance on determining the suitability of applicants and licensees in the hackney and private hire trades.

2.2 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. A number of Authorities in Wales and England have adopted the guidance with a view to providing a consistent approach to the determination of applications for hackney carriage and private hire trades.

### **3. RECOMMENDATIONS**

3.1 That the Committee:-

- a) Consider the objections and comments received following consultation with existing drivers in the County borough, in particular their request to afford existing drivers 'grandfather rights'.
- b) Approve the adoption of the IOL guidance on determining the suitability of applicants and licensees in the hackney and private hire trades and update the current Caerphilly County Borough Council driver policy to reflect the amendments relating to drivers, private hire operators and vehicle proprietors for use at future Taxi & General Sub Committee Hearings.

### **4. REASONS FOR THE RECOMMENDATIONS**

4.1 To ensure that the procedures and processes for determining the suitability of applicants /

existing licensees in the borough comply with current thinking, guidance and best practice.

## 5. THE REPORT

- 5.1 In April 2018, The Institute of Licensing (IOL) in partnership with the Local Government Association (LGA), Lawyers in Local Government and the National Association of Licensing Enforcement Officers (NALEO) produced guidance on determining the suitability of applicants and licensees in the hackney and private hire trades and was subject of widespread national consultation.
- 5.2 The Wales Licensing Expert Panel, attended by Officers of this authority, considered the guidance and endorsed a recommendation that all Welsh authorities approve and implement the Institute of Licensing Guidance, amending their current guidelines/policy. A number of Authorities in Wales and England have adopted the guidance with a view to providing a consistent approach to the determination of applications within the hackney carriage and private hire trade.
- 5.3 In addition, the recently released *Department for Transport (DFT) consultation Taxi & Private Hire Vehicle Licensing: Protecting Users* consultation document made reference to providing greater consistency in licensing and passenger protection as a priority and advocated that the periods of being 'conviction free' for, for example, 7years should be taken as a minimum before a licence should be granted or renewed in all but truly exceptional circumstances, thus ensuring passenger safety.
- 5.4 The IOL Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades is reproduced for Members information as **Appendix 1**. Chapter 3 of the Guidance provides a licensing overview, reiterates the overriding requirement to protect the public and highlights a number of concepts such as licence types, the consideration of financial hardship and offers clarity on commission of offences not committed when driving a taxi. Chapter 4 provides guidance on determination of applicants and existing drivers, which will be applicable to grant, renewal or review of licences. Paragraph 4.6 onwards in particular provides key information to members on determining suitability and it is proposed that this will replace/amend the authorities existing fitness criteria applicable to drivers and private hire vehicle operators.
- 5.5 Whilst the IOL Guidance had already been subject to national consultation, a 4 week consultation exercise with all 480 existing licensees was undertaken in Caerphilly CBC which ended on the 26<sup>th</sup> April 2019. In total, there were 9 responses received either opposing the adoption of the new guidance or advocating that 'grandfather rights' should be provided for existing drivers. This included representation from the Caerphilly Taxi Drivers Association. The responses received are reproduced for Members information, contained within **Appendix 2**. One response was received on the 27<sup>th</sup> April 2019, after the closure of consultation but is also enclosed within the above for completeness, as it demonstrates an approach already taken by another Welsh local authority. Several respondees also made reference to Medical requirements which is a separate requirement and not relevant to the adoption of this guidance.
- 5.6 Having considered the representations received, it is advocated that the April 2018 Institute of Licensing (IOL) guidance is adopted and that 'grandfather rights' are extended to existing licensed drivers. As a consequence, any new convictions, cautions or 'other matters' connected to a persons' character to be considered, will be checked against the proposed new guidance. The approach of providing 'grandfather rights' is consistent with that taken by a number of other Welsh authorities, including Powys and Pembrokeshire. It is noted that the new guidance is more stringent than the Caerphilly CBC existing criteria. The table below provides an indication as to the nature of some of the proposed changes.

Type of Offence	Existing Criteria	Proposed new Criteria
Possession of weapon	3 years free of conviction	7 years free of conviction
Possession of Drugs	3 years free	5 years free
Dishonesty	3 years free	7 years
Drink Driving	3 years free	7 years
Assault occasioning actual bodily harm	3 years free	All violence offences 10 years free of conviction

To assist Members in terms of differences between the existing and proposed new fitness criteria the existing fitness policy is produced as **Appendix 3** and the proposed revised criteria, is reproduced within the proposed revised driver and operator policy as **Appendix 4**.

- 5.7 If approved by Members, the Authority's existing driver policy would be amended to reflect the changes as detailed in 5.4 above. Members will note that the new IOL guidance provides assistance on determining the suitability of private hire operators and vehicle proprietors, in addition to drivers.
- 5.8 Future changes to legislation and guidance may have an impact on this policy and the driver conditions. It is proposed that officers review the policy regularly and amend as required for minor administrative purposes or to comply with changes in legislation or statutory guidance. Any significant changes will be brought before this committee for Member consideration.

## 5.9 Conclusion

A number of Authorities in Wales and England have adopted the guidance with a view to providing a consistent approach to the determination of applications for hackney carriage and private hire vehicle driver licences, private hire vehicle operator and vehicle proprietor licences. It is therefore appropriate that Caerphilly County Borough Council also adopts the guidance.

## 6. ASSUMPTIONS

- 6.1 No assumptions have been made in the preparation of this report.

## 7. LINKS TO RELEVANT COUNCIL POLICIES

- 7.1 There are a number of policies and conditions relevant to driver, operator and vehicle licensing.

### 7.2 Corporate Plan 2018-2023.

The aim of licensing is generally public safety and protection and to ensure a fair and level market place for licensable activities.

The report impacts on the following Corporate Well-being Objectives, which are:

Objective 2 - Enabling employment

Objective 4 - Promote a modern, integrated and sustainable transport system that increases opportunity, promotes prosperity and minimises the adverse impacts on the environment

## **8. WELL-BEING OF FUTURE GENERATIONS**

8.1 The Authority has a duty to improve the social, economic, environmental and cultural well-being of Wales. The areas covered in this report contribute to the following Well-being Goals

- A prosperous Wales
- A resilient Wales
- A more equal Wales

They are consistent with the five ways of working as defined within the sustainable development principle in the Act and support the objectives of other stakeholders. There is an emphasis on prevention as the licensing process ensures that a number of checks and safeguards are in place before a licence is granted. The prime focus for the Council is to ensure public safety and to provide an efficient and effective licensing service

## **9. EQUALITIES IMPLICATIONS**

9.1 The Council ensures that it treats all individuals who are renewing or making new applications for licences, with equal respect in line with the Council's Strategic Equality Plan 2016 to 2020. An Equality Impact Assessment has been carried out and is attached at Appendix 5. It is believed that the adoption of the IOL guidance on suitability will increase protection for the travelling public generally and in particular for persons who may be more vulnerable due to disability, age, reduced capacity etc.

## **10. FINANCIAL IMPLICATIONS**

10.1 There are no financial implications to the Authority in respect of this report.

## **11. PERSONNEL IMPLICATIONS**

11.1 There are no personnel implications

## **12. CONSULTATIONS**

12.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

12.2 The result of consultation with existing licensees is detailed in paragraph 5.5 and Appendix 2.

## **13. STATUTORY POWER**

13.1 Local Government (Miscellaneous Provisions) Act 1976

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Consultees: Cllr Denver Preece Chair, Taxi and General Licensing Committee  
Cllr Julian Simmonds, Vice Chair, Taxi and General Licensing Committee  
Cllr Eluned Stenner, Cabinet Member for Environment and Public Protection.  
Mark S. Williams, Interim Corporate Director Communities  
Robert Hartshorn, Head of Public Protection, Community and Leisure Services  
Robert Tranter, Head of Legal Services and Monitoring Officer  
Jacqui Morgan, Trading Standards, Licensing and Registrars Manager  
Mike Eedy, Finance Manager  
Anwen Cullinane, Senior Policy Officer (Equalities and Welsh Language)  
Shaun Watkins, HR Manager  
Ruth Evans, Senior Transport Officer I.T.U

Appendices:

Appendix 1 Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades  
Appendix 2 Trade Responses to consultation  
Appendix 3 Existing fitness criteria  
Appendix 4 Proposed Revised Driver policy  
Appendix 5 Equality Impact Assessment

# Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:



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## Foreword

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

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

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

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

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

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

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

Philip Kolvin QC  
Cornerstone Barristers

April 2018

## Chapter 1: Introduction

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- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications<sup>1</sup>. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

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

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

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

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

## Chapter 2: Offenders and Offending - An Overview

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- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.<sup>3</sup> With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm<sup>4</sup>. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

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

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

- 2.6 Flaud<sup>5</sup> noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place<sup>6</sup>.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future<sup>7</sup>. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%<sup>8</sup>. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences<sup>9</sup>.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity<sup>10</sup>. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population<sup>11</sup>. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

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

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

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

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

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

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

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

### Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as “any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual’s ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time”<sup>12</sup>.
- 2.12 Kurlychek, 2007 in her study noted that “a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age”<sup>13</sup>.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over<sup>14</sup>. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships<sup>15</sup>. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males<sup>16</sup>.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist<sup>17</sup>. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance<sup>18</sup>. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

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

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

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

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

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

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

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

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

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

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

## Chapter 3: 'Taxi' Licensing Overview

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

### Taxi Drivers

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

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

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person<sup>20</sup>.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK<sup>21</sup>.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.<sup>22</sup>
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*<sup>23</sup>. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’<sup>24</sup>
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

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

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

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

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

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

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

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

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

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

3.20 Some of these are universal, such as medical assessments<sup>26</sup>. Others are required by some authorities, but not others. These include:

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

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

3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared<sup>27</sup>) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker<sup>28</sup>.

3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks<sup>29</sup> and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

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

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

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

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

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

- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability<sup>30</sup>.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account<sup>31</sup>. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been)

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

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

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

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

## Private Hire Operators

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

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

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

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

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

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

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

- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation<sup>35</sup>. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

## Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence<sup>36</sup> and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.47 A suitable test would be:

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

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

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

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

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

## Chapter 4: Guidance on Determination

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

### Pre-application requirements

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

#### Vehicles:

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

#### Drivers:

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

#### Operators:

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

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership<sup>38</sup>) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.

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

- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction<sup>39</sup>. Fixed penalties and community resolutions will also be considered in the same way as a conviction<sup>40</sup>.
- 4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

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

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

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

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

## Drivers

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

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

#### Crimes resulting in death

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

#### Exploitation

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

#### Offences involving violence

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

#### Possession of a weapon

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

#### Sex and indecency offences

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

### Dishonesty

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

### Drugs

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

### Discrimination

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

### Motoring convictions

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

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

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

### Other motoring offences

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

### Hackney carriage and private hire offences

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

### Vehicle use offences

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

## Private Hire Operators

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

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

## Vehicle proprietors

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

## Acknowledgements

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

The core project group comprised:

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

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

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

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

Finally, grateful thanks go to all those who responded to the initial fact-finding survey and the subsequent consultation on the draft guidance.

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

## Consultation Responses

1. I would like to put my view over to the forth coming taxi changes. And I \*\*\*\*\*  
oppose the legislation changes.
2. I am writing in regards to the proposals sent out in the recent letter to the taxi trade as to a "fit and proper person". I am a 47 year old man with a mortgage and family to take care of. As you are aware we all make mistakes through our lives and I made a big mistake when I was a 17 year old boy which lives with me every day of my life. I was involved in a terrible accident which resulted in the death of another person and was subsequently charged with reckless driving and rightly served a prison sentence. I have regretted this accident every day of my life and has had a major affect on my driving skills. I am more aware of how I drive and am constantly assessing the road conditions and surroundings. Our Country has always prided itself on giving people a second chance and I have taken this second chance to make myself a decent person who provides for his family and to help others when I can. If I am deemed not a "fit and proper person" it would have such a detrimental impact on me and my family as to which it would be near impossible to recover from. This is why I am against this new proposal and object to it being introduce.
3. New legislation I strongly disagree its hard enuff as it is.
4. This email is to confirm that I oppose the suggested IOL and would like to stay as we are with a recommendation that all current licensees remain under a group 1 medical and all new applications fall under group 2 this being a policy most neighbouring councils have adopted.
5. I would like to object to the new proposals/ guidance that you will be putting through to the Licensing Committee for consideration. I have major concerns regarding the "fit & proper person" guidance as I feel it has the power to destroy people's lives after they have managed to turn their lives around. I feel that any new changes to the Trade legislation should also grant Grandfather Rights in all circumstances no matter what, The last thing we want is for Taxi Drivers to have their taxi licences revoked and forced to drive illegally to support their families because it's the only work they know how to do. I do feel there is not enough being done to combat illegal taxi drivers (people offering lifts) as it is without adding to the problem with perfectly good Taxi Drivers losing their taxi licences.
6. I herby want to pass on my concerns in the IOL that I oppose it.  
Plus I think that drivers all ready badges should stay on 1 group medical and new ones coming through should do the group 2 medical as this covers lorry drivers not us.Plus other councils have and I oppose have the JTA take over us and wish that you remain in charge of business
7. I herby wish to pass my concerns in relation to the IOL and say that I strongly oppose. I would also like to add my views that current drivers should remain under a group 1 medical and that all new applications received should be under group 2 as this seems to be the practice of our neighbouring councils. I also strongly appose having a JTA ( joint transport authority) and wish for you Caerphilly council licensing to remain in charge of our business .

8. Please can i send you my concerns in relation to the IOL and i appose it . I also would like to say i think drivers should stay under group 1 medicals. And all new applicants be on group 2 as other councils are around us doing this. I also appose having JTA and wish for you to remain in charge of us as licenced drivers
9. We would like to ask Caerphilly Licensing to follow Pembrokeshire's Licensing and grant Grandfather Rights to all existing Taxi Drivers when introducing the New Convictions Policy. We believe that this is the best way forward for everyone and stops Drivers from being punished again after turning their lives around. I have provided a copy below for your information and would like you to submit this to the Licensing Committee.

#### New Convictions Policy

*At the recent Licensing Committee, a new guidance policy was agreed on determining the suitability of applicants and licensees in the hackney and private hire trades.*

*Any convictions received after 28<sup>th</sup> March 2019 will be checked against this policy, **please note** the penalties are far more severe – any convictions, including cautions may affect your taxi driver's licence.*

[www.pembrokeshire.gov.uk/taxi-licensing/how-do-i-become-a-taxi-private-hire-driver](http://www.pembrokeshire.gov.uk/taxi-licensing/how-do-i-become-a-taxi-private-hire-driver)

*The document is under the DBS heading – Guidance on suitability of applicant – Convictions Policy*

## FITNESS CRITERIA FOR DRIVERS AND OPERATORS

### 1. Introduction

1.1 This policy sets out the criteria taken into account by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage/private hire vehicle driver/private hire vehicle operator licence. The policy was approved at a meeting of Caerphilly County Borough Council's Licensing Committee on 11 December 2014

1.1 The aim of this policy is to protect the safety of the public. The Licensing Authority is concerned to ensure:

- That a person is a fit and proper person;
- That the person does not pose a threat to the public;
- That the public are safeguarded from dishonest persons;
- The safeguarding of children and young persons;
- The safeguarding of vulnerable persons;
- That the public have confidence in their use of licensed vehicles.

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

- Applicants for driver/operator licences
- Existing licensed drivers/operators whose licences are being reviewed
- Licensing Officers and Police
- Members of the Licensing Sub-Committee (Taxi & General) (the Sub-Committee)
- Magistrates and Crown Court hearing appeals against local authority decisions

1.3 Where licensing officers have delegated powers to grant licences, they will utilise this policy when making a decision to grant a licence. In all other cases applications for licences will be referred to the Sub-Committee. Whilst officers and the Sub-Committee will have regard to the policy, each case will be considered on its individual merits and, where the circumstances demand, the Sub-Committee may depart from the policy.

1.4 Where applicants fail to disclose any previous convictions; cautions; warning; penalty notices, order or reprimands on their application form including any pending court proceedings or other matters they may be referred to the Sub-Committee for determination.

### 2.0 General Policy

2.1 Each case will be decided on its own merits.

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

- a. Remain free of conviction for an appropriate period (as set out below); and
  - b. Show evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).
- 2.3 For the purposes of this Policy, “other matters to be considered” may include but are not limited to the following:
- a) Criminal/motoring convictions;
  - b) Court Martial;
  - c) Cautions;
  - d) Fixed penalty notices or other penalty notices;
  - e) Anti-social behaviour orders or other similar orders;
  - f) Breach of licensing conditions;
  - g) Formal warnings or reprimands
  - h) Charges or matters awaiting trial;
  - i) Fitness and propriety.
- 2.4 Where an applicant has a conviction(s) or other matter(s) to be considered for a criminal offence, the Council cannot review the merits of the conviction or other matter.
- 2.5 Where an applicant/licence holder has a conviction or other matter to be considered for an offence of aiding, abetting, attempting, conspiring, counselling, procuring, causing, permitting or inciting any of the criminal or motoring convictions/matters specified in this policy, they will be considered relevant for the substantive matter.
- 3.0 Appeals
- 3.1 Any applicant who has been refused a driver/operator licence, or a licensed driver/operator whose licence has been suspended or revoked, has a right of appeal to the Magistrates Court within 21 days of receipt of the notice.
- 4.0 Powers
- 4.1 Powers to grant driver/operator licences are contained within Section 51, Section 55 and Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 (the Act).
- 4.2 Powers to suspend, revoke or refuse to renew a driver’s licence are contained within Section 61 of the Act, where the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 4.3 Section 61 (2b) allows the Licensing Authority, if it appears in the interests of public safety, to suspend or revoke a driver’s licence with immediate effect. A

decision notice explaining why this decision has been taken will be issued to the driver and will have effect when the notice is given to the driver. The driver may appeal this decision but may not drive during the appeal period.

4.4 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator's licence if the applicant/licence holder has been convicted of an offence under or non-compliance with the provisions of Part II of this Act; or grounds of any conduct on the part of the operator which appears to the Council to render him unfit, or due to any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or any other reasonable cause.

4.5 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

5.0 Consideration of disclosed criminal history

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

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

6.0 Violence

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

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

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

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

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

- Actual bodily harm which is racially/religiously aggravated;
- Arson;
- Assault Police;
- Common assault which is racially/religiously aggravated;
- Criminal damage which is racially/religiously aggravated;
- Grievous bodily harm with intent;
- Malicious wounding or grievous bodily harm which is racially aggravated;
- Possession of firearm;
- Resisting arrest;
- Riot;
- Robbery;
- Violent disorder;
- Similar offences or offences which replace the above.

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

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

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

## 7.0 Sex and indecency offences

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

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

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

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

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

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

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

7.6 Added 19/04/2016. Safeguarding (includes sexual or grooming issues)  
Where the Council has received information that an applicant or licence holder has been implicated in a safeguarding issue i.e. where children or other vulnerable persons have been exposed to inappropriate behaviour or

language by the applicant / licensed driver the matter shall be placed before a sub-committee for their consideration of the information and determination of whether or not the person can be considered a fit and proper person to drive a hackney carriage or private hire vehicle.

## 8.0 Dishonesty

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

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

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

## 9.0 Drugs

9.1 A serious view is taken of any drug related offence. The Licensing Authority will consider the nature and quantity of the drugs (as classified under the Misuse of Drugs and Psychoactive Drugs Acts) involved within the following offences:

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

- 9.2 An application will normally be refused or an existing licence suspended or revoked where the applicant/licence holder has a conviction(s) or other matters(s) to be considered for any of the above offences and has not been free of conviction(s) or other matters to be considered for at least 5 years.
- 9.3 An application will normally be refused or an existing licence suspended or revoked where the applicant has more than one conviction or other matter to be considered for offences related to the possession of drugs and has not been free of conviction or other matter to be considered for at least 5 years.
- 9.4 An application will normally be refused or an existing licence suspended or revoked where the applicant/licence holder has an isolated conviction or other matter to be considered for an offence related to the possession of drugs within the last 3 years. Consideration should be given to the nature and quantity of the drugs involved.
- 9.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination may be required. If the applicant was an addict then they would normally be required to show evidence of 3 years free from drug taking.
- 10.0 Driving Offences involving the loss of life
- 10.1 A very serious view is to be taken of any applicant or existing licence holder who has a conviction or other matter to be considered for a driving offence that resulted in the loss of life.
- 10.2 An application will normally be refused or an existing licence suspended or revoked where the applicant / licence holder has a conviction(s) or other matters(s) to be considered for any of the offences listed below and has not been free of conviction(s) or other matters to be considered for at least 7 years.
- Causing death by careless driving whilst under the influence of drink or drugs;
  - Causing death by dangerous driving;
  - Or any similar offence.
- 10.3 An application will normally be refused or an existing licence suspended or revoked where the applicant/licence holder has a conviction(s) or other matters(s) to be considered for any offences listed below and has not been free of conviction(s) or other matters to be considered for at least 5 years.
- Causing death by careless driving;
  - Causing death by driving: unlicensed, disqualified or uninsured drivers.
- 11.0 Drink driving/driving under the influence of drugs

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

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

12.0 Motoring Convictions

12.1 Major Traffic Offences

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

AC10 Failing to stop after an accident

AC20 Failing to give particulars or to report an accident within 24 hours

AC30 Undefined accident offences

BA10 Driving whilst disqualified by order of the Court

BA30 Attempting to drive whilst disqualified by order of the Court

DD40 Dangerous Driving

DD90 Furious Driving

IN10 Using a vehicle uninsured against third party risks

LC20 Driving otherwise than in accordance with a licence

LC30 Driving after making a false declaration about fitness when applying for a licence

LC40 Driving a vehicle having failed to notify a disability

LC50 Driving after a licence has been revoked or refused on medical grounds

MS50 Motor racing on the highway

MS60 Offences not covered by other codes

MS90 Failure to give information as to identity of driver, etc.

UT50 Aggravated taking of a vehicle

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

### 13.0 Minor Traffic Offences

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

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

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

### 14.0 Outstanding charges or summonses

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

### 15.0 Non-conviction information

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

### 16.0 Repeat offending

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

### 17.0 Breach of Legislation, Byelaw or Licence Condition

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

- 17.2 An existing licence holder found to be in breach of legislation, byelaw or licence condition is on the first occasion, likely to be warned in writing as to future conduct, provided that the breach did not compromise the safety of passengers or that the public were not put at risk.
- 17.3 Where an existing holder is found to have more than one breach of licensing legislation, byelaw or licence condition, or a single serious breach, the Sub-Committee may suspend or revoke the licence.
- 17.4 The above is irrespective of any legal proceedings which may be pending or have been taken.

**Caerphilly County Borough Council  
Hackney Carriage and Private Hire Drivers Policy and Conditions**

The Policy was approved by the [Taxi and General](#) Licensing Committee on

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**Further information can be obtained from:  
Licensing Section, Ty Penallta, Tredomen Parc, Ystrad Mynach, Hengoed  
Email: [licensing@caerphilly.gov.uk](mailto:licensing@caerphilly.gov.uk)  
Website: [www.caerphilly.gov.uk](http://www.caerphilly.gov.uk)**

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## INTRODUCTION

This document has been produced in accordance with the powers conferred by the Local Government (Miscellaneous Provisions) Act 1976 as amended, which places on Caerphilly County Borough Council as the Licensing Authority the duty to carry out its licensing functions in respect of hackney carriage and private hire drivers.

In this Policy, the following abbreviations have been used:

Council / CCBC	-	Caerphilly County Borough Council
LA	-	Licensing Authority Caerphilly County Borough Council
Policy	-	Caerphilly County Borough Council's Hackney Carriage and Private Hire Driver's Policy
Driver's Licence	-	Dual Driver's Licence
LG(MP)A	-	Local Government (Miscellaneous Provisions) Act 1976
TPCA	-	Town Police Clauses Act 1847
EA	-	Equalities Act 2010
DVLA	-	Driver and Vehicle Licensing Agency
DPM	-	Data Protection Mandate
DFT	-	Department for Transport
DBS	-	Disclosure and Barring Service (formerly CRB)

## AIMS OF LICENSING

This policy sets out how the Council will deal with the licensing of hackney carriage and private hire drivers and private hire vehicle operators. The Council, will determine each application on its merits, but will place public safety above all other considerations.

The aims are as follows:

- Ensure a driver is considered to be a fit and proper person to hold a driver's licence in that:
  - (i) the person does not pose a threat to the public;
  - (ii) the public are safeguarded from dishonest persons;
  - (iii) the safeguarding of children, young and vulnerable persons;
- Ensure the safety of the public likely to be affected by the operation and use of hackney carriage and private hire vehicle services.
- Encourage the provision of high quality and professional hackney carriage and private hire services.

## EQUALITIES AND HUMAN RIGHTS

The Equalities Act 2010 introduced measures to tackle discrimination encountered by disabled people in certain areas including employment, and access to goods, facilities and services. The applicant shall have regard to this legislation.

The Welsh Language (Wales) Measure 2011 makes both Welsh and English the official languages of Wales, and the Licensing Authority will ensure that it provides its services in accordance with the Council's current policies on Welsh language service provision and production of bilingual material.

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way that is incompatible with such a right. The Licensing Authority will have regard to the Human Rights Act when considering any licensing issues, and particularly in respect of the way in which applications are considered and enforcement activities are carried out.

The Council expects that in granting an authorisation the holder of that authorisation will take all reasonable and practical steps to prevent and eliminate unlawful discrimination and to promote equality of opportunity and good relations within and between staff, customers and visitors. This is irrespective of a person's ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-beliefs, use of Welsh language, BSL and other languages, nationality, responsibility for any dependants or any other reason which cannot be shown to be justified.

The Council ensures that it treats all individuals and organisations who are renewing or making new applications for licenses, with equal respect both when corresponding with those individuals and organisations, and during the licensing approval process and will do so in the language or format of their choice, in line with the Council's Strategic Equality Objectives.

The Council is satisfied that this policy satisfies the statutory requirements and where there are restrictions, they satisfy the provisions on proportionality and balance of competing rights.

## **THE POLICY**

This Policy aims to:

- Set out the Council's approach to regulation, enforcement and sanction of drivers and operators;
- Define and offer guidance on the legislation in relation to the provision of hackney carriage and private hire vehicles services by drivers; and
- Set out the licensing conditions applicable to drivers.

The policy also sets out the Council's intentions in respect of the Equality Act, discrimination and the safeguarding of children and vulnerable persons.

In exercising its discretion in carrying out its regulatory functions, the LA will have regard to this Policy document and the aims set out above. The LA will also take into account DFT or other recognised bodies Best Practice Guidance as they apply to licensing of drivers.

Notwithstanding the existence of this Policy, each application or enforcement measure will be considered on its own merits. Where it is necessary for the LA to depart substantially from the Policy, clear and compelling reasons will be given.

The Policy will be formally reviewed and updated, as and when required; however the Policy and its appendices may also be changed in the interim period to accommodate changes in

law, corrections of errors and other triggers to policy change. The LA reserves the right to alter this Policy to ensure compliance with the law as a minor policy change without further consultation.

The conditions stated within this Policy will apply to hackney carriage and private hire drivers. This therefore means any licence or badge granted will be known as a Dual Licence and Dual Badge. However, it shall be noted that within this document there are circumstances where conditions relate specifically to private hire drivers and hackney carriage drivers.

## **FIT AND PROPER PERSON CONSIDERATIONS**

The Council must be satisfied that a person is 'fit and proper' before a licence will be issued or renewed, or during the course of a licence. The 'fit and proper' requirements are not defined in law but the Council will consider a number of factors, including:

### **Cautions, Warnings, Convictions and Endorsements**

Where offences leading to cautions, warnings, convictions and endorsements are committed, it is important in the interests of consistency and transparency that a procedure should be in place to consider what effect this should have on an application for the grant or renewal of a licence. Drivers must report to the LA any cautions, warnings, convictions and endorsements issued during the course of the licence (in line with licence conditions, which are set out at Appendix D)

Under the Rehabilitation of Offenders Act 1974 Act (as amended), criminal convictions can become spent after a certain period of time, and once spent, for many purposes, may be disregarded, however this is not necessarily the case in respect of taxi driver applications. When considering a licence application, the Licensing Authority may take 'spent' offences into consideration as to whether or not an applicant is a fit and proper person to hold a licence. The Licensing Authority may consider all warnings, cautions, convictions, and additional information on the DBS disclosure or information provided by the Police, if it is satisfied that justice cannot be done except by taking them into account, including any spent convictions.

## **FITNESS CRITERIA POLICY FOR DRIVERS & OPERATORS**

The LA will refer to its Fitness Criteria for Drivers and Operators Policy as attached at Appendix B which outlines the principles and sanctions that will be applied, although each case will be treated on its merit. The Fitness Criteria [has been based upon the \(April 2018\) Institute of Licensing Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades. policy addresses the following issues:—](#)

- ~~Violence~~
- ~~Sex and Indecency~~
- ~~Dishonesty~~
- ~~Drugs (As classified under the Misuse of Drugs and the Psychoactive Substances Acts)~~
- ~~Driving Offences involving Loss of Life~~
- ~~Drink Driving and Driving under the Influence of Drugs~~
- ~~Motoring Convictions including Major and Minor Traffic Offences~~
- ~~Outstanding Charges or Summonses~~
- ~~Non conviction information~~

- ~~Repeat Offending~~
- ~~Breach of Legislation, Bylaw or Licence Condition~~

The LA makes decisions on the balance of probabilities rather than beyond reasonable doubt. The prime concern is to ensure public safety, ~~and as such there are other factors that may be taken into consideration:~~

<u>Event and Venue</u>	<u>Name of Organiser Address/tel/email</u>	<u>Date of Event</u>	<u>Date of Notification</u>	<u>Date Circulated</u>	<u>Comment</u>	<u>Officer</u>

- ~~Possession of indecent photographs, child pornography etc;~~
- ~~Offences involving children or vulnerable adults;~~
- ~~Trafficking for sexual or other exploitation;~~
- ~~Other offences and special circumstances~~

~~This list is not exhaustive.~~

~~Due to potential risks to the public, applications from persons with a persistent record of criminality, where the record suggests a persistent lack of regard for the wellbeing of others or for their property rights, would normally be refused. In addition to the above the Licensing Authority is unlikely to grant a licence to any applicant who is currently on the Sex Offenders Register. An application will normally be refused if an applicant has more than one conviction or other matter to be considered in relation to a sexual offence.~~

### **The Fitness (Knowledge) Test**

Drivers must have a good working knowledge of the area within which they intend to work. Therefore to maintain the high standards that the LA expects of its drivers, new applicants will not be granted a licence until such time as the applicant has successfully passed this test. Where a licence is allowed to lapse for more than 12 months the applicant will be required to pass this test. There may be very exceptional circumstances where an applicant may be exempt from the requirement to undertake such a test, in such cases the matter should be carefully considered by Licensing Officers who will recommend referral of such circumstances to the relevant committee for consideration.

### **Equality and Disability considerations**

The Council expects that all licensed drivers should comply with the terms of the Equality Act. Changes are anticipated to strengthen legislation by placing a clear duty on taxi drivers to assist passengers with wheelchairs (making it an offence to charge wheelchair passengers extra) and to assist persons with disabilities. A government report suggests that local authorities should not issue licences until such time as drivers can demonstrate they can comply with the terms of the Equality Act.

It is the Council's intention to move towards ensuring that all drivers attain an acceptable level of understanding and compliance with the terms of the Act. Details of any future requirements

to be placed on drivers in respect of ensuring compliance will be subject to the Licensing Committee's consideration and determination, this policy would be updated as necessary.

The Council will require all drivers to be compliant with the provisions of the Equalities Act 2010, which has specific sections on private hire and hackney carriages not discriminating on the grounds of disability, including the requirement to carry assistance dogs of disabled people.

Drivers are expected to have knowledge in safe methods of conveying disabled persons, wheelchair bound or not. The Council encourages all drivers to attend training on dealing with disabled people; this does not only include people in wheelchairs but knowledge of the needs of people with a wide range of disabilities. Disabilities include; limited or restricted movement, sight or hearing disabilities, learning difficulties and mental impairment. This list is not exhaustive; the provisions of the current Equalities Act will be taken into account when determining if a person is classed as disabled. Drivers of wheelchair accessible vehicles are advised to attend a recognised training course to ensure that they comply with health and safety requirements not only in respect of handling and securing wheelchairs, but also to prevent any risk to their own health arising from the handling of wheelchairs.

The council may review the licences of any driver who is found to be deficient in disability awareness following a complaint or where the health of a disabled passenger is endangered by the actions of the driver. The lack of training/knowledge on the part of the driver will not be accepted as a defence to the allegation.

### **Discrimination**

Discrimination of any form is unacceptable. An allegation of discrimination will be regarded as extremely serious and may be reported to the police. The LA may then review the licence to establish whether the holder remains a fit and proper person to hold such a licence.

### **Immigration Status**

Foreign nationals are required to provide evidence to the Council regarding their immigration status, in order that their eligibility to work and be granted a licence can be assessed. Further detail is set out in Appendix A.

### **Safeguarding Children and Vulnerable Persons**

The Council has serious concerns regarding the safeguarding of children and vulnerable persons, and have reviewed the requirements in respect of safeguarding awareness of licensed drivers and require training and attendance at courses as is considered appropriate or available and attendance at refresher sessions as considered appropriate by the Council. Confirmation of attendance will only be accepted from authorised officers of the Council or training providers approved by the LA. Attendance at approved safeguarding awareness is a pre-requisite in respect of the grant of a licence and refresher training ~~as appropriate will be required in respect of licence renewal~~ is required to be undertaken every 3 years.

### **Smoking in vehicle**

The LA will take a serious view where a driver smokes tobacco or any other substance, or permits smoking in a licensed vehicle, as this demonstrates a clear disregard for the law and for the health of both the driver and customer. Licensed drivers must be aware that smoking in a licensed vehicle is prohibited. Where a driver is in contravention of smoking legislation, the issue will be investigated and appropriate action taken.

Advisory- Drivers are advised that using Nicotine Inhaling Devices (NIDs) (commonly referred to as electronic cigarettes) or similar devices in licensed vehicles may be mistaken for smoking tobacco or any other like substance. Any changes to legislation prohibiting the use of these devices in public places will be deemed to be a part of this policy. The LA considers that smoking such devices does not promote the professional image expected of a licensed driver.

### **Littering**

Drivers are advised that leaving litter or disposing of it from a vehicle (ie such as throwing cigarette butts out of vehicle windows) are offences under the Environmental Protection Act 1990. Commission of such offences will render you liable to conviction, liability for which may be discharged by payment of a fixed penalty notice, FPN. At the time of writing the policy the fixed penalty is £100 reduced to £75 if paid within 7 days.

### **Medical Conditions**

The licence holder shall notify the LA in writing without undue delay of any serious illness or accident or deterioration in health occurring during the course of their licence, which may affect their ability to drive a licensed vehicle safely.

The driver shall at any time, or at such intervals as the LA may reasonably require, produce a certificate in the form prescribed by the LA signed by the applicant's registered medical practitioner to the effect that he/she is or continues to be physically fit to be a driver of a vehicle. Any fees will be borne by the driver.

### **Acceptable Standards of Dress**

CCBC is committed to encouraging the professional image of licensed drivers and considers therefore that drivers must conform to a minimum standard of suitable clean clothing and that they maintain appropriate levels of personal hygiene. It is expected that such standards will be maintained at all times.

It is recognised that drivers may wear a head covering for religious purposes or personal preference but such coverings must be clean. Any wording or motif upon clothing or headwear must not be of an offensive nature.

### **ACTIONS THAT MAY COMPROMISE THE FIT AND PROPER STATUS OF A LICENSED DRIVER OR APPLICANT**

Driver's licence and badge will be supplied by the LA when they are satisfied the applicant is a fit and proper person to hold such a licence. The following transgressions committed during the course of a licence may render the driver as no longer 'fit and proper'. The LA will take appropriate action dependant on the circumstances. Minor or first time transgressions are likely to attract a written warning, repeated or more serious conduct may lead to prosecution and/or a review of the licence.

Where an offence has been committed and not listed within this Policy, the LA will deal with each case in accordance with the Council's Enforcement Policy, each matter being dealt with on its own merit.

In any event each case will be considered on its own merits and will take into account any mitigating factors.

1. **Failure to comply with a reasonable request from an authorised officer.**  
The LA takes failure to comply with a reasonable request from an authorised officer seriously.
2. **Failure to report/declare a conviction/caution**  
The Council must be satisfied that licence holders or applicants are honest and truthful persons, a serious view will be taken of failure to report or declare convictions or cautions. Any actions to be taken in respect of failures to report/declare a conviction will be determined on the severity of the offence, when committed and any other relevant factors.
3. **Failure to respond to interview request**  
The LA considers failure to respond to an officer's request for an interview (excludes interviews regarding potential offences which may lead to a prosecution where there is a legal right to refuse) to be serious as it may prevent the LA from investigating issues and complaints and shows a disregard for the safety of the travelling public.
4. **Failure to report an accident**  
It is anticipated that the onus is on the vehicle proprietor to report accidents to the LA, however the driver (where not an owner driver) should also report such issues. A first offence of failure to report an accident within the specified time will normally be dealt with by issuing a written warning, in addition to any further action that may be warranted by the nature of the accident or damage to the licensed vehicle.
5. **Failure to show a duty of care**  
Drivers are expected to show a duty of care to both the passengers and any property they carry in their vehicles. .
6. **Refusal to carry a passenger in a hackney carriage vehicle**  
In these circumstances the driver will be invited to state the reasons for the refusal. Where the LA is satisfied that the driver had a justifiable reason then it is likely that no further action will be taken.
7. **Refusal to carry a guide or assistance dog in a hackney carriage vehicle**  
It is an offence to refuse to carry a guide or assistance dog (Disability Discrimination Act 1995 s 37). A driver may hold a medical exemption certificate issued by the LA which must be correctly displayed in the vehicle. Where no exemption exists the driver will have committed an offence.
8. **Failure to display or wear badges**  
Drivers' badges are issued in order that passengers can be assured that the Council have determined that the driver has been considered to be a fit and proper person to hold such a licence.
9. **Rude or aggressive behaviour**

Rude or aggressive behaviour would raise concerns regarding public safety. Where allegations are received that the driver has displayed rude or aggressive behaviour the matter will be investigated. Rude or aggressive behaviour includes the use of obscene language and physical actions, belligerent or contentious communication.

10. **Offence of knowingly or recklessly making a false statement.**  
[Includes omitting any material from the application form or any associated document submitted with it.]  
The LA considers this to be a serious offence as it indicates dishonesty on the part of an applicant, consequently applications may be rejected dependant on the seriousness/nature of the omission or false information.
11. **Offence of an unlicensed driver to drive a licensed vehicle**  
Submission of an application for the grant of a licence does not entitle an applicant to drive a licensed vehicle, and a driver will be unlicensed if they allow their licence to lapse (failure to apply to renew a licence prior to the expiry date). It is an offence for an unlicensed driver to drive a licensed vehicle under the LG(MP)A and TPCA respectively. There are limited circumstances where such an action is permissible in that an unlicensed person may drive a vehicle in connection with the testing of the vehicle for statutory purposes or for the purpose of work necessary to keep the vehicle in good order (This may only be carried out by a qualified mechanic and no passengers may be conveyed in the vehicle during the test). An unlicensed driver who drives a licensed vehicle for any other purpose may be liable to prosecution.
12. **Penalty points on a Driver's (DVLA) Licence**  
Minor traffic offences (as set out in the fitness criteria document at Appendix B) leading to an accumulation of 6 or more points on their DVLA driving licence, the licence may be reviewed to determine whether the driver is showing a disregard for the safety of the public and law.
13. **Major traffic offences**  
Major traffic offences (as set out in the fitness criteria document at Appendix B) are considered to be very serious.
14. **Failure to provide the LA with most current DVLA licence**  
Where an expired DVLA licence is produced to the LA, without reasonable excuse, indicates dishonesty. Applications may be rejected or the LA licence reviewed.

## **APPLICATION REQUIREMENTS**

Application requirements are set out in Appendix A. These requirements may be amended to reflect changes in legislation, policy, procedures as necessary.

## **LICENCES**

The LA does not issue separate drivers' licences in respect of private hire vehicles and hackney carriages. Instead the LA issues a dual driver's licence which gives the holder the flexibility to drive either type of vehicle. The driver's licence shall remain in force for a period of up to 3 years (as prescribed by the Deregulation Act 2015) unless the LA specifies a lesser period as it considers appropriate, revokes or suspends a licence.

Licence fees are normally reviewed on an annual basis by the LA, so as to achieve cost recovery. Fees are published on the Council's website.

The Council will endeavour to remind all licensed drivers of the expiry date of their driver's licence. Where a DBS check or medical certificate is due at the time of renewal a reminder will be sent up to 3 months in advance of the expiry to allow the holder sufficient time to obtain the necessary documentation prior to the expiry date so as to ensure continuity of licence. In all other cases the reminder will be sent up to six weeks in advance of the expiry date.

These arrangements do not abrogate the holder's personal responsibility to ensure that renewal applications and any required documentation are submitted in good time. The procedures for both grant and renewal applications are set out in Appendix A

The badge and licence remain the property of the LA and must be returned at the expiry of the driver's licence. In any event, both must be returned to the LA should the licence be suspended or revoked at the end of the appeal period (where an appeal is not upheld) unless suspended or revoked with immediate effect.

Where a badge or licence has been damaged, lost or stolen this must be reported to the LA immediately and a replacement obtained.

### **CONDITIONS ATTACHED TO LICENCES**

Conditions may not be attached to a hackney carriage driver's licence, however, many of the requirements prescribed within the Hackney Carriage Byelaws are effectively hackney carriage driver's conditions. The Byelaws are attached as Appendix E

The LA may impose such additional conditions on a private hire driver's licence as it considers reasonable and necessary, the conditions are set out in Appendix D. The conditions are considered reasonable, necessary and appropriate for all licensed drivers but it is accepted that they may only be legally imposed when a licensed driver drives a private hire vehicle. As holders of dual licences it is expected that all drivers will comply with these conditions.

Where the LA has serious concerns for the public's safety, an immediate revocation of a driver's licence may be necessary.

DBS checks, DVLA Checks and satisfactory medical certificates may expire during the course of a licence, in which case the Council can no longer be satisfied that a person remains a fit and proper person to hold the licence. Where documentation is required during the course of a licence a condition will be attached to the licence requiring the submission of the required document within 4 weeks of the date on which the document was required. Failure to comply with the condition may jeopardise the licence in that the matter would be referred to a licensing committee for determination.

### **RIGHT OF APPEAL**

The following rights of appeal are provided by the LG(MP)A 1976 :

- i. Appeal against refusal to grant a private hire driver's licence or conditions imposed on such a licence: Section 52
- ii. Appeal against refusal to grant a hackney carriage driver's licence: Section 59

- iii. Appeal against suspension, revocation or refusal to renew a hackney carriage or private hire driver's licence: Section 61

The statutory rights of appeal in connection with drivers are to the Magistrates' Court. These appeals can be both against a refusal to grant or renew a licence and in respect of a decision to suspend or revoke a licence that is in existence, as well as a right of appeal against the conditions that may be imposed on any such licence by the Licensing Authority.

Where an appeal is to be made to the Magistrates' Court applicants must lodge an appeal within a period of 21 days from the day on which the applicant was notified by the LA of any decision. The obligation is on the aggrieved person to submit the appeal within the statutory time periods.

Section 52 of the Road Safety Act 2006 gives the LA the power to suspend or revoke a driver's licence with immediate effect where they are of the opinion that the interests of public safety require such a course of action. The driver may still appeal against this decision but it shall be noted that as this decision is immediate the driver is unable to drive in the appeal period.

## **HEARINGS**

Hearings of the relevant Licensing Committee will take place in public save where the Committee considers, that the hearing, or part thereof, be heard in private having regard to any unfairness to a party that is likely to result from a hearing in public.

In reaching a decision, the committee will balance the public interest in the hearing taking place in public against the public interest in ensuring that a party has a fair hearing.

The committee are at liberty to reconsider at any point within the hearing whether the public interest requires that a part of the hearing take place in the absence of the public or whether documents which are being considered by the Committee should be excluded from publication and make a ruling accordingly.

### **Hearing Procedure**

The procedure to be followed at a hearing is notified to attendees prior to the hearing. The procedure is attached at Appendix C

## **COMPLAINTS AND ENFORCEMENT**

### **Inspections**

Drivers shall be aware that any authorised officer of CCBC or any constable shall have the power at all reasonable times to inspect and examine any licensed vehicle without prior notice.

### **Complaints against Officers of the Licensing Authority**

All complaints against a member of the Licensing Team should be submitted in writing in the first instance to the Licensing Manager. Dependant on the circumstances the complaint may be referred to the Trading Standards and Licensing Manager. Complainants are also advised of the Councils corporate complaints procedures which are detailed on the Councils website. Complaints may be submitted on line or by telephoning 01443 864221.

## **Complaints against Drivers**

Complaints received from members of the public regarding the conduct of drivers will be considered and investigated. When a complaint is received in relation to safeguarding, the CCBC safeguarding procedures will be followed.

In general, however, where a complaint is received authorised officers may:

- Interview the complainant and take witness statements.
- Investigate the matter by interviewing the driver/operator.
- This may be done under caution where there is a likelihood of prosecution.
- Consider the driver's behaviour and public safety issues.
- Consider the driver's previous history.
- Decide on whether to take no action, place the matter before the licensing committee with a view to suspend or revoke the licence, suspend or revoke a licence with immediate effect or issue a written warning.

These actions are not exhaustive. In cases where the public are at risk or public safety is compromised, suspension or revocation will be with immediate effect. In cases of proven, repeated or persistent breach of conditions the matter will be placed before the licensing committee for their consideration and action taken as they consider appropriate.

## APPENDIX A

### DRIVER APPLICATION REQUIREMENTS

In order to issue a driver's licence the Council must be satisfied that the person is considered to be a fit and proper person to hold such a licence. In order to assist the Council in making this determination an applicant must satisfy the following application requirements.

- The applicant must have attained the age of 18 years of age;
- The applicant must attend in person.
- The applicants current DVLA licence be produced for examination
- Complete and submit the Council's prescribed application form;
- Submit the application form comprising the elements listed below;
- Pay to the Council, such fees as may be required for the issue of the licence; Where payment is made by cheque, which is subsequently dishonoured, any licence will be considered null and void.
- Partial applications will not be accepted;
- Photocopies of documents will not be accepted unless certified as a true copy of an original by a solicitor, notary or officer of the Council;
- Produce the current driving licence issued under the Road Traffic Act 1988
- Produce for examination a form of photographic identification, such as DVLA Drivers Licence or passport;
- In respect of the initial grant of a licence (or every three years thereafter in respect of renewals) complete a DBS check.
- The renewal of a licence must be made in advance of the expiry date to ensure licence continuity;
- Applicants must have the legal right to work in this country.
- Applicants should be aware that Caerphilly County Borough Council is under a duty to protect the public funds it administers, and to this end may use the information provided

for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.

- Applicants should be aware that the Licensing Authority has implemented the use of and makes submissions to the National Register of Taxi Licence Refusals and Revocations (NR3). The intention of this is to prevent drivers who have had a hackney carriage or PHV licence revoked or an application for one refused, going to another authority to dishonestly secure a licence by failing to disclose their previous licensing history.

Application essential elements which must be submitted:

- **LA prescribed application form** (completed)
- **Passport sized photograph** - One recent colour passport sized photograph (as required for passport photographs) must be submitted every three years.  
The photograph must:
  - i. Be in sharp focus and clear;
  - ii. Have a strong definition between the face and background;
- iii. Be printed professionally (Photographs printed at home are not likely to be of an acceptable quality);
- iv. **Show full head, without any head covering, unless it is worn for religious beliefs or medical reasons; and Show nothing covering the face.**  
**Alternatively Licensing Officers have the ability to take photographs during your appointment at the council offices.**

**DVLA drivers licence** (Photocard or paper) – checks will be made to ensure that the most current DVLA issue has been produced. All applicants must have for at least 12 months held a full driving licence (not a provisional) issued by the DVLA, or the DVNLI (Northern Ireland), for that class of vehicle, granted under Part III of the Road Traffic Act, 1988 or Northern Ireland equivalent, authorising them to drive that class of vehicle. Under the Driving Licences (Community Driving Licence) Regulations 1996, a full driving licence issued by another EC/EEA state will count toward the grant of a licence if the holder has held such a licence for the previous 12 months. In addition CCBC will require applicants who hold EC/EEA driving licences to have a GB counterpart document. GB counterparts can be obtained free of charge from the DVLA on submission of the form D9 which is available from [www.dvla.gov.uk](http://www.dvla.gov.uk).

**DVLA Check** upon application and requirement to share online DVLA Code/Status within 21 days of a request.

**Enhanced DBS check** The Licensing Authority undertakes its DBS checks using an on line facility. - This check assists the LA in determining whether or not the applicant is a fit and proper person to hold a licence. DBS disclosure applications must be completed and verified through CCBC. In respect of renewal applications, DBS checks (required every three years) should be completed in good time prior to the expiry date of the licence in order that the disclosures are available at the time of renewal. Prescribed forms of identification as required by the DBS prior to them being submitted. The LA will only process DBS disclosure applications for new applicants as part of a valid application and not prior to submission of an application form. Applicants must pay the requisite non-refundable fee.

Applicants for DBS checks may take advantage of joining the DBS update service for which there is an annual cost of £13.00. There are advantages in that having paid the

initial £44.00 for the check the applicant may then subscribe to the DBS Update Service. An applicant can subscribe to this service within 28 days of creating the subscription using the form reference number. Taxi driver applicants are advised to wait until the application reference form has been verified by the licensing authority, before applying for a subscription. Alternatively subscription can be made within 19 days of the date of issue displayed on the certificate. Further details regarding the Update Service is available on line or you can discuss with the LA.  
<https://www.gov.uk/government/organisations/disclosure-and-barring-service>.

A DBS enhanced disclosure that is not more than 30 days old must be supplied to the LA in respect of initial grants as soon as they are received by the applicant in order that the application process can be concluded. The disclosure must be submitted to the LA at the time of submission of the application for the renewal of a licence or when the DBS is reviewed every 3 years. The Council will not accept DBS checks provided to the applicant as the result of being requested by other organisations/Councils. With regard to the disclosure results or information contained in disclosures, the Rehabilitation of Offenders Act (Exceptions) (Amendment) Order 2002 amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 in relation to hackney carriage and private hire drivers. This amendment includes the addition of drivers to the list of exempted occupations and allows the LA to take into account all convictions (spent or otherwise); other relevant information disclosed at the Chief Officer of Police's discretion; Simple Cautions; Fixed Penalty Fines and Criminal Behaviour Orders, etc.

Foreign Nationals. With regard to the licensing of Foreign Nationals, the LA recognises that the DBS disclosure will only provide information in respect of the time the applicant has resided in the UK. In such circumstances and where there is a need to check any potential criminal record, which will also include persons who have spent more than 6 months living outside the UK or EU country, the LA will seek guidance from the DBS on how to obtain further information. Where the information is not listed in the disclosure, then the applicant may be required to obtain a Certificate of Good Conduct from the Embassy of the country in which they were residing. Any costs incurred in this process will be borne by the applicant. CCBC shall, however, take all reasonable and proportionate steps to ensure that a foreign national driver is a fit and proper person. Each case shall be judged on its merits.

- **Immigration/Right to Work Checks – as of May 2014.**

It is appropriate for LA's to check up on an applicant's eligibility/right to work before granting a Hackney Carriage or Private Hire driver's licence. CCBC will only grant a Hackney Carriage/Private Hire driver's licence to those who have the right to work within the UK. Drivers will be required to provide evidence to the Authority regarding their immigration status. Those drivers who have a right to work within the UK but have lost evidence of this will be required to obtain written approval from the Home Office. (Evidence and Enquiry Unit, Floor 12, Lunar House, Wellesley Road, Croydon CR9 2BY Tel: 020 8196 3011). Where an applicant satisfies all the criteria a licence shall only be issued up until the date they are entitled to work within the UK. If an applicant applies for a licence and does not have the right to work within the United Kingdom, their details will be passed to the Border and Immigration Agency. Further details can be found on: [www.bia.homeoffice.gov.uk/employingmigrants](http://www.bia.homeoffice.gov.uk/employingmigrants)

- **Driver Fitness Assessment (Knowledge) Test – Approved by Licensing Committee 16 February 2015.**

Proof of having passed the fitness (knowledge) test – applies to new applications. On first application (or where a licence has lapsed for more than 12 months) evidence is required that the applicant has passed the knowledge test approved by the LA for the CCBC area.

The test comprised of the following: - a pass certificate in respect of the fitness (knowledge) test.

Section 1 – Basic Skills assessment covering literacy and numeracy.

Section 2 – Verbal Communication and Comprehension Test

Section 3 – Law and Conditions – This will involve all applicants being tested on the basic requirements of hackney carriage and private hire licensing laws and conditions laid down in this Policy.

Section 4 – Knowledge of the County - Candidates will need to identify places within the County selected at random.

The applicant shall pay all requisite fees in respect of the test to the test provider.

- **Safeguarding Awareness. Approved by Licensing Committee on the 30<sup>th</sup> June 2016.**

Have attended a safeguarding awareness course approved by the Council.

- **Medical certification – Approved by Licensing Committee on the 28 May 2015.**

On first application, produce a CCBC medical form (equivalent to the DVLA Group 2 medical) completed by a registered medical practitioner and a declaration that they are fit to drive a taxi signed by the same person. Further medicals are dependent on age of applicant.

Where the DVLA have required a satisfactory Group 2 medical examination so as to entitle a driver to drive coaches and lorries etc which is reflected on their DVLA licence, production of a completed medical form may not be required by the LA. The medical must cover the period of the licence and the LA reserve the right to require an up to date certificate where there are concerns.

Payment of any fee in respect of obtaining the medical certificate shall be borne by the applicant.

If the applicant is under 45 years of age one medical is required until the person reaches 45 years of age. If the applicant is over 45 years, but less than 65 years a medical is required every 5 years. If any applicant is over 65 years of age a medical is required annually. Reference should be made to the DVLA Medical Examination Report D4 information booklet (available from [www.dvla.gov.uk](http://www.dvla.gov.uk)) for a list of the medical conditions they may prevent an applicant from being certified medically fit to drive a hackney carriage or private hire vehicle. The Medical Practitioner must also refer to the “At a glance guide to the current medical standards of fitness to drive” also available from the DVLA before submitting a result of the examination.

The Council may require the Applicant to produce additional information certifying that they are physically fit to be the driver of a hackney carriage or private hire vehicle.

Be aware that persons granted a licence to drive hackney carriages and private hire vehicles must carry passengers accompanied by guide, hearing and certain prescribed assistance dogs, unless medical evidence is supplied by his/her own general practitioner or specialist in support of an application for exemption from that requirement.

- **Additional Information.** Provide such other information as may be required by the Council and comply with such other requirements as the Council may from time to time consider reasonably necessary. New and existing drivers may be required to evidence attendance at appropriate courses or training as determined by the Council.

Applicants are advised that the Council has the power to suspend, revoke or refuse to renew a licence where a licence has been obtained by giving false or incomplete information, as well as potential prosecution for the offence committed.

Unlicensed driving of hackney carriages and private hire vehicles is an offence. Therefore, any person found driving without a hackney carriage/private hire vehicle driver's licence may be prosecuted.

## **APPENDIX B**

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

#### **1.0 Introduction**

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

#### **2.0 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.
- 3.0 Appeals**
- 3.1 Any applicant who has been refused a driver/operator licence, or a licensed driver/operator whose licence has been suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of receipt of the notice.
- 4.0 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.

#### 5.0 **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 59 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 for attempt or conspiracy will be regarded as convictions for the Convictions 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) 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.

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.
- 5.16 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.
- 5.17 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.
- 5.18 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.

- 5.19 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.
- 5.20 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.
- 5.21 New applications together with reviews of licences will be determined in line with the principles set out below. New applications will either be granted or refused. Reviews of licences can result the issuing of a warning, no further action or the suspension/revocation of the licence.

## **Drivers**

- 5.22 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.
- 5.23 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.
- 5.24 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.
- 5.25 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.
- 5.26 ***Crimes resulting in death***  
Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.
- 5.27 ***Exploitation***  
Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

5.28 **Offences involving violence**

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.

5.29 **Possession of a weapon**

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

5.30 **Sex and indecency offences**

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.

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.

5.31 **Dishonesty**

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.

5.32 **Drugs**

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

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 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.

5.33 **Discrimination**

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.

5.34 **Motoring convictions**

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.

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

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. 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.

5.36 ***Other motoring offences***

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.

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.

5.37 ***Hackney carriage and private hire offences***

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.

5.38 ***Vehicle use offences***

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.

5.39 ***Private Hire Operators***

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.

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.

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.

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.

#### 5.40 **Vehicle Proprietors**

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

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.

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.

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.

**APPENDIX C  
CAERPHILLY COUNTY BOROUGH COUNCIL  
TAXI AND GENERAL SUB-COMMITTEE PROCEDURES**

**This Is a Committee Hearing and Not a Court Of Law**

***Preliminary Matters***

1. Members should consider the agenda items carefully and notify the Committee Clerk immediately of any potential conflict of interest and return any documentation they may have received as soon as possible to the Committee Section.
2. Copies of relevant documentation will be supplied to the Members prior to the hearing.
3. It is in the interests of applicants that any evidence upon which it is intended to rely is made available to the Licensing Authority in advance. If any party seeks to introduce at the hearing any oral or documentary evidence, which has not previously been disclosed, the Committee will give appropriate weight to these items.

***Conduct of the Hearing***

1. The Chairman of the Committee will start proceedings by introducing the Members and officers present. A final check will then be made to ensure none of the Members have any conflict of interest with any applicant, other relevant person, or supporting witness.
2. The Legal Advisor will then outline the procedure that will be followed at the Committee.
3. If any other persons are in attendance which the applicant wishes to address the committee to represent them they will require the consent of the Committee to speak.
4. The Applicant and/or his representative/accompanying persons may then address the Committee. The applicant and /or the representative/accompanying person may be questioned by the committee and any other parties present.
5. All parties will be given the opportunity to sum up before the committee retires to make its decision. It is usual for the applicant/subject of the hearing to have the last word.
6. Applicant/subject of the hearing, accompanying persons and Licensing officer will not be present whilst the committee makes its determination. All parties are expected to remain within the confines of the building to await the result of the committee's determination.
7. Members may require an adjournment at any time during the course of the proceedings to consider points of law, policy, etc

***Evidence***

1. Hearsay evidence is allowed, although the weight the Committee attaches to such evidence may be less, given that it cannot be tested in cross examination.
2. Every application will be considered on its own merits.

***Determination of the Application***

1. The Members will retire to make their decision. The Legal Advisor will accompany Members and advise them on points of law, policy and procedure that may arise during their deliberations The Legal Advisor will then explain the substance and nature of advice that has been provided to all parties.
2. If once in private, Members need clarification they may return to open session to obtain information, then re-resolve to return into private session.
3. The parties will generally be notified of the Members' decision at the conclusion of their deliberations and advised of the rights of appeal.

***Legal Advisor***

The Committee will rely on its legal adviser as to matters of law and procedure.

This may include, but is not limited to:-

1. Any relevant legislation, guidance or Council Policies.
2. Admissibility of evidence.
3. The rules of procedure arising because of general principles of administrative law.

## APPENDIX D

### CONDITIONS ATTACHED TO HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS (DUAL) LICENCES

#### LICENCE CONDITIONS

1. A Disclosure and Barring Service check is required on the Date, the check shall be submitted to the Licensing Office no later than 4 weeks after this date. (Advisory - Failure to submit the DBS check will result in the matter being placed before the next available Licensing Committee for consideration of the licensee's fitness to hold a dual licence).
2. A Group 2 DVLA standard medical certificate is required on the Date, the certificate shall be submitted to the Licensing Office no later than 4 weeks after this date. (Advisory - Failure to submit a medical certificate of fitness to drive a licensed vehicle will result in the matter being placed before the next available Licensing Committee for consideration of the licensee's fitness to hold a dual licence).
3. The Licensee will share their DVLA code/DVLA status with the Licensing Authority within 21 days following a request. Failure to do so will require the licensees' attendance at Licensing Committee to consider the drivers fitness to hold a Hackney Carriage/Private Hire Vehicle Drivers licence.'
4. The Licensee shall not assign or any way part with the benefit of the licence, which is personal to the Licensee, other than the licence must be delivered to the private hire vehicle operator employing the driver and to be retained by him whilst such driver remains in his employ.
5. The Licensee is advised that any private hire vehicle he may drive must be operated through a private hire vehicle operator licensed with this Council.
6. The Licensee shall, when driving a Hackney Carriage or Private Hire Vehicle, wear such badge issued to the Licensee by the Council, in such a position and manner as to be plainly and distinctly visible, bearing the number corresponding with the number assigned to the Licensee in the register kept by the Council for that purpose.
7. The Licence may be suspended, revoked or not renewed by the Council:
  - (i) if the driver commits an offence or otherwise fails to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976;
  - (ii) if the driver has been convicted of an offence involving dishonesty, indecency or violence;
  - (iii) if the driver becomes disqualified from driving under any of the Road Traffic in which case the licence shall be automatically revoked;
  - (iv) on any other reasonable grounds.
8. The driver's badge shall remain the property of the Council and if the driver's licence is suspended or revoked or the Council refuse to renew a driver's licence such badge shall be returned by the Licensee to the Council within seven days of a notice by the Head of Public Protection, requesting the Licensee to do so.

9. Application for renewal of a licence must be made before the expiry date, to ensure continuity. There is no automatic period of grace and unlicensed driving is an offence.
10. The licensee must throughout the period of his licence hold a valid driver's licence under the Road Traffic Act 1988. If he/she is disqualified from holding a driving licence for whatever reason, he/she must notify the Council immediately and return the badge and licence.
11. The Licensee shall notify the Council forthwith of any change or deterioration to his/her health during the period of his/her licence. The Council reserves the right to require an existing licensee to produce medical evidence of continuing fitness to drive during the period of the licence. Such medical evidence shall be produced by the licensee to the Council within seven days of a notice by the Head of Public Protection requesting the licensee to do so.
12. The Licence holder shall at the request of any Authorised Officer of the Council or any Constable, produce for inspection his driver's licence and/or badge, either forthwith or before the expiration of five days beginning with the day following the date of request:-
  - (i) in the case of a request of an Authorised Officer to the Head of Public Protection at Penallta House, Tredomen, Ystrad Mynach, CF82 7PG
  - (ii) in the case of a request of a Police Constable at any Police Station within the Council's area and which is nominated by the Constable when the request is made.
13. The licence holder shall not cause or suffer or permit to be conveyed in a hackney carriage or private hire vehicle a greater number of persons exclusive of the driver than the number of persons specified in the licence issued and displayed on the hackney carriage or private hire vehicle licence plate issued by the Council in respect of that vehicle.
14. The Licence Holder shall not:
  - (i) Behave in an uncivil or disorderly manner, and shall not use abusive language or gestures to the general public, pedestrians, other road users or any other person
  - (ii) Conduct themselves in a manner that causes offence, nuisance, or actions that may present a hazard to members of the public or passengers
  - (iii) Drink or eat whilst carrying fare paying passengers in the vehicle
  - (iv) Without the consent of passengers, shall not use any radio, CD or MP3 or other sound reproducing instrument or equipment in the vehicle
  - (v) Consume alcohol at any time whilst driving or being in charge of a hackney carriage or private hire vehicle. (Advisory: Consumption of alcohol during or prior to driving a taxi may result in loss of the licence.)
  - (vi) Drive a vehicle unless he/she understands how to safely operate/install any equipment to make the vehicle accessible by disabled persons.
  - (vi) Use a hand held microphone or telephone handset whilst the vehicle is moving. Drivers shall only speak into a fixed neck sling or clipped on microphone or other suitable hands-free or Bluetooth type system, so as not to distract their attention

from the road. Drivers must not stop on the hard shoulder of a motorway to answer or make a call (unless it is to dial 999), however urgent. It is a criminal offence to use a hand held mobile phone whilst driving and any such offence might impact upon the driver's fitness to hold a driver's licence.

(vii) Without consent of the hirer of the vehicle convey or permit to be conveyed any other person in that vehicle.

15. The driver shall notify the LA in writing within 7 days of any change of his/her address or telephone number whether of a temporary or permanent nature.

16. The licence holder shall be clean and respectable in his/her dress and person.

### **Vehicle**

17. The licence holder shall:

(i) at all times maintain his/her vehicle in a roadworthy and clean condition both internally and externally. The driver must carry out a spot check on the vehicle lights and condition of tyres in particular, before using the vehicle.

(ii) ensure that the appropriate insurance cover is in force covering him/her to drive such vehicle. Where an insurance cover note has effect the driver shall, on expiry of that cover note, provide evidence to the LA of the new period of cover. It is the responsibility of the driver to provide the LA with a current and valid copy of their insurance policy and/or cover note and to ensure they have the appropriate insurance cover in place. In accordance with Section 60 of the LG(MP) A failure to provide this insurance cover to the LA will result in a suspension notice being served. The suspension shall remain in place until such time as the LA receives documentary evidence of valid and adequate insurance.

(iii) that the licence plate affixed to the front and rear of the vehicle does not become concealed from public view or be so damaged or defaced as to render it illegible.

(iv) the driver shall ensure that the licence plate is not removed from the vehicle at any time unless an authorisation of exemption has been granted.

### **Equality Act 2010**

18. All drivers will be required to make themselves fully aware of their responsibilities and duties required of them under the Equalities Act to promote equality and opportunity for disabled people.

### **Obligations in respect of passengers/customers**

19. If he/she is aware that the vehicle has been hired to be in attendance at an appointed time and place or he/she has otherwise been instructed by the operator or proprietor of the vehicle to be in attendance at an appointed time and place, punctually attend at that time and place, unless delayed or prevented by sufficient cause. If the vehicle is to be delayed every effort should be made to contact the passenger and inform them of the reason for the delay. In addition, if the passenger is not immediately available the driver shall make all reasonable efforts to contact that passenger.

20. The driver when hired to drive to any particular destination shall, subject to any directions or request made by the hirer, proceed to that destination by the shortest direct route.

21. The driver shall drop off passengers in a safe zone and shall not permit passengers to

alight onto a road where it can be avoided.

22. The driver shall not make any advances to passengers that could be construed as an attempt to procure any special relationship or sexual activity.

**23. The driver shall:**

- (i) at all times comply with all reasonable requirements of any person hiring or being conveyed in the vehicle.
- (ii) when requested by the hirer convey a reasonable quantity of luggage;
- (iii) the driver shall afford reasonable assistance in loading and unloading any luggage or passenger belongings, including assistance in removing it to and from the entrance of any house or other place where he collects or sets down his passenger;
- (iv) if requested by the hirer of a vehicle, provide him/her with a written receipt for the fare paid.

24. The driver shall immediately after the termination of any hiring, carefully search the vehicle for any property that may have been accidentally left therein, and if such property is found, take the same within 48 hours, if not sooner claimed by, or on behalf of its owner, to the Head of Public Protection, Penallta House, Tredomen Park, Ystrad Mynach, Hengoed, CF82 7PG whereupon the Licensee will be given a receipt for the property.

**Taxi meters**

25. Where a vehicle is fitted with a taximeter, the driver shall not cause the fare recorded thereon to be cancelled or concealed until the hirer has had reasonable opportunity of examining it and has paid the fare (unless credit is to be given).

**Convictions**

26. The driver shall notify the LA as soon as is reasonably practicable, and in any event within 72 hours, of full details of any convictions, sentencing, fixed penalty fines, driving penalty points, cautions, warnings, binding over or reprimands imposed on him/her during the period of licence. In addition, the driver shall notify the LA of any sentences imposed on him.

**The Carriage of Animals**

27. A driver must not carry in a hackney carriage or private hire vehicle any animal, which belongs to, or is being looked after by, himself or herself, the owner or operator of the vehicle whilst it is being used as a hackney carriage or private hire vehicle. Animals in the custody of passengers may be carried, at the driver's discretion, provided they are restrained in a safe manner and do not cause an obstruction to the driver.

28. A driver must, however carry assistance dogs as defined in the Disability Discrimination Act 1995 regulations without any additional payment unless they are in possession of an exemption from this condition issued by the LA. (A certificate of exemption will be granted upon the production of suitable medical evidence. If the exemption is being applied for on the grounds of a chronic phobia of dogs, a psychiatrist or clinical psychologist must provide the report.)

29. The driver of a hackney carriage or private hire vehicle who has been issued with an

exemption certificate must exhibit the notice of exemption in a vehicle by either, fixing it to the windscreen, facing outwards, or fixing it in a prominent position on the dashboard. [If the driver of a hackney carriage forges or makes a false statement in respect of an exemption certificate, he/she will be guilty of an offence. If the driver of a private hire vehicle forges or makes a false statement in respect of an exemption certificate, he/she will be in breach of his/her licence conditions and may render his/her licence liable to suspension or revocation.]

### **Accidents**

30. The driver shall report all accidents to the LA as soon as is reasonably practicable but in any event within 72 hours of the occurrence of any such accident that may have caused damage materially affecting the safety, performance or appearance of the vehicle or comfort or convenience of persons carried therein. Any driver reporting an accident will normally be required to present the vehicle for inspection at the Licensing Office upon request.

### **Private Hire Vehicles**

31. Private Hire Vehicle drivers are only permitted to take passengers who have pre-booked their journey via a licensed operator.
32. The driver of a private hire vehicle shall not park on, drop off or pick up at any taxi rank for any reason during the operation times of such rank.
33. The driver of a private hire vehicle shall not ply for hire on any public or private road, or tout or solicit any person to hire or to be carried in his/her private hire vehicle. The driver shall not accept any offer of immediate hire whilst the driver or vehicle is on the road or in any other public place.
34. The driver shall not demand from any hirer of a vehicle a fare in excess of any previously agreed for that hiring between the hirer and the operator.

### **Hackney Carriages**

35. The driver shall not demand from any hirer of a vehicle a fare in excess of any previously agreed for that hiring between the hirer and the operator or if the vehicle is fitted with a taxi meter and there has been no previous agreement as to charging a lesser fare, the fare shown on the taxi meter.

**APPENDIX E  
HACKNEY CARRIAGE BYE LAWS**

Made under Section 68 of the Town Police Clauses Act 1847 and Section 171 of the Public Health Act 1875 by the Council of the County Borough of Caerphilly with respect to hackney carriages in Caerphilly County Borough.

**INTERPRETATION**

1. Throughout these byelaws:-

“THE COUNCIL” means the Council of the County Borough of Caerphilly

“TABLE OF FARES” means the table of fares fixed by the Council under Section 65 of the Local Government (Miscellaneous Provisions) Act 1976.

“THE COUNTY BOROUGH” means the County Borough of Caerphilly.

**PROVISIONS REGULATING THE MANNER IN WHICH THE NUMBER OF EACH HACKNEY CARRIAGE CORRESPONDING WITH THE NUMBER OF ITS LICENCE, SHALL BE DISPLAYED**

2. The proprietor of a hackney carriage shall:-

(a) cause to be affixed on the outside and inside of the carriage the plates and disc provided by the Council on which shall be marked the number of the licence granted in respect of such carriage in a manner as follows, namely:-

i. The exterior plate shall be fixed and displayed outside and on the rear of the vehicle and be at all times clearly visible from the rear and be maintained in a clean condition:

ii. The interior plate shall be fixed on the inside of the carriage in such a position as to be easily observed by the passengers:

iii. The licence disc to be fixed and displayed inside the vehicle on the lower left hand corner of the windscreen in order to be clearly visible from the front of the carriage by persons outside the vehicle.

(b) The proprietor or driver of a hackney carriage shall:-

i. not wilfully or negligently cause or suffer any such number to be concealed from public view while the carriage is standing or plying for hire;

ii. not cause or permit the carriage to stand or ply for hire with any such painting, marking or plate so defaced that any figure or material particular is illegible.

**PROVISIONS REGULATING HOW HACKNEY CARRIAGES ARE TO BE FURNISHED OR PROVIDED**

3. The proprietor of a hackney carriage shall:-

(a) Provide sufficient means by which any person in the carriage may communicate with the driver;

- (b) Cause the roof or covering to be kept water-tight;
  - (c) Provide any necessary windows and a means of opening and closing not less than one window on each side;
  - (d) Cause the seats to be properly cushioned or covered;
  - (e) Cause the floor to be provided with a proper carpet, mat or other suitable covering;
  - (f) Cause the fittings and furniture generally to be kept in a clean condition, well maintained, and in every way, fit for public service;
  - (g) Provide means for securing luggage if the carriage is so constructed as to carry luggage;
  - (h) Provide an efficient fire extinguisher and first aid kit which shall be carried in such a position as to be readily available for use;
  - (i) Provide and maintain an electric light in the interior of such carriage:
  - (j) Carry a spare wheel and tyre and suitable tools for the replacement of damaged or punctured tyres;
  - (k) Provide at least two doors for the use of persons conveyed in such carriage and a separate means of ingress and egress for the driver.
4. The proprietor of a hackney carriage shall cause the same to be provided with a taximeter so constructed, attached and maintained as to comply with the following requirements, that is to say:-
- (a) The taximeter shall be fitted with a key, flag or other device, the operation of which will bring the machinery of the taximeter into action and cause the word "HIRED" to appear on the face of the taximeter;
  - (b) Such key, flag or other device shall be capable of being locked in such a position that the machinery of the taximeter is not in action and that no fare is recorded on the face of the taximeter;
  - (c) When the machinery of the taximeter is in action there shall be recorded on the face of the taximeter in clearly legible figures a fare not exceeding the rate or fare which the proprietor or driver is entitled to demand and take for the hire of the carriage by distance in pursuance of the tariff fixed by the Council:
  - (d) The word "Fare" shall be printed on the face of the taximeter in plain letters so as clearly to apply to the "Fare" recorded thereon;
  - (e) The taximeter shall be so placed that all letters and figures on the face thereof are at all times plainly visible to any person being conveyed in the carriage, and for that purpose

the letters and figures shall be capable of being suitably illuminated during any period of hiring;

- (f) The taximeter and all the fittings thereof shall be so affixed to the carriage with seals or other appliances that it shall not be practicable for any person to tamper with them, except by breaking, damaging or permanently displacing the seals or other appliances.
5. Every proprietor of a hackney carriage shall cause the same to be provided with a roof sign so constructed as to comply with the following requirements, that is to say:-
- (a) The sign shall bear the words "FOR HIRE" in plain letters at least two inches in height;
  - (b) The sign shall be capable of being so operated that it indicates clearly and conveniently to persons outside the carriage whether or not the carriage is for hire.

PROVISIONS REGULATING THE CONDUCT OF THE PROPRIETORS AND DRIVERS OF HACKNEY CARRIAGES PLYING WITHIN THE COUNTY BOROUGH IN THEIR SEVERAL EMPLOYMENTS, AND DETERMINING WHETHER SUCH DRIVERS SHALL WEAR ANY, AND WHAT BADGES

6. The driver of a hackney carriage provided with a taximeter shall:-
- (a) When standing or plying for hire, keep the key, flag or other device fitted in pursuance of the Byelaw in that behalf locked in the position in which no fare is recorded on the face of the taximeter;
  - (b) As soon as the carriage is hired by distance, and before beginning the journey, bring the machinery of the taximeter into action by moving the said key, flag or other device, so that the word "HIRED" is legible on the face of the taximeter and keep the machinery of the taximeter in action until the termination of the hiring;
  - (c) Cause the dial of the taximeter to be kept properly illuminated throughout any part of the hiring which is during the hours of darkness, this being the time between half an hour after sunset to half an hour before sunrise, and also at any other time at the request of the hirer.
7. A proprietor or driver of a hackney carriage shall not tamper with, or permit any person to tamper with, any taximeter with which the carriage is provided, with the fitting thereof, or with the seals affixed there to.
8. The driver of a hackney carriage shall behave in a civil and orderly manner and shall take all reasonable precautions to ensure the safety of persons conveyed in or entering or alighting from the vehicle.
9. The proprietor or driver of a hackney carriage who has agreed or has been hired to be in attendance with the carriage at an appointed time and place shall, unless delayed or prevented by some sufficient cause, punctually attend with such carriage at such appointed time and place.

10. A proprietor or driver of a hackney carriage shall not convey or permit to be conveyed in such carriage any greater number of persons than the number of persons specified on the plate affixed to the outside of the carriage.
11. The driver of a hackney carriage shall, when standing or plying for hire, and when hired, display on his person in such a manner as to be plainly visible, the hackney carriage driver's badge issued to him by the Council.
12. The driver of a hackney carriage so constructed as to carry luggage shall, when requested by any person hiring or seeking to hire the carriage:
  - (a) Convey a reasonable quantity of luggage;
  - (b) Afford reasonable assistance in loading and unloading;
  - (c) Afford reasonable assistance in removing it to or from the entrance of any building, station or place at which he may take up or set down such person.

PROVISIONS FIXING THE RATES OR FARES TO BE PAID FOR HACKNEY CARRIAGES WITHIN THE COUNTY BOROUGH; AND SECURING THE DUE PUBLICATION OF SUCH FARES

13. The proprietor or driver of a hackney carriage shall not be entitled to demand and take a fare greater than that recorded on the face of the taximeter, save for any extra charges authorised by the Council's table of fares, for the time being in force, which it may not be possible to record on the face of the taximeter.
14. The proprietor of a hackney carriage shall cause the table of fares for the time being in force, to be exhibited inside the carriage, in clearly distinguishable letters and figures.
15. The proprietor or driver of a hackney carriage bearing the table of fares in accordance with the preceding byelaw, shall not wilfully or negligently cause or suffer the letters or figures in the statement to be concealed or rendered illegible at any time while the carriage is plying or being used for hire.

PROVISIONS SECURING THE SAFE CUSTODY AND RE-DELIVERY OF ANY PROPERTY ACCIDENTALLY LEFT IN HACKNEY CARRIAGES AND FIXING THE CHARGES TO BE MADE IN RESPECT THEREOF

16. The proprietor or driver of a hackney carriage shall immediately after the termination of any hiring, or as soon as practicable thereafter, carefully search the carriage for any property which may have been accidentally left therein.
17. The proprietor or driver of a hackney carriage shall, if any property accidentally left therein by any person who may have been conveyed in the carriage be found by or handed to him:-
  - (a) carry it, as soon as possible, and in any event within 48 hours, if not sooner claimed by, or on behalf of its owner, to the Council Offices, Ty Penallta, Tredomen Park, Ystrad Mynach, Hengoed and leave it in the custody of the officer in charge of the office on his giving receipt for it;

- (b) be entitled to receive from any person to whom the property shall be re-delivered an amount equal to five pence in the pound of its estimated value (or the fare for the distance from the place of finding to the office of the Council, whichever be the greater) but not more than five pounds.

### **PENALTIES**

Every person who shall offend against any of these byelaws shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale and in the case of a continuing offence to a further fine not exceeding two pounds for each day during which the offence continues after conviction therefor.

## **APPENDIX F**

### **Advice for Licensed Taxi Drivers**

#### **Carriage of young persons**

As hackney carriages and private hire vehicles are regularly used to carry young persons. In the interests of passenger and driver safety, young persons should not be carried in the front of the vehicle.

Children under the age of 16 should be accompanied where possible, by at least one responsible adult.

All passengers shall remain seated whilst the vehicle is in motion.

Drivers of hackney carriages and private hire vehicles used for school contracts must comply with the requirements of that contract in addition to the conditions specified in this policy

#### **Wearing of Seatbelts**

Drivers should always seek their own legal advice in the event of any query relating to the law regarding seat belts. The following information was correct at the time of writing.

Drivers should be aware that the wearing of seatbelts is proven to prevent serious injury and save lives. It is the driver's legal responsibility to ensure that any child is correctly restrained whilst being transported in the vehicle. However exemptions from the wearing of seat belts in licensed vehicles in limited circumstances are as follows:

#### **Drivers**

The following exemption to wearing a seatbelt applies by virtue of the Motor Vehicles (Wearing of Seatbelts) Regulations 1993:

The driver of:

- (i) a licensed taxi while it is being used for seeking hire, or answering a call for hire, or carrying a passenger for hire,
- (ii) a private hire vehicle while it is being used to carry a passenger for hire;

#### **Passengers and children**

In a licensed vehicle, if a child car seat is not available, a child under three years of age may travel unrestrained only in the rear of the vehicle. [At no point should children be permitted to stand in the rear of the vehicle whilst it is moving.]

Children aged 3 years or older can travel without a child's car seat if they wear an adult seat belt

Children over 1.35 metres tall, or who are 12 or 13 years old in the front or rear seat of the vehicle must wear the adult seat belt where fitted.

#### **Sounding Horn**

It is common practice for some taxi drivers to sound their vehicle horn to alert customers to their presence, such use is not permitted.

The Road Vehicles (Construction and Use) Regulations 1986 regulation 99 and rule 112 of the Highway code states:

A vehicle horn may only be used while your vehicle is moving and you need to warn other road users of your presence.

You MUST NOT use your horn

- while stationary on the road
- when driving in a built-up area between the hours of 11.30 pm and 7.00 am
- except when another road user poses a danger.

### **Taxi Ranks**

Hackney carriages only are permitted to 'rank up' whilst waiting for customers. If you are first in the queue at the taxi rank you may not call forward another licensed hackney carriage from your company (so as to preserve your position at the head of the rank) to take the passenger or refuse short journeys.

This constitutes an offence under Section 53 of the Town Police Clauses Act 1847 which states:

'A driver of a hackney carriage standing at any of the stands for hackney carriages who refuses or neglects, without reasonable excuse to drive such carriage to any place within the prescribed distances, or the distance to be appointed by any byelaw of the commissioners, not exceeding the prescribed distance to which he is directed to drive the person hiring or wishing to hire such carriage shall for each offence be liable to a penalty not exceeding level Two'.

Any contravention of the above named legislation may lead to legal proceedings being instituted against any licensed hackney carriage driver committing this offence.

### **Drinking and Driving**

35 microgrammes per 100 millilitres of breath or The Council takes a very serious view of any driver who has been convicted of drink driving as they have jeopardised the safety of not only the travelling public but also other road users. People are killed and injured in accidents, where drivers are over the drink drive limit. There has been a decline in the number of drink driving related accidents and fatalities but drivers should not become complacent. Licensed drivers have a particular obligation for the safe carriage of the public in their vehicle.

At the time of writing the alcohol limit for drivers in Wales is

80 milligrammes of alcohol per 100 millilitres of blood,

107 milligrammes per 100 millilitres of urine.

In most other European countries including Scotland, the limit is less, 50 milligrammes per 100 millilitres of blood<sup>3</sup>.

There is no fool-proof way of drinking and staying under the limit. The amount of alcohol you would need to drink to be considered over the driving limit varies from person to person. It depends on:

- Weight, age, sex and metabolism (the rate your body uses energy)
- The type and amount of alcohol you're drinking
- What you've eaten recently
- Your stress levels at the time

- Even small amounts of alcohol can affect a person's ability to drive so the only safe advice is to avoid any alcohol if you are driving. Many of the functions that we depend on to drive safely are affected when we drink alcohol:
- The brain takes longer to receive messages from the eye
- Processing information becomes more difficult
- Instructions to the body's muscles are delayed resulting in slower reaction times. You can also experience blurred and double vision, which affects your ability to see things clearly while you are driving. And you're more likely to take potentially dangerous risks because you can act on urges you normally repress.

The police are allowed to stop any vehicle at their discretion and require drivers to be tested to ascertain the level of alcohol in their system. Anyone caught over the legal alcohol limit when driving will be banned from driving for at least 12 months, and fined up to £5,000, also be given between three to 11 penalty driving points and could be sent to prison for up to six months. Imprisonment, the period of disqualification, size of fine and number of penalty points depend on the seriousness of the offence. If you're caught drink driving more than once in a 10 year period, you'll be banned for at least three years. Licensed drivers who drink and drive jeopardise their own safety, licence and livelihood.

### **Display of Registration Numbers and Taxi Licence Plates**

The legal requirements for the display of registration plates may not be known by hackney carriage or private hire vehicle proprietors/owners. The DVLA have responsibility for the supply and display of registration marks and number plates. The display of registration numbers is provided for in the Road Vehicles (Display of Registration Marks) Regulations 2001 (as amended) and where a vehicle has been built to a European standard (EC Whole Vehicle Type Approval) the registration number must be correctly displayed on a rectangular plate fitted into the aperture prepared on the vehicle by the manufacturer. This applies to almost all vehicles registered in the UK (there are exceptions for some imported vehicles e.g. those built for the American market).

Displaying square number plates alongside local authority licensing plates in the number plate aperture on hackney carriages and private hire vehicles is illegal. Where such plates are being displayed the driver should bring the legal requirements to the attention of the operator, proprietor or owner. If the driver is an owner driver they must take appropriate action to rectify this matter.

The licensing authority licence plate must be correctly displayed on the rear of the vehicle as required by the Council. Licence plates must not be displayed in rear windows or positioned in such a way that the detail on the plate is obstructed from view.

# EQUALITY IMPACT ASSESSMENT FORM

July 2019

## THE COUNCIL'S EQUALITIES STATEMENT

This Council recognises that people have different needs, requirements and goals and we will work actively against all forms of discrimination by promoting good relations and mutual respect within and between our communities, residents, elected members, job applicants and workforce.

We will also work to create equal access for everyone to our services, irrespective of ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, use of Welsh language, BSL or other languages, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified.

EIAs are a legal requirement under equalities legislation (Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011) where the potential for a significant negative impact has been identified. This legislation has been in place since 2000. We also have a legislative duty to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

The Act explains that having due regard for advancing equality involves:

- removing or minimising disadvantages experienced by people due to their protected characteristics
- taking steps to meet the needs of people from protected groups where these are different from the needs of other people
- encouraging people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The protected characteristics are:

- |                                  |                                  |
|----------------------------------|----------------------------------|
| • Age                            | • Race                           |
| • Disability                     | • Religion, Belief or Non-Belief |
| • Gender Re-assignment           | • Sex                            |
| • Marriage and Civil Partnership | • Sexual Orientation             |
| • Pregnancy and Maternity        | • Welsh Language*                |

\* The Welsh language is not identified as a protected characteristic under the Equality Act 2010, however in Wales we also have to treat Welsh and English on an equal basis as well as promoting and facilitating the use of the Welsh language.

## THE EQUALITY IMPACT ASSESSMENT

<b>NAME OF NEW OR REVISED PROPOSAL *</b>	Adoption of new guidance on determining the suitability of applicants and licensees in the hackney and private hire trades in the borough.
<b>DIRECTORATE</b>	Communities
<b>SERVICE AREA</b>	Public Protection – Licensing
<b>CONTACT OFFICER</b>	Jacqui Morgan
<b>DATE FOR NEXT REVIEW OR REVISION</b>	As and when policy is amended.

**\*Throughout this Equalities Impact Assessment Form, ‘proposal’ is used to refer to what is being assessed, and therefore includes policies, strategies, functions, procedures, practices, initiatives, projects and savings proposals.**

The aim of an Equality Impact Assessment (EIA) is to ensure that Equalities and Welsh Language issues have been proactively considered throughout the decision making processes governing work undertaken by every service area in the Council as well as work done at a corporate level.

The Council’s work across Equalities, Welsh Language and Human Rights is covered in more detail through the **Equalities and Welsh Language Objectives and Action Plan 2016-2020**.

When carrying out an EIA you should consider both the positive and negative consequences of your proposals. If a project is designed for a specific group e.g. disabled people, you also need to think about what potential effects it could have on other areas e.g. young people with a disability, BME people with a disability.

There are a number of supporting guidance documents available on the **Corporate Policy Unit Portal** and the Council’s Equalities and Welsh Language team can provide advice as the EIA is being developed. Please note that the team does not write EIAs on behalf of service areas, the support offered is in the form of advice, suggestions and in effect, quality control.

Contact [equalities@caerphilly.gov.uk](mailto:equalities@caerphilly.gov.uk) for assistance.

## PURPOSE OF THE PROPOSAL

<b>1</b>	<p><b>What is the proposal intended to achieve?</b> <i>(Please give a brief description and outline the purpose of the new or updated proposal by way of introduction.)</i></p> <p>The Institute of Licensing (IOL) in partnership with the Local Government Association, Lawyers in Local Government and the National Association of Licensing Enforcement Officers (NALEO) have produced guidance on determining the suitability of applicants and licensees in the hackney and private hire trades.</p> <p>The policy was also endorsed by the Wales Licensing Expert Panel and recommended for adoption by all Welsh authorities. CCBC intends to adopt the policy in place of its existing fitness policy and provide a consistent approach to the determination of applications for hackney carriage and private hire trades</p>
<b>2</b>	<p><b>Who are the service users affected by the proposal?</b> <i>(Who will be affected by the delivery of this proposal? e.g. staff members, the public generally, or specific sections of the public i.e. youth groups, carers, road users, people using country parks, people on benefits etc. Are there any data gaps?)</i></p> <p>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.</p> <p>Members of the "Taxi" trade are affected by the policy as it will be used to determine their suitability to obtain and retain a licence.</p> <p>Members of the travelling public will be affected; other road users and other CCBC service areas such as Social Services and Integrated Transport Unit who contract with proprietors and Operators for the provision of licensed vehicles for School transport and other contracts. It is a requirement of their contract that the driver is licensed.</p> <p>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.</p>

## IMPACT ON THE PUBLIC AND STAFF

<b>3</b>	<p><b>Does the proposal ensure that everyone has an equal access to all the services available or proposed, or benefits equally from the proposed changes, or does not lose out in greater or more severe ways due to the proposals?</b> <i>(What has been done to examine whether or not these groups have equal access to the service, or whether they need to receive the service in a different way from other people?)</i></p> <p>The policy aims to protect 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</p>
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competent? Are they safe? Are they trustworthy? The proposal will not impact on access to services but aims to ensure the correct checks and balances are made to protect anyone travelling in a licensed vehicle in the county borough.

Individuals with convictions etc may be prevented from obtaining a licence or existing licensees be subject to suspension or revocation. Each case is considered on its merits and the policy is guidance on what is generally acceptable or not when considering suitability so that it is clear to everyone involved in the process.

Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account. (Leeds City Council v Hussain [2002] EWHC 1145 (Admin), [2003] RTR 199 and Cherwell District Council v Anwar[2011] EWHC 2943 (Admin))

The licensed trade have requested "grandfather rights" for existing licensees. If agreed the requirements of the new suitability policy will only apply to existing drivers if any new incidents occur during their licence.

### **Information on users of "taxi" services in CCBC**

There is no specific data available on users in Wales. Statistics from the Department of Transport in England in 2016 provide information on categories of users generally of Hackney carriage and Private hire vehicles by age, gender, mobility difficulties, household income and car access. The data includes average number of journeys for people in various groups. This has been used to assess impact in conjunction with statistical information for the borough from the 2011 census.

Percentages in brackets are figures for CCBC from the 2011 census. Caerphilly has a divergent demographic profile with a higher proportion of children and people of retirement age than Welsh averages. It has the second lowest employment rate in Wales with comparatively higher levels of deprivation.

### **General impact**

The average person takes 11 trips per annum, 49% trips for leisure purposes, 51% shopping, personal business & commuting.

**Largest use group** by age is 16 to 29 year olds ( 12.7% 33,437)

**Women** take more trips than men, averaging 12 per year (50.5 % CCBC population)

**Passengers with mobility issues** take on average 16 journeys per year (14% or approximately 25,000 ). 25.8 % of CCBC population between 16 and 64 are considered Equality Act core disabled

**Persons with no access to a vehicle** take on average 29 journeys per annum.

<b>4</b>	<p><b>Is your proposal going to affect any people or groups of people with protected characteristics?</b>  <i>(Has the service delivery been examined to assess if there is any indirect effect on any groups? Could the consequences of the policy or savings proposal differ dependent upon people's protected characteristics?)</i></p>
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Protected Characteristic	Positive, Negative, Neutral	What will the impact be? If the impact is negative how can it be mitigated?
<b>Age</b>	<b>Positive</b>	Increased safeguards on suitability of licensees will have a positive impact on protecting all members of the travelling public but also give extra protection to those that may be more vulnerable due to age, sex, disability , reduced capacity etc.
<b>Disability</b>	<b>Positive</b>	Increased safeguards on suitability of licensees will have a positive impact on protecting all members of the travelling public but also give extra protection to those that may be more vulnerable due to age, sex, disability , reduced capacity etc
<b>Gender Reassignment</b>	<b>Neutral</b>	There is no evidence available to the Council to suggest a negative impact due to gender reassignment .
<b>Marriage &amp; Civil Partnership</b>	<b>Neutral</b>	There is no evidence available to the Council to suggest a negative impact due to marriage or civil partnership.
<b>Pregnancy and Maternity</b>	<b>Neutral</b>	There is no evidence available to the Council to suggest a negative impact due to pregnancy or maternity
<b>Race</b>	<b>Neutral</b>	There is no evidence available to the Council to suggest a negative impact due to race.
<b>Religion &amp; Belief</b>	<b>Neutral</b>	There is no evidence available to the Council to suggest a negative impact due to religion or belief
<b>Sex</b>	<b>Positive</b>	Increased safeguards on suitability of licensees will have a positive impact on protecting all members of the travelling public but also give extra protection to those that may be more vulnerable due to age, sex, disability , reduced capacity etc.
<b>Sexual Orientation</b>	<b>Neutral</b>	There is no evidence available to the Council to suggest a negative impact due to sexual orientation.

<b>5</b>	<p><b>In line with the requirements of the Welsh Language Standards. (No.1) Regulations 2015, please note below what effects, if any (whether positive or adverse), the proposal would have on opportunities for persons to use the Welsh language, and treating the Welsh language no less favourably than the English language.</b>  <i>(The specific Policy Making Standards requirements are Standard numbers 88, 89, 90, 91, 92 and 93. The full detail of each Standard is available on the Corporate Policy Unit Portal. Although it is important that what is outlined in the proposal is available in Welsh and English, please consider wider impacts on Welsh speakers.)</i></p> <p>We do not believe that adopting the guidance will impact on the Welsh Standards.</p>
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## INFORMATION COLLECTION

<b>6</b>	<p><b>Please outline any evidence and / or research you have collected which supports the proposal? This can include an analysis of service users.</b> <i>(Is this service effectively engaging with all its potential users or is there higher or lower participation of uptake by one or more protected characteristic groups? If so, what has been done to address any difference in take up of the service? Does any savings proposal include an analysis of those affected?)</i></p> <p>National consultation on the IOL policy prior to implementation. Consideration and promotion of adoption by the All Wales Licensing Technical Panel.</p> <p>The Government response to a Report of the Task and Finish Group on Taxi and Private Hire Vehicle Licensing welcomed the work that the Institute of Licensing in partnership with the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government have done in relation to suitability. Their work has informed the guidance on previous convictions that is included in the draft statutory guidance. Their intention is that, subject to the outcome of the consultation, this will be included in national minimum standards.</p>
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## CONSULTATION

<b>7</b>	<p><b>Please outline the consultation / engagement process and outline any key findings.</b> <i>(Include method of consultation, objectives and target audience. What steps have been taken to ensure that people from various groups have been consulted during the development of this proposal? Have you referred to the Equalities Consultation and Monitoring Guidance?)</i></p> <p>The Institute of Licensing working party carried out a national consultation exercise on the draft Guidance and 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.</p> <p>The Council also consulted with the existing trade in CCBC prior to the submission of a report to the Taxi and General Licensing Committee in September 2019. A 4 week consultation exercise with all 480 existing licensees was undertaken in Caerphilly CBC which ended on the 26th April 2019. In total, there were 9 responses received either opposing the adoption of the new guidance or advocating that 'grandfather rights' should be provided for existing drivers. This included representation from the Caerphilly Taxi Drivers Association. One response was received on the 27th April 2019, after the closure of consultation but is also enclosed within the above for completeness, as it demonstrates an approach already taken by another Welsh local authority.</p>
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## MONITORING AND REVIEW

<b>8</b>	<b>How will the proposal be monitored?</b>
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	<p><i>(What monitoring process has been set up to assess the extent that the service is being used by all sections of the community, or that the savings proposals are achieving the intended outcomes with no adverse impact? Are comments or complaints systems set up to record issues by Equalities category to be able analyse responses from particular groups?)</i></p> <p>Numbers of drivers and Operators licensed by the Authority will be monitored and compared with trend information on numbers generally. Also numbers of refusals of new licensees will be monitored along with complaints and formal actions against existing licensees.</p>
<p><b>9</b></p>	<p><b>How will the monitoring be evaluated?</b>  <i>(What methods will be used to ensure that the needs of all sections of the community are being met?)</i></p> <p>Analysis of any changes in trend information relating to driver numbers, any increase in the number of refusals, revocations etc .</p>
<p><b>10</b></p>	<p><b>Have any support / guidance / training requirements been identified?</b>  <i>(Has the EIA or consultation process shown a need for awareness raising amongst staff, or identified the need for Equalities or Welsh Language training of some sort?)</i></p> <p>If adopted training will be required for Members of the Taxi and General Committee on the requirements of the new guidance when determining suitability, likewise legal officers who support the Taxi and General Sub Committees.</p>
<p><b>11</b></p>	<p><b>If any adverse impact has been identified, please outline any mitigation action.</b></p>
<p><b>12</b></p>	<p><b>What wider use will you make of this Equality Impact Assessment?</b>  <i>(What use will you make of this document i.e. as a consultation response, appendix</i></p>

*to approval reports, publicity etc. in addition to the mandatory action shown below?)*

The EIA will be published as an appendix to the report to the Taxi and General Committee on the 23<sup>rd</sup> of September 2019 and be published along with the Committee documents prior to the meeting. All EIA's are also published on the CCBC website.

<b>13</b>	<p><b>An equality impact assessment may have four possible outcomes, though more than one may apply to a single proposal. Please indicate the relevant outcome(s) of the impact assessment below.</b></p> <p style="text-align: right;"><b>Please tick as appropriate:</b></p> <p><b>No major change</b> – the impact assessment demonstrated that the proposal was robust; there was no potential for discrimination or adverse impact. All opportunities to promote equality have been taken. <input checked="" type="checkbox"/></p> <p><b>Adjust the proposal</b> – the impact assessment identified potential problems or missed opportunities. The proposal was adjusted to remove barriers or better promote equality. <input type="checkbox"/></p> <p><b>Continue the proposal</b> – the impact assessment identified the potential problems or missed opportunities to promote equality. The justification(s) for continuing with it have been clearly set out. (The justification must be included in the impact assessment and must be in line with the duty to have due regard. Compelling reasons will be needed for the most important relevant proposals.) <input type="checkbox"/></p> <p><b>Stop and remove the proposal</b> – the impact assessment identified actual or potential unlawful discrimination. The proposal was stopped and removed, or changed. <input type="checkbox"/></p>
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Form completed by:	
<b>Name:</b>	Jacqui Morgan
<b>Job Title:</b>	Trading Standards, Licensing & Registrars Manager
<b>Date:</b>	1.8.19

Head of Service Approval	
<b>Name:</b>	Robert Hartshorn
<b>Job Title:</b>	Head of Public Protection, Communities and Leisure.
<b>Signature:</b>	
<b>Date:</b>	1.8.19