

## Appendix 9 A Policy on Determining the Suitability of Applicants and Licensees as Drivers in Taxi & Private Hire Licensing

### 1. Introduction

- 1.1 The West Yorkshire and York licensing authorities, which consists of Bradford, Calderdale, Leeds, Kirklees, Wakefield and York, recognises that the role of Hackney Carriage and Private Hire Drivers is a professional one. Hackney Carriage and Private Hire Drivers transport our most vulnerable persons and are often the first point of contact for visitors to each authority.
- 1.2 The reason for this policy is to ensure that the travelling public within West Yorkshire and York can be confident that the drivers licensed by each authority are suitable for this role, that the standards applied are consistent across each Authority area and that the requirements will be the same for whichever authority they choose to apply to.
- 1.3 It is a function of the Council to issue Hackney Carriage and Private Hire licences under the Local Government Miscellaneous Provisions Act 1976.
- 1.4 The overriding requirement of the Council when carrying out this function is the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services. The aim of this policy is to ensure that public safety is not compromised.
- 1.5 The Council must ensure that applicants/licence holders are and remain fit and proper to hold a licence. This policy will apply to all new applicant and to existing licensees on renewal. This requirement is contained within Sections 51 & 59 of the Local Government Miscellaneous Provisions Act 1976.
- 1.6 This policy categorises the types of issues including, crime and driving convictions, that form part of the "fit & proper" test to facilitate the assessment of the potential risk to the public. As part of this assessment the Council is concerned to ensure that

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- An individual does not pose a threat to the public.
  - The Council's obligations to safeguard children and vulnerable adults are met.
  - The public are protected from dishonest persons.
- 1.7 The standards of safety and suitability are not set as a base minimum. They are set high to give the public the assurance it requires when using taxi services. The Council does **not** have to strike a balance between the driver's right to work and the public's right to protection. The public are entitled to be protected. This means that the Council is entitled and bound to treat the safety of the public as the paramount consideration.
- 1.8 Taxis are used by almost everyone but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated. A taxi driver has significant power over a passenger who places themselves, and their personal safety, in the driver's hands.
- 1.9 As part of the assessment referred to in paragraph 4 above the Council can consider convictions and cautions but also other outcomes of actions taken by the Police, other agencies and the Civil Courts.
- 1.10 Reference to convictions in this policy also includes cautions, warnings, reprimands, all forms of fixed penalty notices, restrictive type orders and any other relevant information. These must be reported to the Council in the format and timescales stated in the relevant policy. In addition any circumstances relating to the licensee is potentially relevant if it is relevant to their safety and suitability to hold a licence.
- 1.11 Matters which have not resulted in a criminal conviction (whether as a result of an acquittal, a conviction being quashed, a decision not to prosecute or an investigation which is continuing where the individual has been bailed) will be taken into account by the Council. In addition, complaints where there was no police involvement will also be considered.
- 1.12 In the case of a new applicant who has been charged with any offences and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn.
- 1.13 In all cases, the Council will consider a conviction or behaviour

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and what weight should be attached to it, and each case will be decided on its own merits and in line with this policy.

- 1.14 The licensing process places a duty on the Council to protect the public. Therefore it is essential that those seeking a living as a driver meet the required standards. As previous offending and other behaviour can be considered as a predictor in determining future behaviour, it is important that the Council considers all relevant factors including previous convictions, cautions, complaints, failures to comply with licence conditions, and the time elapsed since these were committed.

### 2. Applying the Guidance

- 2.1 One of the purposes of this policy is to provide guidance to an applicant or existing licenceholder on the criteria to be taken into account by the Council when determining whether or not an applicant, or an existing licensee on renewal, is fit & proper to hold a hackney carriage or private hire driver's licence.
- 2.2 When determining whether or not a person is "fit & proper" to become or remain a licensed driver each case will be decided on its own merits and the Council shall only depart from this Policy in exceptional circumstances.
- 2.3 There must be clear and compelling reasons for the Council to depart from this policy. The otherwise good character and driving record of the applicant or licence holder will not ordinarily be considered exceptional circumstances nor will the impact of losing (or not being granted) a licence on the applicant and/or his family.
- 2.4 The granting of a licence places an individual in a unique position of trust and they are expected to act with integrity and demonstrate conduct befitting of the trust placed in them. For this reason, whilst it is possible for an applicant or existing licence holder to have convictions that individually comply with the policy, the overall offending history and conduct of the applicant/licence holder will be considered. Appropriate weight will be applied where a series of convictions/incidents have been incurred over a period of time.
- 2.5 The Policy will also be applied if any additional issue arises that would call into question a person's suitability to continue to hold

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a licence. If an existing licence holder's conduct falls short of the "fit and proper" standard of behaviour at any time, their licence will be revoked.

- 2.6 Where a licence would normally be granted after an elapsed period, there may be circumstances where the elapsed period will be extended.
- 2.7 Any foreign offence disclosed by the applicant/licence holder or revealed on an enhanced Disclosure & Barring Service Disclosure will be dealt with in line with this Policy.
- 2.8 Any concerns, issues, incidents or convictions/offences not covered by this Policy will not prevent the Council from taking them into account.

### 3. Disclosure and Barring Service

- 3.1 Applicants need to be aware that as a consequence of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, they are excluded from the provisions of the Rehabilitation of Offenders Act 1974 in relation to spent convictions and that **ALL** convictions (including minor motoring convictions and fixed penalty notices) must be declared. The Secretary of State made this exemption because it is necessary to put public safety as the first consideration and to enable the Councils to take a wider view of the applicant over a longer timescale.
- 3.2 The Council conducts enhanced disclosures from the Disclosure and Barring Service ("DBS") of any applicant for a drivers licence. Applicants will be required to obtain an enhanced disclosure at their expense and to subscribe to the Disclosure and Barring Update Service.
- 3.3 Any information contained in the Enhanced DBS Certificate that identifies an individual as not suitable to work with children or vulnerable adults will normally be refused.
- 3.4 The Council is also entitled to use other records and information including any complaints history that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Council or other Councils and information disclosed by the police under the Home Office scheme for reporting offences committed by

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notifiable occupations.

- 3.5 In determining safety and suitability the Council is entitled to take into account all matters concerning that applicant or licensee. This includes not only their behaviour whilst working in the hackney carriage or private hire trade, but also their entire character including, but not limited to, their attitude and temperament.
- 3.6 Any applicant who has resided outside the UK for any period longer than 6 months within the preceding 3 years will be required to produce a certificate of good conduct dated in the last 3 months which details any convictions or cautions recorded against the individual. It is the applicant's responsibility to obtain this evidence at his cost. This will be in addition to the Enhanced DBS. Alternatively you may be required to produce a Statutory Declaration dated in the last 3 months.
- 3.7 It is the responsibility of the applicant/licence holder to satisfy the Council that they are a "fit and proper person" to hold a licence. Therefore the applicant/licence holder must ensure that all convictions, cautions, warnings, reprimands, fixed penalties, arrests and summonses are disclosed to the Council, including any incurred outside the UK. A failure to report such convictions, cautions, warnings, reprimands, fixed penalties, arrests and summonses will be given significant weighting.
- 3.8 Once a licence has been granted there is a continuing requirement on the part of a licensee to maintain their safety and suitability to meet the "fit and proper" test. The Council has the powers to take action against licence holders and any behaviour, incidents, convictions or other actions on the part of the licensee which would have prevented them from being granted a licence will lead to the licence being revoked.
- 3.9 Any dishonesty by any applicant or other person acting on the applicant's behalf which occurs in any part of the application process will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 3.10 An applicant must hold a full DVLA driver's licence, have the right to remain and work in the UK and be a "fit and proper" person.

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- 3.11 Under the Local Government (Miscellaneous Provisions) Act 1976 section 57, the Council 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 such licence.”
- The provision of this information can help to satisfy the Council that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of “fit and proper” and “safety and suitability” go beyond this. There is the character of the person to be considered as well.
- 3.12 The character of the applicant in its entirety is the paramount consideration when considering whether they should be licensed. The Council is not imposing an additional punishment in relation to previous convictions or behaviours. The information available to them is used to make an informed decision as to whether or not the applicant is a safe and suitable person.
- 3.13 The fact that an offence was not committed when the applicant was driving a taxi or when passengers were aboard is irrelevant. Speeding, drink driving and bald tyres are all dangerous, irrespective of the situation. Violence is always serious. A person who has a propensity to violence has that potential in any 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.
- 3.14 Licensees are expected to demonstrate appropriate professional conduct at all times, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.
- 3.15 There are those who seek to take advantage of vulnerable people by providing services they are not entitled to provide; for example, by plying for hire in an area where they are not entitled to do so. The Council expects licensees to be vigilant

of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers must feel able to check that the person offering a service is entitled to do so. Licensees must be willing to demonstrate that they are entitled to provide the service offered by, for example, showing their badge. Any applicant or licensee who does not comply with the requirements set out in this paragraph will not meet the "fit and proper" test.

#### 4. Criminal and Driving Convictions

- 4.1 The Council considers that a period of time must elapse after a crime before a person can no longer be considered to be at risk of re-offending. The timescales set out in Table A are to reduce the risk to the public to an acceptable level.
- 4.2 In relation to single convictions Table A sets out the time periods that should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.
- 4.3 The Council will look at the entirety of the individual and in some cases the suitability will not be determined simply by a specified period of time having elapsed following a conviction or the completion of a sentence. The time periods are a relevant and weighty consideration but they are not the only determining factor.
- 4.4 In addition to the nature of the offence or other behaviour, the Council will also consider the quantity of matters and the period of time over which they were committed. 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.
- 4.5 This policy does not replace the Council's duty 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 this policy the Council must consider the matter from first principles and determine the fitness of the individual.
- 4.6 Once a licence has been granted there is a continuing requirement on the part of the licensee to maintain their safety and suitability to meet the "fit and proper" test.

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- 4.7 Some offences on their own are serious enough for a licence not to be granted and these identified Table A. In the case of an existing licence "refused" in the Table means "revoked".
- 4.8 Applicants and licensees should be aware that where they have been convicted of a crime which has 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.
- 4.9 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 or financial abuse.
- 4.10 The Council will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any "barred" list. Existing licensees who are placed on the Sex Offenders Register or on any "barred" list will have their licence revoked.
- 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. Fixed penalties and community resolutions will also be considered in the same way as convictions.
- 4.12 Road Safety is a major priority to the Council. A taxi 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 their vehicle. As those passengers may be alone, and may also be vulnerable, any driving convictions or unacceptable behaviour whilst driving will weigh heavily against a licence being granted or retained.
- 4.13 Taxi drivers are professional drivers charged with the responsibility of carrying the public. Any motoring convictions demonstrate a lack of professionalism and will be considered seriously. Whilst 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 taken against an existing licence, subsequent convictions would indicate that the licensee does not take their professional responsibilities seriously and is therefore not a safe



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and suitable person to be granted or retain a licence.

### 5. Decision and Right of Appeal

- 5.1 Where the Council is minded to refuse an application or suspend or revoke an existing licence in line with this policy the applicant or existing licence holder will be informed and be given an opportunity to provide any additional written evidence in support of their application or retention of their licence.
- 5.2 The Council, at its absolute discretion, may determine to meet with the applicant or existing licence holder for the purpose of clarifying information provided or received. The applicant can be accompanied by one individual at the meeting who is not permitted to make comment or enter into any part of the discussion.
- 5.3 The Applicant or existing licence holder will be notified in writing of the Council's final decision within 14 days of completion of the procedures set out in paragraphs 43 and/or 44 above.
- 5.4 Any person whose application is refused or licence suspended or revoked by the Council has a right of appeal to the Magistrates' Court. An Appeal must be lodged within 21 days of the decision at the appropriate Magistrates' Court. Appeal rights are contained in Section 77 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II) and Section 300 of the Public Health Act 1936.

**Table A**

Offence	Period Elapsed
Crimes resulting in death of another person or was intended to cause the death or serious injury to another person.	No period is thought sufficient to have elapsed and the application will be refused.
Exploitation – any crimes involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victims were adults or children including, for example: slavery, child sexual exploitation, grooming, psychological, emotional, or financial abuse.	No period is thought sufficient to have elapsed and the application will be refused.
Offences involving violence (including arson, riot, terrorism offences, harassment, common assault & criminal damage) or connected with any offence of violence.	10 years
Possession of a weapon or any other weapon related offence.	7 years
Sex and indecency offences – any offence involving or connected with illegal sexual activity or any form of indecency.	No period is thought sufficient to have elapsed and the application will be refused.
Dishonesty – any offence of dishonesty, or any offence where dishonesty is an element of the offence.	7 years
Drugs supply – any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply.	10 years

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Offence	Period Elapsed
Drugs use – any conviction for possession of drugs, or related to possession of drugs.	5 years
Discrimination – any conviction involving or connected with discrimination in any form.	7 years
Drink driving/driving under the influence of drugs	7 years
Driving whilst using a hand-held telephone or other device.	5 years
Minor traffic or vehicle related offences – offences which do not involve loss of life, driving under the influence of drink or drugs, driving whilst using a hand held telephone or other device and has not resulted in injury to any person or damage to any property (including vehicles) resulting in 7 or more points on a DVLA licence.	3 years
Major traffic or vehicle related offences – offences not covered under minor traffic or vehicle related offences and also any offence which resulted in injury to a person or damage to any property (including vehicles), driving without insurance or any offence relating to motor insurance.	7 years
Hackney carriage and private hire offences.	7 years
Vehicle use offences, for example being carried in vehicle without the owners consent.	7 years.