



**Notice of a public meeting of
Licensing and Regulatory Committee**

To: Councillors Mason (Chair), Wells (Vice-Chair), Barker, Cuthbertson, Fitzpatrick, Galvin, Hook, Hunter, Melly, D Myers, Norman, Orrell, Pearson, D Taylor and Warters

Date: Monday, 15 July 2019

Time: 5.30 pm

Venue: The George Hudson Board Room - 1st Floor West Offices (F045)

AGENDA

1. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. Minutes (Pages 1 - 6)

To approve and sign the minutes of the meeting held on 18 March 2019.

3. Public Participation

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00pm on Friday 12 July 2019**.

Filming or Recording Meetings

Please note that, subject to available resources, this meeting will be filmed and webcast, or recorded, including any registered public speakers who have given their permission. This broadcast can be viewed at <http://www.york.gov.uk/webcasts>.

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The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at http://www.york.gov.uk/download/downloads/id/11406/protocol_for_webcasting_filming_and_recording_of_council_meetings_20160809.pdf

4. Renewal of Sex Establishment Licence for The Adult Shop (Pages 7 - 34)

This report seeks Members' determination of an application to renew a Sex Establishment Licence for a sex shop which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of The Adult Shop, 70B Gillygate, York, YO31 7EQ.

5. Taxi Licensing Policy - Amendments in relation to driver training (Pages 35 - 48)

This report seeks Members' recommendation to the Council's Executive for approval to amend the Taxi Licensing Policy in relation to driver training. The report advises the Committee of the consultation undertaken and the amendments made to the proposed policy following the consultation. The report also asks for Officers (Licensing Manager level and above) to set the implementation date for the new training requirements once adequate training providers have been sourced.

6. Taxi Licensing Policy - Amendments in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing (Pages 49 - 96)

This report seeks Members' recommendation to the Council's Executive for approval to amend the Taxi Licensing Policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing. The report advises the Committee of the consultation undertaken and the amendments made to the proposed policy following the

consultation. The report also asks for the Licensing Manager, in consultation with the Licensing and Regulatory Committee Chair and Senior Officers (Licensing Manager level and above), to make any minor changes that may be necessary to the policy, so that it remains consistent with the standards applied by the West Yorkshire Authorities.

7. Draft Work Plan 2019-20 (Pages 97 - 98)

Members are asked to consider the draft Work Plan for the 2019-20 municipal year.

8. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Angela Bielby

Contact Details:

- Telephone – (01904) 552599
- E-mail – a.bielby@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

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City of York Council

Committee Minutes

Meeting	Licensing and Regulatory Committee
Date	18 March 2019
Present	Councillors Lisle (Chair), Boyce, Cullwick, Douglas, Hayes, Hunter, Pavlovic, Reid, Richardson, D Taylor and Wells
Apologies	Councillors Funnell, Mason, Mercer and Derbyshire

29. DECLARATIONS OF INTEREST

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

30. MINUTES

Resolved: That the minutes of the meeting held on 11 February 2019 be approved as a correct record and signed by the Chair subject to the inclusion of a Work Plan on future Committee meeting agendas.

31. PUBLIC PARTICIPATION

It was reported that there had been 8 registrations to speak at the meeting under the Council's Public Participation Scheme.

Gwen Swinburn spoke on agenda item 5 Update Report – Private Hire Licensing. She outlined her view that the report had a number of deficiencies including lack of an Equalities Impact Assessment. She urged the committee to reject the report.

Sidney Gitsham spoke on agenda item 5 Update Report – Private Hire Licensing. Mr Gitsham suggested that there should be a judicial review and made a number of points in relation to the operation of Uber in York.

Barry Page (YPHA) spoke on agenda item 5 Update Report – Private Hire Licensing. He noted that Uber did not hold an operators licence in York and that there had been a number of incidents involving Uber drivers in York. He suggested that all taxi drivers in York should be regulated.

Michael Palmer (York Private Hire Association (YPHA) Secretary) spoke on agenda item 5 Update Report – Private Hire Licensing. He questioned the validity of the advice given by the Barrister to the Council and he cited specific paragraphs where he disagreed with that advice.

Tony Green (York Hackney Carriage Association (YHCA) Vice Chair) spoke on agenda item 5 Update Report – Private Hire Licensing. He suggested that the Reading Case quoted by the Barrister to the Council was not relevant and cited section 46 of the 1946 Act.

Lauren Senior (YPHA Member) spoke on agenda item 5 Update Report – Private Hire Licensing. She explained the differences between Uber and York taxi drivers in their treatment of customers and she gave examples of how York taxi drivers met the needs of different customers.

Drew Thompson (YPHA Member) spoke on agenda item 5 Update Report – Private Hire Licensing. He noted that the legal opinions to the York Private Hire Association and to City of York Council (as detailed in the annexes to the report), were opinions and therefore the trade's legal position was as valid as the Council's legal position.

Alan Rowley (YHCA and YPHA Member) spoke on agenda item 5 Update Report – Private Hire Licensing. In referring to the York Taxi Licensing Policy, he clarified that the trade was asking for the full implementation of the policy. He noted that Uber lost its licence due to not being 'fit and proper' and that protecting the public should be a number one priority.

Wendy Loveday (YPHA Chair) spoke on agenda item 5 Update Report – Private Hire Licensing. She explained that the trade believed that the assessment made by officers was fundamentally flawed and that the authority's interpretation of its own policy was ambiguous. She asked that the Committee reject the officer recommendation and consider the advice put

forward in the legal opinion put forward to the York Private Hire Association.

Cllr Warters, Councillor for Osbaldwick and Derwent Ward spoke on behalf of a taxi driver in his Ward on agenda item 5 Update Report – Private Hire Licensing. He reminded the Committee that the legal opinions put forward were opinions. He noted the potential loss in income to the Council should there be a reduction in taxi licence renewals.

32. UPDATE ON DISCLOSURE AND BARRING SERVICE CHECKS FOR YORK TAXI DRIVERS

Members considered a report that updated them of the progress made on ongoing criminal record checks with the Disclosure and Barring Service (DBS), 'refresher' checks for York licensed hackney carriage and private hire drivers as requested by at the Committee meeting on 8 October 2018.

The Head of Public Protection gave an update advising that as at 20 February 2019, all 984 (100%) drivers had been contacted by officers and were in different stages of the checking process. He also noted that 18 drivers had indicated their intention to surrender their licence as they were no longer driving.

In response to Member questions, the Head of Public Protection clarified that:

- All drivers from out of town would be checked by their Licensing Authority.
- He was not aware of other Local Authorities not undertaking the DBS checks.
- One licence had been revoked and the remainder would be dealt with within a week.

The Head of Public Protection agreed to keep the future Executive Member for Transport and Planning and future Chair of the Committee updated on the DBS checks.

Resolved: That the report be noted.

Reason: In order that Members be updated on the progress of DBS checks for York taxi drivers.

33. UPDATE REPORT - PRIVATE HIRE LICENSING

Members considered an update report that explained the Council's position regarding the interpretation of the law relating to private hire licensing and the ability to work outside the area within which they are licensed. An alternative interpretation of the law had been put forward by members of the trade and the Opinion of their legal adviser was attached for Members' information at Annex 1. The Council had sought external legal advice which was attached for Members' information at Annex 2.

A legal update was provided by the Legal Services Manager to respond to questions raised during the public participation session. She explained why there were no options included in the report, which included a recommendation. She noted that it was unusual to have committee involvement in matters of legal interpretation, which had been at the request of the Chair. She highlighted the need to comply with the Code for Crown Prosecutors and the Council's enforcement policy when determining whether a criminal offence had been committed and whether it was in the public interest to prosecute. She advised that both the Counsel's Legal Opinion to the Council and the Leading Counsel's Opinion to the trade had been made public. She explained that risks had not been set out in the report as the risks would only have arisen if there was an alternative option to the recommendation. As the Council's legal adviser, the Legal Services Manager was satisfied that having regard to the independent Legal Opinion, which analysed and dismissed the QC's Opinion to the trade, that the settled legal position remained as follows:

Provided the three licences required in relation to a private hire vehicle (operator, vehicle and driver) have all been issued by the same authority, then the private hire vehicle (PHV) can undertake journeys anywhere in England and Wales. That is irrespective of where the journey commences, areas through which the journey passes and, ultimately, the area where the journey ends.

In response to questions raised by Members, the Legal Services Manager confirmed that:

- The matter was not about the Deregulation Act
- It was considered that there were no implications as the Council's position was viewed to be legally correct

- Any decision to change the Taxi Licensing Policy would be a decision made by Executive, not the Committee.
- Consideration of the Uber operating licence application was a licensing regulatory function which was under the remit of the Committee. That Committee made the decision that Uber was not fit and proper to hold an operating licence.

In response to Member questions, the Head of Public Protection clarified that

- It was not known how many licensing authorities had decided that Uber was not fit and proper to hold an operating licence.
- The cost for licences was the cost of operating the service.
- The investigation of a driver pretending to be Uber driver had been referred to the police and was under investigation.
- Enforcement officers would stop illegal picks if they observed this taking place.
- There was a government review of taxi licensing law in progress.

During debate a number of views and suggestions were put forward. Concerns were expressed regarding the conflicting legal Opinions, a lack of case law, risk analysis and Equalities Impact Assessment. Following debate it was:

Resolved: That it be recommended to the Executive that, in order to make an informed decision, further investigation be undertaken regarding the requirement for a change in Taxi Licensing Policy.

Reason: To provide clarity for the public in relation to the Council's interpretation of the law.

Cllr A Mason, Chair

[The meeting started at 4.00 pm and finished at 5.45 pm].

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**Meeting of Gambling, Licensing & Regulatory
Committee**

15 July 2019

Report of the Assistant Director – Planning and Public Protection

**Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as
amended by Policing and Crime Act 2009
Renewal of Sex Establishment Licence for The Adult Shop,
70B Gillygate, York, YO31 7EQ**

Summary

1. This report seeks Members determination of an application to renew a Sex Establishment Licence for a sex shop which has been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of The Adult Shop, 70B Gillygate, York, YO31 7EQ.
2. Name of applicant: Lilacgrange Limited
3. Summary of Application: The application is to renew an existing Sex Establishment Licence which permits the premises to operate as a sex shop during the following times; Monday to Saturday 10:00 hours to 20:00 hours and Sunday 12:00 hours to 17:00 hours. A copy of the renewal application is attached at Annex 1.
4. A sex establishment licence is valid for 12 months. The licence holder must submit an application to renew the licence to the licensing authority before the existing licence expires if they wish to continue running a sex establishment, in this case a sex shop. A copy of the licence to be renewed is attached at Annex 2.

Recommendations

5. Members are asked to determine the application for the grant of the licence in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Schedule 3 as amended by Policing and Crime Act 2009.

Reason: To consider renewal of the sex establishment licence as required by the legislation.

Background

6. Sex shops are defined in the legislation as any premises, vehicle or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating sex articles; or other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity; or acts of force or restraint which are associated with sexual activity.
7. These premises have operated as a sex shop since 1997. There have been no complaints received in relation to the premises since the initial licence was granted.
8. City of York Council's Licensing of Sex Establishments Licensing Policy was reviewed and a revised policy was adopted on 27 April 2017 with immediate effect. A copy of this policy can be found at https://www.york.gov.uk/downloads/file/2964/sexual_entertainment_venues_-_policy_and_procedurepdf.
9. A copy of City of York Council's Standard Conditions for Sex Shops is attached at Annex 3.

Consultation

10. Consultation was carried out by the applicant and the Licensing Authority in accordance with paragraph 10 of Schedule 3 of the 1982 Act relating to the process which the applicant must follow for the application for renewal to be considered valid.
11. There were no objections received to the application.
12. A map showing the location of the premises is attached at Annex 4.

Relevant Legislation – Grounds for Refusal

13. When considering the renewal application, the Authority does not have an unfettered discretion as to whether to refuse an application or grant a renewal. The grounds on which an application could be refused are set out in paragraph 12 to Schedule 3 of the 1982 Act.

Mandatory grounds for the refusal of an application

14. The mandatory grounds for the refusal of an application for a sex establishment licence are that the applicant:
- a) is under the age of 18;
 - b) is for the time being disqualified from holding a sex establishment licence;
 - c) is not a body corporate, and is not in resident or has been resident in an EEA state for six months immediately preceding the date of the application;
 - d) is a body corporate which is not incorporated in an EEA state;
 - e) has in the period of twelve months preceding the date of application been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the reversal has been reversed on appeal.
15. There are no mandatory grounds for refusing this application.

Discretionary grounds for the refusal of an application

16. Discretionary grounds for the refusal of an application for a sex establishment licence are that:
- a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or any other reason;
 - b) if the licence were to be granted, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of such a licence if he made the application himself;
 - c) the number of sex establishments, or sex establishment of a particular kind, in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality;
 - d) the grant would be inappropriate, having regard –
 - to the character of the relevant locality;
 - to the use to which any premises in the vicinity are put;

- to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.
17. When considering the suitability of the applicant to hold a licence the council will take into account such matters it considers to be relevant.
 18. Guidance on relevant locality can be found at Annex 5, paragraphs 3.32 to 3.38.
 19. Within the licensing policy the council has determined a limit on the number of sexual entertainment venues permitted within the Authority area, however, this limit does not apply to sex shops. These applications must be dealt with on a case by case basis.

Options

20. By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee have the following options available to them in making their decision:
21. Option 1: Grant a renewal of the licence as requested.
22. Option 2: Renew the licence with modified/additional conditions imposed by the licensing committee.
23. Option 3: Refuse the application for renewal on one of the mandatory grounds or on one or more of the discretionary grounds within paragraph 12 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

Analysis

24. The following could be the result of any decision made by this Committee:
25. Option 1: This decision cannot be appealed at Magistrates Court by an objector to the application. Objectors could judicially review the decision.
26. Option 2: This decision could be appealed at Magistrates Court by the licence applicant.
27. Option 3: With the exception of a decision to refuse an application on a ground specified in paragraph 12(3) (c) or (d) of Schedule 3 to the 1982

Act, the licence applicant may appeal against the decision made to the Magistrates' Court.

Council Plan

28. The approved City of York Council Policy will support the Council's Plan for a prosperous city for all and a council that listens to residents.

Implications

29. The implications arising directly from this report are:

- **Financial** - N/A
- **Human Resources (HR)** – N/A
- **Equalities** – N/A
- **Legal** – The Council has the ability to control the licensing of sexual entertainment venues having adopted Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009.

Paragraph 8 of Schedule 3 to the 1982 Act provides that where it determines to grant sex establishment licence, the Council is empowered to impose such conditions or restrictions as it deems appropriate.

Paragraph 12 of Schedule 3 to the 1982 Act sets out a number of mandatory grounds for refusal of sex establishment licence and also discretionary grounds for refusal of a sex establishment licence.

In considering this application the Committee should have regard to:

- Schedule 3 to the 1982 Act, as amended by Policing and Crime Act 2009 (Annex 5).
- The City of York Council Licensing of Sex Establishment Licensing Policy which can be found at https://www.york.gov.uk/downloads/file/2964/sexual_entertainment_venues_-_policy_and_procedurepdf.
- The Home Office – Sexual Entertainment Licence – Guidance for England and Wales which states that “Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12” [of Schedule 3 to the 1982 Act].

In addition when making their decision Members must give consideration to the rights the applicant has under the European Convention on Human Rights. Article 1 (entitles every person to peaceful enjoyment of their possessions) and Article 10 (freedom of expression) are particular rights that may be relevant. Members should consider whether interference with these rights is necessary and proportionate for the prevention of crime or disorder, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, whether interference can be justified in the general interest.

Members of the Committee should not allow themselves to predetermine the application or to be prejudiced in favour or opposed to the licence and shall only determine the application on its own merit.

- **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
- **Information Technology (IT)** – N/A
- **Property** – N/A
- **Other** – none

Risk Management

30. All Members are aware that any decision which is unreasonable or unlawful could be open to legal challenge resulting in loss of reputation and potential financial penalty.
31. The report details the options available to the panel in determining the application and recommends that a decision be reached. Provided the decision complies with the proper grounds for considering the application as set out within this report, there are no known risks involved with this recommendation.

Contact Details

Author:

Lesley Cooke
Licensing Manager
Ext 1515

Chief Officer Responsible for the report:

Michael Slater
Assistant Director
Planning & Public Protection
Ext 1300

Report ✓ **Date** 4 July 2019
Approved

Wards Affected: Guildhall

Annexes

- Annex 1** - Copy of application for renewal
- Annex 2** - Copy of existing licence to be renewed
- Annex 3** - Standard Conditions for Sex Shop
- Annex 4** - Map showing location of premises
- Annex 5** - Legislation Extracts – Renewal Applications

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CITY OF YORK COUNCIL
Licensing Services, Hazel Court EcoDepot, James Street, York, YO10 3DS

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 AS AMENDED
SCHEDULE 3 – CONTROL OF SEX ESTABLISHMENTS
Application for the Grant / Renewal / Transfer of a Sex Establishment Licence

TYPE OF VENUE

Sexual Entertainment Venue

Sex Shop

Sex Cinema

TYPE OF APPLICATION

Grant

Renewal

Transfer

008669

APPLICANT DETAILS

1. Is the applicant:

An individual

(please answer questions 2, 5 to 9)

A company or other corporate body

(please answer questions 3, 5 to 9)

A partnership or other unincorporated body

(please answer questions 4, 5 to 9)

2. Full name of applicant (individual):

Former or previous names:

Home address:

Post town:

Post code:

Telephone numbers:

Date of birth:

Email address:

3. Name of applicant (company name): LILACGRANGE LTD

Address of registered or principal office: 70 B GILLYGATE

Post town: YORK

Post code: YO31 7EQ

Registration number: 05842814

Email address:

4. Name and address of applicant:

Names and addresses of applicant's partners (please use additional sheet):

5. Are there any other persons responsible for the management of the premises/business other than the partners? Please state their names and addresses:

6. a. Has the applicant ever been known by any other name? ~~YES~~ / NO
b. Has the applicant ever been convicted of a criminal offence? ~~YES~~ / NO
c. Has the applicant ever been refused a sex establishment licence? ~~YES~~ / NO
d. Has the applicant ever had a sex establishment licence revoked? ~~YES~~ / NO
e. Has the applicant ever been served with a winding up petition? ~~YES~~ / NO

If the answer to any of these questions is yes, please provide details:

7. Applicants' trading address or head office (other than the premises)
THE PREMISES ARE THE TRADING ADDRESS AND HEAD OFFICE
170B GILLGATE YORK YO31 7EQ

8. Will the business for which this licence is sought be carried on for the benefit of a person other than the applicant? ~~YES~~ / NO

If the answer is yes, state the name, address, place of registration, registered number and the identity of all directors, company secretary and those with a greater than 10% shareholding (use separate sheet if necessary).

9. Does the applicant operate any other sex establishments, licensed or otherwise? Please state name, address, and type of sex establishment of each.

No

PREMISES DETAILS

10. Please state the name the business will be known as:

THE ADULT SHOP

11. Is the premises a Building Vehicle Vessel Stall

12. Where is it proposed to use the vehicle, vessel or stall?

N/A

13. Does the company propose to only operate on the internet?
(f yes answer Q14 to 19 only)

No

14. Premises address 70B GILLYGATE

Post town YORK

Post code YO 31 7EQ

Telephone number at premises

01904 613 638

15. Which part of the premises is to be used as a sex establishment?

GROUND FLOOR SHOP (AS EXISTING)

16. Is the applicant owner lessee sub-lessee other

17. If the applicant rents the property state:

a. Name and address of landlord:

b. Name and address of the superior landlord:

c. Total annual rental: £5440

d. Length of unexpired term: 1 YEAR

e. Notice required to terminate tenancy: 3 MONTHS

18. Please provide details of the building management company (if appropriate):

NONE

19. State the current use of the premises:

SEX SHOP.

20. Has planning permission, or a certificate of lawful use, been obtained for the use of the proposed premises? YES / ~~NO~~

21. Can members of the public access the premises:
 a. Directly from the street? YES / ~~NO~~
 b. From other premises? ~~YES~~ / NO
 c. Not at all? (internet sales only) YES / NO

22. Are the premises currently being used as a sex establishment? YES
 Please provide details of the business currently operating the business:
 LILAC GRANGE LTD
 70 B GILLYGATE
 YORK YO31 7EQ

OPERATING SCHEDULE

23. Opening hours: (If internet sales only please tick here and continue to Q 26)

Monday	Tuesday	Wednesday	Thursday	Friday
10:00 20:00	10:00 20:00	10:00 20:00	10:00 20:00	10:00 20:00
Saturday	Sunday			
10:00 20:00	12:00 17:00	(ALL AS EXISTING)		

Any non-standard timings:

24. Has the applicant entered into any written or oral agreement in connection with the business, for example a management agreement, partnership agreement or profit share arrangement? Please provide details.
 NO

a. Please provide details of any lender, mortgage or others providing finance:
 NONE

b. Please provide details of any merchandising agreements:
 NONE

PREMISES MANAGEMENT

25. Please state the name of the person who will be in day to day control of the premises (the manager).

a. Will the manager be based at the premises? YES ~~YES/NO~~
 b. Will the management of the premises be the manager's sole occupation? YES / NO

26. Who will be in control of the premises in the manager's absence (relief manager)?

a. Will the relief manager be based at the premises in the absence of the manager? YES / ~~NO~~

If you have ticked no to any of the above please provide details.

EXTERNAL APPEARANCE AND ADVERTISING – DO NOT COMPLETE FOR RENEWAL APPLICATION

27. Please describe the proposed exterior signage and advertising. Please include nature, content and size of each sign and any images to be used:

Please note that a drawing of the front elevation is required to be submitted with this application.

28. Please describe how the interior of the premises is obscured to passersby:

29. Please describe any proposed window displays:

30. Please describe how the business is to be advertised, ie business cards, billboard advertising, personal solicitation, advertising on motor vehicles, radio or television advertising:

RENEWAL

APPLICATIONS FOR SEXUAL ENTERTAINMENT VENUES ONLY

31. Is the proposal for full nudity? YES / NO

32. Describe the nature of the entertainment eg lap-dancing, pole dancing, stage strip tease:

33. State measures to ensure employees age and right to work in the UK:

34. Describe training and welfare policies:

Please enclose a copy of the welfare policy for performers (or equivalent document).

35. Please set out any further information you wish the authority to take into account.

SEXUAL ENTERTAINMENT VENUE

NO

36. Is there any information on this form you do not wish to be seen by members of the public?
If so state which information and the reasons why you do not wish it to be seen.

NO

CHECKLIST & ENCLOSURES

Enclosures

- I have made or enclosed payment of the fee
- I have enclosed three sets of plans of the premises
- I have enclosed a drawing of the street elevation of the premises
- In the case of an application to transfer the licence, include the completed Consent to Transfer form

DECLARATION

I declare that I have served notice of this application on North Yorkshire Police.

I declare that a public notice advertising this application has today been displayed upon the proposed premises where it may be conveniently read by the public and will remain thereon for a period of 21 days. A copy of the notice and the standard declaration is enclosed.

I declare that within seven days of the date of this application a public notice advertising this application will be publicised in the legal notices column of the local press.

A copy of the relevant press edition will be forwarded to the City of York Council Licensing Section.

I understand that if I do not comply with the above requirements my application will be rejected.

Any person who, in connection with an application for a grant, renewal or transfer of a sex establishment licence, makes a false statement which he knows to be false in any material respect of which he does not believe to be true is guilty of an offence and liable on summary conviction to an unlimited fine.

SIGNATURES

Signature of applicant or applicant's solicitor or other duly authorised agent, If signing on behalf of the applicant please state in what capacity./

Signature	Signature
Name (print)	Name (print)
Date 24th April 2019	Date
Capacity DIRECTOR	Capacity

Contact name (where not previously given) and address for correspondence associated with this application:

Post town _____ Post code _____

Telephone number (if any) _____

If you would prefer us to correspond with you by email, your email address (optional)

Ref no: MAU 008669/18



LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

SEX ESTABLISHMENT LICENCE

The City of York Council hereby grant renewal of licence to:

Lilacgrange Ltd
70B Gillygate
York
YO31 7EQ

to use the premises known as:

The Adult Shop
70B Gillygate
York
YO31 7EQ

for the purposes of a sex establishment comprising a sex shop as defined in Schedule 3 to the above Act.

This Licence is renewed subject to the City of York Council Standard Conditions Application to Sex Establishment Licences and to the additional conditions set out in the schedule below.

This licence shall continue in force from 1 May 2018 until 30 April 2019 unless previously revoked.

Granted on 18 June 2018 (renewal)

Signed
For and on behalf of Economy & Place

SCHEDULE

1. The sound from the video preview facility must be inaudible externally and in adjoining premises.
2. That the hours of opening be limited to 10:00am to 8.00pm, Monday to Saturday, and 12 noon to 5:00 pm on Sunday.
3. The attached Standard Conditions also apply to this licence.

Extract from the Local Government (Miscellaneous Provisions) Act 1982

APPEALS (*Sched. 3, para. 27*)

27. - (1) Subject to sub-paragraphs (2) and (3) below, any of the following persons, that is to say -
- (a) an applicant for the grant, renewal or transfer of a licence under this Schedule whose application is refused;
 - (b) an applicant for the variation of terms, conditions or restrictions on or subject to which any such licence is held whose application is refused;
 - (c) a holder of any such licence who is aggrieved by any term, condition or restriction on or subject to which the licence is held; or
 - (d) a holder of any such licence whose licence is revoked
- may at any time before the expiration of the period of 21 days beginning with the relevant date appeal to the magistrates' court acting for the relevant area.
- (2) An applicant whose application for the grant or renewal of a licence is refused, or whose licence is revoked, on any ground specified in paragraph 12(1) above shall not have a right to appeal under this paragraph unless the applicant seeks to show that the ground did not apply to him.
- (3) An applicant whose application for the grant or renewal of a licence is refused on either ground specified in paragraph 12(3) or (d) above shall not have the right to appeal under the paragraph.
- (4) In this paragraph -
- 'the relevant area' means-
 - (a) in relation to premises, the petty sessions area in which they are situated; and
 - (b) in relation to a vehicle, vessel or stall, the petty sessions area in which it is used or, as the case may be, desired to be used as a sex establishment;
 - and
 - 'the relevant date' means the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation of his licence, as the case may be.
- (5) An appeal against the decision of a magistrates' court under this paragraph may be brought to the Crown Court.
- (6) Where an appeal is brought to the Crown Court under sub-paragraph (5) above, the decision of the Crown Court shall be final; and accordingly in section 28(2)(b) of the Supreme Court Act 1981 for the words 'or the Gaming Act 1968' there shall be substituted the words 'the Gaming Act 1968 or the Local Government (Miscellaneous Provisions) Act 1982'.
- (7) On an appeal to the magistrates' court or the Crown Court under this paragraph the court may make such order as it thinks fit.
- (8) Subject to sub-paragraph (9) to (12) below, it shall be the duty of the appropriate authority to give effect to an order of the magistrates' court or the Crown Court.
- (9) The appropriate authority need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (5) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.
- (10) Where a licence is revoked or an application for the renewal of a licence is refused, the licence shall be deemed to remain in force -
- (a) until the time of bringing an appeal under this paragraph has expired and, if such an appeal is brought, until the determination or abandonment of the appeal; and
 - (b) where as appeal relating to the refusal of an application for such a renewal is successful and no further appeal is available, until the licence is renewed by the appropriate authority.
- (11) Where -
- (a) the holder of a licence makes an application under paragraph 18 above; and
 - (b) the appropriate authority impose any term, condition or restriction other than one specified in the application,
- the licence shall be deemed to be free of it until the time for bringing an appeal under this paragraph has expired.
- (12) Where an appeal is brought under this paragraph against the imposition of any such term, condition or restriction, the licence shall be deemed to be free of it until the determination or abandonment of the appeal.



STANDARD CONDITIONS

SEX SHOPS

General

1. Unless stated otherwise, the licence hereby granted will remain in force for one year from the date on the licence, after which it will cease to be in effect unless an application for renewal is submitted in the manner prescribed by the council.
2. The licence may be revoked by the council if at any time the holder is convicted of an offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.
3. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
4. The name of the premises must be approved by the council in writing. Any change to the name of the premises must be approved by the Council in writing.

Exhibition of the licence

5. The licence or a certified copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises and all authorised officers. A copy of the conditions attached to the licence shall be kept on the premises and be available for inspection by an authorised officer of the council.

Hours of opening

6. Except with the written consent of the council, the premises will only open to the public during the following hours:

Monday	09:00 – 20:00	Friday	09:00 – 20:00
Tuesday	09:00 – 20:00	Saturday	09:00 – 20:00
Wednesday	09:00 – 20:00	Sunday	12:00 – 20:00
Thursday	09:00 – 20:00		

Conduct of the premises

7. The premises will be conducted primarily for the purpose of the sale or hire of goods by retail.
8. The licensee, or any other person concerned in the conduct or management of the premises, will only obtain custom by means of personal solicitation or touting from the premises in such a way that it does not cause concern to the public or the licensing authority. All literature used will not contain images or text of a sexually explicit, obscene or offensive nature.

9. No part of the premises will be used by prostitutes.
10. All sex articles or other items displayed for sale, hire, exchange or loan within the premises will be clearly marked to show the price being charged.
11. All printed material offered for sale, hire, exchange or loan will be available for inspection prior to purchase and a notice to this effect will be displayed in a conspicuous position within the premises.
12. No film, DVD or video recording (or computer game) will be exhibited, sold or supplied unless it has been passed by the British Board of Film Classification and bears a certificate to that effect.
13. No moving picture will be provided on display at the licensed premises unless it is that of advertising videos on a loop system or allowing a prospective purchaser a short preview of films upon request, being no longer than 3 minutes in length.
14. Items offered for sale, hire, exchange or used in any promotion/advertising must not contravene any current legislation i.e. Section 12 Video Recordings Act 1984 (as amended).

External appearance

15. There will be a notice displayed inside each entrance or doorway to the premises, clearly visible on entering the premises, which states the following words and no others:

STRICTLY NO ADMITTANCE TO PERSONS UNDER 18 YEARS OF AGE

This premises operates a Challenge 25 policy.
Persons who appear to be under the age of 25 will be required to show proof of age.

16. The external appearance of the premises must be approved by the council in writing. Any change to the external appearance must be approved by the council. The operator must advise of any change in writing including a drawing of the existing and proposed street elevation. This must be approved by the council in writing before work is undertaken.
17. The frontage of the licensed premises will be of such a nature that the inside of the licensed premises are not visible and the contents of the licensed premises should not be visible when the doors of the licensed premises is open.
18. There will be no illuminated or protruding signs fixed to the premises and no signs placed outside the premises on the public highway.

Advertising

19. Any unsolicited written, visual or auditory advertisement material, posters, signage or window display must not be of a sexually explicit or suggestive nature, will not contain images or text of a sexually explicit, obscene or offensive nature and must be approved by the council in writing.
20. The distribution of flyers will only be permitted in such a way where it does not cause public offence. Flyers must not be distributed by and to persons under the age of 18 years.

Layout of the premises

21. Access to ground floor premises may only be through two or more doors placed consecutively, so arranged that when a person enters or leaves the premises the interior of the premises is not recognisable to persons outside the premises. The first set of entry doors must be fitted with a device to provide for their automatic closure and such a device shall be maintained in good working order.
22. No access will be permitted through the premises to any other adjoining or adjacent premises except in the case of an emergency.
23. No alterations (including temporary alterations) will be made to the structure and installations on the premises, without the prior written consent of the council. This condition will not require notice to be given in respect of routine maintenance works. Where there is any doubt the licensee should seek advice from the council.

Management of the premises

24. Where the licensee is a body corporate, or an un-incorporated body, any change of director, company secretary or other person responsible for the management of the body will be notified in writing to the council within 14 days of such change. Such details as the council may require in respect of the change of personnel will be furnished within 14 days of a request in writing from the council.
25. The licensee, or a responsible person nominated by him/her in writing for the purpose of managing the venue ("the manager") will have personal responsibility for and be present on the premises whilst the premises are open to the public. Any such nomination will be produced on demand to an authorised officer of the council or the police.
26. The licensee will ensure that any person nominated by him/her under the above:
 - a) has been provided with a copy of the conditions relating to the premises and is fully conversant with them; and
 - b) is in possession of a written nomination referred to about at all times when they are in charge of the premises.
27. Where the licensee, director, company secretary, or responsible person nominated for the purpose of managing the venue ("the manager"), is convicted of an offence, they must, as soon as practicable after the conviction, inform the council of the conviction giving details of the nature and date of the conviction, and any sentence imposed.
28. The licensee will retain control over all parts of the premises and will not let, licence or part with possession of any part of the premises. The council must be notified immediately in the event that any part of the premises affected by the termination of a lease or other event affecting the licensee's control of the premises.
29. The licensee will ensure that the public is not admitted to any part or parts of the premises that has not been approved by the council.
30. The holder of the licence will keep a record of all employees who are asked to work on the premises which will include their full name, date of birth, current and previous address and any convictions recorded against that person (subject to the Rehabilitation of Offenders Act 1984).
31. An authorised and certified copy of the full personal record or a record of an individual will be produced on demand to an authorised officer of the council or the police.

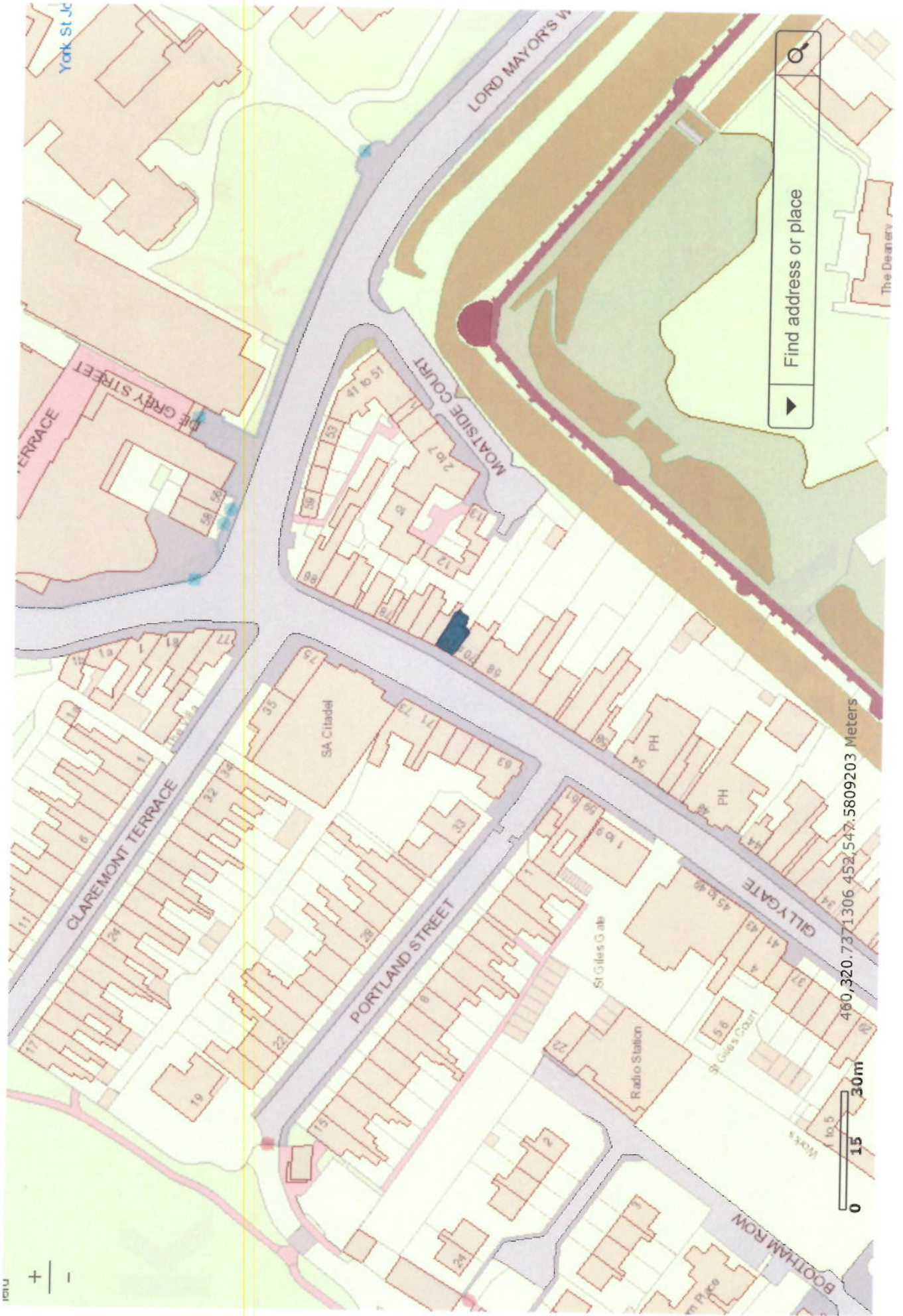
32. No person under the age of 18 will be admitted to the premises.
33. The licensee will operate a Challenge 25 age verification policy. People who appear to be under the age of 25 will be required to show proof of ID prior to admittance. A notice to this effect, in accordance with condition 18 will be displayed on the premises.
34. The licence holder will not employ any person under the age of 18 in any capacity.

Vessels, vehicles and stalls

35. In the case of licensed premises that are a vessel, vehicle or stall, the licensee shall not move the vessel, vehicle or stall from the location specified in the licence unless 28 days written notice is given to the council of such intended removal. The council may require the licensee to lodge such written application as it may deem appropriate and pay such a fee as it may deem reasonable in respect of such application.
36. The requirements of condition 35 will not apply to a vessel, vehicle or stall habitually operating from a fixed location, which is regularly moved, whether under its own propulsion or otherwise, from another place for storage purposes. This place must be specified in the licence and must not be used for the purposes for which the licence is granted and any other location than that specified in the licence.
37. Vehicles must not be used for personal solicitation, touting or advertising.

Variation of conditions

38. The council may, at the time of grant or renewal of the licence, waive, modify or vary these conditions or impose additional conditions as appropriate.
39. The licensee may apply to the council to vary any of the terms of the licence.
40. Applications to vary conditions of the licence must be advertised by the licensee in the same manner as the application for the grant, renewal or transfer of the licence.



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Legislation and Policy Considerations

1. The following provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) apply to this application:
 - Paragraph 10 (Grant, renewal and transfer of licences for sex establishments) relates to the process which the applicant must have followed for the application to be considered valid.
 - Paragraph 12 (Refusal of licences) relates to the grounds under which an application shall not be granted and also describes the powers by which the licensing authority has a discretion to refuse the licence.
 - Paragraph 13 (Power to prescribe standard conditions).

2. The following provisions of the Home Office Guidance apply to this application:
 - Paragraphs 3.23 – 3.24 (Objections) explain who can object and how this is done and that the applicant must be made aware of the general grounds for the objection before the application is determined.
 - Paragraphs 3.25 – 3.26 (Hearings) explain that the applicant must be given the opportunity to appear and be heard in front of the sub-committee considering the application. Schedule 3 does not make any explicit provision for objectors to be heard, this is left to the discretion of the appropriate authority.
 - Paragraphs 3.27 – 3.31 (Grounds for refusal).
 - Paragraphs 3.32 – 3.38 (Relevant locality) define the meaning of “relevant locality” and the powers of the appropriate authority to decide the maximum number of premises allowed in a particular locality.
 - Paragraphs 3.39 – 3.42 (Licence conditions) explain that once the decision is made to grant, the appropriate authority can attach conditions specific to the individual premises and/or standard conditions for the particular type of establishment. These conditions should not duplicate conditions placed on a premises licence issued under the Licensing Act 2003 and should be appropriate to the activities authorised by the licence.
 - Paragraphs 4.19 – 4.21 (European Convention on Human Rights) explain whilst applications from existing operators can be refused on one or more grounds set out in paragraph 12 of schedule 3 of the 1982 Act, account must be taken of rights existing operators may have under Article 1 of Protocol 1 to the European Convention

which protects the peaceful enjoyment of their possessions (including licences) and article 10 (freedom of expression).

4. City of York Council's Policy for the Licensing of Sex Establishments Licensing Policy and the Standard Conditions for Sex Shops applies to this application.
5. The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
6. The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.
7. The Committee is reminded that it must comply with the Council's Public Sector Equality Duty (as required to do so under s.149 of the Equality Act 2010), and have due regard to the potential impact on gender equality.

NOTE FOR MEMBERS

Extracts from Home Office Guidance for England and Wales relating to Sexual Entertainment Venues.

3.23 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 days of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 of Schedule 3 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.

3.24 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

Hearings

3.25 Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.

3.26 Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.

Refusal of a Licence

3.27 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- a) to a person under the age of 18;

- b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- d) to a body corporate which is not incorporated in an EEA State; or
- e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.28 A licence may be refused where:

- a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- d) that the grant or renewal of the licence would be inappropriate, having regard -
 - i. to the character of the relevant locality;
 - ii. to the use to which any premises in the vicinity are put; or
 - iii. to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.29 A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.

3.31 The Provision of Services Regulations 2009 amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it if one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

Relevant Locality

3.32 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

3.33 Schedule 3 to the 1982 Act does not define “relevant locality” further than to say that:

- (a) in relation to premises, it is the locality where they are situated; and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

3.34 Clearly, the decision regarding what constitutes the ‘relevant locality’ is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.

3.35 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

3.36 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority’s view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding two sex establishments 200 miles away from one another were in the same locality. Case law indicates that a relevant locality cannot be an entire local authority area or an entire town or city.

3.37 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the ‘character’ of the relevant locality

and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.

3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

Licence Conditions

3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.

3.40 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:

- The hours of opening and closing
- Displays and advertisements on or in sex establishments
- The visibility of the interior of a sex establishment to passers-by
- Any change of use from one kind of sex establishment to another

3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

3.42 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licence or clubs premises certificates and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.



Gambling, Licensing & Regulatory Committee 15 July 2019

Report from the Assistant Director – Planning and Public Protection

Taxi Licensing Policy – Amendments

Summary

1. This report seeks Members' recommendation to the Council's Executive for approval to amend the Taxi Licensing Policy in relation to driver training.
2. It advises of the consultation undertaken and the amendments made to the proposed policy following the consultation.
3. It asks for Officers (Licensing Manager level and above) to set the implementation date for the new training requirements once adequate training providers have been sourced.

Recommendations

4. That Members approve Option 1 of this report.

Reason: This will allow the Council to make amendments to the Taxi Licensing Policy in relation to driver training requirements, aligning the Council's Policy with that of the West Yorkshire Authorities. This will ensure the travelling public within West Yorkshire and York can be confident that drivers licensed by each authority have been trained to the high standard which is consistent across the six authorities.

Background

5. Under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847, the Council is responsible for the licensing of hackney carriage and private hire driver. The primary concern when licensing drivers is public safety.
6. Council Leaders of the five West Yorkshire Authorities and City of York asked Licensing Committee Chairs, in conjunction with Licensing

Managers, to harmonise our policies in relation to taxi licensing matter. It was agreed by Committee Chairs of all six authorities that one of the areas to address was new driver applicants and existing licensed driver training.

7. It is a requirement of Sections 51 and 59 of the 1976 Act that Licensing Authorities must ensure that applicants for driver licences and licensed driver are and remain fit and proper to hold a licence. One of the ways of doing this is through training of drivers.
8. Licensing Managers looked at the training that each authority expects a new driver applicant to complete prior to a licence being issued, and refresher training that existing licensed drivers should complete. It was decided that the training requirements should be consistent for each authority.
9. The driver training policy forms part of the overall assessment of an applicant / existing licence holder fitness and propriety, and ensures the travelling public within the West Yorkshire and City of York regions can be confident that drivers licensed by each authority have been trained to a high consistent standard, and that they are fully aware of their roles and responsibilities as a licensed driver.
10. The proposed Training Policy can be found at Annex 1. It has been developed by working in partnership and considering the existing policies in place for each authority. The proposed policy details each module that a new applicant will be required to pass before being granted a licence, as well as details of refresher training that existing drivers will be expected to complete.
11. To implement the proposed policy officers will work with colleagues within the Workforce Development Unit to source adequate training providers. This training will only be provided by a training provider approved and appointed by the West Yorkshire and City of York licensing authorities. The local knowledge aspect of the training for new driver applicants can only be provided by an approved trainer of the authority for which the driver intends to be licensed.
12. The implementation date for the new training will be set by officers once training providers are in place. The costs of any training will be paid for by new applicants and the existing licensed trade.

Consultation

13. Five of the six authorities (Calderdale, Kirklees, Leeds, Wakefield and York) consulted on the proposed training policy between November 2018 to January 2019; with York's consultation taking place from 6 November 2018 to 18 January 2019.
14. The consultation was carried out by direct mailing via email and letter, with the proposed policy been available on the Councils website, with hard copies available at the Customer Centre at West Offices and the Reception of the Eco Depot.
15. Hackney carriage and private hire driver, vehicle and operator licence holders were consulted. With hard copies of the consultation provided to the Hackney Carriage and Private Hire Associations and the large private hire operators.
16. City of York received 124 responses to the consultation:
 - 68 – licensed driver
 - 7 – licensed private hire operator
 - 21 – licensed vehicle proprietor
 - 2 – licensed driver/private hire operator
 - 16 – licensed driver/licensed vehicle proprietor
 - 1 – licensed driver/licensed vehicle proprietor/private hire operator
 - 3 – member of the public
 - 6 – not specified
17. A summary of the City of York consultation responses and comments received can be found at Annex 2. From the responses received it is clear that respondents are in favour of this training policy.
18. A summary of the consultation responses from the five authorities can be found at Annex 3.

Options

19. Option 1 – take into consideration the responses received from the consultation and recommend to the Councils Executive to approve the new taxi licensing policy in relation to driver training. The implementation date will be set by officers once a training provider is in place. New driver applicants will be expected to undertake and pass the training prior to being licensed and existing drivers will be expected to attend refresher training at least once every three years. The training

will be provided by a trainer approved and appointed by the West Yorkshire and City of York licensing authorities, each authority will appoint a trainer(s).

20. Option 2 – take into consideration the responses received from the consultation and make further amendments to the taxi licensing policy in relation to driver training prior to recommending to the Councils Executive to approve. The implementation date will be set by officers once a training provider is in place. New driver applicants will be expected to undertake and pass the training prior to being licensed and existing drivers will be expected to attend refresher training at least once every three years. The training will be provided by a trainer(s) approved and appointed by the West Yorkshire and City of York licensing authorities.
21. Option 3 - take into consideration the responses received from the consultation and determine that a change to the current policy is not required.

Analysis

22. It is currently a requirement of the Taxi Licensing Policy that new driver applicants must undertake Knowledge and Safeguarding Training, prior to being licensed. They must attend a full day training course and pass a test. Working with our colleagues in the Workforce Development Unit (WDU) we sourced a training provider. The topics covered in the training are:
 - Disability Awareness
 - Child and Adult Safeguarding
 - Sexual Exploitation
 - Equality Awareness
 - Legislation, Conditions of Licence and Byelaws
 - York's Pedestrian Zone awarenessThe test at the end of the training is 30 questions with a pass mark of 26 (87%).
23. Applicants must also complete and pass a taxi driving assessment with a training provider approved by the Council. Drivers of wheelchair accessible vehicles must also pass a practical assessment.
24. It is also a requirement of the Taxi Licensing Policy that prior to renewal of licences in 2019 existing licensed drivers must complete training in sexual exploitation and Safeguarding. The training attended has to be

approved by the Council. Again Licensing Officers worked with colleagues in WDU to source a training provider. Licensing Officers requested that the training should also cover disability and equality awareness.

25. It was agreed by Licensing Committee Chairs and Managers of the authorities referred to in paragraph 13 that the topics to be cover within the proposed training policy are:
- Advanced practical driving assessment
 - English
 - Local knowledge
 - Regulatory framework
 - Professional standards
 - Safeguarding
 - Equalities/disability
 - Practical wheelchair assessment (drivers of wheelchair accessible vehicles)

The consultation asked for views to the topic and the pass park for tests.

Council Priorities

26. The provision of hackney carriage and private hire licensing supports the council plan of a prosperous city for all, where local businesses can thrive.

Implications

27. The direct implications arising from this report are:
- (a) **Financial** – There are no financial implications for the Council. New driver applicants and licensed drivers will be expected to pay a fee to attend the training. This fee will be set by WDU at a cost recovery level.
 - (b) **Human Resources (HR)** - There are no HR implications.
 - (c) **Equalities** – An equality impact assessment has been undertaken.
 - (d) **Legal** - Hackney carriage and private hire licensing is a function of the Council. The statutory powers are contained within the Town Police Clauses Act 1847 and Part 11 of the Local Government (Miscellaneous Provisions) Act 1976. The Council is required to

issue a hackney carriage or private hire driver's licence provided it is satisfied that the applicant is fit and proper to hold such a licence. Each Local Authority can determine the criteria by which it can 'measure' if an applicant is fit and proper to hold a licence. The matters outlined in paragraph 25 of this report, are matters which may be required prior to the grant of a licence and could form part of determining whether or not an applicant is a fit and proper person to be granted a licence.

- (e) **Crime and Disorder** – There are no crime and disorder implications.
- (f) **Information Technology (IT)** - There are no IT implications.
- (g) **Property** - There are no property implications.
- (h) **Other** - There are no other implications.

Risk Management

28. There are no known risks associated with this report.

Contact Details

Author:

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01904 551515

Chief Officer Responsible for the report:

Mike Slater
Assistant Director – Planning and Public
Protection

**Report
Approved**



Date 04/07/19

Specialist Implications Officer(s)

Wards Affected:

All



For further information please contact the author of the report

Background papers

Annex 1 – proposed Training Policy

Annex 2 – summary of City of York consultation responses

Annex 3 – summary of consultation responses for the five licensing authorities

HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER TRAINING POLICY

INTRODUCTION

Calderdale, Leeds, Kirklees, Wakefield, and York all recognise 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 of the authorities.

The reason for this policy is to ensure that the travelling public within West Yorkshire West Yorkshire and York can be confident that the drivers licensed by each authority have been trained to the highest standard and to a standard which is consistent across the West Yorkshire and York region.

We will ensure that all applicants wishing to train as Hackney Carriage or Private Hire Drivers will know that the requirements will be the same for whichever authority they choose to apply to.

1. **REQUIREMENTS**

The requirements that all new applicants will have to undertake are:

- An Advanced Taxi driving test
- An English test
 - ESOL Entry 3 in Speaking, Listening and Reading
- Local knowledge test
 - Local Tourism and routes to places within the authority for which you are applying
 - Local Conditions/policies/bylaws
- Regulatory framework (Legislation) of the private hire and hackney carriage industry and test
 - Local Government (Miscellaneous) Provisions Act 1976
 - Town Police Clauses Act 1847
 - Highways Act 1980
- Professional standards training and test:
 - Health and safety (Personal Safety/Passenger Safety)
 - Professional customer service (Assisting Customers)
 - Fares
 - How to drive safely and efficiently

- Providing a safe and legal vehicle
- Transport parcels, luggage and other items
- Safeguarding training and test:
 - Adults safeguarding
 - Children safeguarding
 - Vulnerable passengers
- Equalities/disability training and test
 - Wheelchair users
 - Users with assistant dogs
 - Elderly passengers
 - Recognising non visible disability
- Practical wheelchair course (for all drivers of wheelchair accessible vehicles)

2. TESTING

Advanced Taxi Driving Test	Practical Assessment (any providers recognised by each authority will be acceptable)
An English Test	Practical Assessment, ESOL Entry 3 in Speaking, Reading and Listening
Local Knowledge Test	Requirement to achieve a pass rate specified by the authority that you are applying to. (will have questions specific to each area and cannot be transferred)
Regulatory Framework of the Hackney Carriage and Private Hire Industry and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Professional Standards Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Safeguarding Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Equalities/Disability Training and Test	Requirement to achieve a 80% pass rate (these questions will cover the same topics for all authorities)
Practical Wheelchair Course (for all Drivers of Wheelchair Accessible Vehicles)	Practical Assessment

You will be required to carry out the training specified by the authority in which you are applying and each authority will have different approved providers and/or approved methods for delivering the training and testing procedure. However, it will cover the above requirements to the same standard. Costs at each authority may vary for each aspect of the training.

Where a module has a test associated with it, there will be, within that test, certain questions that an applicant must answer correctly. If an applicant fails to answer these questions correctly, then the test will be classed as a fail, irrespective of whether the pass mark has been achieved or not.

All new applicants will be required to complete and pass the training programme.

The aspects of the training shown in section 3 of the policy will have to be carried out by all existing drivers prior to the renewal of their application. New drivers must have completed all training within the twelve month period following the submission date of their application.

If the module requires the training material to be given in advance; this will be provided either by the local authority or the training provider when you confirm your booking onto the course.

The training must be completed before an application will be accepted.

3. REFRESHER TRAINING

Once completed (by new applicants or at renewal), there will be a number of the modules which will require refresher training every three years, to ensure that all current drivers remain up to date with current industry legislation and practice, these will be:-

- Regulatory Framework of the Private Hire Industry
- Professional Standards Training
- Safeguarding Training
- Equalities/Disability Training
- Practical Wheelchair Course (for all Drivers of Wheelchair Accessible Vehicles)
- Any other training, such as any legislation changes

4. OTHER REASONS FOR HAVING TO COMPLETE MODULES

There may be occasion for the licensing authority to require an existing licensed driver to complete and pass one or more of the training modules. This may be the result of a substantiated complaint, for example, about the standard of English, the

standard of driving, the standard of customer care, attitude of the driver (this list is not exhaustive) or if the licensing authority believes that a driver's standard of driving or behaviour falls below the standards required.

The West Yorkshire Authorities including York firmly believes that safe, suitable and professional trained Hackney carriage and Private Hire drivers are an asset to the West Yorkshire and York region as a whole. We wish to set standards on a par or above that of our neighbouring regions to ensure the safety of the travelling public within our region.

DRAFT

Driver Training Policy – Summary of City of York Consultation Responses

	Advanced Practical Driving Assessment			English Test ESOL Entry 3			Local Knowledge Test			Regulatory Framework			Professional Standards			Safeguarding Training		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered
York	115	8	1	122	2	0	108	16	0	107	16	1	107	17	0	105	17	2

	Equality/Disability Training			Practical Wheelchair Assessment			90% Pass Rate			Refresher Training for Existing Drivers		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered
York	102	21	1	116	7	1	100	24	0	74	47	3

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Consultation Comments

Ref :	Comments	Officer Comments
1	Refresher training every 5 years	Refresher training is in line with licence renewal which is every 3 years
2	To much red tape – local knowledge test to server – 90% to server,	It is important that new driver applicants complete and pass training. Knowing the local knowledge of a city like York is very important due to our visitor base and pedestrian zone.
3	Language and understanding oral assessment 1-1 test – all drivers should be police checked,	We are introducing as English test. DBS checks are carried out on all new driver applicants, and the existing trade.
4	Refresher training is insulting to most people; you don't do refresher courses to be a builder, mechanic, plumber, etc. If you do it is paid for by the employer. Self employed people are independent this is an infringement on a persons human and consumer rights.	Taxi and private hire drivers transport vulnerable customers. Refresher training is important to keep drivers abreast of the best practice approach to being a driver, so that they are aware of equability related issues and customer needs. This helps safeguard the driver as well as the passenger.
5	Refresher training only if driver has had a substantial complaint against them –	As stated in point 4 above.

	knowledge test is now Mickey take – tested every 3 years is an insult.	Existing drivers will be expected to attend refresher training every 3 years; they will not be a test.
6	Pass rate to high 60/70% - refresher training is used to maintain standards, if same pass rate as new drivers and licence suspension on failure.	The pass rate for each module has been set at 80%; apart from the local knowledge test which will be 90% for York, as detailed above this is due to our visitor base and the pedestrian zone. Refresher training will maintain standards; there is no test for the refresher training.
7	Advance practical driving no doubt additional expense for already struggling driver – refresher training its just another opportunity to take money off drivers.	It is already a requirement that new driver applicants must pass the advance practical driving assessment. The free for refresher training will be set at a cost recovery level.
8	Practical wheelchair assessment if they drive a WAV they should already know.	It is already a requirement that new driver applicants must pass the practical wheelchair assessment.

Responses were also received that did not relate to this consultation and are therefore not included within these comments.

Driver Training Policy – Summary of Consultation Responses

Annex 3

	Advanced Practical Driving Assessment			English Test ESOL Entry 3			Local Knowledge Test			Regulatory Framework			Professional Standards			Safeguarding Training		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered
Calderdale	119	86	0	124	80	1	100	104	1	112	91	2	123	80	2	134	66	5
Kirklees	108	53	0	117	43	1	88	73	0	98	58	5	108	51	2	123	37	1
Leeds	665	224	0	771	118	0	657	232	0	740	148	0	739	150	0	806	83	0
Wakefield	20	25	0	24	21	0	16	28	0	14	31	0	18	27	0	23	22	0
York	115	8	1	122	2	0	108	16	0	107	16	1	107	17	0	105	17	2
Combined Results	1027	396	1	1158	264	2	969	453	1	1071	344	8	1095	325	4	1191	225	8
	Equality/Disability Training			Practical Wheelchair Assessment			90% Pass Rate			Refresher Training for Existing Drivers								
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered						
Calderdale	130	71	4	153	49	3	87	115	3	89	114	2						
Kirklees	120	38	3	124	34	3	75	83	3	70	91	0						
Leeds	786	103	0	790	99	0	625	264	0	307	582	0						
Wakefield	23	22	0	32	13	0	10	35	0	7	38	0						
York	102	21	1	116	7	1	100	24	0	74	47	3						
Combined Results	1161	255	8	1215	202	7	897	521	6	547	872	5						

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Summary of respondents

	Calderdale	Kirklees	Leeds	Wakefield	York
Total Number of Responses	205	176	899	45	124
Type:					
A licensed driver	117	95	-	34	68
A licensed private hire operator	10	14	-	2	7
A licensed vehicle proprietor	2	3	-	0	21
A member of the public	70	59	61	7	3
A licensed driver/a proprietor	-	-	-	-	16
A licensed driver/private hire operator	-	-	-	-	2
A licensed driver/a proprietor/private hire operator	-	-	778	-	1
Other	5	5	59	2	-
Not specified	1	-	1	-	6

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Gambling, Licensing & Regulatory Committee 15 July 2019

Report from the Assistant Director – Planning and Public Protection

Taxi Licensing Policy – Amendments

Summary

1. This report seeks Members recommendation to the Councils Executive for approval to amend the Taxi Licensing Policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing.
2. It advises of the consultation undertaken and the amendments made to the proposed policy following the consultation.
3. It asks for the Licensing Manager, in consultation with the Licensing and Regulatory Committee Chair and Senior Officers (Licensing Manager level and above), to make any minor changes that may be necessary to the policy, so that it remains consistent with the standards applied by the West Yorkshire Authorities.

Recommendations

4. That Members approve Option 1 of this report.

Reason: This will allow the Council to make amendments to the Taxi Licensing Policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing, aligning the Council's Policy with that of the West Yorkshire Authorities. Adopting this policy will help to ensure that people across the six authority areas are transported safely and protected from harm to standards applied consistently across the area.

Background

5. Under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847, the Council is

responsible for the licensing of hackney carriage and private hire drivers. The primary concern when licensing drivers is public safety.

6. Council Leaders of the five West Yorkshire Authorities and City of York asked Licensing Committee Chairs, in conjunction with Licensing Managers, to harmonise our policies in relation to taxi licensing matters. It was agreed by Committee Chairs that one of the areas to address was the suitability of applicants and licensed drivers especially in relation to convictions.
7. It is a requirement of Sections 51 and 59 of the 1976 Act that Licensing Authorities must ensure that applicants for driver licences and licensed drivers are and remain fit and proper to hold a licence.
8. Taxis and private hire vehicles are used by almost everyone but are used regularly by vulnerable groups:
 - children
 - the elderly
 - disable people
 - the intoxicated
9. A driver has significant power over a passenger who places themselves and their personal safety in the driver's hands. Therefore the standards of safety and suitability are set high to give the public the assurance it requires when using taxi and private hire services. The Council does not 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.
10. It is already a requirement for the six licensing authorities that new driver applications must undertake an enhanced Disclosure and Barring Service (DBS) check prior to being licensed; it is also a requirement that existing licensed drivers must undertake an enhance DBS at least once every three years.
11. To meet their duties to protect the public the six authorities worked in partnership, considering the existing policies already in place for each authority and the new guidance issued by the Institute of Licensing (IoL), 'Guidance on Determining the Suitability of Applicants and Licensees in the Hackney Carriage and Private Hire Trades', to develop the proposed policy which can be found at Annex 1. The policy is compliant with the new guidance, adopting the strict tariffs. In April

2019 the IoL guidance was included as a proposal within the draft Statutory Guidance for Licensing Authorities 'Taxi and Private Hire Vehicle Licensing: Protecting Users', which has been out for consultation by the Department for Transport (DfT).

12. Bradford implemented this policy on the 7 February 2019. It has been agreed by Calderdale, Kirklees, Leeds, Wakefield and York local authorities that the policy will be implemented in line with each authority's decision making process, in the case of the City of York this will be the 1 October 2019 following the Council's Executive in September.

Consultation

13. Five of the six authorities (Calderdale, Kirklees, Leeds, Wakefield and York) consulted on the proposed training policy between November 2018 to January 2019; with York's consultation taking place from 6 November 2018 to 18 January 2019. Bradford carried out an engagement exercise.
14. The consultation was carried out by direct mailing via email and letter, with the proposed policy available on the Councils website, with hard copies available at the Customer Centre at West Offices and the Reception of the Eco Depot.
15. Hackney carriage and private hire driver, vehicle and operator licence holders were consulted. With hard copies of the consultation provided to the Hackney Carriage and Private Hire Associations and the large private hire operators.
16. City of York received 50 responses to the consultation:
 - 17 – licensed driver
 - 3 – licensed private hire operator
 - 17 – licensed vehicle proprietor
 - 1 – licensed driver/private hire operator
 - 9 – licensed driver/licensed vehicle proprietor
 - 2 – member of the public
 - 1 – not specified
17. A summary of the City of York consultation responses and comments received can be found at Annex 2. From the responses received it is clear that respondents are in favour of this policy.

18. A summary of the consultation responses from the five authorities can be found at Annex 3.

Options

19. Option 1 – take into consideration the responses received from the consultation and recommend to the Council’s Executive to approve the new taxi licensing policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing. The new policy will come into effect from the 1 October 2019.
20. Option 2 – take into consideration the responses received from the consultation and make further amendments to the taxi licensing policy in relation to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing prior to recommending to the Councils Executive to approve. The new policy will come into effect from the 1 October 2019.
21. Option 3 - take into consideration the responses received from the consultation and determine that a change to the current policy is not required.

Analysis

22. The Rehabilitation of Offenders Act 1974 does not apply to any person applying for a private hire or hackney carriage driver’s licence on initial grant or on renewal. Applicants are required therefore to disclose all convictions, including those that would normally be regarded as ‘spent’.
23. There is provision within the 1976 Act for Councils to suspend or revoke the licence of a hackney carriage or private hire driver:
 - a) who since the grant of the licence has been convicted of an offence:
 - involving dishonesty, indecency or violence; or
 - under the provisions of the Act of 1847 or Part II of the 1976 Act;or
 - b) for any other reasonable cause.
24. It is a requirement of the City of York’s Taxi Licensing Policy that licensed drivers shall inform the Council within three days of any conviction being recorded against them or any Company to which they are a Secretary or Director. Under Common Law Police Disclosure the Police can disclose information to a Licensing Authority relating to a licensed driver if there is a pressing social need. The Police may

disclose information following the arrest of a licensed driver if they believe there is a potential risk, for example if a driver has been arrested for an offence involving violence or sexual assault, it is then for the Licensing Authority to determine the risk of the driver retaining their licence.

25. Convictions and the Rehabilitation of Offenders Act 1974 are covered within section 29 and Appendix 8 of the City of York's Taxi Licensing Policy. Within the Council's Scheme of Delegation the Managers within the Public Protection Service, the Head of Public Protection, the Assistant Director for Planning and Public Protection and the Director of Economy and Place have delegated powers to determine whether a new applicant or a licensed driver is a fit and proper person.
26. It was agreed by Licensing Committee Chairs and Managers of the six authorities, in line with the new guidance issued by the IoL, that the offences to be considered in the proposed suitability policy are:
 - crimes resulting in death or intended to cause death or serious injury
 - exploitation
 - violence
 - possession of a weapon or any other weapon related offence
 - sex and indecency
 - dishonesty
 - drugs supply
 - drugs use
 - discrimination
 - drink driving / driving under the influence of drugs
 - driving whilst using a hand held telephone or other device
 - minor traffic or vehicle related offences
 - major traffic or vehicle related offences
 - hackney carriage or private hire offences
 - vehicle use offences
27. Since the introduction of the IoL guidance in April 2018, it has become common practice for Licensing Authorities to adopt the provisions of this guidance. The guidance can be found at Annex 4. As stated at paragraph 11 of this report the DfT has recently consulted on Statutory Guidance for Licensing Authorities, if this guidance is implemented Licensing Authorities would have to justify their position if they do not comply with the requirements of the guidance.

Council Priorities

28. The provision of hackney carriage and private hire licensing supports the council plan of a prosperous city for all, where local businesses can thrive.

Implications

29. The direct implications arising from this report are:
- (a) **Financial** – There are no financial implications.
 - (b) **Human Resources (HR)** - There are no HR implications.
 - (c) **Equalities** – An equality impact assessment has been undertaken.
 - (d) **Legal** – Any changes to the licensing policy could be challenged by an aggrieved party in the High Court.
 - (e) **Crime and Disorder** – There are no crime and disorder implications.
 - (f) **Information Technology (IT)** - There are no IT implications.
 - (g) **Property** - There are no property implications.
 - (h) **Other** - There are no other implications.

Risk Management

30. There are no known risks associated with this report.

Contact Details

Author:		Chief Officer Responsible for the report:	
Lesley Cooke Licensing Manager 01904 551515		Mike Slater Assistant Director – Planning and Public Protection	
Report Approved	√	Date	04/07/19
Specialist Implications Officer(s)			
Wards Affected:		All	√

For further information please contact the author of the report	

Background papers

Taxi Licensing Policy

https://www.york.gov.uk/downloads/file/9715/taxi_licensing_policy

Annex 1 – proposed policy to determining the suitability of applicants and licensees as drivers in taxi and private hire licensing

Annex 2 – summary of City of York consultation responses

Annex 3 – summary of consultation responses for the five licensing authorities

Annex 4 – IoL Guidance

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A POLICY ON DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES AS DRIVERS IN TAXI & PRIVATE HIRE LICENSING.

Introduction

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.
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.
3. It is a function of the Council to issue Hackney Carriage and Private Hire licences under the Local Government Miscellaneous Provisions Act 1976.
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.
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.
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
 - 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.
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.
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.

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.
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.
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.
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.
13. In all cases, the Council will consider a conviction or behaviour and what weight should be attached to it, and each case will be decided on its own merits and in line with this policy.
14. The licensing process places a duty on the Council to protect the public. Therefore it is essential that those seeking a licence 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.

Applying the Guidance

15. One of the purposes of this policy is to provide guidance to an applicant or existing licence holder 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.
16. 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.
17. 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.
18. 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.

19. The Policy will also be applied if any additional issue arises that would call into question a person's suitability to continue to hold 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.
20. Where a licence would normally be granted after an elapsed period, there may be circumstances where the elapsed period will be extended.
21. 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.
22. Any concerns, issues, incidents or convictions/offences not covered by this Policy will not prevent the Council from taking them into account.

Disclosure and Barring Service

23. 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.
24. 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.
25. 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.
26. 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 notifiable occupations.
27. 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.
28. 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.

29. 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.
30. 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.
31. 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.
32. 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.
33. 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.

34. 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.
35. 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.
36. 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.

37. 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.

Criminal and Driving Convictions

38. 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.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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.
44. 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”.
45. 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.
46. 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.

47. 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.
48. 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.
49. 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.
50. 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 and suitable person to be granted or retain a licence.

Decision and Right of Appeal

51. 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.
52. 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.
53. 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.
54. 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
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.

Annex 2

Suitability Policy – CYC Summary of Consultation Responses

	Crimes resulting in death or intended to cause death or serious injury– no elapsed period			Exploitation – no elapsed period			Offences involving violence – 10 years				Possession of a weapon or any other weapon related offence – 7 years				Sex and indecency offences – no elapsed period		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Disagree	Not Answered
York	42	8	0	39	11	0	21	23	3	3	35	4	9	2	38	11	1

	Dishonesty offences – 7 years				Drugs supply – 10 years				Drugs use – 5 years				Discrimination – 7 years				Drink driving/ driving under the influence of drugs – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
York	26	20	3	1	29	14	7	0	26	15	9	0	33	14	2	1	39	5	6	0

	Driving whilst using a hand-held telephone or other device – 5 years				Minor traffic or vehicle related offences – 5 years				Major traffic or vehicle related offences – 7 years				Hackney carriage and private hire offences – 7 years				Vehicle use offences – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
York	14	34	0	2	17	32	0	1	33	10	3	4	19	28	0	3	26	22	0	2

	Requirement to subscribe to DBS Update Service			Certificate of good conduct		
	Yes	No	Not Answered	Yes	No	Not Answered
York	46	4	0	48	1	1

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Comments

Ref :	Comments	Officer Comments
1	How can you licence someone who has supplied drugs – 10 years for major traffic related offence.	This is in line with guidance issued by the Institute of Licensing (IoL), ‘Guidance on Determining the Suitability of Applicants and Licensees in the Hackney Carriage and Private Hire Trades’.
2	Never be allowed a licence for use of a weapon – dishonesty depending on offence – drink driving and using hand-held phone/device should be as long as courts	As point 1.

	decide – minor traffic fine and points from court should be enough.	The period for a minor traffic offence has been reduced to 3 years.
3	Each case judged on merit 0 drivers who have convictions and hold a licence who has been of good character for several years should not be penalised now.	As point 1. Each case will be considered on their own merits.
4	Drink driving no elapsed period – minor / major traffic offences look at each case individually.	As point 1 and 3.
5	DBS checks implemented immediately.	DBS (criminal record) checks are carried out on all new driver applicants prior to licence and existing drivers once every three years as recommended by best practice.
6	Crime resulting in death 10 yrs if intentional – exploitation 5 yrs – offence involving violence 10 yrs – possession of a weapon 10 yrs – discrimination 5 yrs – drink driving 10 yrs – others 1 yr.	As point 1.
7	Exploitation further debate required – dishonesty varying degrees.	As point 1.
8	Offences involving violence/possession of a weapon/drug use drink driving life time ban.	As point 1.
9	Exploitation 5 yrs – dishonesty 2 yrs – HC & PH offences/drink driving/major traffic 5 yrs – using hand-held phone 3 yrs – minor traffic 2 yrs.	As point 1 and 2.
10	DBS online update service means giving out bank details strongly disagree.	This is a requirement of the DBS who undertaken.

Responses were also received that did not relate to this consultation and are therefore not included within these comments.

Annex 3

Suitability Policy – Summary of Consultation Responses

	Crimes resulting in death or intended to cause death or serious injury– no elapsed period			Exploitation – no elapsed period			Offences involving violence – 10 years				Possession of a weapon or any other weapon related offence – 7 years				Sex and indecency offences – no elapsed period		
	Agree	Disagree	Not Answered	Agree	Disagree	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Disagree	Not Answered
Calderdale	115	63	7	111	63	11	65	86	28	6	85	52	42	5	107	75	3
Kirklees	111	45	1	116	39	2	69	61	26	1	73	43	40	1	110	46	1
Leeds	194	41	5	194	41	5	203	24	23	0	194	19	37	0	182	68	0
Wakefield	33	17	0	36	14	0	10	38	3	0	17	27	7	0	32	18	0
York	42	8	0	39	11	0	21	23	3	3	35	4	9	2	38	11	1
Combined Results	495	174	13	496	168	18	368	232	83	10	404	145	135	8	469	218	5

	Dishonesty offences – 7 years				Drugs supply – 10 years				Drugs use – 5 years				Discrimination – 7 years				Drink driving/ driving under the influence of drugs – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
Calderdale	86	81	13	5	115	28	35	7	110	33	36	6	106	60	15	4	105	32	42	6
Kirklees	75	62	19	1	95	34	27	1	88	36	33	0	91	54	12	0	84	32	39	2
Leeds	203	35	12	0	196	13	41	0	201	22	27	0	213	21	16	0	200	12	38	0
Wakefield	10	38	3	0	30	13	7	0	27	12	12	0	19	30	2	0	32	10	9	0
York	26	20	3	1	29	14	7	0	26	15	9	0	33	14	2	1	39	5	6	0
Combined Results	400	236	50	7	465	102	117	8	452	118	117	6	462	179	47	5	460	91	134	8

	Driving whilst using a hand-held telephone or other device – 5 years				Minor traffic or vehicle related offences – 5 years				Major traffic or vehicle related offences – 7 years				Hackney carriage and private hire offences – 7 years				Vehicle use offences – 7 years			
	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered	Agree	Too Long	Too Short	Not Answered
Calderdale	71	87	19	8	62	111	8	4	94	65	24	3	73	92	11	9	75	98	11	1
Kirklees	64	71	19	3	59	93	4	1	74	63	17	3	68	77	11	1	72	73	9	3
Leeds	200	44	6	0	185	61	4	0	201	28	12	0	199	42	9	0	212	29	9	0
Wakefield	5	45	0	0	4	46	1	0	12	37	2	0	7	39	4	0	12	39	0	0
York	14	34	0	2	17	32	0	1	33	10	3	4	19	28	0	3	26	22	0	2
Combined Results	354	281	44	13	327	343	17	6	414	203	58	10	366	278	35	13	397	261	29	6

	Requirement to subscribe to DBS Update Service			Certificate of good conduct		
	Yes	No	Not Answered	Yes	No	Not Answered
Calderdale	113	67	5	88	90	7
Kirklees	118	38	1	108	47	2
Leeds	235	15	0	6	9	235
Wakefield	31	20	0	24	27	0
York	46	4	0	48	1	1
Combined Results	543	144	6	274	174	245

	Represents a majority of the number of responses in favour of the proposal
	Represents a majority of the number of responses against the proposal

Summary of respondents

	Calderdale	Kirklees	Leeds	Wakefield	York
Total Number of Responses	185	168	250	51	50
Type:					
A licensed driver	116	93	-	42	17
A licensed private hire operator	4	13	-	1	3
A licensed vehicle proprietor	3	2	-	1	17
A member of the public	58	60	19	6	2
A licensed driver/ a proprietor	-	-	-	-	9
A licensed driver/private hire operator	-	-	-	-	1
A licensed driver/a proprietor/private hire operator	-	-	227	-	-
Other	4	-	4	1	1

Annex 4.

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



April 2018

 Institute of Licensing

Produced by the Institute of Licensing in partnership with:





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Foreword

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

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

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

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

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

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

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

Philip Kolvin QC
Cornerstone Barristers

April 2018

Chapter 1: Introduction

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

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

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

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

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

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

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

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

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

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

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

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

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

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

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

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

Risk of re-offending:

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

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

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

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

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

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

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

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

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

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

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

Chapter 3: 'Taxi' Licensing Overview

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

Taxi Drivers

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

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

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*²³. Silber J said:
- “... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”
- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁴
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

Private Hire Operators

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

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

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

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

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

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

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

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

Vehicle Proprietors

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

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

³⁵ See s57(1)(c) of the 1976 Act.

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



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

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

Chapter 4: Guidance on Determination

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

Pre-application requirements

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

Vehicles:

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

Drivers:

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

Operators:

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

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

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

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

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

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

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

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

Drivers

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



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- 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.



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Other motoring offences

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

Hackney carriage and private hire offences

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

Vehicle use offences

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

Private Hire Operators

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

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

Vehicle proprietors

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

Acknowledgements

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

The core project group comprised:

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

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

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

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

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- Ellie Greenwood and Rebecca Johnson, Local Government Association
- Tim Briton, Lawyers in Local Government
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- Professor of Criminology Fiona Measham, Durham University
- Councillor Philip Evans, Conwy County Borough Council
- Councillors Catriona Morris and Mick Legg, Milton Keynes Council
- Louise Scott Garner
- Jenna Parker, Institute of Licensing

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The Local Government Association (LGA) is the national voice of local government. www.local.gov.uk



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



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

Licensing and Gambling Committee – Draft Workplan 2019-20

Mon 15 Jul 2019 at 5.30pm	Renewal of Sex Establishment Licence for The Adult Shop Taxi Licensing Policy – Driver Training Taxi Licensing Policy – Determining the Suitability of Applicants and Licensees as Drivers in Taxi and Private Hire Licensing Draft Work Plan 2019-20
Weds 14 Aug 2019 at 5.30pm	Work Plan 2019-20
Weds 9 Oct 2019 at 5.30pm	Work Plan 2019-20
Weds 27 Nov 2019 at 5.30pm	Work Plan 2019-20
Weds 22 Jan 2020 at 5.30pm	Work Plan 2019-20
Weds 18 Mar 2020 at 5.30pm	Work Plan 2019-20
Weds 6 May 2020 at 5.30pm	Work Plan 2019-20

Future items:

Animal Welfare Licensing Policy
Renewal of Sex Establishment Licence for Upstairs (Mansion),

Renewal of Sex Establishment Licence for The Adult Shop

Unmet Demand Survey

Renewal of Sex Establishment Licence for Black Orchid

Taxi Licensing Policy

Update on the Taxi Licensing Internal Audit report

Gambling Act 2005 - Statement of Licensing Policy

Statement of Licensing Policy & Cumulative Impact Assessment