



# LICENSING COMMITTEE

**Monday, 15th July, 2013**

**7.30 pm**

**Town Hall, Watford**

**Publication date: 5 July 2013**

**CONTACT**

If you require further information or you would like a copy of this agenda in another format, e.g. large print, please contact Jodie Kloss in Democracy and Governance on 01923 278376 or by email to [legalanddemocratic@watford.gov.uk](mailto:legalanddemocratic@watford.gov.uk).

Welcome to this meeting. We hope you find these notes useful.

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# **COMMITTEE MEMBERSHIP**

Councillor J Brown (Chair)

Councillor P Jeffree (Vice-Chair)

Councillors I Brown, J Connal, K Crout, G Derbyshire, J Dhindsa, K Hastrick, H Lynch, M Meerabux, M Mills, G Saffery, D Scudder, L Scudder and M Turmaine

## **AGENDA**

### **PART A - OPEN TO THE PUBLIC**

- 1. APOLOGIES FOR ABSENCE/ COMMITTEE MEMBERSHIP**
- 2. DISCLOSURE OF INTERESTS (IF ANY)**
- 3. MINUTES**

To submit for signature the minutes of the meeting held on 18 March 2013.

*(All minutes are available on the Council's website.)*

- 4. AMENDMENTS TO HACKNEY CARRIAGE AGE LIMIT POLICY** (Pages 1 - 4)  
Report of the Head of Community and Customer Services
- 5. LICENSED DRIVER ENFORCEMENT POLICY** (Pages 5 - 18)  
Report of the Head of Community and Customer Services
- 6. LICENSED DRIVER CONVICTION POLICY** (Pages 19 - 32)  
Report of the Head of Community and Customer Services

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# Agenda Item 4

PART A	

**Report to:** Licensing Committee  
**Date of meeting:** 15 July 2013  
**Report of:** Head of Community and Customer Services  
**Title:** Amendments to Hackney carriages age limit policy

## 1.0 **SUMMARY**

- 1.1 The Council is the licensing authority for hackney carriages and private hire vehicles in the Borough. These vehicles may be licensed to carry up to eight passengers, and the driver.
- 1.2 In July 2010 the Licensing Committee approved that saloon hackney carriage vehicles will not be licensed for the first time if they are not less than 3 years old.
- 1.3 Time has shown that there is a need for further amendment to conditions relating to the saloon/estate hackney carriages initial age limit.

## 2.0 **RECOMMENDATIONS**

- 2.1 That the Committee approve the amendments to the Council's current conditions for hackney carriage vehicles to allow saloon vehicles to be less than 4 years for getting it initially licensed.

**Contact Officer:** For further information on this report please contact:  
Parminder Seyan (Licensing Officer) on telephone extension: 278434 email:  
[parminder.seyan@watford.gov.uk](mailto:parminder.seyan@watford.gov.uk)

**Report approved by:** Head of Community and Customer Services

## 3.0 **DETAILED PROPOSAL**

### 3.1 **Saloon/Estate hackney carriages age limit**

Hackney carriages and private hire vehicles licensed by the Council may in law carry up to eight passengers, as well as the driver. (Vehicles that carry nine or more passengers are classed as public service vehicles, licensed by the Traffic Commissioners).

- 3.2 Currently wheelchair accessible, purpose-built and MPV hackney carriage vehicles can be considered for a hackney carriage vehicle licence if they are less than 4 years old when presented for initial licensing and hackney carriage saloon need to be less than 3 years for getting it initially plated.
- 3.3 Several licensed drivers have recently expressed concern about the age limit on saloon/estate type vehicles. They have suggested that the age restriction for saloon vehicles could be slightly relaxed so that vehicles could be first licensed up to four years of age, thus bringing the age of saloon in line with London-style/MPV hackneys. The Watford Hackney Carriage Drivers' Association has suggested that the maximum age for newly licensed saloon, estate and MPVs should be five years. Mechanically there is likely to be very little difference between vehicles but financially there can be a difference in the purchase price. Allowing vehicles up to years (or even five) years old instead could encourage owners to change their vehicles and avoid further confusions when purchasing their vehicles.

#### **3.4 Best Practice Guide**

The Taxi and Private Hire Licensing: Best Practice Guide (Department for Transport, 2010) does not specifically address minimum age limits but suggests in relation to maximum age limits:

"Age limits

It is perfectly possible for an older vehicle to be in good condition. So the setting of an age limit beyond which a local authority will not license vehicles may be arbitrary and inappropriate. But a greater frequency of testing may be appropriate for older vehicles - for example, twice-yearly tests for vehicles more than five years old."

- 3.5 The Council's view is that setting a maximum age limit for vehicles when they are first licensed helps raise the standards of vehicles that are available to taxi passengers in the town.

#### **3.6 Regulators' Compliance Code**

The statutory Regulators' Compliance Code under the Legislative and Regulatory Reform Act 2006 places a duty on the council in relation to encouraging economic progress when determining any general policy or principles as follows:

*"Good regulation and its enforcement act as an enabler to economic activity. However, regulation that imposes unnecessary burdens can stifle enterprise and undermine economic progress. To allow or encourage economic progress, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.*

*3.1 Regulators should consider the impact that their regulatory interventions may have on economic progress, including through consideration of the costs, effectiveness and perceptions of fairness of regulation. They should only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving their objectives.*

*3.2 Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.*

*3.3 Regulators should consider the impact that their regulatory interventions may have on small regulated entities, using reasonable endeavours to ensure that the burdens of their interventions fall fairly and proportionately on such entities, by giving consideration to the size of the regulated entities and the nature of their activities.*

- 3.7 By approving and bringing this age limit in line with the London-style and wheelchair accessible vehicles the trade will have a clear and better understanding of the vehicle age limit whilst licensing and would avoid further confusion. This proposal will assist economic development by making it easier for licence-holders to buy cars that should not be significantly different in mechanical and safety terms. They are often cheaper to purchase however as cars used for normal private use of course require annual MOT tests once they are over three years old, and consequently many people place their cars on the second-hand market at that point.

#### 4.0 **IMPLICATIONS**

##### 4.1 **Financial**

- 4.1.1 There are no financial implications to the Council arising from this report.

##### 4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 This report concerns a change in the licensing conditions for hackney carriage vehicles. A party aggrieved by a licence condition has the right to appeal against that condition to the magistrates' court within 21 days of the grant of that particular licence. The Council is entitled to adopt conditions that are clear, reasonable and proportionate.

##### 4.3 **Equalities**

- 4.3.1 There are no equalities implications to the Council arising from this report.

#### 4.4 **Potential Risks**

<b>Potential Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Overall score</b>
Legal challenge	2	2	6

Risks are to be scored 1 - 4 for both Likelihood and Impact  
Likelihood 1=unlikely 2=possible 3= highly likely 4= virtually certain  
Impact 1= very little 2=not very serious 3= serious 4= catastrophic  
So overall maximum score is 16

#### Appendices

None

#### Background Papers

The following background papers were used in the preparation of this report.  
If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report:

Taxi and Private Hire Vehicle Licensing: Best Practice Guidance (Department for Transport, 2010)

File Reference

None

# Agenda Item 5

**Report to:** Licensing Committee  
**Date of meeting:** 15 July 2013  
**Report of:** Head of Community and Customer Services  
**Title:** Licensed Driver Enforcement Policy

## 1.0 **SUMMARY**

- 1.1 In 2007 the Licensing Committee adopted an enforcement policy to allow officers to allocate points against hackney carriage and private hire driver licences for specific contraventions of licensing requirements. This report seeks to update and revise the scheme by:
- (1) making minor changes to the schedule of contraventions;
  - (2) updating the procedure for revoking licences;
  - (3) introducing a system to suspend licences for short periods in certain circumstances.

## 2.0 **RECOMMENDATIONS**

- 2.1 That officers consult with licensed drivers on the proposed changes outlined in paragraphs 3.13 – 3.22 and at appendix 1 of the report.
- 2.2 Officers to discuss and agree any minor objections and modifications to the scheme with the Chair of the Committee, with any modifications being reported to the Committee.
- 2.3 That any significant objections to the proposed changes be referred back to the Committee for further consideration.
- 2.4 That officers have delegated authority to make further minor amendments to the scheme as necessary.

### **Contact Officer:**

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension: 8429. email: [jeffrey.leib@watford.gov.uk](mailto:jeffrey.leib@watford.gov.uk).

**Report approved by:** Alan Gough, Head of Community and Customer Services

## **3.0 DETAILED PROPOSAL**

### **3.1 Legislative background**

The Council licences hackney carriage and private hire drivers on the basis that they are, and remain whilst licensed, “fit and proper persons” within the terms of the Local Government (Miscellaneous Provisions) Act 1976.

3.2 The Act allows that licences may (as the case may be) be suspended, revoked or not renewed where the individual concerned:

- (1) has been convicted of an offence of indecency, violence or dishonesty;
- (2) has been convicted of an offence under the 1976 Act, (or the Town Police Clauses Act 1847 relating specifically to hackney carriages), or failed to comply with the requirements of those Acts; or
- (3) for any reasonable cause.

3.3 A driver must be notified in writing that their licence is proposed to be suspended, revoked or not renewed. The decision takes effect 21 days after they have been notified, to allow for an appeal to be lodged at the magistrates’ court by way of complaint. If an appeal is lodged, the decision to revoke or refuse the licence is “stayed” until the disposal of the appeal.

3.4 Licences may be suspended or revoked with immediate effect (notwithstanding any appeal) if it appears to the licensing authority that this is required for reasons of public safety.

### **3.5 How the scheme currently works**

In 2004 the Licensing Committee adopted a policy that allowed penalty points to be added to driver’s licences where the circumstances in paragraphs 3.2(2) or (3) had taken place, with a driver’s licence being considered for revocation when 15 points had been acquired. This was subsequently revised to a maximum of 20 penalty points in January 2007. In August 2010 the table of contraventions was amended to include parking contraventions such as waiting on double-yellow lines and loading bays and where a Penalty Charge Notice had not been issued by a Civil Enforcement Officer.

3.6 The rationale behind the penalty point scheme is to provide an objective scale of warnings where their conduct is below the required standards. It also ensures a consistent approach is taken towards contraventions by different officers who may deal with similar contraventions by different drivers. Points may be allocated on a fixed scale for objective contraventions (such as failing to display a fare tariff) or on a sliding scale for subjective contraventions such as adopting an unpleasant manner towards a passenger or for being abusive. A number of factors will be taken into account when deciding whether to allocate points, including the driver’s history of compliance, gravity of the contravention, and any health and safety implications arising from the contravention. Drivers have the opportunity to challenge officers when points have been allocated against them by way of appeal to the Environmental Health and Licensing section head. Drivers who accrue 20 or more penalty points in a rolling 12 month period are referred to a licensing sub-committee with a recommendation that their licence is revoked.

- 3.7 There are currently 484 drivers licensed by the Council. Penalty points have been issued to 43 drivers (just under 9% of the total) in the twelve months to April 2013; one driver has been considered for revocation in the last 12 months and only three drivers have been referred to a licensing sub-committee since 2007.
- 3.8 Rationale for change  
On 19 March 2012 the Committee adopted the Driver and Vehicle Action Plan in tandem with re-imposing a limit on the number of hackney carriage vehicle drivers. An element of the Plan was to conduct a review of the driver conviction and penalty point policies with the intention that tougher policies would make it clear that drivers who failed to meet our standards will not be considered fit and proper to hold licences.
- 3.9 Officers receive a number of complaints each year about drivers' conduct, the most prolific of which are from:
- (1) passengers complaining about hackney carriage drivers over-charging, particularly for short journeys from Watford Junction during the day or for journeys from the Rickmansworth Road rank at night;
  - (2) passengers complaining about hackney carriage drivers refusing to carry passengers short distances within the Borough, particularly from the above two locations;
  - (3) Members, the public, local residents, businesses and the police complaining about hackney carriage drivers misusing the Clarendon Road and Rickmansworth Road taxi ranks;
  - (4) businesses, the public and the Parking Service complaining about hackney carriages parking in inappropriate places in the High Street, Clarendon Road, Shady Lane and Westland Road (e.g. on loading bays, pay-and-display bays and on yellow lines);
  - (5) residents and the Parking Service complaining about hackney carriages and private hire vehicles parking in inappropriate places in King Street and Smith Street; and
  - (6) passengers and other road-users complaining about the behaviour of hackney carriage and private hire drivers.
- 3.10 The first three examples above are criminal offences under the Council's byelaws and attract a maximum penalty upon conviction of £500. The penalty scheme offers an alternative, cheaper and faster out-of-court disposal which builds up an objective picture of a driver's conduct to help defend future decisions to revoke a licence on the basis that the individual is no longer a fit and proper person to hold the licence.
- 3.11 In the year to April 2013, officers logged just over 120 specific complaints relating to licensed drivers. The table below shows the number of service complaints received relating to taxis/private hire vehicles in the previous five financial years:

<i>Year</i>	<i>Number of service complaints</i>
2007 - 2008	75
2008 – 2009	82
2009 – 2010	91
2010 – 2011	80
2011 – 2012	98
2012 – 2013	120

3.12

Proposed changes

One of the scheme's principles is to provide drivers with a clear warning that their conduct has not reached the required standards and that their licence may in due course be in jeopardy should future contraventions come to light. In order to reinforce the Council's desire for higher standards to be maintained, officers recommend that a revocation ought to be considered when a driver has accrued 15 points (in line with the original scheme). Few drivers achieve 20 points and a lower threshold will help drive up standards amongst the large number of drivers currently working in the town.

3.13

In addition, a few changes are recommended to the scale of contraventions, namely:

- (1) failure to properly display a door sign on a licensed vehicle in the position specified by officers – 3 points;
- (2) using a licensed vehicle to ply for hire or be made available for hire when in an unsafe and/or unroadworthy condition – 3 to 12 points;
- (3) charging or attempting to charge passengers with disabilities a greater fare than would otherwise be charged to a passenger contrary to the Equalities Act 2010 – 12 points;
- (4) unspecified behaviour or misconduct – increased in range of points from 3 – 6 points to 3 – 12 points;
- (5) refusing without reasonable excuse to carry passengers within the Borough – 12 points. This would be in line with similar contraventions relating to fares and over-charging;
- (6) physical abuse towards any person – this would be reduced from a range of 10 – 20 points to a range of 10 – 15 points in line with the reduction of the total number of points that could be allocated.

3.14

Officers would also recommend a change to the process by which points are allocated, as follows:

- (1) licensing officers or the licensing enforcement officer investigates contraventions and issues points with reasons to a driver;
- (2) drivers have the opportunity to challenge the points within ten working days either in writing or at a meeting with the licensing manager or section head. At the meeting the hearing officer will give reasons for their decision and will have the discretion to:
  - (a) allow the appeal;

- (b) dismiss the appeal;
  - (c) substitute the level of penalty points for another amount where the scheme allows for a range of points;
  - (d) authorise some other appropriate sanction, such as written advice, formal warnings, a simple caution or referral to the Council's legal team for consideration for prosecution.
- (3) where drivers have accrued 15 or more points (after any internal appeals have been disposed with), the licensing manager advises the driver that their licence will be considered for revocation and that they have 15 working days in which to make representations;
- (4) (a) where drivers do not make representations against their licence being revoked within 15 working days, the licensing manager or section head will confirm that the licence will be automatically revoked and the driver will be entitled to their statutory 21 days to appeal;
- (b) where drivers do wish to make representations, a meeting will be arranged with the section head or head of service, within 10 working days of the end of the 15 day period for making representations,. Officers will at that stage consider any representations as to the driver's fitness to continue holding a licence but the meeting will not be an opportunity to reconsider the original points leading to the proposed revocation. If officers decide to revoke the licence, the driver will be notified accordingly and informed within five working days of the meeting of their right to appeal to the magistrates' court.

3.15 Other revocation powers

The 1976 Act allows for licences to be revoked, suspended or not renewed if a driver has been convicted of indecency, dishonesty or violent offences. In those circumstances, the conviction can be assessed against the Council's policy for previous convictions and an appropriate decision taken.

3.16 Action can be taken where a driver has been convicted of an offence under the licensing legislation, failed to comply with a requirement under the licensing legislation, or for any other reasonable cause.

3.17 In these circumstances, that are not covered by the penalty point scheme, drivers would be referred for consideration by the Licensing Sub-Committee (Drivers Appeal Panel) along the lines set down in paragraph 3.14 and the existing sub-committee protocol. Drivers would have 15 days in which to make representations, with a hearing convened within a further 10 working days of that date. The sub-committee would consider all of the drivers' history as well as any representations as to their fitness before determining whether the licence should have penalty points imposed, suspended, not renewed or revoked. The Licensing Committee may wish to decide whether there should be any temporal limits on the sub-committee's powers of suspension, as there are in paragraph 3.19 below.

3.18 Licence suspensions

The Council's existing and long-standing policy has been to only use the power to suspend driver licences in order to allow serious allegations against drivers to be investigated (normally by other law enforcement agencies).

- 3.19 In May 2012 the High Court held<sup>1</sup> that the true construction of the relevant power meant that licence suspension could not be used as interim measure to assess a person's fitness and propriety to hold a licence but as a lesser sanction short of revocation.
- 3.20 Officers believe that the introduction of short periods of suspensions for the more prevalent offences would raise awareness amongst drivers of the need to comply with their licensing obligations and raise standards generally.
- 3.21 Where officers are satisfied one of the following contraventions had occurred, a drivers' licence could be suspended for 72 hours :
- (1) failing to comply with the Council's byelaws relating to hackney carriage ranks, and after any previous warnings or points have been issued (whether or not those pre-date this policy);
  - (2) rude, abusive or inappropriate behaviour towards any person, when viewed from the perspective of the complainant. (Officers would still have to be satisfied that the conduct complained of had actually taken place);
  - (3) over-charging passengers in a hackney carriage;
  - (4) refusing without reasonable excuse to carry a passenger within the Borough;
  - (5) plying for hire as a private hire vehicle driver.
- 3.22 Drivers who have had three periods of suspensions within 12 months will be considered no longer a fit and proper person and their licence revoked along the lines outlined in paragraph 3.14.
- 3.23 Drivers have 21 days in which to bring appeals to the magistrates' court against a decision to suspend their licence.
- 3.24 Regulators' Compliance Code  
The Council is required to have regard to the statutory Regulators' Compliance Code<sup>2</sup> (2007) when publishing or reviewing polices. The most specific obligations under the code are set out below together with the Council's view in relation to the penalty point scheme.
- 3.25 *"Hampton Principle: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.*
- Good regulation and its enforcement act as an enabler to economic activity. However, regulation that imposes unnecessary burdens can stifle enterprise and undermine economic progress. To allow or encourage economic progress, regulators must have regard to provisions [of the Code] when determining general policies or principles or when setting standards or giving general*

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<sup>1</sup> The Queen (on the application of Singh ) v Cardiff City Council [2013] EWHC 1852 (Admin)

<sup>2</sup> <http://www.berr.gov.uk/files/file45019.pdf>

*guidance about the exercise of regulatory functions.”*

- 3.26 The interventions recommended in this policy are reasonable, measured, proportionate and targeted. The Council’s penalty point scheme is a quick, low-cost enforcement mechanism which avoids the inconvenience, cost, delay and stigma of using court procedures that might otherwise hinder economic progress. Licence suspensions are limited to a specific range of the most common examples of non-compliance. The most significant intervention – revocation – will only occur either in the most extreme cases or when a number of prior warnings had been ignored. In those situations there is also a risk to the economic development of the trade generally as evidence of bad or poor standards is likely to deter passengers from using local taxi/private hire services.
- 3.27 **“Hampton Principle:** *Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.*
- Risk assessment involves the identification and measurement of capacity to harm and, if such capacity exists, an evaluation of the likelihood of the occurrence of the harm. By basing their regulatory work on an assessment of the risks to regulatory outcomes, regulators are able to target their resources where they will be most effective and where risk is highest. As such, in order to carry out comprehensive and effective risk assessment, regulators must have regard to provisions [of the Code] when determining general policies or principles or when setting standards or giving general guidance about the exercise of regulatory functions.”*
- 3.28 The Code suggests that regulators ought to pay regard to past compliance records and potential future risks; the existence of good systems for managing risks; evidence of recognised external accreditation; and management competencies and willingness to comply. Regulators should regularly review and consult on their risk methodologies with regulated businesses and other interested parties.
- 3.29 The data in paragraph 3.11 shows that there are still areas of non-compliance and officers’ experience is that is perhaps inevitable in a trade that effectively offers a one-to-one personal service with limited regulatory oversight. However the Council has adopted a softer approach of targeting penalty points at non-compliant drivers rather than more instantly draconian measures, partly in recognition that individual taxi businesses should regulate their own standards and partly in recognition that many drivers have also achieved a professional industry standard in terms of an NVQ or similar qualification. The overall scheme is kept under regular review and consultations conducted when significant changes are being proposed.
- 3.30 **“Hampton Principle:** *The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions. By facilitating compliance through a positive and proactive approach, regulators can achieve higher compliance rates and reduce the need for reactive enforcement actions. However, regulators should be able to target those who deliberately or persistently breach the law. To ensure that they respond proportionately to regulatory breaches, regulators must have regard to the provisions [of the Code] when determining general policies or principles or when setting standards or giving general guidance on the exercise of*

*compliance and enforcement functions.”*

- 3.31 The Code suggests that sanctions and penalties policies should:
- (a) aim to change the behaviour of the offender;
  - (b) aim to eliminate any financial gain or benefit from non-compliance;
  - (c) be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
  - (d) be proportionate to the nature of the offence and the harm caused;
  - (e) aim to restore the harm caused by regulatory non-compliance, where appropriate; And
  - (f) aim to deter future non-compliance.
- 3.32 Officers would suggest that the penalty points and suspension scheme meet all of those criteria, in particular:
- (a) by eliminating financial gains or benefit from non-compliance by short periods of suspension from those business activities;
  - (b) being responsive and appropriate by allowing for prosecution to be considered in appropriate cases in line with the Environmental Services enforcement policy;
  - (c) is proportionate in terms of either being a sequence of measured warnings – the penalty points – or limited periods of suspension; and
  - (d) aims to deter future non-compliance by other drivers.
- 3.33 The Code also suggests that regulators should create effective consultation and feedback opportunities to enable continuing cooperative relationships with regulated entities and other interested parties. If Members wish to adopt the proposals in this report officers will consult with the trade. Any minor objections will be sought to be resolved with the Chair of the Committee and reported to Members, and any significant objections brought back to the Committee for further deliberation.
- 3.34 Best Practice Guide  
The Department for Transport's Taxi and Private Hire Vehicle Licensing: Best Practice Guide (2010) contains no specific mention of penalty point schemes or licence suspensions, other than noting that local authorities are best placed to use their discretion when an immediate suspension is justified on public safety grounds.

## **4.0      IMPLICATIONS**

### **4.1      Financial**

4.1.1 The Head of Strategic Finance comments that there are no financial implications to the Council arising from this report.

### **4.2      Legal Issues (Monitoring Officer)**

4.2.1 The Head of Legal and Property Services comments that the key issues are dealt with in the main body of the report. A new feature is the use of a long-standing power to suspend licences for non-compliance. This is arguably an interference with an individual's property rights under article 1 to protocol 1 of the European Convention on Human Rights and Fundamental Freedoms. As such, it is only justified if in accordance with established legal principles and if it is in the public interest. The Convention talks about deprivation of property, and these proposals amount to a very limited interference with property rights within an established statutory framework where there is the opportunity of appeal to an independent and impartial tribunal.

### **4.3      Equalities**

An impact assessment has been prepared to analyse the effects of this policy.

### **4.4      Potential Risks**

Potential Risk	Likelihood	Impact	Overall score
Judicial review challenge to the scheme	1	4	4
Inconsistent application of enforcement by not using the scheme	2	4	8

### Appendices

Appendix 1 – proposed amendment to penalty point scheme

### Background Papers

No papers were used in the preparation of this report.

### File Reference

Driver licences/penalty point scheme

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**WATFORD BOROUGH COUNCIL  
PENALTY POINTS SCHEME**

This scheme applies to existing licensed drivers, and is separate from the Council's policy on criminal convictions.

CONTRAVICTION	Existing range of points	Proposed change (if any)
Adopting an unpleasant manner towards a passenger	3	
Verbal abuse towards any person whilst working as a driver	5 – 8	
Physical abuse towards any person	10 - 20	10 - 15
Rudeness or failure to co-operate with Council officers	10 - 12	
Failing to ensure the safety of a passenger entering, alighting or conveyed in a vehicle	8 - 15	
Failing to provide a customer with reasonable assistance with their luggage	4 – 6	
Refusal to take a guide dog or other assistance dog	10 - 12	
Eating or drinking whilst conveying passengers	5 - 8	
Consuming alcohol whilst on duty	12	
Smoking in a licensed vehicle whilst conveying a passenger/waiting on a rank	5 - 8	
Failure to produce driver's badge on request to authorised officer	5 - 8	
Failing to use taximeter when hired as a hackney carriage	10 - 12	
Failing to agree a fare with passenger before starting journey in hackney carriage where taximeter is not being used	10 - 12	
Charging hackney carriage passenger more than the metered or agreed fare	10 - 12	
Failing to advise private hire passenger of estimated fare at start of journey	10 - 12	
Failure to display fare tariff within a hackney carriage vehicle	10 - 12	
Failure to notify the Council of a change in drivers' name or address	4	
Failure to notify the Council in writing of accidents to a vehicle	6	
Failure to advise council in writing of previous convictions when applying for licence or of other convictions within twenty-eight days	6	
Exterior/interior of vehicle not maintained in clean, sound and roadworthy condition	8 - 12	
Failing to ensure the display of the vehicle licence plate on the inside or the outside of the vehicle in the prescribed manner	10 - 12	
Failing to comply with byelaw 7 relating to the use of hackney carriage stands	6 - 8	
Failure to ensure the vehicle is equipped with a First Aid kit and readily-accessible fire extinguisher or failing to ensure either is properly secured	5	
Using a hand-held mobile telephone whilst driving	10	
Failure to wear a seatbelt when required	5	
Knowingly giving false information to passengers	3 - 8	
Failure to pick up pre-booked passengers	3 – 5	
Failure to wear driver's badge or display large drivers' badge	6	
Unspecified behaviour or misconduct	3 – 6	3 - 12

<b>Misuse of disabled person's Blue Badge*</b>	<b>6</b>	
Waiting/parking on a loading ban; disabled bay; bus stop or cycle route*	5	
Waiting/parking on yellow lines where not allowed*	4	
Waiting/parking in parking bays without a valid ticket*	4	
Failure to properly display a door sign on a licensed vehicle in the position specified by officers	-	3
Using a licensed vehicle to ply for hire or be made available for hire when in an unsafe and/or unroadworthy condition	-	3 – 12
Charging or attempting to charge passengers with disabilities a greater fare than would otherwise be charged to a passenger contrary to the Equalities Act 2010	-	12
Refusing without reasonable excuse to convey a passenger in a hackney carriage within the Borough of Watford	-	12

Factors to be taken into account when imposing penalty points include

- ◆ previous warnings
- ◆ previous track record
- ◆ mitigating circumstances
- ◆ gravity of the misconduct
- ◆ effect of incident on passengers, the public or other drivers
- ◆ any health and safety implications to passengers, public or drivers
- ◆ the potential for the incident to recur
- ◆ whether the licensee can still be considered to be a fit and proper person.

There is a right of appeal against the issue of penalty points to the Licensing Manager/Environmental Health and Licensing Section Head. Any person issued with points and wishing to appeal must notify the council, in writing, within 10 working days of the points being issued, stating the outline of the reasons that they wish to appeal. The appeal can be considered by post or in person.

If in person, the appeal will be an informal hearing involving the hearing officer, the relevant officer who issued the penalty points, and the driver concerned. The hearing officer will give reasons for their decision, and will have the discretion to:

- (1) allow the appeal;
- (2) dismiss the appeal;
- (3) substitute the level of penalty points for another amount where the scheme allows for a range of points;
- (4) authorise some other appropriate sanction, such as written warnings, advice, a formal caution or referral to the Head of Legal Services for prosecution.

Drivers who have more than 15 points issued in any 12-month period may have their licence revoked after consideration of any appeals against the issuing of points. (Penalty points for the same offence that are more than 12 months old may be taken into account where it is considered appropriate to do so). In those cases drivers will be advised in writing that they have 15 working days in which to make representations as to why their licence should not be revoked.

Licences will be automatically revoked if no representations have been received during that period, and the driver advised of their statutory right of appeal.

If representations are made a meeting will be arranged within 10 working days with the Section Head or the Head of Service. Officers will at that stage consider any representations as to the

driver's fitness to continue holding a licence but the meeting will not be an opportunity for a further appeal in relation to the points acquired up until that point. If officers decide to revoke the licence, the driver will be notified accordingly within 5 working days and informed of their statutory right of appeal.

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**Note:**

\* Points will be allocated for these contraventions following evidence from a reliable witnesses (eg a Civil Enforcement Officer, other Council enforcement officer, police officer or police community support officer). Points will not be allocated if a Penalty Charge Notice has also been issued.

July 2013

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# Agenda Item 6

**Report to:** Licensing Committee

**Date of meeting:** 15 July 2013

**Report of:** Head of Community and Customer Services

**Title:** Licensed Driver Conviction Policy

## 1.0 **SUMMARY**

- 1.1 The Council is the licensing authority for hackney carriage and private hire vehicle drivers within the Borough. Licences may only be granted if the authority is satisfied that the applicant is a 'fit and proper person' to hold the licence; powers also exist to suspend, revoke or refuse to renew licences where an individual is no longer fit and proper to hold the licence. Fitness and propriety are often judged against an individual's criminal convictions, and the Council's policy is now the subject of review having been last revised in 2007.

## 2.0 **RECOMMENDATIONS**

- 2.1 That the Licensing Committee adopt the revised policy Guidelines at appendix II.

**Contact Officer:**

For further information on this report please contact Jeffrey Leib (Licensing Manager) on telephone extension (27)8503 or email [Jeffrey.leib@watford.gov.uk](mailto:Jeffrey.leib@watford.gov.uk)

**Report Approved by:**

Alan Gough, Head of Community and Customer Services

### **3.0 DETAILED PROPOSAL**

#### **3.1 Legislative background**

- The Council is the licensing authority for hackney carriages and private hire vehicles within the Borough. It may grant drivers' licences where it is satisfied that the applicants are 'fit and proper' people to hold such licences. Further powers exist to suspend, revoke or refuse to renew the licences of those who are no longer fit and proper.
- 3.2 One test of fitness and proprietary is the absence of any criminal convictions. Where a person has or acquires criminal convictions, the Council has a long-standing policy against which those convictions are assessed.
- 3.3 The authority is entitled to consider both current convictions, and those that would otherwise be considered as 'spent' under the Rehabilitation of Offenders Act 1974. Under the Act, individuals do not have to disclose details of criminal sentences after certain periods of time, unless they are applying in relation to certain 'excepted occupations' that include hackney carriage and private hire vehicle drivers. (This provision does not apply to private hire vehicle operators or licensed vehicle owners, who can not be asked to disclose details of spent convictions).
- 3.4 Checks are made of the Disclosure and Barring Service (DBS, formerly the Criminal Records Bureau) when applicants first apply for a drivers' licence or when renewing their licences on a three year basis. It is a condition of the private hire vehicle drivers' licence issued to all drivers that the Council is advised of criminal convictions, driving licence endorsements and cautions within 28 days of conviction. Home Office Circular 6/2006 advises police forces to notify licensing authorities when a person identified as a licence-holder is arrested, charged, convicted or otherwise comes to police attention where that person poses a risk to public safety.
- 3.5 The Council's current policy was initially based on the joint Department of Transport Circular 2/92/Home Office Circular 13/92. That circular has not been updated since that time. The current policy was reviewed in June 2000 and June 2007.
- 3.6 The Department for Transport has published the following advice to licensing authorities<sup>1</sup>.

#### ***Criminal Record Checks***

*58. A criminal record check is an important safety measure particularly for those working closely with children and the vulnerable. Taxi and PHV drivers can be subject to a Standard Disclosure (and for those working in "Regulated Activity" to an Enhanced Disclosure) through the Criminal Records Bureau. Both levels of Disclosure include details of spent and unspent convictions, cautions reprimands and final warnings. An Enhanced Disclosure may also include any other information held in police records that is considered relevant by the police, for example, details of minor offences, non-conviction information on the Police National Computer such as Fixed Penalty Notices and, in some cases, allegations. An Enhanced Disclosure is for those working in Regulated Activity and the Government has produced guidance in relation to this and the new "Vetting and Barring Scheme" which is available at [www.isa-gov.org.uk/default.aspx?page=402](http://www.isa-gov.org.uk/default.aspx?page=402). [The Department will issue*

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<sup>1</sup> Taxi and Private Hire Vehicle Licensing: Best Practice Guide (Department for Transport, 2010)

*further advice as the new SVG scheme develops.<sup>2</sup>*

*59. In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they should take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence.*

*60. Local licensing authorities will also want to have a policy on background checks for applicants from elsewhere in the EU and other overseas countries. One approach is to require a certificate of good conduct authenticated by the relevant embassy. The Criminal Records Bureau website ([www.crb.gov.uk](http://www.crb.gov.uk)) gives information about obtaining certificates of good conduct, or similar documents, from a number of countries.*

*61. It would seem best practice for Criminal Records Bureau disclosures to be sought when a licence is first applied for and then every three years, even if a licence is renewed annually, provided drivers are obliged to report all new convictions and cautions to the licensing authority*

- 3.7 It should be remembered that the policy is a set of guidelines and not tramlines, and that exceptions can be made to policy in appropriate cases.
- 3.8 The Committee's attention is drawn to the following extract which they may find useful in considering the application of the policy:

An argument often forward against the use of previous convictions is that, once a person has served their sentence, their 'debt to society' has been paid and it is wrong to keep bringing a matter up and punishing them again for the same offence, eg by revoking a licence or refusing to grant or renew, thereby depriving them of their livelihood. However, the local authority is not punishing them, it is protecting the public from a person who has demonstrated a propensity towards wrongdoing. Accordingly, it is both correct and, arguably, essential that convictions, both current and spent, are considered.<sup>3</sup>

- 3.9 Officers are only proposing minor amendments (shown in bold text in the appendix) to the policy. One of these changes arises from the decision of the Court of Appeal in January this year<sup>4</sup> which affected the amount of information that could be disclosed by the DBS. Currently the DBS will no longer provide details of some convictions if the person has only one previous conviction which did not result in a custodial sentence, and which is more than 11 years old (or 5½ years if the individual was under 18 at the time of the offence).

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<sup>2</sup> The Coalition Government has announced since the publication of the DfT Guidance that the Vetting and Barring Service will not now be implemented in the way described here.

<sup>3</sup> *Taxis – Licensing Law and Practise*, 3<sup>rd</sup> edn, para 5.46., J T H Button (Reed Elsevier, 2009).

<sup>4</sup> R on the application of T, JB and AW v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice [2013] EWCA Civ 2

3.10 Proposed changes to the policy are:

- (a) renaming the CRB as the Disclosure and Barring Service (and its Scottish equivalent)
- (b) clarifying in paragraph 2.2 that convictions for violent, sexual, child-related, racially aggravated or other serious crime will not lead licences to be issued for at least five years from the date that the sentence had become spent. Applicants or drivers whose sentence for this list of offences never became spent will only be granted a licence if they can show the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence;
- (c) amend the procedure at paragraph 2.8 so that a Licensing Officer will interview candidates about any previous convictions and that the Environmental Health and Licensing Section Head or Head of Community Services will review and determine any application;
- (d) amending paragraph 3.1 so drivers whose DVLA licences have not been disqualified despite having at least 12 points endorsed under the "totting-up" procedure may nevertheless be barred from holding a licence from the Council for 3 years from the date of the last conviction on the licence unless the driver can show that the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence;
- (e) amend paragraphs 3.6 and 3.7 so that applicants or drivers with convictions for indecency or violence offences that are never spent will not be granted a licence unless they can show the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence;
- (f) clarify paragraph 3.11 so that anyone convicted of any offence relating to the use of any licensed hackney carriage or private hire vehicle (and not just those licensed by Watford Borough Council) would be banned from holding a licence for a minimum of three years.

3.10 Officers do not intend to undertake a formal consultation on the proposals but any comments received will be discussed with the Chair of the Licensing Committee and referred to the Committee if appropriate.

## 4.0 **IMPLICATIONS**

### 4.1 **Financial**

The Head of Strategic Finance comments that there are no financial implications to the Council arising from this report.

### 4.2 **Legal Issues (Monitoring Officer)**

The existence of a policy provides a rationale basis to decision-making when deciding to whether to refuse to grant, refuse to renew or revoke a licence.

#### **4.3      Equalities**

An impact assessment has been prepared to analyse the effects of this policy.

#### **4.4      Potential Risks**

Potential Risk	Likelihood	Impact	Overall score
Judicial review challenge to the scheme	1	4	4
Inconsistent application in not using the scheme	2	4	8
Appeals to the magistrates' court against licensing decisions without a reasonable and proportionate policy in place	2	4	8
Appeals to the magistrates' court against licensing decisions <i>with</i> a reasonable and proportionate policy in place	1	2	2

#### Appendices

Appendix I – proposed criminal conviction policy

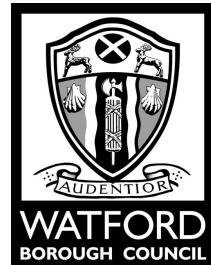
#### Background Papers

No papers were used in the preparation of this report.

#### File Reference

Driver licences/conviction policy

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## GUIDELINES FOR THE ISSUE OF HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS LICENCES (REVISED JULY 2013)

### 1. Introduction

- 1.1 When submitting an application for a Licence to drive a Hackney Carriage or Private Hire Vehicle you are requested to declare any cautions or convictions you may have. The information you give will be treated in the strictest confidence and will only be taken into account in relation to your application. Failing to disclose relevant information may prejudice an application or the right to hold a licence, and may be a criminal offence.
- 1.2 You should be aware that the Council will obtain an enhanced disclosure from the **Disclosure and Barring Service**. Checks will also be made with the Driver and Vehicle Licensing Agency. Information received from the **DBS** and DVLA will be kept in the strictest confidence while the licensing process takes its course, and will be retained on manual and computer records for no longer than is deemed necessary. The **DBS** disclosure will be securely disposed of once a licensing decision has been made. A DVLA disclosure will be retained until either a decision has been made to refuse a licence (and any subsequent appeal) or until your licence is surrendered.
- 1.3 The existence of a criminal record or disclosure of other information will not necessarily preclude you from gaining a licence unless the Council considers the conviction renders you not to be a 'fit and proper person'. In making this decision the Council will consider the nature of the offence, how long ago and what age you were when it was committed, and any other factors it or you feel are relevant.
- 1.4 Any applicant refused a licence on the grounds that they are not a fit and proper person to hold a licence has a statutory right of appeal to a magistrates' court.
- 1.5 Existing holders of drivers licences are required to notify the Council in writing on the Council's official forms within twenty-eight days of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions).
- 1.6 If you would like to discuss further what effect a caution/conviction might have on any application, you may telephone the Licensing Officer on (01923) 278503 (or e-mail [licensing@watford.gov.uk](mailto:licensing@watford.gov.uk)) in confidence for advice.
- 1.7 The Council conducts enhanced disclosures from the Disclosure and Barring Service of any applicant for a driver licence. The Council follows the **DBS's** Code of Practice on the fair use of disclosure information, and a copy is available on request.

Applicants applying for the grant or a renewal of a drivers' licence will be required to obtain an enhanced disclosure at their expense.

The Council also abides by the **DBS's** Policy on the secure storage, handling, use, retention

and disposal of disclosure information, which is available on request.

More information about the **DBS** can be found on [www.gov.uk](http://www.gov.uk).

- 1.8 The Council is also entitled to use other records and information 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.

## **2. General Policy**

- 2.1 Each case will be decided on its own merits.
- 2.2 A person with a conviction for crime need not necessarily be permanently barred from obtaining a licence, but should be expected to remain free from conviction for three to five years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. ~~although Persons with spent convictions for offences of a violent, sexual, child-related nature, a racially aggravated offence or other very serious crime will not normally be issued with a licence for five years once the sentence is spent unless they can show the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence. Persons whose sentences for violent, sexual, child-related nature, a racially aggravated offence or other very serious crime are never spent will not be granted a licence unless they can show the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence.~~ The overriding consideration should always be the protection of the public.

However, remaining free of convictions for a specified period may not be sufficient to show that a person is a fit and proper person, and additional evidence may be required.

- 2.3 A person who has received a Penalty Notice for Disorder for offences listed in this policy will be expected to remain conviction-free for at least twelve months from the date that the notice was paid for or discharged.
- 2.4 In this policy, the time periods mentioned in each case refer to the time that has elapsed since the date of conviction.
- 2.5 The Council reserves its right to act as a judicial authority in the case of relevant spent convictions under the Rehabilitation of Offenders Act 1974 (as amended).
- 2.6 Applicants who have prior convictions or driving endorsements will be invited to attend an interview with a Licensing officer. They may be accompanied by a representative should they wish, and bring supporting evidence with them. The interviewing officer will record any mitigating circumstances. The fact that existing licensed drivers rely on their licence for their livelihood will not be seen as a mitigating factor.
- 2.7 The Council will take a strict view of anyone convicted of any offence listed in this policy where alcohol or illegal drugs was a factor, which it will take as an aggravating and not a mitigating factor unless evidence is presented to the contrary.
- 2.8 A review will then be arranged within three working days (wherever possible) with the Environmental Health and Licensing Section Head or the Head of Community Services and Housing, which the applicant may attend. The senior Officer will review the application and the result of the first interview (but not accept any new evidence) before making an immediate determination.
- 2.9 Where a person has been convicted of an offence by the Council itself, the decision on whether the licence should be revoked or refused will be taken by a Licensing sub-Committee of Councillors. The sub-Committee shall be convened within three weeks of being notified of the conviction, and will be heard in private. Applicants will be entitled to address the sub-Committee, to answer questions, and will be given written reasons for any decision.

- 2.10 There may be occasions where it is appropriate to depart from the guidelines, eg where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.11 In accordance with current case law, the Council will not seek to go behind the convictions by reinvestigating the circumstances of the case or questioning the decision of the relevant judicial authority. It will be for applicants to persuade the Council that the conviction is no longer serious, relevant or is so old that it should not affect their ability to hold a licence.
- 2.12 'A decision to revoke a licence following a conviction is not a case of penalising the individual twice. The objective of a conviction is for an offender to be punished by a court or other judicial process; a licensing decision is made to assess whether a person is a fit and proper person to hold a licence; to protect public safety; and to promote public confidence in the licensing system.'
- 2.13 The following examples afford a general guide on the action to be taken where convictions are declared. It is based on Department of Transport Circular 2/9/Home Office Circular 13/92.
- 2.14 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence, punishable by a maximum fine of level 3 (£2500) upon summary conviction.

### **3. Driver Licences**

#### **3.1 Minor traffic offences**

Convictions or a fixed penalty notice for minor traffic offences, e.g., obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicants DVLA driving licence then a hackney carriage or private hire vehicle licence may be granted after its restoration but a warning should be issued as to future conduct. Holders of a Hackney Carriage or Private Hire Driver Licence convicted of such offence(s) may be warned as to future conduct, and any disqualification from driving will lead to revocation of any licence issued by the Council (and see section 6 below).

#### **3.1.1 Under the “totting up” procedure a court may find that despite having 12 or more points endorsed on their DVLA licence there are special reasons not to disqualify the person from driving. In those circumstances the Council may still bar an individual for three years from the date of the last conviction on the DVLA licence unless they can show that the convictions are no longer serious, relevant or so old they do not affect their applicability to hold a licence.**

#### **3.2 Major traffic offences**

A major traffic offence is one for which a person may be sentenced to a term of imprisonment or which is not otherwise specified as a minor traffic offence. A conviction for a major traffic offence such as causing death by dangerous driving, careless driving, racing, driving without due care and consideration, taking vehicles without consent, aggravated vehicle taking, interfering with a motor vehicle etc (which is not specified as a minor traffic offence), within the last five years will normally disbar an applicant from being given a licence. A conviction for a major traffic offence during the period of a Council-issued licence may lead to the licence being revoked.

**3.3 Drunkenness**

A serious view will be taken of convictions of driving or being in charge of a vehicle under the influence of drink. An isolated incident in the past should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to an applicant's fitness to hold a Hackney Carriage or Private Hire Driver's licence. At least five years should elapse after the restoration of the DVLA driving licence before an applicant is considered for a Hackney Carriage or Private Hire Drivers licence.

**3.4 If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of five years should elapse after treatment is complete before a further licence application is considered. A driver found guilty of driving whilst under the influence of alcohol will have their Hackney Carriage or Private Hire Drivers Licence revoked immediately and be banned from holding a licence from the Council for a minimum period of five years.**

**3.5 Drugs**

An applicant with a conviction for a drug-related offence, the supply or trafficking of drugs should be required to show a period of at least five years free of convictions before an application is entertained, or five years after detoxification treatment if they were an addict. A driver found guilty of driving whilst under the influence of drugs, or found guilty of any drug-related offence, will have their Hackney Carriage or Private Hire Drivers Licence revoked immediately and be banned from holding a such a licence with the Council for a minimum period of five years.

**3.6 Indecency and sexual offences**

Hackney carriage and Private Hire Vehicle drivers often carry unaccompanied and/or vulnerable passengers. **Applicants with convictions for indecency or sexual offences that are never spent will not be granted a licence unless they can demonstrate that the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence.** Applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused a licence until they can show a substantial period (at five years) free of such offences. More than one conviction of this kind should preclude consideration for at least five years. In either case if a licence is granted a strict warning as to future conduct should be issued. A driver found guilty of indecency offences during the period of a Licence will have their Hackney Carriage or Private Hire Drivers licence revoked and be banned from holding a licence from the Council for a minimum period of five years.

**3.7 Violence**

**Applicants with convictions for violent offences that are never spent will not be granted a licence unless they can demonstrate that the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence.** As hackney carriage and Private Hire Vehicle drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. . At least five years free of such convictions should be shown before an application is entertained and even then a strict warning will be administered. A driver found guilty of violence-related offences will have their Hackney Carriage or Private Hire Drivers Licence revoked immediately and be banned from holding such a licence from the Council for a minimum period of five years.

**3.8 Dishonesty**

Hackney carriage and private hire vehicle drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property, taking children to school and families on holiday is indicative of the trust that people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by any lost property being kept by unscrupulous drivers. For these reasons a serious view should be taken of any convictions involving dishonesty. In general, a period of at least five years free of conviction should be required before entertaining an application. Any existing driver convicted of offences of dishonesty can expect any licence held to be revoked and a possible ban on holding a licence from the Council for a minimum five year period.

**3.9 Insurance offences**

A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily debar an applicant provided he has been free of conviction for three years, but strict warning should be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to an applicant's fitness to hold a Hackney Carriage or Private Hire Driver Licence unless there are exceptional circumstances. A period of at two years must elapse if a licensed private hire vehicle was being driven, or three years if any other vehicle was being driven. Any applicant with three insurance offences or more will not be considered 'fit and proper' to hold a Hackney Carriage or Private Hire Drivers Licence with the Council.

**3.10 Plying for hire**

This is regarded as a serious offence likely to undermine the rationale for the system of licensing hackney carriages and private hire vehicles. More than one conviction for these offences will raise grave doubts as to an applicant's fitness to hold a licence unless there are exceptional circumstances. A period of at least one year must elapse if a licensed private hire vehicle was being driven, or three years if any other vehicle was being driven. Any applicant with three or more convictions will not be considered 'fit and proper' to hold a Hackney Carriage and Private Hire Vehicle with the Council.

**3.11 Use of hackney carriages or private hire vehicles**

Anyone convicted of any offence relating to the use (not driving, covered above) of **any** licensed **hackney carriage or private hire vehicle** vehicle during the period of their Hackney Carriage or Private Hire Driver Licence will be banned from holding any such licence for a minimum three year period.

#### **4. Vehicle Licences**

- 4.1 If you apply for a vehicle licence but do not have a drivers' or operators' licence from the Council, you must also produce with your application a basic disclosure form from **Disclosure Scotland**.
- 4.2 Licences will not generally be granted to applicants who have been convicted within the last three years of an offence relating to the use or ownership of motor vehicles, or offences involving dishonesty.

#### **5. Private hire vehicle operator licences**

- 5.1 If you apply for a private hire vehicle operators' licence but do not have a drivers' licence from the Council, you must also produce with your application a basic disclosure form from **Disclosure Scotland**.
- 5.2 **Violence**  
At least three years free of such convictions should be shown before an application is entertained and even then a strict warning will be administered. An existing operator convicted of an offence relating to violence could be expected to have their licence revoked for a period of three years.
- 5.3 **Dishonesty**  
Private hire vehicle operators are often privy to confidential information about their customers, and are required to maintain records in relation to their business. In general, a period of at least three years free of conviction should be required before entertaining an application. Any existing operator convicted of offences of dishonesty can expect any licence held to be revoked and a ban on holding a licence from the Council for a minimum three year period.
- 5.4 **Insurance offences**  
A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily debar an applicant provided he has been free of conviction for three years, but strict warning should be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to an applicant's fitness to hold a licence unless there are exceptional circumstances.
- 5.5 At least three years should elapse (after the restoration of the DVLA driving licence), before an applicant is considered for a hackney carriage or private hire drivers licence. An operator found guilty of aiding and abetting the driving passengers for hire and reward whilst without insurance will have his operators' licence revoked immediately and be banned from holding a licence for a three years. Any applicant with three insurance offences or more will not be considered 'fit and proper' to hold a operators' licence with the Council.
- 5.6 **Use of hackney carriages or private hire vehicles**  
Anyone convicted of any offence relating to the use (not driving, covered above) of a licensed vehicle during the period of their operator's licence will be banned from holding any such licence for a minimum three year period.
- 5.7 **Other regulatory offences**  
An operator who has been convicted of other regulatory offences (eg tax evasion, or under the Health and Safety at Work etc Act 1974) will generally be debarred from holding a licence for a further two years from the date of conviction.

## **6. Additional policy for licensed drivers in certain circumstances**

- 6.1 The Driving Standards Agency's driving test for hackney carriage/orivate hire vehicle drivers must be taken again by:
- (i) licensed drivers who accumulate six or more points on their DVLA licence;
  - (ii) following any period of disqualification;
  - (iii) following a written report of bad driving from a police traffic officer;
  - (iv) following an absence from the trade for more than 6 years (that is, the length of two consecutive driver's licences);
  - (v) drivers who have more than three reported accidents in licensed vehicles within any twelve month period where they were at fault.
- 6.2 The test will be taken at your own expense. Drivers would not be granted licences (or, if already licensed, have the licences restored) until they have passed the test.