

**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.

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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 propriety 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 it's 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 become 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