

**West Lindsey District Council**

**Taxi & Private Hire Drivers' Applications**

**Guidance for Members General Policy**

**Adopted September 2013**

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## **APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE**

### *EVIDENCE TO ASSIST IN THE DECISION AS TO WHETHER AN INDIVIDUAL IS A 'FIT AND PROPER PERSON'*

The following information is obtained in all cases:-

1. The applicant's current driving licence – in order to discover what endorsements/suspensions/points he or she has, and gain some idea as to their driving record.
2. A Group 2 Medical Certificate (that is the level required for professional drivers) from the applicant's GP, or from a doctor who is in possession of the applicant's medical records, giving details of any medical conditions which would affect the applicant's ability to drive.
3. An 'enhanced' Disclosure and Barring Service check (previously Criminal Records Bureau) which shows the applicant's complete criminal history (if any).

If, having received the above information, officers are doubtful as to whether the applicant is 'fit and proper'; the application is put before the Licensing Sub-Committee for consideration.

The reasons why the application must be dealt with by the Sub-Committee are:-

- Officers do not have delegated authority to refuse an application, although they do have authority to grant or renew a licence.
- Members are given the opportunity to meet the applicant, question him about the problems associated with his or her application, and form some idea about his overall character and his suitability for being licensed.
- The application is dealt with under the rules of Natural Justice, whereby the applicant will be given the opportunity to speak in support of his application, and members of the Sub-Committee will be able to ask questions of him, in an informal but organised manner.

Members may wish to ask questions of the applicant which bring out:-

- The applicant's attitude to his or her criminal convictions.
- The thought he or she may have given to the responsibility they will have to passengers' safety and welfare, if granted a licence.
- Their attitude to the rules of the road – if they have driving convictions.
- The hours to be worked – if the applicant has medical problems.
- The relationship between the applicant and their prospective employer.
- Previous employment history.
- Relationship with the persons who have given references on their behalf.

There is, unfortunately, no definition of a 'fit and proper person' to be guided by. Members must consider the 'evidence' put before them and decide accordingly, bearing in mind that the overriding consideration is the safety of the public.

# **GUIDELINES RELATING TO RELEVANCE OF CONVICTIONS AND HOW THE LICENSING AUTHORITY WILL DEAL WITH THE APPLICATION**

## *GENERAL POLICY*

### The application process for all new drivers:

- Applicants are required to undertake a knowledge test, comprising of basic reading, writing, arithmetic, knowledge of the West Lindsey district and the wider Lincolnshire area
- Individuals who pass the knowledge test to become a licensed driver need to have their identity verified, before a Disclosure and Barring Service check (previously C.R.B.) can be submitted, (this function can only be carried out by licensing staff). Further details can be found in Appendix 2 of this policy.

Applicants whose DBS certificates reveal offences which are serious enough to be of a cause for concern to officers, due to the number of offences, the nature of offences or both, can be given the opportunity to attend a second interview with two licensing officers present, to give a full explanation of the circumstances surrounding the offence(s) listed.

If there is any doubt whatsoever as to the applicant's suitability to be issued with a drivers badge after this stage, (as officers do not have delegated authority to refuse an application for a drivers badge) the applicant would be informed, that the application would automatically be referred to the Taxi and General Licensing Sub-Committee, for a Hearing to be carried out under the format of the Natural Justice Procedure, if the applicant would like to proceed further.

## *CONVICTIONS POLICY*

### **1. Introduction**

- 1.1 The purpose of this policy is to provide guidance on the criteria which are taken into account by the council when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver licence.
- 1.2 The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:
  - That a person is a fit and proper person
  - That the person does not pose a threat to the public
  - That the public are safeguarded from dishonest persons
  - The safeguarding of children and young persons
- 1.3 This policy provides guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:
  - Applicants for drivers' licences
  - Existing licensed drivers whose licences are being reviewed
  - Licensing officers

- Members of the licensing committee/ panel (or other relevant decision making body)
- Magistrates hearing appeals against local authority decisions

1.4 Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence\*. In all other cases applications for licences will be referred to the licensing sub-committee (or other relevant decision-making body). Whilst officers and the sub-committee will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits and, where the circumstances warrant, the sub-committee/officer may depart from the guidelines.**

\*Please note officers always have the option to refer any matter delegated to them on to a Committee or Sub-Committee

## 2. General policy

2.1 There may be occasions where it is appropriate to depart from the guidelines, for example 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.

2.2 A person with a conviction need not be automatically barred from obtaining a licence, but would be expected to show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

2.3 **Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction** [Nottingham City Council v. Mohammed Farooq (1998)].

## 3. Pre-requisites to making an application

3.1 It is the policy of the licensing authority that every application for a licence to drive a Hackney Carriage and/or Private Hire Vehicle must be accompanied by satisfactory evidence of the following matters (and that applications that are incomplete will not be deemed to have been made until such time as they are completed) -

- That the applicant has the right to live and work in the country
- An enhanced criminal record check and evidence that they are not on a child and/or vulnerable adult barring list
- A certificate of their current medical fitness [to DVLA Group 2 standard]
- That the applicant is authorised to drive a vehicle of the same classification as that which the licence will allow them to drive

- That the applicant has a minimum of two year's post qualification driving experience
  - That the applicant has adequate literacy and numeracy skills to provide the service that they wish to be licensed for
  - That the applicant has sufficient ability to speak English and to understand spoken English to provide the service that they wish to be licensed for
  - That the applicant has, where available, completed safeguarding awareness training
  - That the applicant has signed the declaration relating to the drivers Code of Conduct
- 3.2 If an applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries covering the period before a licence application can be made.

Criminal record checks/certificates of good conduct must be provided in accordance with the Home Office "Application processes for Foreign National Criminality Information". Any criminal record check must be translated into English by a recognised translation service provider.

#### **4. Appeals**

- 4.1 Any applicant refused a driver's licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].
- 4.2 Any applicant refused an operator licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.
- 4.3 Any licensee whose licence is suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice of suspension or revocation.

#### **5. Powers**

- 5.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 5.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows

the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the licensing authority will have regard to all relevant convictions (as defined in this policy), particularly where there is a long history of offending or a pattern of repeat offending.

- 5.3 In this policy the term "disqualification" refers to the period served, to take account of the fact that a period of disqualification may be reduced upon the successful completion of a relevant driver rehabilitation course. An applicant must provide the Licensing Authority with sufficient evidence to prove that the period of disqualification was so reduced.

## **6. Consideration of disclosed criminal history**

- 6.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a licence to drive a hackney carriage and/or a private hire vehicle and/or a private hire vehicle operator's licence is a 'fit and proper' person to hold such a licence.

All conviction(s), criminal findings of guilt (including fixed penalty ticket(s)), caution(s) and warning(s), whether for motoring or other offences and County Court Judgment(s)/Order(s) (where the judgment or order relates to a debt or charge to another Hackney Carriage/Private Hire driver, owner or operator) may be taken into account on or after the issue of a licence. During the currency of a licence the licence holder must, immediately after the date of arrest, conviction(s), criminal findings of guilt (including fixed penalty notice(s)), caution(s) and/or warning(s), advise the Licensing Authority of this information in writing.

The Licensing Authority will consider:

- How relevant the offence(s) are to the licence being applied for
- The seriousness of the offence(s)
- When the offence(s) were committed
- The date of conviction
- Circumstances of the individual concerned
- Sentence imposed by the court
- The applicant's age at the time of conviction
- Whether they form part of a pattern of offending
- Any other character check considered reasonable (e.g. personal references)
- Any other factors that might be relevant

- 6.2 Applicants can discuss what effect a caution/conviction or other sanction may have on any application by contacting the licensing office in confidence for advice.

- 6.3 The licensing authority requires enhanced disclosures from the Disclosure and Barring Service (DBS) from any applicant for a driver licence. The licensing authority follows

the DBS's Code of Practice on the fair use of disclosure information. A copy is available on request.

- 6.4 Applicants applying for the grant or a renewal of a drivers' licence and/or operator licence will be required to obtain an enhanced disclosure at their expense. The licensing authority abides by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.
- 6.5 The licensing authority encourages applicants and licence holders to register for the DBS's update service and to nominate the licensing authority to receive updates. Registration lasts for 1 year and costs £13 per year. DBS certificates obtained for a Hackney Carriage or Private Hire Driver Licence cannot be used for the purpose of obtaining a Lincolnshire County Council School Transport Badge ("Green Badge") and vice versa. A separate check is required for each authorisation. However, applicants can register both checks with the DBS update service for a total cost of £13 per year.
- 6.6 More information about the DBS can be found on their website at <https://www.gov.uk/government/organisations/disclosure-and-barring-service>
- 6.7 The licensing authority 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 licensing authority or other licensing authorities, and information disclosed by the police.
- 6.8 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. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

## **7 Serious offences involving violence**

- 7.1 Licensed drivers have close regular contact with the public. A firm line will be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 7.2 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
  - Manslaughter
  - Any culpable homicide while driving
  - Terrorism offences
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 7.3 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:



- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated features
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

7.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage
- Any other racially-aggravated offence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

7.5 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning Actual Bodily Harm
- S.20 Grievous Bodily Harm
- Affray
- S.5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S.4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licensed Hackney Carriage/Private Hire driver found guilty of any of these offences should have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

7.6 A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

7.7 In the event of a licence being granted, a strict warning both verbally and in writing should be administered.

## **8. Possession of a weapon**

8.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give rise to serious concern as to whether the person is fit to carry the public. Depending on the circumstances of the offence, an applicant should be free of conviction for at least 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before an application for a licence is considered.

## 9. Sex and indecency offences

9.1 Licensed drivers often carry unaccompanied and vulnerable passengers, therefore applicants with convictions for sexual offences will be very closely scrutinised. Applicants with convictions for sexual offences will generally be refused.

9.2 An application will generally be refused where the applicant has a conviction for an offence such as:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Any offence involving child sexual exploitation and/or sexual exploitation of vulnerable adults
- Possession of indecent photographs, child pornography etc.
- Or **any** sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit).

9.3 In addition to the above the licensing authority will not generally grant a licence to any applicant who is currently on the Sex Offenders Register.

## 10. Dishonesty

10.1 Licensed Hire Drivers are expected to be trustworthy. 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 an unscrupulous driver. For these reasons a serious view should be taken of any

conviction involving dishonesty. In general, a period of 5 years free of conviction should be required before entertaining an application.

A licensed Hire Driver found guilty of a dishonesty offence should expect to have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

10.2 In general, a minimum period of 5 years free of conviction or at least 5 years from completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- and any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

10.3 A licence will not normally be granted if an applicant has more than one conviction for a dishonesty offence.

## **11. Drugs**

11.1 A serious view will be taken of any drug related offence.

11.2 A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and has not been free of conviction for 5 years.

11.3 A licence will not normally be granted where the applicant has a conviction for an offence related to the possession of drugs and has not been free of conviction for 3 years.

11.4 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

11.5 A licence will not normally be granted if an applicant has more than one conviction for a drugs related offence.

- 11.6 A hackney carriage or PHV driver found guilty of driving whilst under the influence of drugs, or found guilty of any drug-related offence should expect to have his/her drivers licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

## **12 Driving offences involving the loss of life**

- 12.1 A very serious view will be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted where the applicant has a conviction for an offence such as:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by careless driving
- or any similar offences

## **13 Drink driving – Excess Alcohol**

### **13.1 In a Mechanically Propelled Vehicle**

A serious view will be taken of convictions for driving or being in charge of a vehicle while under the influence of drink or with excess alcohol (Sections 4 and 5, Road Traffic Act 1988 – as amended) – hereinafter referred to as drink-driving. One isolated incident may not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for such offences should give rise to serious doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the DVLA driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is alcohol dependant, a special medical examination should be arranged before the application is decided. If the applicant is found to be alcohol dependant, a period of 5 years should elapse after treatment is complete before a further licence application is considered.

A Hire Driver found guilty of a drink-driving offence should expect to have his/her drivers licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

### **In a Licensed Vehicle**

A driver found guilty of a drink-driving offence whilst carrying passengers for hire should expect to have his/her driver's licence revoked immediately and not be considered for the grant of a licence until a minimum period of 6 years has elapsed.

## **14. MAJOR TRAFFIC OFFENCES**

- 14.1 An isolated conviction for dangerous driving or driving without due care and attention etc, should normally merit a strong warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.
- 14.2 Similarly, a first conviction during the period of a hackney carriage or PHV drivers licence will lead to a warning as to future conduct, and may lead to revocation of that licence for subsequent convictions. At least 3 years should elapse (after the restoration of the DVLA licence) before the individual is considered for a licence.

## **15 Insurance offences**

- 15.1 A serious view will be taken of convictions for using, or causing or permitting the use of a motor vehicle without insurance. An isolated incident in the past will not necessarily prevent a licence being granted provided the applicant has been free of conviction for 3 years, however strict warning should be given as to future conduct.
- 15.2 A licence will not generally be granted if an applicant has more than one conviction for an insurance related offence.
- 15.3 A Private Hire Operator or Hackney Carriage Proprietor found guilty of causing or permitting the driving of passengers for hire whilst without insurance will normally have his Operators' / Proprietor's licence revoked immediately and not be considered for the grant of a licence until a minimum period of 3 years has elapsed.

## **16 Using a mobile phone whilst driving**

- 16.1 Applicants should be aware of the serious risk posed by driving whilst using a mobile phone. There is a substantial body of research (see for instance <http://www.rospa.com/rospaweb/docs/advice-services/road-safety/drivers/mobile-phone-report.pdf>) which shows that drivers who use a mobile phone suffer physical and cognitive distraction which means they:
- are much less aware of what's happening on the road around them
  - fail to see road signs
  - fail to maintain proper lane position and steady speed
  - are more likely to 'tailgate' the vehicle in front
  - react more slowly, take longer to brake and longer to stop
  - are more likely to enter unsafe gaps in traffic
  - feel more stressed and frustrated
- 16.2 There is evidence to show that drivers who use a mobile phone have slower reaction times than those who have consumed alcohol up to the legal limit. In light of this, an equally serious view will be taken of convictions for driving whilst using a mobile phone as for drink-driving or driving under the influence of drugs.

- 16.3 A licence will not normally be granted if an applicant has more than one conviction for an offence of driving whilst using a mobile phone.

## **17. MINOR TRAFFIC OFFENCES**

### ***New Applicants***

- 17.1 Conviction(s) for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. However, the number, type and frequency of this kind of offence will be taken into account. In certain instances it may be appropriate to issue a licence but with a strong warning as to future driving standards. If a significant history of offences is disclosed, refusal of an application may result.
- 17.2 New applicants who have received 6 or more DVLA penalty points (in respect of minor traffic offences) on their driving licence during the 12 months prior to the date of application may be refused.

### ***Existing Licence Holders***

- 17.3 Any current driver disqualified from holding a DVLA licence under the “totting-up” procedure should expect to have his/her hackney carriage or PHV driver licence revoked. At least 2 to 3 years should then elapse (after the restoration of the DVLA licence) before he/she is considered for a licence.
- 17.4 In the case of an existing hackney carriage or PHV driver where the “totting-up” disqualification of a DVLA licence is considered by the court, even if the court does not disqualify, the Council is likely to revoke the hackney carriage or PHV licence. At least 2 to 3 years should elapse before the individual is considered for a licence.

## **18 Other offences involving alcohol**

- 18.1 An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination. In some cases, a warning may be sufficient.
- 18.2 In cases of severe alcohol abuse, a significant period after the last conviction must elapse before an application is considered and then only after examination by a consultant with a special interest in such cases with confirmation being provided of satisfactory liver enzyme tests and mean cell volume (MCV).

## **19 Licensing offences**

- 19.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally preclude a licence being granted or renewed until a period of 3 years has passed since conviction.
- 19.2 A licence will not normally be granted if an applicant has more than one conviction for a licensing related offence.

## **20 Outstanding charges or summonses**

- 20.1 If the individual is the subject of an outstanding charge or summons their application can be processed, but the application will be reviewed at the conclusion of any outstanding proceedings.
- 20.2 If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

## **21 Non-conviction information**

- 21.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application.
- 21.2 In assessing the action to take, the safety of the travelling public shall be the paramount concern.

## **22 Once a licence has been granted**

- 22.1 If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.
- 22.2 This document applies equally to currently licensed drivers and operators as it does to applicants unless otherwise stated.

## **23 Licences issued by other licensing authorities**

- 23.1 Applicants who already hold a licence with another licensing authority should not assume that a similar application will be granted by this Authority. Each case will be decided on its own merits.
- 23.2 Licensees who are licensed by several authorities are expected to inform each of those authorities about every licence they hold and to advise each authority of any changes in this respect. Licence holders should expect those authorities to share information regarding their conduct and to take it into account as appropriate.

## **24 DVLA Penalty Points**

- 24.1 Applicants who have recently been disqualified from driving under the "totting-up" procedure will not normally be granted a licence unless they have held a licence for at least 2 years following the expiry of the period of disqualification.

- 24.2 New applicants who have 6 or more current penalty points will be required to undertake a driving assessment by the Lincolnshire Road Safety Partnership and submit a low risk driving certificate as part of the application process.

### ***Existing Licence Holders***

- 24.3 A hackney carriage or PHV driver receiving 6 or more penalty points during any three year period will be issued with a written warning as to future conduct and will be required to undertake a taxi driver training course with the Lincolnshire Road Safety Partnership and submit a low risk driving certificate.

## **25 Conclusion**

- 25.1 To conclude, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for between 3 to 10 years, according to circumstances, before an application can be considered.

However, there may be occasions when an application can be allowed before 3 years free from conviction have elapsed.

- 25.2 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history will be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion may be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public. This consideration is vital because taxi and private hire licence holders have unprecedented access to the public and are in a position to exercise control over an individual.
- 25.3 The Council generally considers that offences committed by licensed Hire Drivers should be considered more seriously than offences committed by individuals when not licensed. This is because current licensees have previously been judged as "fit and proper" and are aware of the standards required of them and are expected to maintain those high standards of personal conduct.
- 25.4 Whilst officers and the sub-committee will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the sub-committee/officer may depart from the guidelines.

### **Criminality checks on applicants from overseas.**

Residents from overseas who have only resided in the UK for a short period of time can be difficult to obtain background checks in terms of their suitability to hold a licence.



The usual method of utilising the services of the Disclosure and Barring Service is pointless unless the applicant has lived at checkable addresses, usually for at least 5 years. Therefore a degree of caution is needed when dealing with foreign nationals who cannot provide the usual group 1 documentation, such as passports, driving licences, birth certificates etc.

Therefore the following process will apply to applicants who have resided in the UK for a short period of time, whereby the usual DBS process would be unsuitable:

- Officers would contact the Home Office who should be able to confirm how and why the applicant entered the country, on what basis e.g. as a student, self-employed etc and whether or not the applicant is on a time limited basis in terms of residency and work permissions.
- The amount of time allowed to work/reside in the UK is dependent on what residency stamp was issued at the time of entering the country. The applicant should be able to produce a "*certificate of good conduct*" which is the equivalent of our P.N.C. check and is issued by the home country embassy or High Commission. Ideally the applicant should have this documentation before entering the UK. Should this not be the case, this may create some doubt as to the suitability of the applicant.
- Again, if officers are of the view that there is any doubt, as to the suitability of the applicant to hold a drivers badge, then the same procedure will apply as above, for all new drivers.

### Acceptance of driving licences from other EU member states

Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 as enacted stated that an applicant for a Hackney Carriage/Private Hire driver's licence must have held a full ordinary GB driving licence for at least 12 months in order to be granted a Taxi/Private Hire driver's licence. This requirement has now been amended since the 1976 Act was passed.

The Driving Licences (Community Driving Licence) Regulations 1996 SI No 1974 amended the Local Government (Miscellaneous Provisions) Act 1976 to allow full driving licences issued by EEA states to count towards the qualification requirements for the grant of Hackney Carriage/Private Hire drivers licences. Since that time a number of central and eastern European states have joined the EU and the EEA and the DfT take the view that drivers from the accession states are eligible to acquire a Taxi/Private Hire drivers licence if they have held an ordinary driving licence for 12 months which was issued by an acceding state.

To complete the picture equal recognition was given to Northern Ireland licences also, for the purpose of Hackney Carriage/Private Hire driver licensing under the 1976 Act.

### Medical Criteria (Insulin treated Diabetes Mellitus)

In light of the latest guidance from the Secretary of State's Honorary Medical Advisory Panel regarding Diabetes Mellitus and Driving, it is suggested that the best practice is to apply the category C1 standards (i.e. 3500-7500kgs lorries) to Hackney Carriage/Private Hire drivers, providing they can meet the medical criteria, which were previously precluded from driving, under Group 2 standards.

# **PROCEDURE TO FOLLOW IN RESPECT OF APPLICATIONS WHICH ARE TO BE DEALT WITH IN ACCORDANCE WITH THE PRINCIPLES OF NATURAL JUSTICE**

## *PRIVATE SESSION*

### **1 Introduction**

- 1.1 The Chairman welcomes the Applicant and, where applicable, his/her solicitor or other advisor to the meeting.
- 1.2 If unaccompanied, the Chairman should ask whether the Applicant was aware that he/she could be represented.
- 1.3 Those present at the meeting should be given the opportunity to identify themselves.
- 1.4 Members should be reminded not to leave the room whilst the application is being heard.
- 1.5 The Council's Senior Licensing Officer or his/her representative refers to the matter in hand being conducted in accordance with the rules of Natural Justice and briefly outlines the procedure to be adopted for the benefit of the Sub-Committee and the Applicant and his/her advisor.

### **2 The Senior Licensing Officer's Report**

- 2.1 The Council's Senior Licensing Officer or his/her representative to open the proceedings with an outline of the application under debate and call witnesses if appropriate. (A copy of this procedure, the report and any relevant background papers having been supplied in advance of the hearing to the Applicant or his/her adviser which details the nature of any representations made.)
- 2.2 The Applicant and the Sub-Committee will be given an opportunity to question the Senior Licensing Officer or his/her representative and witnesses, if any, on the details of his/her report.

### **3 The Applicant's Case**

- 3.1 Opening remarks by the Applicant or his/her representative.
- 3.2 The Applicant or his/her representative will then call any witnesses and/or give evidence in support of his case.
- 3.3 The Senior Licensing Officer or his/her representative and members of the Sub-Committee will be given the opportunity to question the Applicant or his/her representative and any of his/her witnesses.
- 3.4 The Applicant or his/her representative will be given the opportunity to ask any further questions of each witness after they have been questioned by the other parties in (3.3) above.

#### **4 Statutory Representatives**

- 4.1 Statutory Representatives to be invited to address the Sub-Committee and call witnesses if appropriate.
- 4.2 The Applicant or his/her representative and the Sub-Committee will be given an opportunity to question the Statutory Representatives and any of their witnesses.

#### **5 Concluding Remarks**

- 5.1 The Senior Licensing Officer or his/her representative will sum up the Council's case.
- 5.2 The Applicant or his/her representative will be given the opportunity to sum up.

#### **6 The Decision**

- 6.1 The Sub-Committee will deliberate in private. (All parties to the proceedings will be requested to withdraw and only the Committee Administrator and Legal Advisor will remain to give procedural advice and to record the decision.)
- 6.2 Once the Sub-Committee has reached a decision, the Applicant and the Senior Licensing Officer together with all other parties will be invited to re-enter the meeting and the Chairman will announce the decision to the Applicant. (Any conditions, provisos, restrictions etc. or the reasons for refusal should be given.)
- 6.3 The Applicant is to be informed that the decision will be notified in writing as soon as possible, together with any statutory rights of appeal which may be available.
- 6.4 The Chairman concludes the proceeding by thanking all parties for their attendance.

## **APPENDIX 1**

*INTENDED USE POLICY* (including statutory declaration for applicants and policy statement from the Council)

### **1. Applications for the New Grant of a Hackney Carriage Licence**

- 1.1 Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within the administrative area of West Lindsey District Council under the terms of the licence for which the application is being made.
- 1.2 There will be a presumption that applicants who do not intend (to a material extent) to ply for hire within the administrative area of West Lindsey District Council will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.
- 1.3 Even where the applicant intends to ply for hire to a material extent in West Lindsey, if the intention is to trade in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused. Each application will be decided on its merits.

### **2. Applications for the Renewal of a Hackney Carriage Licence**

- 2.1 Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to ply for hire within the administrative area of West Lindsey District Council under the terms of the licence for which the application is being made.
- 2.2 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of West Lindsey District Council will not be granted a hackney carriage licence authorising them to do so. Section 60 of the Local Government Miscellaneous Provisions) Act 1976 gives the Council a broad discretion to refuse to renew a licence for any reasonable cause. Each application will be decided on its merits.
- 2.3 Even where the applicant intends to ply for hire to a material extent in West Lindsey if the intention is to trade in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused. Each application will be decided on its merits.

### **3 Transfer of Ownership – when a licensed vehicle is transferred from one person to another**

- 3.1 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who transfers his interest to another must, within 14 days of the transfer, give written notice to the Council of the name and address of the transferee of the hackney carriage. The Council has no power to refuse the new proprietor: *R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd* [1947] KB583.

- 3.2 Provided the requisite notice has been given in accordance with Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 the Council will register the transferee of a licensed hackney carriage as the new proprietor. This is a legal requirement.
- 3.3 The transferee of a licensed hackney carriage will be asked to inform the Council whether he/she has a bona fide intention to use the vehicle to ply for hire within the administrative area of West Lindsey District Council. Transferees should note the obligation under Section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information, the Council will give serious consideration to exercising its powers of suspension of the licence under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 until such information is forthcoming, in addition to its powers under Section 73.
- 3.4 Transferees of existing licences will be expected to have a bona fide intention to ply for hire within the administrative area of West Lindsey District Council under the terms of the licence in respect of the vehicle being transferred.
- 3.5 Where the transferee of a licensed hackney carriage is found to have no intention to ply for hire to a material extent to ply for hire within the administrative area West Lindsey District Council and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976. Where the transferee proposes to operate remotely from the administrative area of West Lindsey District Council there will be a presumption that his/her licence will be revoked. Each case will be decided on its merits.

#### **4. Change of Vehicle – when a proprietor replaces a licensed vehicle**

- 4.1 Applicants seeking the grant of a hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire to a material extent within the administrative area of West Lindsey District Council will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire to a material extent within the administrative area of West Lindsey District Council, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, there will be a presumption that the application will be refused. Each case will be decided on its merits.

## **5. Revocation of Licence**

- 5.1 Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within the administrative area of West Lindsey District Council but is subsequently found not to plying for hire to a material extent within West Lindsey and/or to be trading in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated), there will be a presumption that the licence will be revoked. Each case will be decided on its merits.

## **6. Exceptional Circumstances**

- 6.1 Each application will be decided on its merits. However, the presumption that intended use is to ply for hire to a material extent within the administrative area of West Lindsey District Council will be rebuttable in exceptional circumstances. Whilst it is neither possible or prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to satisfy the Council that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed or if it were not suspended or revoked as the case may be.

## **7. Reasons for Policy**

- 7.1 The Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgement and the declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].
- 7.2 The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court, unless precautionary steps are taken. Section 3 is intended to put the Council in a position to respond responsibly to the transfer of a West Lindsey District Council hackney carriage into the name of someone who operates outside the West Lindsey District Council zone or remotely from it.
- 7.3 Unless there has been a change in the proprietor's intention with regard to plying for hire within the administrative area of West Lindsey District Council, there should be no reason why he/she should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained his first licence on the expressed intention of plying for hire to a material extent within the administrative area of West Lindsey District Council, and who on application to replace that vehicle with another, disclosed that he/she no longer so intends, effectively engages the presumption against grant that is mentioned earlier. Each case will be decided on its merits.

## **8. Application of this Policy**

- 8.1 The Intended Use Policy shall apply to all new applications, renewal applications and change of vehicle applications contained in section 3 (however applications for transfer of ownership will still be subject to the special provisions for vehicle transfer applications). Where a licence holder allows their current licence to expire, the Council will require a new application to be made; such application will be subject to this policy.

## **DECLARATION – INTENDED USE OF HACKNEY CARRIAGE**

*TO FORM PART OF THE APPLICATION FORM AND BE SIGNED BY APPLICANT*

I have been advised that, based upon the decision of the High Court in the case of R. (on the application of Newcastle City Council) –v- Berwick upon-Tweed Borough Council 2008, West Lindsey District Council ought not to licence Hackney Carriages which will be predominantly used outside the district.

I hereby declare that it is my intention that the vehicle licensed by me will be used predominantly in the district of West Lindsey and I understand that should this not be the case either at the date hereof or at any time thereafter the council may revoke or refuse to renew the licence under Section 60(1)(c) Local Government (Miscellaneous Provisions) Act 1976.

I understand that each case will be decided on its merits.

## **STATEMENT FROM COUNCIL**

*FOR INCLUSION ON APPLICATION FORMS*

If you wish to be a hackney carriage proprietor we require information, pursuant to section 57 of the Local Government (Miscellaneous Provisions) Act 1976 as to whether you intend to use the vehicle in West Lindsey or outside of the district.

You will need to be able to show what proportion of your business you propose to carry out in West Lindsey and what business will be carried out elsewhere, including the geographical location.

If we have concerns that the hackney carriage is to be used primarily outside of this area then the decision on whether to licence you would need to be made by our licensing committee.

Each case will be decided on its merits.

This is in accordance with the decision in R (App Newcastle City Council) v Berwick-upon-Tweed Borough Council [2008] EWHC 2369



## **APPENDIX 2**

### *DRIVER KNOWLEDGE TESTS*

#### **1. Driver Knowledge Tests**

- 1.1 Hackney carriage drivers need a good working knowledge of the area for which they are licensed because they can be hired directly at ranks or on the street. The Council also considers it necessary for private hire drivers to know the local area.
- 1.2 In order to assist the Council in determining the fitness of an applicant to hold a hackney carriage or private hire driver's licence, applicants are required to undertake a test of basic reading, writing, arithmetic, and a test to challenge their knowledge of the area within the district of West Lindsey and the wider Lincolnshire area.
- 1.3 Applicants will be allowed three attempts to pass the tests. After three failed attempts the application will be deemed unsuccessful and they will have to wait 12 months before making a further application. Applicants will have to wait at least 2 weeks between test dates.
- 1.4 The applicant will be invited to sit the Knowledge Test once the approved payment has been made. The Knowledge Test will form the initial part of the application process and until the applicant has successfully satisfied this part of the process no further part of the application will be considered.
- 1.5 This requirement shall apply to all new applicants. Current licence holders will not be required to sit the knowledge test providing that they renew their licences promptly, ahead of the expiry date. Where a licence holder allows their current licence to expire, WLDC will require a new application to be made; such application will be subject to this provision.

## **APPENDIX 3**

### *LOW RISK DRIVING ASSESSMENT*

Proposed changes to the taxi policy were consulted on in March 2015. These were then approved by the Licensing & Regulatory Committee at its meeting in June 2015 and were formally approved by the Prosperous Communities Committee meeting held on 22 July 2015.

The effect of this means that:

- All new taxi/private hire driver applications with 6 live points or more will be required to submit a Low Risk Driving Assessment from the Lincolnshire Road Safety Partnership as part of their application; and
- Any existing taxi/private hire driver currently licensed by WLDC who has accrued 6 points or more on their driving licence will receive a warning and be required to take part in the Taxi Driver Information Programme and provide the relevant certificate to Officers accordingly.

## **APPENDIX 4**

### *SAFEGUARDING*

Proposed changes to the taxi policy were consulted on in March 2015. These were then approved by the Licensing & Regulatory Committee at its meeting in June 2015 and were formally approved by the Prosperous Communities Committee meeting held on 22 July 2015.

The effect of this means that:

- All new drivers on initial application and all existing drivers upon renewal will be expected to sign up to and abide by the Safeguarding Code of Conduct
- All new drivers on initial application and all existing drivers upon renewal be expected to complete the required Safeguarding Awareness training module as a pre-requisite to making their application (once developed for the taxi trade).