

# Agenda

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## Hackney Carriages and Private Hire Licensing Sub Committee

Date: **Tuesday 16 August 2011**

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Time: **5.00 pm**

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Place: **Oxford Town Hall**

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# Hackney Carriages and Private Hire Licensing Sub Committee

## Membership

<b>Chair</b>	<b>Councillor Clark Brundin</b>	North;
<b>Vice-Chair</b>	<b>Councillor Colin Cook</b>	Jericho and Osney;
	<b>Councillor Bryan Keen</b>	Cowley;

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## AGENDA

Pages

### PART ONE PUBLIC BUSINESS

**1 APOLOGIES FOR ABSENCE**

**2 PROCEDURE TO BE FOLLOWED AT THE MEETING**

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Procedure, guidance note and guidance on the relevance of convictions adopted by the Council for dealing with cases to be considered by the Sub Committee

**3 DECLARATIONS OF INTEREST**

Councillors serving on the Committee are asked to declare any personal or prejudicial interests that they may have in any of the following agenda items.

**4 MINUTES**

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Minutes of the meeting held on 5<sup>th</sup> July 2011 attached

**5 EXEMPT MATTERS**

If the Sub-Committee wishes to exclude the press and the public from the meeting during consideration of any aspects of the preceding or following agenda items it will be necessary for the Sub-Committee to pass a resolution in accordance with the provisions of Section 100A(4) of the Local Government Act 1972 specifying the grounds on which their presence could involve the likely disclosure of exempt information as described in specific paragraphs of Part 1 of Schedule 12A of the Act if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### PART II EXEMPT BUSINESS

In accordance with paragraph 3 of Part 1 of Schedule 12A of the Act – business affairs of a person other than the Council.

**6 CONVICTION RECEIVED WHILST A LICENSED PRIVATE HIRE VEHICLE DRIVER.**

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Conviction for assault occasioning actual bodily harm received whilst a licensed Private Hire Driver.

Report of the Head of Environmental Development attached.

**7 APPLICATION TO DRIVE PRIVATE HIRE VEHICLES**

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Application to Drive Private Hire Vehicles

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The Sub Committee is requested to determine the application.

**8 FAILURES TO CO-OPERATE WITH ENQUIRIES TO ESTABLISH FIT AND PROPER PERSON COMPLIANCE**

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Report of the Head of Environmental Development attached.

**9 APPLICATION TO RENEW PRIVATE HIRE DRIVER'S LICENCE**

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Application to renew Private Hire Driver's licence.

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The Sub Committee is requested to determine the application.

**10 EXEMPT MINUTES**

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## **DECLARING INTERESTS**

What is a personal interest?

You have a personal interest in a matter if that matter affects the well-being or financial position of you, your relatives or people with whom you have a close personal association more than it would affect the majority of other people in the ward(s) to which the matter relates.

A personal interest can affect you, your relatives or people with whom you have a close personal association positively or negatively. If you or they would stand to lose by the decision, you should also declare it.

You also have a personal interest in a matter if it relates to any interests, which you must register.

### **What do I need to do if I have a personal interest?**

You must declare it when you get to the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you. You may still speak and vote unless it is a prejudicial interest.

If a matter affects a body to which you have been appointed by the authority, or a body exercising functions of a public nature, you only need declare the interest if you are going to speak on the matter.

### **What is a prejudicial interest?**

You have a prejudicial interest in a matter if;

- a) a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest; and
- b) the matter affects your financial interests or relates to a licensing or regulatory matter; and
- c) the interest does not fall within one of the exempt categories at paragraph 10(2)(c) of the Code of Conduct.

### **What do I need to do if I have a prejudicial interest?**

If you have a prejudicial interest you must withdraw from the meeting. However, under paragraph 12(2) of the Code of Conduct, if members of the public are allowed to make representations, give evidence or answer questions about that matter, you may also make representations as if you were a member of the public. However, you must withdraw from the meeting once you have made your representations and before any debate starts.



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**INFORMATION PACK**

# **HACKNEY CARRIAGE & PRIVATE HIRE LICENSING SUB-COMMITTEE**

GUIDANCE RELATING TO THE PROCEDURES  
APPLICABLE TO THE HACKNEY CARRIAGE &  
PRIVATE HIRE LICENSING SUB-COMMITTEE







## **GUIDANCE APPLICABLE TO THE PROCDEURES RELATING TO THE HACKNEY CARRIAGE & PRIVATE HIRE LICENSING SUB-COMMITTEE**

This guidance note is applicable to applicants, representatives of applicants, existing licence holders, those requested to attend a Hearing, interested parties, Licensing Officers, and Elected Members of the Licensing Authority.

### **1. Nature of the Hearing**

These Hearings are of a quasi-judicial character, and the rules of natural justice will apply. The arrangements are therefore, markedly different to the usual arrangements for Committee meetings.

As a matter of principle, no Member of the Hackney Carriage and Private Hire Licensing Sub-Committee should have been involved in making, altering or confirming the decision of the Head of Environmental Development in connection with which the Sub-Committee is meeting.

Quite apart from the operation of the provisions of the Local Government Act 1972 dealing with pecuniary interest, no Member of the Sub-Committee should have any close connection with the case subject. Where the connection is more remote it may be sufficient for the Member concerned to declare her or his interest and to continue to participate, in the absence of any objections from the case subject or the Head of Environmental Development's representative. The matter is one of degree and it will be necessary for the Chair of the Sub-Committee to decide what is appropriate in each case where such a question arises. Where the Member has been directly approached in connection with the subject of the Hearing by or on behalf of the case subject, he or she shall decline to participate in the hearing of the case.

Because of the quasi-judicial nature of the Hearings all Members must be present throughout the Hearing. If for any reason a Member needs to withdraw during the proceedings the Hearing should be temporarily adjourned until the Member arrives, or the Member should not participate any further in the Hearing. Any departure should therefore be avoided wherever possible. Nor can a Member who has arrived late, after the Hearing has commenced, be allowed to participate in that Hearing.

If the number of Members who leave prematurely is such as to reduce the Sub-Committee to one person only, then the Hearing would have to be adjourned. Otherwise the Hearing may continue but if there are only two Members present then the consent of the case subject is required if the Hearing is to proceed. Cases coming before the Sub-Committee will involve private and personal information relating to the case subject. All sessions of the Sub-Committee will therefore be held in private and its proceedings will be treated as confidential and not for publication. Because of the private nature of the Hearing only the case subject, his or her representative and any witnesses, and the Council representatives and any witnesses should be admitted to the Hearing.

## **2. Conduct of the Hearing**

The Hearing is the main opportunity for the case subject to state his or her case. While some case subjects or their representatives may have had previous experience of Hearings and be able to present their case clearly and confidently, others will be nervous and inarticulate and may be put off by excessive formality in the conduct of the Hearing. The Chair should therefore try to ensure that the atmosphere of the Hearing is friendly and encouraging.

He or she should let the case subjects put any points he or she may wish to make in his or her own way, and air any real or imagined grievance, so that nobody can reasonably say that he or she did not receive a "fair hearing". The desire for informality should not, however, be allowed to defeat the primary objective of establishing the facts so that the Sub-Committee can come to a fair decision in accordance with the relevant statutory provisions. The Chair must therefore be prepared to intervene impartially, when necessary, in order to ensure that the proceedings are orderly, or to curb lengthy speeches which are obviously irrelevant to the question at issue.

## **3. Introductory Procedure**

When the case subject enters the meeting room, the Chair should do all that is possible to help him or her feel at ease. As a matter of course, the Chair should introduce the Members of the Sub-Committee by name and explain the reason for the presence of all other persons in the room.

## **4. The Order of the Hearing**

The procedure at the Sub-Committee Hearing shall follow so far as possible the order set out in the relevant note, except that it may be varied with the agreement of both parties.

## **5. Witnesses**

Any case subject has a right to call witnesses to give evidence to the Sub-Committee. The witnesses should not be admitted to the room at the commencement of the Hearing, but should be admitted at the point at which they are required to give evidence. They should be allowed to give evidence in an informal manner, provided that what they have to say is relevant.

## **6. Evidence**

A Sub-Committee is not bound by the rules of evidence applicable in Court proceedings. The Sub-Committee must decide whether, in the first place, the evidence presented to it is relevant and, if so, whether it is admissible, and what weight should be given to the evidence. Nevertheless, there are certain kinds of evidence which, if not rejected as wholly unreliable, must be treated with caution. For example, while it is open to a Sub-Committee to accept hearsay evidence, care must, as a matter of common sense, be exercised in doing so.

Where there is a conflict of evidence as to the facts of the case, the Sub-Committee may have to rely on its assessment of the honesty and reliability of the person appearing before it. The way in which a person gives evidence and his or her general approach and body language may give guidance as to the accuracy of what he or she says. It should be borne in mind, however, that most case subjects have had little or no experience of giving evidence before a Sub-Committee and neither nervousness nor glibness should be assumed to be an indication of dishonesty. If the facts at issue are of importance, the Sub-Committee should consider adjourning the Hearing in order that more satisfactory evidence may be produced.

Wherever possible, copies of any documentary evidence will have been made available to both parties before the Hearing. If documents of any material importance are produced for the first time during the Hearing, the Sub-Committee should consider whether it would be proper to adjourn the Hearing, particularly if the case subject is not present or is not represented.

## **7. Non-Attendance of the Case Subject**

If a case subject who has had reasonable notice of the Hearing fails to attend either in person or through his or her representative, the Sub-Committee can proceed with the Hearing in his or her absence.

The Sub-Committee may grant an adjournment if a reasonable explanation has been given for failure to attend or an adjournment has been specifically requested, and there is no reason to think that the person would fail to attend on another occasion. If a case subject has expressed an intention not to attend, or has repeatedly failed to attend, it would be proper for the Sub-Committee to hear the case in his or her absence.

If a case subject fails to attend without giving a reasonable explanation and the case has not previously been adjourned, it will usually be right to proceed with the Hearing, but the Sub-Committee should be prepared to adjourn proceedings if questions arise which cannot be dealt with satisfactorily in his or her absence. In deciding whether to hear the case in the absence of the case subject, the Sub-Committee should take into account whether he or she has sent a representative to act on his or her behalf and whether delay in hearing the case is likely to result in hardship (for example, where the case subject has stated that his or her need is urgent).

## **PROCEDURES AT THE HEARINGS OF THE HACKNEY CARRIAGE & PRIVATE HIRE LICENSING SUB-COMMITTEE**

This is the procedure that will be followed at Hearings of the Hackney carriage and Private Hire Licensing Sub-Committee. The Hearings are held in confidential session (i.e. not open to the public). This is because they relate to the business affairs and livelihoods of any particular persons (Paragraph 3 of Schedule 12A of the Local Government Act 1972).

1. Each Sub-Committee shall normally consist of three Members of the Council. The Sub-Committee may consist of two Members (but no fewer) only if the person appearing before it agrees. The Sub-Committee shall be advised on legal and procedural issues by the Head of Law & Governance or his representative, who shall be present at the Hearing.
2. Any disagreement between Members of the Sub-Committee on any matter shall be decided on a simple majority of votes. If there is an equality of votes the Chair shall have a second vote.
3. To avoid any suggestion of bias, Members should not take part in any Hearing if they have any interest, financial or otherwise, in the outcome, or if they have any connection with (or have been approached by) a person who is the subject of an item on the Sub-Committee's agenda. Members must take care not to be influenced in their role on any other Sub-Committee. Licensing decisions must be taken strictly on the criteria allowed by the relevant legislation.
4. The material for each Sub-Committee shall consist of copies of any written material submitted by the person appearing before the Sub-Committee (the "case subject") and a report of the Head of Environmental Development. The persons appearing before the Sub-Committee shall also be sent a copy of this procedure note, as copy of the Council's Policy on the Relevance of Offences, Cautions and Convictions, and a copy of a note for the guidance of Councillors hearing the matter.
5. Persons appearing before the Sub-Committee and the Head of Environmental Development (or his or her representatives) shall ensure that any written representations they would like to be included in the material for the Sub-Committee Hearing are sent to the Head of Law & Governance or his representatives fourteen days before the Sub-Committee meets.
6. A person appearing before the Sub-Committee shall be told when the Sub-Committee will meet to consider their case, where it will meet and at what time he or she should arrive for the Hearing. He or she shall be told that if he or she fails to attend the Sub-Committee Hearing then the Sub-Committee may proceed and determine the case in his or her absence.

7. The Head of Environmental Development shall send copies of all written material to each person appearing before the Sub-Committee, and Members of the Sub-Committee at least five working days before the Sub-Committee meets.
8. Persons who are the subject of an item on the Sub-Committee's agenda may attend the Hearing personally and / or be represented (reference to the person appearing before the Sub-Committee includes his or her representative). Alternatively they may provide a written submission under paragraph 5 above, without attending the Sub-Committee Hearing. The Head of Law & Governance shall ask the case subject if they and / or their representative will be attending the Hearing personally when the written material is sent out five days before the Hearing. A representative of the Head of Environmental Development may attend the meeting on his behalf. Both the person appearing before the Sub-Committee and the Head of Environmental Development may bring witnesses to the Hearing.
9. If the person who is the subject of an agenda item fails to attend the Sub-Committee Hearing, the Sub-Committee shall decide whether to proceed and determine the case in his or her absence, or whether it should adjourn the item to the next available date to give him or her a further opportunity to attend to present his or her case. The Sub-Committee must bear in mind his or her right to a fair hearing within a reasonable time and his or her right to freedom of thought, conscience and religion (i.e. if the date of the Sub-Committee Hearing coincides with a day of particular religious significance).
10. Neither the Head of Environmental Development nor the person appearing before the Sub-Committee shall be present in the room in which the case is to be heard with the Sub-Committee without the other party also being present with or without the other party's consent for them to be alone in the room with the Sub-Committee.
11. The Head of Law & Governance shall arrange for the person appearing before the Sub-Committee to be met on their arrival at the Oxford Town Hall (or other venue for the Hearing) and to be shown to a suitable place to await the start of the Hearing.
12. With the permission of the Sub-Committee both the person appearing before it and the Head of Environmental Development may circulate additional material not previously sent to the Head of Law & Governance. If the Sub-Committee consider that the additional material raises "new" issues or cannot be dealt with without an adjournment, the Sub-Committee shall either adjourn the Hearing, or give the party not producing the additional material the opportunity to request an adjournment.
13. The Chair shall introduce the Members of the Sub-Committee, the Head of Law & Governance representative, and the representatives of the Head of Environmental Development to the person appearing before it and his or her representative.

14. The Chair shall introduce the procedure to the person appearing before the Sub-Committee. The Sub-Committee shall be satisfied that the person in question is able to understand the nature of the proceedings.
15. The person appearing before the Sub-Committee shall be advised that he or she may ask questions at any stage during the course of the proceedings.
16.
  - (i) The Head of Environmental Development shall present his case.
  - (ii) The person appearing before the Sub-Committee may ask questions of the Head of Environmental Development on his or her presentation.
  - (iii) Members of the Sub-Committee may ask question of the Head of Environmental Development on his or her presentation.
17.
  - (i) The person appearing before the Sub-Committee shall present his case.
  - (ii) The Head of Environmental Develop may ask questions of the person appearing before the Sub-Committee.
  - (iii) Members of the Sub-Committee may ask question of the person appearing before them.
18.
  - (i) The Head of Environmental Development shall have the opportunity to sum up his or her case.
  - (ii) The person appearing before the Sub-Committee shall have the opportunity to sum up at the end of the proceedings.
19. The Head of Environmental Development (or his or her representatives) and the person appearing before the Sub-Committee shall leave the Sub-Committee Hearing. The Head of Law & Governance (or his or her representative) shall remain to deal with any questions of the law and procedure which the Sub-Committee may have.
20. If points arise which require clarification to enable the Sub-Committee to determine the matter both the person appearing before it and the Head of Environmental Development (or his or her representatives) shall be invited back to deal with the points after which they shall both be asked to withdraw.
21. When the Sub-Committee has reached its decision the Head of Environmental Development (or his or her representatives) and the person appearing before it shall be invited back into the meeting and told the decision and reasons for it. The person appearing before the Sub-Committee shall be advised orally of his or her rights of appeal, and that the decision and rights of appeal shall be notified to them in writing.
22. The person appearing before the Sub-Committee shall be notified in writing within five working days of the Hearing, of the Sub-Committee's decision and advised of any rights of appeal that he or she may have.

**LICENSING AUTHORITY:**  
**POLICY ON THE  
RELEVANCE OF  
OFFENCES,  
CAUTIONS AND  
CONVICTIONS**

Consideration of the Grant, Renewal, Suspension or Revocation of Hackney Carriage and Private Hire Driver's Licences, Vehicle Operators and Vehicle Proprietors







## POLICY ON THE RELEVANCE OF OFFENCES, CAUTIONS AND CONVICTIONS

### **Consideration of the Grant, Renewal, Suspension or Revocation of Hackney Carriage and Private Hire Driver's Licences, Vehicle Operators and Vehicle Proprietors**

#### **Definitions**

**Appeal:** A means by which a decision under delegated authority can be reviewed by the Magistrates Court or the Crown Court. The decision of the Council may be upheld or overturned.

**Offence:** commonly used to signify any public wrong, including crimes or indictable offences and offences punishable on summary conviction.

**Caution:** A caution is a formal warning given to an adult who has admitted to the commission of an offence and has consented to the caution.

**Conviction:** Judicially determining that someone is guilty of a crime

**Free of convictions:** This means a period since your last conviction in which you remain free of any further convictions. In the case of a custodial sentence this means the periods given will run from the date that the full sentence awarded by the court would have been completed.

**Fit and Proper Person:** A person who is of no threat to the general public, has a good City knowledge, is healthy, is of a good character (including driving record) and is therefore deemed fit and able to hold a licence.

**Hackney Carriages:** A vehicle that can carry passengers for hire or reward, can be hailed by a prospective passenger and can park on a rank to await the approach of passengers; a vehicle available for public Hire.

**Mitigating Circumstances:** The circumstances surrounding an offence, caution or conviction. These may alter the seriousness of a crime.

**Private Hire Vehicles:** A vehicle which must be pre-booked with a Private Hire operator. This type of vehicle cannot stand in a rank or ply for Hire.

**Proprietor:** The person in possession of a Hackney Carriage or Private Hire vehicle licence.

**Operator:** This means a business that makes provision for the invitation or acceptance of bookings for a Private Hire vehicle.

**Refusal:** To decide not to give something

(Within this Policy any reference to refusal will also be a reference to revocation or suspension).

**Revoke:** To take something away permanently.

**Suspend:** To take something away temporarily.

**Verbal Warning:** Verbally advising that although an offence, caution or conviction was not serious enough to have warranted a written warning, the offence committed is unacceptable and has caused concern to the Council as to the suitability to hold such a licence. If, in the future, similar behaviour is illustrated, the consequences could be much more severe, possibly leading to the suspension of the licence

**Written Warning:** A letter advising that although an offence, caution or conviction was not serious enough to have warranted the refusal, suspension or revocation of the licence, the offence committed is unacceptable and has caused concern to the Council as to the suitability to hold such a licence. If, in the future, similar behaviour is illustrated, the consequences could be much more severe, possibly leading to the suspension of the licence.

**Final Warning:** A letter advising that although an offence, caution or conviction was not serious enough to have warranted the refusal, suspension or revocation of the licence, the offence committed is unacceptable and has caused concern to the Council as to the suitability to hold such a licence. If, in the future, similar behaviour is illustrated, the licence holder should expect the matter to be met with the suspension / revocation of his/her licence.

## **Introduction to the Guidelines Relating to the Relevance of Convictions Powers and Duties**

The Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847 (as amended), Road Safety Act 2006 (Sections 52-53) places on Oxford City Council (the "Authority") the duty to carry out its licensing functions in respect of Hackney Carriage and Private Hire vehicles. The Rehabilitation of Offenders Act 1974 is summarised at Appendix 1.0. However, Hackney Carriage and Private Hire drivers are listed as regulated occupations within the Rehabilitation of Offenders Act 1974 (Exceptions) Order (Amendment) (No2) 2002. No conviction is categorised as spent under this Order. All categories that criminal offences fall into are deemed to be relevant to the role of a Private Hire and Hackney Carriage driver.

Therefore the Authority will take into account all convictions and cautions when considering an application for a driver's licence, irrespective of offence, sentence imposed or age when the offence is committed. All motoring and criminal offences must be declared on the application form.

## **Background**

Hackney Carriage and Private Hire have a specific role to play in an integrated transport system. They are able to provide services in situations where public transport is either not available (for example in rural areas, or outside "normal hours" of operation such as in the evenings or on Sundays), or those with mobility difficulties. The Hackney Carriage/Private Hire vehicles play an integral part in the dispersal of people to support the night time economy.

## **Best Practice Guidance**

In formulating this policy, advice contained in the Taxi And Private Hire Vehicle Licensing Best Practice Guidance issued by the Department for Transport has been taken into account.

## **Status**

In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document.

**Notwithstanding the existence of this policy, each application will be considered on its own merits. Where it is necessary for the Authority to depart substantially from its policy, clear and compelling reasons will be given for doing so. The purpose of this document is to formulate guidelines which detail the Council's current stance on the relevance of convictions and cautions in respect of applications for the grant of new licences, and the renewal of existing Hackney Carriage and Private Hire vehicle driver's, operator's and proprietor's licences.**

The aim of the licensing regime to which these guidelines relate is not to punish the applicant twice for an offence (which includes a conviction or caution), but to ensure that public safety is not compromised. The objective of the licensing regime is to ensure that, so far as possible, those licensed to drive Hackney Carriages and Private Hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

These guidelines will be taken into account by the Licensing Officers when dealing with new applications as well as renewal applications for an existing Private Hire/Hackney Carriage driver's licence, Private Hire/Hackney Carriage vehicle licence, and a Private Hire operators licence, and also, when considering whether to suspend or revoke an existing licence.

### **Suitability**

The legislation states that the Council may grant a licence **ONLY** if it is satisfied that the person is fit and proper – **the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.**

### **Convictions**

The Licensing Officer is required to look at any past indicators (convictions, including formal cautions, fixed penalties, speeding offences, etc) that may affect a person's suitability to hold a Hackney Carriage/Private Hire driver's licence and consider the possible implications of granting such a licence to that person.

The imposition of a fixed penalty in place of a prosecution under any enactment may be considered a relevant indicator of suitability. In addition, applicants must disclose any recent formal cautions they have received and any pending matters. The disclosure of any conviction will not necessarily prevent an applicant from being issued a licence. However, all convictions, spent or live, will be assessed.

Cautions are included under the definition of 'convictions' and they will also be taken into consideration. Although these are generally not as serious as convictions, they can give some indication as to an applicant's character and whether they are a fit and proper person to hold or be granted a licence. The Licensing Officer will bear in mind that a caution is given where there is sufficient evidence for a prosecution and guilt has been admitted. Cautions will be taken in to consideration for a period of five years.

Penalty notices are similar to fixed penalties, but are issued for a wide range of offences of an anti social nature, including behaviour likely to cause harassment, alarm or distress to others, drunk and disorderly behaviour in a public place, destroying or damaging property up to the value of £500, retail theft under £200, sale of alcohol to a person under 18 years of age, selling alcohol to a drunken person or using threatening words or behaviour. This will be viewed in an appropriate light given the nature of the offence.

The Licensing Officer may refer to the Rehabilitation of Offenders Act 1974 as part of their assessment of the convictions. A summary of the Act is provided at Appendix 1.0. The fact that a conviction is not yet spent under the Act may be relevant in the determination. However, the Exemption Order means that for all practical purposes, it is as if the Rehabilitation of Offenders Act had never been passed for licensed drivers. Therefore Licensing Officers may disregard the Act if they consider it necessary in a particular case.

If a Court has found as a matter of fact that a person has committed an offence, that person cannot then say to the Licensing Officer that he / she did not commit the offence; and if they seek to do so, their representations will not be taken into consideration. The applicant can, however, explain any mitigating factors that led to them committing the offence and the Licensing Officer can take these into account in deciding whether the applicant is a fit and proper person to hold or be granted a licence. Such cases may be referred to the Licensing Sub-Committee for determination. **In the case of offences that have led to a term of imprisonment, the periods given will run from the date that the full sentence awarded by the court would have been completed.**

### **A “Fit and Proper Person”**

When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind. For example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property. Some areas give rise to particular concern, including:

- **Honesty and trustworthiness** – drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust. *For example, any passenger would expect to be charged the correct fare for a journey and then be given the correct change; they would also expect a driver to hand in any article left by a passenger in a vehicle; and also to maintain confidentiality between driver and passenger.*
- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands.
- **A good and safe driver** – Passengers paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence. A person who has committed an offence and has to wait a period of time before being accepted as a Hackney Carriage or Private Hire driver is more likely to value his/her licence and act accordingly.

### **Protecting the Public**

The over-riding consideration for the Licensing Officer is to protect the public. Having considered and applied the appropriate guidelines, the Licensing Officer will determine **each case on its own merits.**

### **History**

The Licensing Officer may take into account a persons history whilst holding a licence, from this or any other authority. The Licensing Officer may take into account, in deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as the record of complaints about them, also their compliance with Licence conditions and their willingness to co-operate with the reasonable requests of Licensing Officers.<sup>14</sup>

## GUIDELINES RELATING TO THE RELEVANCE OF OFFENCES, CAUTIONS AND CONVICTIONS

### GENERAL POLICY

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 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. However, the overriding consideration must be the protection of the public.
3. In the case of offences that have led to a term of imprisonment, whether or not suspended, the periods given will run from the date that the full sentence awarded by the court would have been completed.
4. Cautions will be taken in to consideration for a period of five years.
5. A new applicant is a person who has not previously held a licence with this authority or whose licence had expired for 12 months before the application form was received in the Taxi Licensing Office.

The following examples afford a general guide on the action to be taken where convictions are admitted.

### Driving Offences

Private Hire and Hackney Carriage drivers are considered professional drivers and must be aware of the safety of their passengers and the safety of their vehicles at all times.

Any traffic offences show a lack of responsibility whilst driving either due to the maintenance and safety of their vehicle or in the manner of their driving.

Convictions for traffic offences should not necessarily prevent a person from proceeding with an application. However, the number, type and frequency of an offence will be taken into account. In some cases it may be appropriate to issue a licence together with a strong warning as to future driving conduct. If a significant history of offences is disclosed, an application may be refused.

Whilst the imposition of a Fixed Penalty Notice does not lead to a conviction, it never the less attracts penalty points to a DVLA licence. The Council considers 'death by careless driving' or 'death by dangerous driving' to be a very serious and you should therefore refer to the **Major Traffic Offences** section.

For information on alcohol and drug related offences see **Drunkenness & Drugs** sections.

**5 or less penalty points:** For 5 or fewer points on an applicant's driving licence, a licence will usually be granted, with a verbal warning.

**6 or more penalty points:** Where any applicant has 6 or more penalty points on their driving licence the Licensing Officer will usually consider granting the licence with a written warning unless exceptional circumstances justify a refusal.

**“Totting Up” under S35 Road Traffic Offenders Act 1988:** Where an applicant has been disqualified under the “totting up” procedures, the Licensing Officers will normally consider refusal until there has been a **period of 12 months** free of relevant convictions. If an applicant has agreed “exceptional hardship” and avoided disqualification, refusal will still be considered and a **period of 12 months** free of relevant convictions required.

### **Motor Insurance Offences**

An isolated incident in the past should not necessarily bar an applicant from being issued a licence; however, the Council takes a serious view of motor insurance offences. More than one conviction for these offences should raise serious doubts as to an applicant’s suitability to hold a Hackney Carriage or Private Hire licence. In this instance, at **least 3 years** after restoration of the DVLA driving licence should elapse before an applicant, who has been disqualified from driving for an insurance offence, can be considered.

### **Traffic Offences**

New applicants should not normally be considered if they have acquired more than three penalty points within the twelve months prior to the grant of a licence, they have in the previous two years, been convicted of any single offence which resulted in a points penalty of five or more points, or offences totalling more than six points.

If sufficient points have been accrued or offences committed resulting in a period of disqualification of the applicant’s DVLA driving licence then an application for a Hackney Carriage or Private Hire driver licence may not normally be considered until a period of twenty-four months has elapsed following its restoration and a warning should be issued as to future conduct.

If the DVLA driving licence of an applicant or an existing driver is revoked following the acquisition of six or more points during the first two years since passing the DVLA driving test, then a period of 24 months following the restoration of the licence must have elapsed before a Hackney Carriage or Private Hire driving licence can be granted

Drivers already licensed who are convicted any single offence which results in a penalty of five or more points or acquires nine or more penalty points, should be interviewed and may be referred to the Licensing Sub-Committee.

When a driver who is already licensed with this authority is disqualified from holding or obtaining a DVLA driving licence, the licence will be suspended. A period of 24 months following the restoration of the licence must have elapsed before a Hackney Carriage or Private Hire driving licence application may be considered. The driver may be required to appear before the Hackney Carriage and Private Hire Licensing Sub-Committee before the licence is reinstated.

Drivers already licensed and applicants awaiting the grant of a licence must inform the Taxi Licensing office within 7 days of any conviction.

### **Major traffic offences**

E.g. dangerous driving, drive whilst disqualified, fail to stop after an accident, using a handheld mobile telephone whilst driving, no insurance, careless driving, using vehicle with defective brakes/tyres/steering wheel etc. If the applicant has been convicted of one isolated major traffic offence a **period of 12 months** free of convictions will usually be expected prior to consideration of grant.

If the applicant has been convicted of two or more major traffic offences then a licence will not normally be granted until the applicant has completed at least a **period of 2 years** free from conviction. This period may increase where the combination of offences are considered to increase the risk to the public.

We consider 'death by careless driving' or 'death by dangerous driving' to be a very serious offence. If the applicant has been convicted of such an offence a **period of 3 years** free of convictions will usually be expected prior to consideration of an application. In all such cases, the matter will be determined by the Hackney Carriage & Private Hire Licensing Sub-Committee.

### **Plying for Hire**

A serious view is taken of this offence, particularly since the vehicle will almost certainly have been carrying fare-paying passengers whilst uninsured.

One conviction for the offence of plying for hire, and the licence holder will be required to appear before the Hackney Carriage and Private Hire Licensing Sub-Committee, where if found guilty of the offence then the licence holder should expect to receive a revocation of their licence.

If a licence is revoked a period of twenty-four months should have elapsed before any application is considered.

### **Drunkenness (With Motor Vehicle)**

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of alcohol. A conviction for this offence should raise grave doubts as to the applicants' fitness to hold a licence and at least 3 years should elapse (after the restoration of the driving licence) before an application for a licence is considered.

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 5 years should elapse after treatment is complete before a further licence application is considered.

### **Drunkenness (Not in Motor Vehicle)**

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, more than one conviction for drunkenness could indicate a medical problem necessitating critical examination.

### **Drugs**

A serious view should be taken of this type of offence. An applicant with a conviction or caution for any drug related offence should be required to show a period of at least 3 years free of conviction or caution before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

Any person convicted of supplying drugs should not be considered for the grant of a licence for at least 5 years following conviction. If the applicant has received a custodial sentence, the 5 years should be counted from the completion of the full sentence. If a licence is granted, the applicant should be warned of the serious consequences of driving a motor vehicle whilst under the influence of drugs.

## **Indecency Offences**

As Hackney Carriage and Private Hire vehicle drivers often carry unaccompanied passengers. Applicants with any cautions or convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused a Hackney Carriage or Private Hire drivers licence until they can show a substantial period (at least 5 years) free of such offences before being considered to hold a licence. Any applicant with a single caution or conviction of this kind should expect to have their application determined by the Hackney Carriage and Private Hire Licensing Sub-Committee. A person with more than once caution or conviction for any indecency offence would not normally be considered to be a suitable applicant.

A person who already holds a licence with this Authority, if charged with any indecency offence may expect to have their licence immediately suspended until the case is resolved by either the Police or by the Courts.

**No application will be considered from a person currently on the Sex Offender's Register.**

## **Violence**

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 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be given.

Offences involving breaches of public order should be treated seriously even if the case resulted in the applicant being bound over. More than one offence of this nature may indicate a propensity for this type of behaviour and at least three years free of conviction should be shown before an application is entertained.

## **Dishonesty**

Hackney Carriage and Private Hire vehicle drivers are expected to be persons of trust. The widespread delivery of unaccompanied property is indicative of the trust that business 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. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction or if a custodial sentence, 3 to 5 years from the completion should be required before entertaining an application.

## **Complaints Against Drivers**

Complaints are frequently made against Hackney Carriage and Private Hire drivers. Such complaints include refusal to assist a disabled passenger, use of abusive language or refusal to accept a fare. Such complaints should be investigated and dealt with by the Licensing Officer, and if the complaint is serious enough, the applicant may be invited to make representations. At the Officer's discretion the applicant may be requested to attend an interview.

The Licensing Officer will consider the conduct of licence holders, taking into account the circumstances surrounding any alleged incident, and the realities of the profession, where drivers are often the subject of unwarranted abuse from members of the public.



The Licensing Officer will consider the history of all complaints made against the driver to assess any patterns. If a pattern is identified, then the Officer will consider whether the driver is fit and proper person to hold such a licence, and the matter referred to the Licensing Sub-Committee for determination.

### **Conclusion**

Any applicant having a previous or current conviction should not necessarily prevent them from obtaining a Hackney Carriage or Private Hire licence.

A person who has committed an offence and who is made to wait for a rehabilitation period to lapse prior to their application being accepted, is more likely to value their licence and act accordingly. However, there are certain offences that are considered so serious that they will usually prevent a person obtaining or keeping a licence.

It is this Authority's policy to consider the safety, protection and well being of the general public by ensuring all licensed drivers are safe and competent drivers and are able to maintain their vehicles to an acceptable standard.

The main purpose of the Licensing Officer's assessment is to ensure the public safety; not to punish or financially penalise licence holders. By applying these guidelines, the Council is seeking to maintain the high standard of quality of Hackney Carriage and Private Hire drivers, operators and proprietors in the City, which in turn maintains the good reputation of the taxi industry and the high quality of service to the travelling public.

Any applicant refused a licence on the grounds that the Licensing Officer is not satisfied he/she is a fit and proper person to hold such a licence, or who has had their licence suspended or revoked and disagrees with that decision, has a right of appeal by way of written complaint, to the Magistrates' Court within **21 days of the notice of decision.**

## APPENDICES

### Appendix 1.0: Table of Rehabilitation of Offenders Act

The Rehabilitation of Offenders Act 1974 provides that after a certain lapse of time, convictions for offences are to be regarded as “spent”. Set out below are some examples of when convictions become “spent”. Please note that it is from **the date of conviction** that the time commences for the Rehabilitation of Offenders Act.

#### Adult

	Sentence	Rehabilitation Period
1.	2 ½ years (30 months) imprisonment and over whether sentence was suspended or not	Never spent
2.	6 months imprisonment/youth custody and over but under 30 months whether sentence was suspended or not	10 years
3.	Under 6 months imprisonment/youth custody whether sentence was suspended or not	7 years
4.	A Fine, Compensation or Community Service Order	5 years
5.	Conditional Discharge, Bound Over or Probation Order. (Also includes Fit Person, Supervision and Care Orders)	1 year or period of probation sentence, whichever is longer
6.	Absolute Discharge	6 months
7.	Disqualification, disability or prohibition	Period of sentence unless a longer period as above (e.g. disqualification and a fine – 5 years)
8.	Remand Home/Approval School/ Attendance Centre Orders	1 year after Order expires
9.	Hospital Order Under Mental Health Acts	The period of the Order plus a further 2 years after Order expires (with a minimum of 5 years from the date of the conviction)

#### Youths

For applicants aged under 17 when the date of conviction took place 2, 3 and 4 above of the fixed rehabilitation periods are halved. Sentences which can only be passed on young offenders remain **fixed** and cannot be halved, i.e.

	Sentence	Rehabilitation Period
10.	Borstal	7 years
11.	6 months – 2 ½ years detention in a place determined by the Secretary of State	5 years
12.	6 months detention and less as above	3 years
13.	Detention Centre Orders	3 years

The period of time which must elapse in other cases before the conviction becomes “spent” may vary considerably according to the nature of the offence and other circumstances. **The rehabilitation period may, for example, be extended by the commission of a further offence during the rehabilitation period.**

## HACKNEY CARRIAGES AND PRIVATE HIRE LICENSING SUB COMMITTEE

**Tuesday 5 July 2011**

**COUNCILLORS PRESENT:** Councillors Brundin (Chair) and Keen.

**Officers Present:** Jeremy Franklin (Legal Advisor to the hearing) and Lois Stock (Committee Secretary) were present.

Julian Alison, Natalie Brome and Rob Thornton (Environmental Development – Taxi Licensing) were in attendance to present reports on cases before the Sub Committee. They left the meeting room on each occasion that the Sub Committee discussed the cases and reached decisions.

### **15 APOLOGIES FOR ABSENCE**

None received

### **16 PROCEDURE TO BE FOLLOWED AT THE MEETING**

Resolved to note the Procedure, guidance note and guidance on the relevance of convictions adopted by the Council for dealing with cases to be considered by the Sub Committee

### **17 DECLARATIONS OF INTEREST**

None made

### **18 MINUTES**

Resolved to confirm as a correct record the minutes of the meeting held on 24<sup>th</sup> May 2011.

### **19 EXEMPT MATTERS**

Resolved that under Section 100(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the remaining items of business on the grounds that their presence would involve the likely disclosure of information as described in paragraph 3 of Part I of Schedule 12A to the Act.

Summary of business transacted under Part II of the agenda as required by Section 100C (2) of the Local Government Act 1972.

**Part II**

**EXEMPT BUSINESS**

The Sub Committee considered matters related to Hackney Carriage and Private Hire Licensing in closed session.

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# Agenda Item 7

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# Agenda Item 8

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# Agenda Item 9

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# Agenda Item 10

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