

LICENSING AUTHORITY:

POLICY ON THE RELEVANCE OF WARNINGS, OFFENCES, CAUTIONS & CONVICTIONS

Consideration of the Grant, Renewal, Suspension
or Revocation of Hackney Carriage / Private Hire
Driver & Vehicle Licences, & Private Hire Operator
Licences



This policy was adopted by the Oxford City Council at the meeting of the Full Council on 17th March 2022 and comes into force on 1st April 2022.
The Policy shall be in place for period of five (5) years from that date, however it will remain under review should amendments be necessary.

OXFORD CITY COUNCIL

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

CONTAINED WITHIN THIS POLICY YOU WILL FIND:

| CONTENT | PAGE |
|---|------|
| 1. Introduction | 2 |
| 2. Objectives | 2 |
| 3. Status | 2 |
| 4. Legislation and Best Practice Guidance | 3 |
| 5. Enforcement Procedures | 3 |
| 6. Definitions | 5 |
| 7. Guidelines Relating To The Relevance of Convictions – Powers and Duties | 5 |
| 8. Suitability to Hold a Licence – A ‘Fit and Proper’ Person | 6 |
| 9. Information Sharing | 7 |
| 10. Protecting the Public | 7 |
| 11. Licensing History | 7 |
| 12. Safeguarding | 8 |

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

| | |
|--|----|
| 1. General Principles | 9 |
| 2. Assessment of Previous Convictions | 9 |
| 3. Complaints Against Licence Holders | 12 |
| 4. Warnings Issued by Licensing Officers | 12 |

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

Consideration of the Grant, Renewal, Refusal, Suspension or Revocation of Hackney Carriage and Private Hire Driver's Licences, Vehicle Licences, and Private Hire Operator Licences.

1. Introduction

- 1.1 The aim of Local Authority licensing of the Taxi and Private Hire trades is to protect the public. With this in mind, Public Protection must be at the forefront when determining whether an individual is considered a 'fit and proper' person to hold a licence. The Licensing Authority is entitled and bound to treat the safety of the public as the paramount consideration.
- 1.2 The Hackney Carriage and Private Hire trade have a specific role to play in an integrated transport system. They are able to provide demand responsive services in situations where public transport is either not available (for example in rural areas, or outside 'regular' hours of operation such as in the evenings or on Sundays), and /or for those with mobility difficulties. Hackney Carriage and Private Hire vehicles support the night-time economy by playing a vital part in the safe dispersal of people in the city.
- 1.3 The Council's aim is to ensure that the public have reasonable access to Taxi and Private Hire services, due to the part they play in a local transport provision. Therefore, it is essential that the councils' Hackney Carriage and Private Hire licensing powers are used to ensure that licensed vehicles in the district are safe, comfortable, properly insured and available where and when required.
- 1.4 It is the Council intention to license well-run and responsible businesses and individuals. Its purpose, therefore, is to prevent licences being issued to or used by those who are not suitable persons, taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their position to cause distress, harm or suffering to any passenger or other person and that they meet the 'fit and proper' person test.

2. Objectives

- 2.1 The Licensing Authority will carry out its Hackney Carriage and Private Hire functions with the view to promote the following objectives:
 - The protection of public safety and health
 - The promotion of a professional and respected Hackney Carriage and Private Hire trade
 - Access to an efficient, modern and effective transport service
 - The protection and improvement of the environment, local economy and quality of life
- 2.2 The aim of the licensing process, in this context, is to regulate the Hackney Carriage and Private Hire trade in order to promote the above objectives. In promoting these objectives the Authority shall expect all licence holders and applicants to continuously demonstrate they can meet or exceed specifications set by the Council.
- 2.3 The purposes 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 and that they meet the 'fit and proper' person test.

3. Status

- 3.1 This policy contains information about legal requirements, government guidance, procedures and standards in relation to its taxi licensing functions. It has been produced pursuant to the powers conferred by the Local Government (Miscellaneous Provisions) Act 1976, the Town Police Clauses Acts 1847 and 1889, the Public Health Act 1875 and the Local Government Act 1972 which place on the Council the duty to carry out licensing functions in respect of Hackney Carriage and Private Hire vehicles, drivers and operators.
- 3.2 In exercising its duties when carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out above. Notwithstanding the existence of this policy, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Council to depart substantially from this policy, clear and compelling reasons shall be given for doing so.
- 3.3 The Council expects licence holders to comply with the conditions and regulations pertaining to the licence immediately. However, certain provisions may place financial obligations on existing licence holders and accordingly the Council is prepared to permit a reasonable transitional period which will be determined and provided by officers acting under delegated powers, during which necessary changes must be made by all licence holders.
- 3.4 The policy provides guidance for applicants, proprietors, drivers and operators to assist them with application processes and operation of their business. This guidance, application forms, current fees, as well as criteria, conditions and regulations relating to Taxi and Private Hire licensing functions can be found in the following documents:

- **Hackney Carriage and Private Hire Driver Licence Application Pack**
- **Hackney Carriage and Private Hire Vehicle Licence Application Pack**
- **Private Hire Operator Licence Application Pack**

These are available on the relevant Council website or by contacting the General Licensing Team. In order to ensure that the most up to date version is used, applicants and licence holders should not store these forms on their own system but should download the latest version of a form when it is required.

The Council provides all such relevant information on its website at: www.oxford.gov.uk/taxilicensing

- 3.5 This policy will remain existence for a period of five years, during which time it shall be kept under review and revised as necessary. The Head of Regulatory Services and Community Safety in consultation with the Chair of the General Purposes Licensing Committee is authorised to make minor administrative amendments to the policy where necessary, and to amend the policy to reflect any changes in legislation, statutory guidance or similar.

4. Legislation and Best Practice Guidance

- 4.1 All licence holders must comply with the provisions relating to Hackney Carriage and Private Hire drivers and vehicles contained in legislation, including but not limited to the following:

- The Local Government (Miscellaneous Provisions) Act 1976
- The Local Government Act 1972
- Town Police Clauses Act 1847 (as amended)
- Town Police Clauses Act 1889
- Road Safety Act 2006
- Equality Act 2010
- Public Health Act 1875

- 4.2 The Department for Transport (DfT) has responsibility for Hackney Carriage and Private Hire legislation in England and Wales and produced best practice guidance for local licensing authorities in March 2010. The DfT guidance states local authorities will “decide for themselves the extent to which they wish to make use of it or adapt it to suit their own purposes”. The document recognises that licensing authorities may reach their own decisions both on overall policies and on individual licensing matters, in the light of their own circumstances. The DfT has also published the Statutory Taxi and Private Hire Vehicle Standards in July 2020 focusing on protecting children and vulnerable adults, as well as benefiting all passengers. The council has taken account of the recommendations in both documents to shape this policy.

5. Enforcement Procedures

- 5.1 Enforcement is part of the overall licensing control process exercised by the Council and is taken to:

- **ensure public safety**
- **maintain standards within the trade**
- **support the policies of the council**
- **respond to complaints**
- **support partnerships with neighbouring local authorities, and other agencies such as the Police and Driver and Vehicle Standards Agency (DVSA)**

All enforcement will be proportionate, transparent and in accordance with the Council's Corporate Enforcement Policy. The Council will ensure that its enforcement system meet the objectives set out in the policy whilst avoiding undue burden and costs upon licence holders.

- 5.2 This Authority will deal with enforcement matters relating to an applicant or existing licence holders by means of Licensing Officers, the Head of Regulatory Services and Community Safety, the Hackney Carriage and Private Hire General Licensing Sub-Committee and the Courts. The expectation of the Authority is that any person who seeks the grant of a licence, or who holds a licence, meets with the definition of a “fit and proper” person. Hackney Carriage and Private Hire drivers and operators maintain close contact with the public and are therefore not expected to behave or act in a manner that may:

- **cause any person to take offence at their actions**
- **cause any person to believe their actions are inappropriate**
- **cause any person to fear for their physical safety**
- **cause any person to doubt their integrity**
- **brings the integrity of the Council in to disrepute for having granted such a person a licence**
- **fail to adhere to the conditions and regulations pertaining to the licence**

- 5.3 The Council's enforcement process addresses persistent, low level breaches through to serious, possibly criminal, behaviour. Sanctions range from advice and warnings, to the suspension and revocation of a licence and / or prosecution. Failures on the part of an applicant or existing licence holder to uphold the Licensing Objectives or to adhere to the conditions and regulations pertaining to the licence may result in any of the following actions :

- **the issue of an Advisory letter**
- **the issue of a warning (appropriate to the incident reported)**

- the issue of a higher level of warning (appropriate to the incident reported and having regard to the history of the licence holder)
 - the request for an interview to be held in accordance with the Police and Criminal Evidence Act 1984
 - the issue of a Formal Caution
 - the referral of the matter to the Head of Regulatory Services and Community Safety
 - the referral of the matter to the Hackney Carriage and Private Hire General Licensing Sub-Committee
 - the referral of the matter to the Law and Governance department for consideration of prosecution
- 5.4 Licensing Officers are permitted to instruct an existing licence holder to undertake new or repeated courses or training (driving standards, safeguarding, disability awareness, etc.) at any time, to ensure their standards have not fallen below the council expectations for a 'fit and proper' person. The Licensing Officer will provide detailed reasons for the requirement
- 5.5 All case notes, evidence and enforcement outcomes are recorded on the Council's case management system. The council understands the importance of ensuring that personal data, including sensitive personal data is always treated lawfully and appropriately and that the rights of individuals are upheld. You can find the council data protection policy online <https://www.oxford.gov.uk/privacy>
- 5.6 **"Warning" System:**

Advisory Letter: A letter advising that although the incident, allegation, an offence, caution or conviction was not serious enough to have warranted a First Level Warning, the incident has caused concern to the Council as to the suitability to hold such a licence. The Advisory Warning usually addresses a low level non-compliance, which can be issued at any level on the scale of warnings. If similar behaviour or non-compliance persists, it may lead to an escalation in the level of warning issued.

First Level Warning: A letter advising that although the incident, allegation, an offence, caution or conviction was not serious enough to have warranted a Second Level Warning, which deals with more serious incidents, repetitious behaviour or non-compliance, 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.

Second Level Warning: A letter advising that although the incident, allegation, an offence, caution or conviction was not severe enough to have warranted a Final Warning, suspension or revocation of the licence, the behaviour or the offence committed is unacceptable and has caused significant concern to the Council as to the suitability to hold such a licence. A Second Level Warning deals with serious incidents, repetitious behaviour or non-compliance. If in the future, similar behaviour is illustrated, the consequences shall be much more severe.

Final Warning: A letter advising that although the incident, allegation, an offence, caution or conviction did not warrant the refusal, suspension or revocation of the licence, the offence committed is unacceptable and has caused major concern to the Council as to the suitability to hold such a licence. A Final Warning deals with major incidents, as well as escalation of warning level due to repeated non-compliance. If in the future, similar behaviour or any other non-compliance is illustrated, the licence holder should expect the matter to be addressed through the escalation warning system.

5.7 Suspension, Revocation and Sub-Committee interventions

Councillor Warning: A Decision issued by the Hackney Carriage and Private Hire Licensing Sub-Committee, likely to also include additional conditions being imposed on a licence, advising that although the incident, an offence, caution or conviction, and / or accumulation of Warnings issued by the Licensing Officers did not warrant 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 or revocation of his/her licence.

Immediate Suspension: A Decision issued by Head of Regulatory Services and Community Safety or the Hackney Carriage and Private Hire Licensing Sub-Committee advising that in the view of the serious nature of the incident, allegation, an offence, caution or conviction the Council has decided there is reasonable cause to suspend the licence with immediate effect in the interests of public safety. Suspension is not indefinite and the Authority may consider determination of the individual 'fit and proper' status during the suspension period. An individual has the right of appeal to the Magistrates' Court within 21 days from the decision, however the suspension shall remain in force pending the outcome of any appeal.

Immediate Revocation: A Decision issued by Head of Regulatory Services and Community Safety or Hackney Carriage and Private Hire Licensing Sub-Committee advising that in the view of the serious nature of the incident, allegation, an offence, caution or conviction the Council has decided there is reasonable cause to revoke the licence with immediate effect in the interests of public safety. The revocation is indefinite. The individual has the right of appeal to the Magistrates' Court within 21 days from the decision.

Hackney Carriage and Private Hire Licensing Sub-Committee: A committee having powers to determine the suitability of a new applicant to be granted a licence or existing licence holder to maintain a licence, by assessing if the person meets the Authority's definition of a "fit and proper" person. The Licensing Sub-Committee hearings are conducted in person. Parties attending the hearing

consist of the Sub-Committee panel (three elected members), council legal adviser, clerk, Licensing Officer and the new applicant or current licence holder, who are entitled to be accompanied by a representative should they need assistance. An applicant for a new Hackney Carriage and/ or Private Hire driver licence is entitled to have their application determined by the Licensing Sub-Committee, taking into account the policy recommendations. Each application shall be considered on its own merits. The Licensing Sub-Committee could determine to grant or renew a licence, refuse to grant or renew a licence, suspend or revoke a licence.

6. 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 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 poses no threat to the general public, has a good knowledge of the City, is healthy, and is of a good character (including driving record) will be deemed fit and able to hold a licence. The following question shall be posed:

"Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?"

Hackney Carriage Vehicles: A vehicle that can carry passengers for hire or reward, can be hailed by a prospective passenger and can park on a taxi rank within their district to await the approach of passengers; a vehicle available for Public Hire within the controlled district.

Hackney Carriage and Private Hire Licensing Sub-Committee: A committee having powers given to it by the General Purposes Licensing Committee of the Council, to determine the suitability of an applicant to be granted a licence or existing licence holder to maintain a licence, when the Head of Regulatory Services and Community Safety is unable to determine whether such a person meets the Authority's definition of a "fit and proper" person.

Head of Regulatory Services and Community Safety: Holds delegated authority to make day to day decisions regarding the suitability of any person seeking the grant or renewal of a licence, and decisions regarding the suspension or revocation of any licence holder.

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

Private Hire Vehicle: A vehicle which must be pre-booked with a Private Hire Operator. This type of vehicle cannot ply for hire (stand in a taxi rank, wait without a booking in a "prominent position" giving rise to the impression that the vehicle is available for hire) or undertake a journey that has not been pre-booked by the hirer with a Private Hire Operator.

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

Operator: A business that makes provision for the invitation or acceptance of bookings for Private Hire Vehicles.

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.

7. Guidelines Relating to the Relevance of Convictions - Powers and Duties

7.1 The Rehabilitation of Offenders Act 1974 ("1974 Act") and associated amendments sets out the period after which a conviction/caution/warning would be regarded as 'spent' and not normally require details of that conviction to be provided on any relevant application form. In 2002 the Rehabilitation of Offenders Act 1974 was amended to exclude hackney carriage and private hire drivers from the 1974 Act. The driving of hackney carriages and private hire vehicles was listed as a 'Regulated Occupation' in relation to which questions may be asked as to the suitability of individuals to be granted a licence. The Rehabilitation of Offenders Act 1974 is summarised at Appendix 1.0.

7.2 Applicants for, or current licence holders of, taxi driver, vehicle or operator licences must therefore provide details of all convictions, warnings, reprimands, injunctions, cautions, Community Protection Notices, Criminal Behaviour Orders, community service orders, restraining orders, traffic offences, other court orders, Notices or Orders associate with child or adult safeguarding concerns, driver education courses, disqualifications and fixed penalty notices (including for traffic offences), including

any that would previously have been regarded as spent under the 1974 Act or may not currently show on any replacement DVLA driver's licence, or another other notice or legal matter pertaining to a criminal or anti-social behaviour incident. In addition, any pending court cases or hearings must be declared, and details of any licences previously held, suspended or revoked. The Authority will take the information provided into account irrespective of offence, sentence imposed or age when the offence is committed.

- 7.3 Failure to disclose any information detailed in paragraph 7.2 in writing within 48 hours of receipt of their issue, or the making of false declarations will be considered to be an act of dishonesty and may result in the application being refused or the licence revoked. Applicants must seek the advice of an officer if they cannot remember full details that they are required to declare or have any uncertainty about what details they are required to provide.
- 7.4 All licence holders are required to inform the council in writing within 48 hours if they are arrested, formally interviewed (voluntary) or charged with an offence by the police or other enforcement body. This is to allow the council to be aware of any public safety concerns and to take appropriate action. Failing to notify the council may result in additional enforcement action against the licence.
- 7.5 In order to assess an individual suitability to hold a licence, this Authority requires all applicants to provide a current Enhanced Disclosure and Barring Services (DBS) Certificate and a DVLA Disclosure. All licence holders must subscribe to the online DBS update service and maintain the subscription for the full duration of the licence. Where a driver fails to maintain their subscription with the online DBS Update service, or the DBS update check reveals new information their licence may be suspended with immediate effect on the grounds of public safety. The licence holder will have to submit a new DBS application, provide the DBS Certificate and online subscription, which may take several weeks to be processed by DBS.
- 7.6 Where the Authority has a reasonable cause for concern in regards to a licence holder, an Enhanced DBS update check may be carried out. Should the check reveal any concerns or new information, the driver shall be notified of the outcome. The Authority shall also carry out an annual background checks (DBS) to ensure no changes in circumstances occurred during the validity of the licence.
- 7.7 A licence may be suspended or revoked with immediate effect pending the outcome of any investigation or trial where a licensed driver has been arrested or charged with a serious offence. Serious offences can include but are not limited to:
- Driving or being in charge of a vehicle whilst under the influence of alcohol or drugs
 - A drug related offence
 - An offence of a sexual nature
 - An offence involving violence
 - An offence involving dishonesty
- 7.8 A licence may also be suspended or revoked with immediate effect where information received raises grave doubts as to the fitness of a driver, regardless of whether criminal charges are brought or if the police determine to take no further action. In all cases the licence holder will be given an opportunity to make representations and these will be taken into account by the decision maker/s.

8. Suitability to Hold a Licence - A 'Fit and Proper' Person

- 8.1 When considering whether someone should serve the public as a taxi driver, the range of passengers that a driver may carry must be borne in mind. For example, elderly people, unaccompanied children, the disabled, those who could be intoxicated, lone women, foreign visitors and unaccompanied property. Some areas give rise to particular concern, including:
- **Honesty and trustworthiness** – drivers are very often trusted with sensitive information whilst carrying out their duties. They have the knowledge of passenger vulnerabilities, convey customers who do not know the city and its locations, as well as manage a property lost in the vehicles. They must not abuse their position of trust.
 - **Abusive behaviour** – drivers are often subject to a disagreement, unpleasant or dishonest behaviour. The Council does not consider that such situations excuse any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, attempt to defuse the situation and to address disputes through the proper legal channels.
 - **A good and safe driver** – Passengers paying for a transport services rely on their driver to get them to their destination safely. Licensed drivers are professional drivers and should be fully aware of all road traffic legislation and conditions attached to the licence.
- 8.2 Licensing authorities have a duty to ensure that any person to whom they grant a Taxi or Private Hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:
- Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?**
- If on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.
- 8.3 Licensing Authorities have a duty to safeguard the public. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given 'the benefit of doubt'. If the committee or delegated officer is only "50/50"

as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction and can take into consideration conduct that has not resulted in a criminal conviction.

- 8.4 The relevant legislation provides that the Council may grant a licence **ONLY** if it is satisfied that the individual is a 'fit and proper' person – **the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.**
- 8.5 The Licensing Authority is entitled to take into account all matters concerning an applicant or licensee. They are not simply concerned with that person's behaviour whilst working in the Hackney Carriage or Private Hire trade. This consideration is far wider than criminal convictions or other evidence of unacceptable behaviours, and the entire character of the individual will be considered. This can include but is not limited to, the individual's attitude and temperament.
- 8.6 Where sufficient and appropriate enforcement measures have been taken by the Licensing Officers, in relation to a licence holder who has failed to adhere to the conditions and regulations pertaining to his or her licence, their suitability to hold a licence may be placed before the Hackney Carriage and Private Hire Licensing Sub-Committee to determine. It is therefore prudent for all new applicants and existing licence holders to be familiar with the content of this Policy on the Relevance of Warnings, Offences, Cautions and Convictions, and with the criteria, conditions and regulations specific to the licence that they hold.
- 8.7 Full details of the criteria, conditions and regulations relating to the Taxi Licensing function can be found in the following documents:
 - **Hackney Carriage and Private Hire Driver Licence Application Pack**
 - **Hackney Carriage and Private Hire Vehicle Licence Application Pack**
 - **Private Hire Operator Licence Application Pack**

9. Information Sharing

- 9.1 Applicants and licensees are required to disclose if they hold or have previously held a licence with another authority. As well as, if they have had an application for a licence refused, or a licence revoked or suspended by any other licensing authority. Where drivers have been licensed with other authorities, this authority shall carry out checks with those authorities for any information that may be relevant to the application being considered. In addition, the council will use the National Anti-Fraud Network's - National Register of Taxi and Private Hire Vehicle Driver Licence Refusals and Revocations (known as 'NR3'), to share information and mitigate the risk of non-disclosure of relevant information by applicants.
- 9.2 The police are an invaluable source of intelligence when assessing whether a licensing applicant or current licence holder is a 'fit and proper' person. This Authority is committed to work in partnership with the police service to ensure that appropriate information is shared as quickly as possible. As part of building an effective working relationship between the licensing authority and the police, action taken by the licensing authority as a result of information received may be reported to the police. Safeguarding concerns resulting in a revocation or refusal on public safety grounds may be reported to the police and other relevant agencies.
- 9.3 In order to assist effective information sharing on a local level, this Authority is a partner in the Oxfordshire Joint Operating Framework (JOF) for the Transportation of Children and Adults with Care and Support Needs and Taxi Licensing. The framework provides a single set of minimum standards for agencies with responsibilities for transporting children and adults with care and support needs in Oxfordshire, including addressing vetting, training, awareness raising and most importantly information sharing between agencies.

10. Protecting the Public

- 10.1 It is not the Licensing Authorities role to balance a driver's right to work against the public's right to protection. The Licensing Authority is duty bound to treat the safety of the public as its principle consideration. Having considered and applied the appropriate guidelines, the council shall determine each case on its own merits.
- 10.2 The character of the driver in its entirety is the central consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a 'fit and proper' person.

11. Licensing history

- 11.1 The Licensing Officer may take into account a person's licensing 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, any enforcement actions, their compliance with Licence conditions and their willingness to co-operate with the reasonable requests of Licensing Officers.

12. Safeguarding

- 12.1 The council acknowledge that all licensed drivers who transport children, young people and vulnerable adults play a very important role in safeguarding, and this is why mandatory training is required for all licensed drivers. **The key message is that safeguarding is everyone's responsibility.**
- 12.2 The Authority recognise the opportunities provided by Taxi and Private Hire drivers to spot the signs and alert the appropriate authorities to concerns about the safety of children and adults with care and support needs. Taxis and Private Hire vehicles regularly transport passengers who may be vulnerable, for example when the passenger is under the influence of alcohol or drugs or is travelling alone, hence the need to promote the highest safeguarding standards to protect both passengers and drivers
- 12.3 Vulnerable children and adults are those whose mental health, disability, age, illness or other reasons means that they may be unable to take care of themselves and/or unable to protect themselves against serious harm or potential exploitation. Some people may have more advanced needs than others and therefore are more likely to face abuse or be directly abused by others because they require assistance to speak, move themselves or understand others; these are some of the types of needs that make them vulnerable.
- 12.4 Drivers are expected to report all safeguarding concerns to the police if there is an immediate risk of harm to a child or vulnerable adult and / or the relevant social care providers. Drivers are also expected to inform the Private Hire Operator under whose licence they operate at the time and inform the Council's Licensing Authority.

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

1. General Principles

- 1.1 Each case shall be considered on its own merits.
- 1.2 Any applicant having a previous or current conviction should not necessarily prevent them from obtaining a Hackney Carriage or Private Hire Licence. However, they should remain free of conviction for an appropriate period of time, according to the circumstances, before the Licensing Authority will consider whether a licence should be granted or renewed. This places passenger safety as the priority while enabling those with past offences to be considered for a licence. However, there are certain offences that are considered so serious that they will usually prevent a person obtaining or keeping a licence.
- 1.3 Cautions shall also be taken into consideration. They can give indication as to an applicant's (licensee) character and whether they are a 'fit and proper' person to hold or be granted a licence. A caution is given where there is sufficient evidence for a prosecution and guilt has been admitted.
- 1.4 Should a Court have found as a matter of fact that a person has committed an offence, the Licensing Authority will not take into consideration the applicant's assertion that they did not commit the offence. The applicant can, however, explain any mitigating circumstances that led to them committing the offence, which could be taken into account when determining whether the applicant is a 'fit and proper' person to hold a licence. Such cases may be referred to the Hackney Carriage and Private Hire General Licensing Sub-Committee for determination.
- 1.5 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.
- 1.6 Warnings issued by the Licensing Officers shall be considered relevant to the determination of the suitability of all applicants and existing licence holders with regard to the grant or continuation to hold a licence issued by the Authority.
- 1.7 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 a valid application form was received in the Taxi Licensing Office.
- 1.8 Where an applicant has more than one conviction / caution showing a pattern or tendency irrespective of time since the convictions, serious consideration shall be given as to whether they are a 'fit and proper' person to hold a licence.
- 1.9 In relation to a single conviction / caution, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence may be granted. Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed.

2. Assessment of previous convictions

2.1. Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

2.2. Exploitation

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

2.3. Offences involving violence against the person

Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least ten (10) years have elapsed since the completion of any sentence imposed.

2.4. Possession of weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least seven (7) years have elapsed since the completion of any sentence imposed.

2.5. Sexual and indecency offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted. The licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

2.6. Dishonesty

Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven (7) years have elapsed since the completion of any sentence imposed

Failure to declare endorsement convictions, cautions, warnings, reprimands, anti-social behaviour orders, community protection notices, criminal behaviour orders, community service orders, restraining orders, fixed penalties (including traffic offences), driver education courses and any disqualifications from driving is regarded as a serious matter, whether it is through the omission of such matters when submitting an application to the Authority, or by not informing the Authority within 48 hours of receipt of their issue.

Any person, who fails to declare on his or her application any such matters, should expect their application to be referred to the Hackney Carriage and Private Hire Licensing Sub-Committee, to determine their suitability to hold a licence.

2.7. Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least ten (10) years have elapsed since the completion of any sentence imposed.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five (5) years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

2.8. Discrimination

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least seven (7) years have elapsed since the completion of any sentence imposed.

2.9. Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of transporting the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence. However, applicants with multiple motoring convictions indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

New applicants should not normally be considered if they have acquired more than three penalty points within the twelve months prior to the application for the grant of a licence; or 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 (24) 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 twenty-four (24) months following the restoration of the licence must have elapsed before a Hackney Carriage or Private Hire driving licence may be applied for.

Any motoring conviction while a licensed driver demonstrates that the licensee does not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a 'fit and proper' person to retain a licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

When a driver who is already licensed with this authority is disqualified from holding or obtaining a DVLA driving licence, the Hackney Carriage or Private Hire licence shall be suspended or revoked. A period of twenty four (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 General Licensing Sub-Committee for determination.

Drivers already licensed by the authority and applicants awaiting the grant of a licence must inform the Taxi Licensing office within 48 hours of any new conviction.

For **existing licence holders**, a guideline is provided below in relation to penalty points:

6 or less penalty points: Where any current licence holder, has 6 or fewer points on their DVLA driving licence, the Licensing Officer will usually consider granting the licence with a written warning, as long as the licensee remains 'fit and proper' person. The number, type and frequency of an offence(s) will be taken into account when considering the level of warning.

7 or more penalty points: Where any current licence holder is convicted during the course of the licence of any single offence which results in a penalty of six or more points or acquires

seven or more penalty points should expect their licence to be suspended, refused or revoked taking into account the number, type and frequency of an offence(s). In exceptional circumstances the Licensing Officer may request an additional / new driving standards test at the expense of the Licence Holder.

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

2.10. Other motoring offences

A minor traffic or vehicle related offence is one which does not involve loss of life; or driving under the influence of drink or drugs; or driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least five (5) years have elapsed since the completion of any sentence imposed.

A major traffic or vehicle-related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving whilst disqualified, fail to stop after an accident, driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least seven (7) years have elapsed since the completion of any sentence imposed

2.11. Drink driving / driving under influence of drugs

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven (7) years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs

2.12. Using hand-held telephone or hand-held device whilst driving

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five (5) years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

2.13. Hackney Carriage and Private Hire offences

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

2.14. 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. The offence is making one's vehicle available for public hire without a licence; this could be by taking a passenger without a booking in a licensed Private Hire vehicle or a picking up a fare without a booking in a Hackney Carriage vehicle outside of its licenced district. It is illegal for Private Hire drivers to park or stop in a prominent positions for the intention of taking a passenger (i.e. where people are likely to congregate, locations with a high level of footfall, near a taxi rank), without a pre-booked journey having been provided by a Private Hire Operator. The licence holder should expect further enforcement measures to be taken against them, including a full inspection of the vehicle and driver compliance against the conditions relating to both licences.

Licensing Officers may request from Private Hire Operator details of all bookings given to a driver, and further evidence if required that could assist with the Licensing Officer's investigation. If a Private Hire Operator is complicit in allowing the driver to book a journey for a member of public, rather than the passenger book the journey directly with the Operator, the Operator should expect for the Licensing Officer to undertake any necessary enforcement measures against the Operator itself.

The Licensing Authority regularly carries out what are known as “Test Purchase” Operations, where attempts are made to ascertain whether individual licence holders and Private Hire Operators knowingly ply for hire. If any licence holder is found to be non-compliant with regard to this matter during such an operation, they should expect the matter to result in a prosecution against them in the Courts. If convicted by the Court of a single offence of plying for hire, the licence holder will be required to appear before the Hackney Carriage and Private Hire Licensing Sub-Committee, where the licence holder should expect to receive a revocation of their licence.

If a licence is revoked a period of seven (7) years should have elapsed before any application is considered.

2.15. Licensing History

Applicants who have had a licence revoked or an application refused by the council or any other local authority will not be licensed for a minimum of five (5) years after the date of the revocation or refusal.

3. Complaints Against Licence Holder

- 3.1. Complaints about drivers and operators provide a source of intelligence when considering the renewal of a licence or to identify problems during the period of the licence. Patterns of behaviour such as complaints against drivers, even when they do not result in further action in response to an individual complaint, may be indicative of characteristics that raise doubts over the suitability to hold a licence.
- 3.2. The Authority operates a robust system for recording and investigating complaints, as well as analysing trends across the trade and individual licensees. This helps the authority to build a fuller picture of the potential risk an individual may pose and could tip the 'balance of probabilities' assessment that the authority must take. All complaints submitted to the Authority are investigated and dealt with by Licensing Officers. The licence holder is invited to make representations in regards to the complaint made against him/her. Should the complaint be of a serious nature, the licence holder may be requested to attend an interview.
- 3.3. The Licensing Officer will consider the conduct of the licence holder and determine what action should be taken, if any, whilst taking into account written submissions, evidence submitted or gathered during the investigation and the circumstances surrounding the alleged incident. The Licensing Officer will also consider the history of all complaints made against the driver to assess any patterns of behaviour and if deemed appropriate request additional background checks to be carried out.
- 3.4. In assisting the process all licensed vehicles are required to display information for passengers on how to make complaints directly to the licensing authority. For renewals, this requirement will take effect from the next licence renewal after the date of publication of this policy. The licensing authority will provide the information card to be displayed

4. Warnings Issued by Licensing Officers

- 4.1. The Licensing Officers carry out the day to day enforcement functions of the Licensing Authority. They deal with complaints made about licence holders, and carry out enforcement operations throughout the district. Such operations include the inspection of Hackney Carriage vehicles at the ranks, the checking of licensed drivers for adherence to the conditions attached to the driver, vehicle and operator licences, and checking that licence holders are complying with the relevant regulations pertaining to the licence.
- 4.2. Any failures on behalf of the licence holder to adhere to the criteria, conditions and regulation pertaining to the licence are dealt with, in the first instance, by way of Warnings. Unless the incident is of serious nature and must be escalated. It is this Authority's policy to provide advice and to educate the licensed trade in order to meet the licensing objectives as described in this Policy.
- 4.3. The levels of Warning issued by the Licensing Officers shall be proportionate to the incident that they deal with. However, should a licence holder be found to be continually failing to meet with the requirements of their licence, display a repetitious behaviour or be subject to a serious incident, the level of Warning shall be escalated.
- 4.4. A licence holder, who has shown a propensity to fail to adhere to the conditions and regulations pertaining to his or her licence, should expect the consequences to be much more severe. If deemed necessary the matter will be referred to the Head of Regulatory Services and Community Safety or the Hackney Carriage and Private Hire Licensing Sub-Committee or possibly lead to the suspension or revocation of the licence.
- 4.5. Any licence holder, who is issued with a Warning by the Licensing Officer and disagrees with that decision, has a right of appeal by way of written submission (licensing@oxford.gov.uk), to the Licensing Team Leader (or higher management) within **21 days of the Warning being issued**.