

If you would like any further information or have any special requirements in respect of this Meeting, please contact Lynda Eastwood, Democratic Services Officer (01507) 613422

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Date: Thursday, 23 May 2024

Dear Councillor,

General Licensing Committee

You are invited to attend a Meeting of the **General Licensing Committee** to be held at **the Hub, Mareham Road, Horncastle, Lincolnshire LN9 6PH** on **Monday, 3rd June, 2024** at **2.00pm**, for the transaction of the business set out in the attached Agenda.

The public and press may access the meeting via the following link <https://bit.ly/ELDCYT> where a livestream and subsequent recording of the meeting will be available or by attending the meeting.

Yours sincerely



Robert Barlow
Chief Executive

Conservative

Councillors Neil Jones (Vice-Chairman), Richard Avison, Stephen Evans, Carl Macey and Terry Taylor

District Independent/Liberal Democrat

Councillor Sandra Campbell-Wardman (Chairman)

Labour

Councillor David Hall

East Lindsey Independent Group

Councillors Darren Hobson, George Horton and Andrew Leonard

Skegness Urban District Society (SUDS)

Councillor Billy Brookes



GENERAL LICENSING COMMITTEE AGENDA

Monday, 3 June 2024

Item	Subject	Page No.
1.	APOLOGIES FOR ABSENCE:	
2.	DISCLOSURE OF INTERESTS (IF ANY):	
3.	MINUTES: To confirm the Open and Exempt Minutes of the Extraordinary General Licensing Meeting held on 15 April 2024, the Open and Exempt Minutes of the General Licensing Meeting held on 22 April 2024 and the Minutes of the Special Meeting held at the rising of the Annual General Meeting held on 22 May 2024.	1 - 22
4.	EXCLUSION OF PUBLIC AND PRESS: That under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items on the grounds that, if they were present, there could be disclosed exempt information as defined at paragraphs 1, 2 and 7 of Part 1 of the Schedule 12A of the Act (as Amended).	
5.	EQUALITY ACT 2010 - HACKNEY CARRIAGE & PRIVATE HIRE DRIVER WHEELCHAIR EXEMPTION: Report of the Group Manager Public Protection.	23 - 32
6.	APPLICATION FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCES: Confidential report of the Group Manager Public Protection.	33 - 54
7.	DATE OF NEXT MEETING: The programmed date for the next Meeting of this Committee will be 15 July 2024.	

Minutes of a Meeting of the General Licensing Committee held in the Hub, Mareham Road, Horncastle, Lincolnshire LN9 6PH on Monday, 15th April, 2024 at 10.30am.

PRESENT

Councillor Sandra Campbell-Wardman (Chairman)
Councillor Neil Jones (Vice-Chairman)

Councillors Richard Avison, Stephen Evans, Darren Hobson,
George Horton, Andrew Leonard and Terry Taylor.

OFFICERS IN ATTENDANCE:

Adrian Twiddy - Principal Licensing Officer
Kim Robertson - Legal Advisor
Lynda Eastwood - Democratic Services Officer
Laura Allen - Democratic Services Officer

44. APOLOGIES FOR ABSENCE:

Apologies for absence were received from Councillors Billy Brookes and Graham Cullen.

45. DISCLOSURE OF INTERESTS (IF ANY):

At this point in the meeting, Members were asked to disclose any relevant interests. The following interests were disclosed:

- Councillor Carl Macey asked it be noted that he was a personal licence holder.
- Councillor Andrew Leonard asked it be noted that he was a Magistrate.

46. EXCLUSION OF PUBLIC AND PRESS:

It was proposed and seconded that the public and press be excluded from the meeting.

RESOLVED

That under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items on the grounds that, if they were present, there could be disclosed exempt information as defined at paragraphs 1, 2 and 3 of Part 1 of the Schedule 12A of the Act (as Amended).

47. APPLICATION FOR RENEWAL OF AN ANIMAL WELFARE LICENCE (ANIMAL BOARDING):

An exempt report was submitted by the Group Manager Public Protection which enabled Members to consider the application for renewal of an animal welfare licence for animal boarding.

RESOLVED

That the animal welfare licence for animal boarding be renewed as set out in the Exempt minute.

48. DATE OF NEXT MEETING:

The date of the next meeting was confirmed as 22 April 2024.

The Meeting closed at 1.10pm.

By virtue of paragraph(s) 1, 2, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

Agenda Item 3

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Minutes of a Meeting of the General Licensing Committee held in the Hub, Mareham Road, Horncastle, Lincolnshire LN9 6PH on Monday, 22nd April, 2024 at 2.00pm.

PRESENT

Councillor Sandra Campbell-Wardman (Chairman)
Councillor Neil Jones (Vice-Chairman)

Councillors Richard Avison, Stephen Evans, Darren Hobson,
George Horton, Andrew Leonard, Carl Macey and Terry Taylor.

OFFICERS IN ATTENDANCE:

Adrian Twiddy - Principal Licensing Officer
Kim Robertson - Legal Advisor
Lynda Eastwood - Democratic Services Officer
Laura Allen - Democratic Services Officer

49. APOLOGIES FOR ABSENCE:

Apologies for absence were received from Councillor Graham Cullen.

50. DISCLOSURE OF INTERESTS (IF ANY):

At this point in the meeting, Members were asked to disclose any relevant interests. The following interests were disclosed:

- Councillor Carl Macey asked it be noted that he was a personal licence holder.
- Councillor Andrew Leonard asked it be noted that he was a Magistrate.
- Councillors Darren Hobson and George Horton asked it be noted that they knew Neil Warne of Wolds Taxis, Minute number 54 refers.
- Councillor Terry Taylor asked it be noted that he was a Member of Spilsby Town Council, Minute number 55 refers.

51. MINUTES:

The Open and Exempt Minutes of the General Licensing Committee Meeting held on 11 March 2024 were agreed as a correct record.

52. HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING: BEST PRACTICE GUIDANCE:

An open report was submitted by the Group Manager Public Protection which updated the Committee on the changes to the Department for Transport's Best Practice Licensing Guidance.

On 17 November 2023 the Department for Transport (DfT) issued updated Best Practice Guidance for Local Authorities on the subject of hackney carriage (taxi) and private hire vehicle licensing. The Report advised the Committee on the new guidance document and indicated the changes that had been made by the DfT.

The Licensing team were recommending that the Committee:

- Note the updated Department for Transport (DfT) Best Practice Guidance.
- Amend the Council's current hackney carriage and private hire vehicle licensing policy in line with the recommendations set out in **Appendix B** of the Report.
- Instruct Officers to provide any further reports to the Committee where aspects of the guidance may necessitate a further review of local licensing practices.

The Principal Licensing Officer set out the background to the report and updated Members on the Best Practice Guidance, pages 2 to 30 of the report refer. Members were further referred to Appendix A and the Principal Licensing Officer highlighted the three specific items in the guidance which needed to be reviewed as a matter of urgency. Those items were:

Item 8.14 Carrying Children - page 13 of the report refers.

Following which, it was Proposed and Seconded for the guidance to remain as it was.

Item 8.18 Emergency Equipment - page 14 of the report refers.

A Member queried whether there was anything in the policy with regards to what action a driver should take if their taxi caught fire. The Principal Licensing Officer responded that there was nothing in the policy or Best Practice Guidance that referred to this.

A Member commented that it was useful to have a fire extinguisher in a taxi to be used in an emergency and highlighted that fire extinguisher training would not be required as the instructions were on the side of the fire extinguisher.

A Member further suggested that it should be mandatory, and not the driver's choice as to whether they carried a fire extinguisher.

The Principal Licensing Officer informed Members that he was aware that most taxi drivers' preference was to stop carrying a fire extinguisher and that was also the recommendation of other Councils.

Following which, it was Proposed and Seconded to amend the policy to leave it to the drivers' preference if they wished to carry a fire extinguisher.

Item 8.8 Tinted Windows - page 12 of the report refers.

A Member queried whether there had been any reaction from the public with regards to this and whether feedback had been received whether they felt their safety had been compromised. The Principal Licensing Officer responded that they had not received any complaints with regards to heavily tinted windows in private hire vehicles.

The Principal Licensing Officer confirmed that the ban on mirror glass/heavily tinted glass would remain and if Committee were minded to amend the guidance, it would be the second time the tint level would have been decreased.

A Member queried whether the 30% tint percentage was in line with production vehicles. The Principal Licensing Officer responded that the tint percentage must be correct otherwise the vehicle would be illegal.

The Principal Licensing Officer advised Members that the strict rules on tinted windows related to the front passenger windows, however the policy related to rear windows only.

Following which, it was Proposed and Seconded to amend the policy in line with officer recommendation.

The Principal Licensing Officer also advised Members that further items in the Best Practice Guidance would need to be looked at in the future, including disability awareness training, driver proficiency, vehicle condition check and the frequency of vehicle tests.

A discussion ensued with regards to first aid kits and carbon emissions reduction. The Principal Licensing Officer advised Members that the Climate Team had written to all taxi proprietors with regards to reducing their carbon emission footprint.

Following which, it was

RESOLVED

- That the updated Department for Transport (DfT) Best Practice Guidance be noted.
- That the Council's current hackney carriage and private hire vehicle licensing policy in line with the recommendations set out in **Appendix B** of the Report be amended.
- That officers be instructed to provide any further reports to the Committee where aspects of the guidance may necessitate a further review of local licensing practices.

N.B. Councillor George Horton left the Meeting at 14:39 and returned at 14:41.

53. EXCLUSION OF PUBLIC AND PRESS:

It was proposed and seconded that the public and press be excluded from the meeting.

RESOLVED

That under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items on the grounds that, if they were present, there could be disclosed exempt information as defined at paragraphs 1, 2 and 7 of Part 1 of the Schedule 12A of the Act (as Amended).

54. APPLICATION FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCES:

Adrian Twiddy, Principal Licensing Officer presented Members with an exempt report relating to an application for hackney carriage and private hire vehicle driver licences.

Following which, it was

RESOLVED

That the licence application be refused, as set out in the Exempt Minute.

55. APPLICATION FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCES:

Adrian Twiddy, Principal Licensing Officer presented Members with an exempt report relating to an application for hackney carriage and private hire vehicle driver licences.

Following which, it was

RESOLVED

That the licence application be granted, as set out in the Exempt Minute.

The Meeting closed at 3.48pm.

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Minutes of a Meeting of the General Licensing Committee held in the Hub, Mareham Road, Horncastle LN9 6PH on Wednesday, 22 May 2024 at the rising of the Annual General Council Meeting.

PRESENT

Councillor Edward Mossop (Chairman of the Council in the Chair)

ELECTED MEMBERS OF THE COMMITTEE PRESENT:

Councillors Richard Avison, Stephen Evans, Neil Jones, Carl Macey, Terry Taylor, Andrew Leonard, George Horton, Darren Hobson, David Hall and Sandra Campbell-Wardman

Apologies were received from Councillor Billy Brookes.

1. ELECTION OF CHAIRMAN:

It was proposed and seconded that Councillor Sandra Campbell-Wardman be elected Chairman.

Upon being put to the vote, it was

RESOLVED:

That Councillor Sandra Campbell-Wardman be elected Chairman of the General Licensing Committee for the Council year 2024/25.

2. ELECTION OF VICE-CHAIRMAN:

It was proposed and seconded that Councillor Neil Jones be elected Vice-Chairman.

Upon being put to the vote, it was

RESOLVED:

That Councillor Neil Jones be elected Vice-Chairman of the General Licensing Committee for the Council year 2024/25.

The Meeting closed at 8.55 pm.

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REPORT TO:	GENERAL LICENSING COMMITTEE
DATE:	03 JUNE 2024
SUBJECT:	EQUALITY ACT 2010 – HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER WHEELCHAIR EXEMPTION
PURPOSE:	The Committee is asked to consider an application submitted by a licensed driver under Section 166 of the Equality Act 2010 for an exemption from the duties to assist passengers in wheelchairs.
REPORT OF:	Group Manager Public Protection.
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer).
EXEMPT REPORT?	<p>No – However, Appendices A and B of this Report are exempt by virtue of Paragraphs 1 & 2 of Schedule 12A of the Local Government Act 1972 because they contain confidential and sensitive information relating to an individual.</p> <p>The Appendices to this Report contain information regarding an individual, which is of a confidential and sensitive nature. The information must be stored securely and not disclosed to any person outside the decision-making process. The Report must not be kept any longer than is necessary and copies must be confidentially and securely destroyed.</p>

SUMMARY

The Committee is asked to consider an application submitted by a licensed driver under Section 166 of the Equality Act 2010 for an exemption from the duties to assist passengers in wheelchairs.

The exemption application, together with other relevant information, is detailed at the **Confidential Appendices A and B** of this Report.

Section 166 of the 2010 Act allows the Council to exempt drivers from the duties to assist passengers in wheelchairs if the Authority is satisfied that it is appropriate to do so on medical grounds or because the driver's physical condition makes it unreasonably difficult for them to comply with the duties.

RECOMMENDATIONS

That the Committee consider the application submitted under Section 166 of the Equality Act 2010 for an exemption from the duties to assist passengers in wheelchairs. The options available to the Committee are:

1. To issue a temporary exemption (the expiry date to be determined by the Committee) or a lifetime exemption.
2. To refuse to issue an exemption.

REASONS FOR RECOMMENDATIONS

In order to comply with the legal requirements of the Equality Act 2010.

OTHER OPTIONS CONSIDERED

Not Applicable.

1. BACKGROUND

1.1. Section 165 of the Equality Act 2010 places the following duties on drivers of designated wheelchair accessible hackney carriage (taxi) and private hire vehicles:

- To carry the passenger while in the wheelchair;
- Not to make any additional charge for doing so;
- If the passenger chooses to sit in a passenger seat, to carry their wheelchair;
- To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
- To give the passenger such mobility assistance as is reasonably required.

1.2. A licensed driver who fails to comply with the wheelchair assistance provisions of the Act (unless he/she holds a relevant exemption certificate) is guilty of an offence and may receive a fine if convicted.

1.3. Under the terms of Section 166 of the 2010 Act the Council may provide an exemption to these wheelchair duties, to drivers who have genuine medical conditions which are aggravated by assisting people in wheelchairs.

1.4. The Council is responsible for issuing exemption certificates and needs to be satisfied that it is appropriate to do so on medical grounds.

1.5. On 11 September 2017 the Committee approved the adoption of a wheelchair exemptions policy. The policy, and further information regarding the hackney carriage and private hire provisions of the Equality Act, can be found on the Council's website at:

The policy authorises Licensing Officers, under delegated powers, to issue temporary exemptions for a maximum period of three months. Any application, for a period longer than three months, will need to be considered by the Committee.

2. REPORT

- 2.1. An existing licensed driver has indicated to the Licensing Team that they wish, under Section 166 of the Equality Act 2010, to apply for an exemption from the duties to assist passengers in wheelchairs.
- 2.2. The exemption application, and other relevant information, is detailed at the **Confidential Appendices A and B** of this Report. The Appendices are confidential because they refer to a person's medical condition and history. The **Confidential Appendix A** includes Officer comments relating to this specific case.
- 2.3. The Council's policy indicates that applicants for an exemption will normally be expected to attend the licensing hearing and respond to any relevant questions from Committee Members.
- 2.4. This Authority has stated that it will seek to promote the following objectives when undertaking the hackney carriage and private hire vehicle licensing function:
 - the protection of the public;
 - the establishment of professional and respected hackney carriage and private hire trades;
 - access to an efficient and effective public transport service;
 - the protection of the environment;
 - improved disability access and awareness.
- 2.5. Under the Equality Act 2010 the Council can consider two types of wheelchair exemption – a temporary exemption or a lifetime exemption. This Authority's licensing policy indicates that lifetime exemptions will only be granted in exceptional circumstances.
- 2.6. In exempting drivers from the duties to assist passengers in wheelchairs the Council needs to be satisfied that it is appropriate to do so on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with their duties.
- 2.7. To apply for a Medical Exemption Certificate, this Authority's policy indicates that a driver must obtain information from their Doctor detailing exactly what duties cannot be undertaken and why. The process undertaken by applicants is that they complete an application form (available from the Council's Licensing Team) and their Medical Practitioner completes a separate part of the same form which outlines the medical condition. The cost of the certification from the Doctor must be borne by the applicant.

2.8. The options available to the Committee are:

- Issue a temporary exemption certificate (the expiry date to be determined by the Committee).
- Issue a lifetime exemption certificate.
- Refuse to issue an exemption certificate.

3. CONCLUSION

3.1. The Council has a legal duty under the Equality Act 2010 to consider an exemption application from a hackney carriage and private hire driver in relation to the wheelchair duties placed on such a driver.

3.2. The Council must only provide an exemption to the wheelchair duties, to those drivers who have a genuine and proven medical condition(s) which is aggravated by assisting people in wheelchairs or it is impossible for the driver to undertake the duties.

EXPECTED BENEFITS TO THE PARTNERSHIP

Not Applicable.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

None.

CORPORATE PRIORITIES

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the District's residents, visitors and business community.

STAFFING

None.

WORKFORCE CAPACITY IMPLICATIONS

None.

CONSTITUTIONAL AND LEGAL IMPLICATIONS

The 2010 Act makes it possible for drivers to appeal against a decision by the Licensing Authority not to grant a medical exemption; the appeal will go to the Magistrates' Court.

DATA PROTECTION

The Appendices to this Report contain information regarding an individual, which is of a confidential and sensitive nature.

FINANCIAL

As with all licence decisions it is possible that if a Licensing Authority decision is appealed to the Courts and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

This exemption application is being processed as part of the normal duties carried out by the Licensing Team with no additional costs to the Authority involved.

RISK MANAGEMENT

There is a theoretical risk of civil action against the Council if it is found not to have exercised due diligence in licensing matters.

STAKEHOLDER / CONSULTATION / TIMESCALES

None.

REPUTATION

Having a robust licensing scheme protects public safety and commands the confidence of the public.

CONTRACTS

Not Applicable.

CRIME AND DISORDER

None.

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

Equality Implications: The Council's wheelchair exemption procedures do not have the potential to cause negative impact or discriminate against different groups in the community based on age, disability, gender, race/ethnicity, religion or religious belief (faith), or sexual orientation.

Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e., is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

The applicant for an exemption is entitled to a fair hearing.

The human rights of the wider community are also engaged.

Safeguarding: Not Applicable.

HEALTH AND WELL BEING

Not Applicable.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not Applicable.

ACRONYMS

None.

APPENDICES

Appendices are listed below and attached to the back of the report:

CONFIDENTIAL APPENDIX A	Relevant information relating to the application for an exemption from the duties to assist passengers in wheelchairs.
CONFIDENTIAL APPENDIX B	Letter from the Applicant's Medical Practitioner

BACKGROUND PAPERS

None.

CHRONOLOGICAL HISTORY OF THIS REPORT

A Report on this item was adjourned to a later date by the General Licensing Committee on 11 March 2024.

REPORT APPROVAL

Report author:	Adrian Twiddy (Principal Licensing Officer) Tel. No. 01507 601111 Email: adrian.twiddy@e-lindsey.gov.uk
Signed off by:	Donna Hall (Group Manager Public Protection) Tel. No. 01775 761161 Email: donna.hall@sholland.gov.uk

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By virtue of paragraph(s) 1, 2, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

Agenda Item 6

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By virtue of paragraph(s) 1, 2, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

Agenda Item 6

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APPENDIX B**Relevant Extracts from the Council's Current Relevance of Convictions & Cautions Guidelines****1. Introduction**

1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council (the Licensing Authority) when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire vehicle driver's licence. The policy also relates to applicants for a private hire vehicle operator licence and holders of a current private hire vehicle operator licence.

1.2 In drafting and adopting these guidelines the Licensing Authority took into consideration the Statutory Taxi & Private Hire Vehicle Standards issued by the Department of Transport in July 2020.

1.3 The purpose of setting guidelines and standards is to protect children and vulnerable adults, and by extension the wider public, when using hackney carriages and private hire vehicles.

1.4 The overriding aim of the Licensing Authority is to protect the safety of the public. The Licensing Authority is concerned to ensure:

- That a person is a fit and proper person
- That the person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children, young persons and vulnerable adults

1.5 This policy provides guidance to any person with an interest in hackney carriage and private hire licensing. In particular, but not exclusively:

- Applicants for drivers and operator licences
- Existing licensed drivers and operators whose licences are being reviewed
- Licensing Officers
- Members of the Council's Licensing Committee
- Magistrates hearing appeals against Local Authority decisions

1.6 The Licensing Authority has a duty to ensure that any person to whom it grants a hackney carriage or private hire vehicle driver's licence is a 'fit and proper' person to be a licence holder. Where appropriate and when considering whether an applicant or licensee is fit and proper may decide to pose itself 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?

1.7 If, on the balance of probabilities, the answer to the above question is 'No', the individual will not be granted or hold a licence.

1.8 Licensing Authorities have to make difficult decisions but the safeguarding of the public is paramount. All decisions on the suitability of a licence applicant or licence holder will be made on the balance of probability. This means that an applicant or licence holder will not be 'given the benefit of doubt'. If the Licensing Authority is only "50/50" as to whether the applicant or licence holder is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a

criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

1.9 In considering an individual's criminal record, this Authority will consider each case on its merits, but it will take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime.

1.10 Where Licensing Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision whether or not to grant a licence. Should there be any doubt, in the Officer's opinion, as to whether the applicant is a 'fit and proper' person, then the application will not be granted under delegated powers. Such applications will be referred to the Council's Licensing Committee (consisting of Councillors) for determination. Whilst Officers and the Licensing Committee will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the Committee or Officer may depart from the guidelines, as long as the reasons for doing so are recorded in the decision.

2. General Policy

2.1 There may be occasions where it is appropriate to depart from the guidelines, for example, where the offence is a one-off occasion or there are mitigating circumstances. However, the overriding consideration should always be the protection of the public.

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

2.3 A series of offences over a period of time is more likely to give cause for concern than an isolated, minor conviction. A serious view will be taken when an applicant shows a pattern of offending and unfitness.

2.4 Where an applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction (*see Nottingham City Council v. Mohammed Farooq (1998)*) and, for instance, determine that the applicant should never have been convicted.

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6. Consideration of Disclosed Criminal History

6.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operators licence is a 'fit and proper' person to hold such a licence. The Authority must not grant a licence unless it is satisfied that the applicant is a fit and proper person to hold it.

6.2 All conviction(s), criminal findings of guilt (including fixed penalty ticket(s)), caution(s) and warning(s), whether for motoring or other offences and County Court Judgment(s)/Order(s) (*where the judgment or order relates to a debt or charge to another Hackney Carriage/Private Hire driver, owner or operator*) may potentially be taken into account when deciding to grant a licence or on a review after the issue of a licence. During the currency of a licence the licence holder should, immediately after being told that/she is being reported for an offence, being arrested, convicted or has admitted guilt (including fixed penalty notice(s)), caution(s) and/or warning(s), advise the Licensing Authority of this information in writing.

6.3 The Licensing Authority will consider:

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

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7. Offences Involving Violence.....

7.1 Licensed drivers have close regular contact with the public. A firm line will be taken with those who have convictions for offences involving violence.

7.2 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 10 years have elapsed since the completion of any sentence imposed.

7.3 Given the wide range of the offences that involve violence, consideration will be given to the nature and type of the conviction.

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7.7 A licence will not normally be granted where the applicant has a conviction for an offence below (or similar offence(s) which replace the below offences) or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

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

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

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11. Dishonesty

11.1 Licensed drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property, taking children to school and families on holiday, is indicative of the trust that people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by any lost property being kept by an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty.

11.2 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 years have elapsed since the completion of any sentence imposed.

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11.4 Offences involving dishonesty include:

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- and any similar offences

Or any similar offences (including attempting, conspiring to commit, aiding and abetting or procuring such offence) or any offences which replace the above

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

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15 Insurance Offences (With a Motor Vehicle)

15.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for at least 3 years; however, a strict warning should be given as to future behaviour.

15.2 A licence will not normally be granted if an applicant has more than one conviction for an insurance related offence.

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17. Other Traffic Offences

17.1 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence.

However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

17.2 Any motoring conviction while a licensed driver demonstrates that the licensee may 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.

17.3 **New Applicants** – Any conviction for other traffic offences, (e.g. obstruction, waiting in a restricted street, speeding, etc.) should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account. In certain instances, it may be appropriate to issue a licence together with a strong warning as to future driving requirements. If a history of multiple offences is disclosed, refusal of an application may result.

17.4 New applicants who have received 9 or more penalty points (in respect of minor traffic offences) on their driving licence during the 12 months prior to the date of application may be refused.

17.5 Applicants who have been disqualified from driving under the “totting-up” procedure will not normally be granted a licence unless they have held a licence for at least 2 years following the expiry of the period of disqualification and can show a significant improvement in a history of traffic offences received during that period.

26. Conclusion

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

26.2 While it is possible that an applicant may have a number of convictions that, individually, would not prevent him/her being licensed, the overall offending history will be considered when assessing an applicant’s suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion may be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public. This consideration is vital because taxi and private hire licence holders have unprecedented access to the public and are in a position to exercise control over an individual (including children and vulnerable adults).

26.3 A man or woman who has committed an offence and has to wait a period of time before being accepted as a hackney carriage or private hire vehicle driver (or operator) is more likely to value his/her licence and act accordingly.

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APPENDIX C**Extract from Sentencing Guidelines: Magistrates Court / Crown Court**

The Sentencing Council (SC) for England and Wales promotes consistency in sentencing while maintaining the independence of the judiciary. The Council produces guidelines on sentencing for the judiciary and aims to increase public understanding of sentencing. SC is an advisory non-departmental public body, sponsored by the Ministry of Justice.

Totting Up Disqualification

Incurring 12 or more penalty points means a minimum period of disqualification must be imposed - a totting up disqualification (Section 35 of the Road Traffic Offenders Act (RTOA) 1988 refers).

Points are not to be taken into account for offences committed more than three years before the commission of the current offence – Section 29 of the RTOA 1988.

The minimum period is:

- **six months** if no previous disqualification is to be taken into account.
- **one year** if one previous disqualification is to be taken into account.
- **two years** if more than one previous disqualification is to be taken into account.

A previous disqualification is to be taken into account if it is:

- not less than 56 days; and
- imposed within the three years immediately preceding the date on which the current offence (or most recent of the current offences) was committed.

The Court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification**

*(**discretionary period of disqualification – see paragraph later in this note)*

But the Court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory “totting” disqualification and, unless the Court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the Court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies.

In deciding whether there are grounds to reduce or avoid a totting up disqualification the Court must not take into account:

- (a) any circumstances that are alleged to make the offence (or any of the offences whose penalty points are to be taken into account) not serious,
- (b) hardship, other than exceptional hardship, or
- (c) any circumstances which, within the three years immediately preceding the conviction, have been taken into account to reduce or avoid a totting up disqualification.

Section 35(4) of the RTOA 1988

When considering whether there are grounds to reduce or avoid a totting up disqualification the Court should have regard to the following:

- It is for the offender to prove to the civil standard of proof that such grounds exist. Other than very exceptionally, this will require evidence from the offender, and where such evidence is given, it must be sworn.
- Where it is asserted that hardship would be caused, the Court must be satisfied that it is not merely inconvenience, or hardship, but exceptional hardship for which the Court must have evidence;
- Almost every disqualification entails hardship for the person disqualified and their immediate family. This is part of the deterrent objective of the provisions combined with the preventative effect of the order not to drive.
- If a motorist continues to offend after becoming aware of the risk to their licence of further penalty points, the Court can take this circumstance into account.
- Courts should be cautious before accepting assertions of exceptional hardship without evidence that alternatives (including alternative means of transport) for avoiding exceptional hardship are not viable;
- Loss of employment will be an inevitable consequence of a driving ban for many people. Evidence that loss of employment would follow from disqualification is not in itself sufficient to demonstrate exceptional hardship; whether or not it does will depend on the circumstances of the offender and the consequences of that loss of employment on the offender and/or others. Useful information can be found in the Equal Treatment Bench Book.

Where it finds that there are grounds for mitigating the 'normal consequences of the conviction', the Court may consider whether this can be achieved by ordering a period of disqualification which is shorter than the statutory minimum or by ordering that the offender should not be disqualified at all.

Where the Court does not find grounds for mitigating the normal consequences of the conviction then a period of disqualification of at least the statutory minimum must be imposed.

Consult your legal adviser for further guidance on minimum periods and applications for avoiding or reducing the minimum period.

****Discretionary Disqualification**

Whenever an offender is convicted of an endorsable offence or of taking a vehicle without consent, the Court has a discretionary power to disqualify instead of imposing penalty points. The individual offence guidelines indicate whether the offence is endorsable and the number or range of penalty points it carries.

The number of variable points or the period of disqualification should reflect the seriousness of the offence. Some of the individual offence guidelines include penalty points and/or periods of disqualification in the sentence starting points and ranges; however, the court is not precluded from sentencing outside the range where the facts justify it. Where a disqualification is for less than 56 days, there are some differences in effect compared with disqualification for a longer period; in particular, the licence will automatically come back into effect at the end of the disqualification period (instead of requiring application by the driver) and the disqualification is not taken into account for the purpose of increasing subsequent obligatory periods of disqualification (Road Traffic Offenders Act 1988, S.34(4), 35(2), 37(1A)).

In some cases in which the Court is considering discretionary disqualification, the offender may already have sufficient penalty points on their licence that they would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, unless the Court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification

period, the Court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies.

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