

# General Licensing Sub-Committee

## Agenda

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<b>Date:</b>	<b>Friday, 16th December, 2016</b>
<b>Time:</b>	<b>10.00 am</b>
<b>Venue:</b>	<b>Committee Suite 2/3 - Westfields, Middlewich Road, Sandbach, CW11 1HZ</b>

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The agenda is divided into two parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

It should be noted that Part 1 items of Cheshire East Council decision making and Overview and Scrutiny meetings are audio recorded and the recordings will be uploaded to the Council's website.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Appointment of Chairman**

To appoint a Chairman for the meeting.

2. **Apologies for Absence**

To receive any apologies for absence.

3. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

4. **Exclusion of the Public and Press**

To consider passing a resolution under Section 100(A)(4) of the Local Government Act 1972 to exclude the public and press from the meeting for the following item(s) of business on the grounds that they involve the likely disclosure of exempt information in accordance with paragraphs 1 and 2, pursuant to part 1 of Schedule 12 (A) of the Act.

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For requests for further information

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## **PART 2 - MATTERS TO BE CONSIDERED WITHOUT THE PRESS AND PUBLIC PRESENT**

### **5. 16-17/20 Consideration of Fitness to Hold a Joint Hackney Carriage/Private Hire Driver Licence (Pages 17 - 42)**

To consider whether the holder of a Joint Hackney Carriage/Private Hire Driver Licence remains 'a fit and proper person' to hold a licence and to determine the future of their Joint Hackney Carriage/Private Hire Driver Licence.

**CHESHIRE EAST COUNCIL**  
**LICENSING COMMITTEE PROCEDURE**  
**(‘General’ Licensing matters)**

- 1 Chairman will:
  - (a) call the matter forward and confirm whether there are any declarations of interest;
  - (b) request the parties to introduce themselves; and
  - (c) explain the procedure to be followed.
2. The Licensing Officer will present the report introducing the case.
3. The applicant and/or representative will be given the opportunity to speak in support of the application.
4. The Committee Members will then be given the opportunity to question the applicant on any matter which it is felt requires clarification or to ascertain the applicant’s suitability to hold the licence.
5. The applicant and/or representative will then be given the opportunity to add any further comments in support of the application.
6. The applicant and/or representative will then be asked to withdraw from the meeting whilst the committee considers its decision.
7. The applicant will finally be asked to re-join the meeting to be informed of the Committee’s decision.

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## **HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE CONDITIONS**

These conditions must be read in conjunction with all relevant provisions of

- Local Government (Miscellaneous Provisions) Act 1976
- Town Police Clauses Act 1847
- Transport Act 1980

***NB. Drivers of Hackney Carriages must also comply with the provision of any Bye Law in force in the area in which they operate.***

The terms 'Operator', 'Private Hire Vehicle', 'Hackney Carriage', 'Proprietor' and 'Taximeter' are defined as by the above legislation.

### **1) GENERAL**

- i. The driver shall within 7 days, notify the Council of any change of their name or home address
- ii. The driver must deposit their Private Hire/Hackney carriage driver's licence with the operator/proprietor of the vehicle at all times that they are employed/permitted to drive by the operator/proprietor

### **2) CONDUCT**

The driver shall at all time whilst the vehicle is available or being driven for hire:

- i. attend punctually at the time and place appointed for hire unless delayed or prevented by sufficient cause
- ii. behave in a civil and orderly manner
- iii. be clean and respectable in dress
- iv. take all reasonable steps to ensure the safety of passengers conveyed in or entering or alighting from the vehicle
- v. afford all reasonable assistance with the hirer's and other passengers' luggage
- vi. not eat or drink in the vehicle whilst it is let for hire unless with the express consent of the hirer and shall not at any time smoke in the vehicle
- vii. not to play any sound reproducing equipment within the vehicle other than for communicating with the operator/proprietor without the express consent of the hirer
- vii. not cause or permit any sound producing equipment so as to cause a nuisance or annoyance to any person in or outside of the vehicle

- viii. keep in a clean condition and not conceal or deface all or any part any internal or external vehicle identification or licence plates.

### 3) DRIVER'S IDENTIFICATION BADGE

- i. The driver shall, at all times when in or with the vehicle wear the driver's Identification badge supplied by the Council so as to be plainly visible at all times.

### 4) MEDICAL FITNESS

- i. The driver must produce a medical certificate in the form prescribed by the Council:-
- On first application
  - on *every other* renewal thereafter until the driver's 60<sup>th</sup> birthday
  - on *every* renewal after the driver's 60<sup>th</sup> birthday
  - at any time reasonably required by the Council
- ii. Whether a certificate has been produced or not applicants may be required to submit themselves for examination by a registered practitioner of the Council's choice as to their fitness to be a driver, the Council to bear the cost.
- iii. The driver is must cease driving vehicles for hire and contact the Council immediately if they know/become aware of any medical condition which may affect their ability to drive safely or the health and safety of themselves or their passengers

### 5) FARES / TAXIMETERS

- i. The driver shall not demand from any hirer any fare in excess of that previously agreed for that hiring between the hirer and the operator or if the vehicle is fitted with a taximeter the fare shown on that meter, whichever is the lesser amount
- ii. The driver shall not cause the fare recorded on the taximeter be concealed or cancelled until the hirer has had sufficient time and opportunity of examining it and has paid the fare
- iii. The driver shall, when requested, provide the hirer with a written receipt for the fare paid.
- iv The driver shall proceed to the destination by the shortest possible route unless:
- (a) he/she receives an express directions given by the hirer; or
  - (b) he/she receives express consent of the hirer to an alternative route.

### 6) PASSENGERS

- i. The driver shall not convey in the vehicle a greater number of passengers than prescribed on the Vehicle Licence and Licence Plate
- ii. The driver shall not, without the express consent of the hirer convey any person other than the hirer in the vehicle.

## 7) ANIMALS

The driver must **not carry any** animal in the vehicle, including his/her own or the operator's/proprietors animal **except that**

- The driver **may** at his/her discretion carry the animal of a fare paying passenger but the animal must be carried in the rear of the vehicle
- Assistance dogs **MUST** be carried unless the driver has applied for and been granted an exemption certificate.

## 8) WHEELCHAIR ACCESSIBLE VEHICLES

Drivers of wheelchair accessible vehicles must:

- i. Be fully conversant with the correct method of operation of all ramps, lifts and wheelchair restraints fitted to the vehicle
- ii. Before the commencement of any journey ensure that all wheelchairs are firmly secured and that the brakes of the wheelchair have been applied

## 9) LOST PROPERTY

- i. The driver shall immediately after the termination of each hiring, or as soon as practicable thereafter, search the vehicle for any property that may have been left there
- ii. The driver must take any property left in the vehicle to a police station, wherever possible within twenty four hours and in any event no longer than within forty-eight hours, and obtain a receipt for the property
- iii. The driver shall notify the Council of the whereabouts of the property, and whenever possible of the details of the hirer, the journey and the date found

## 10) CRIMINAL CONVICTIONS

- i. The driver shall inform the Council in writing and within 7 days of any conviction, caution, warning or Fixed Penalty Notice imposed on them during the period of the licence.

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## **Guidelines Relating to the Relevance of Convictions**

### **Hackney Carriage and Private Hire Drivers**

The Licensing Authority must be satisfied that all those who are licensed to drive Hackney Carriage and Private Hire Vehicles are fit and proper persons. This Policy relates to the Council's assessment of the suitability of an applicant for licensing as a licensed Driver in terms of their Criminal and Driving records.

**By virtue of The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 a requirement is placed on all Licensed Hackney Carriage and Private Hire Vehicle Drivers, and applicants, to disclose ALL convictions including those 'spent'.**

### **GENERAL POLICY**

1. Each case will be decided on its own merit.
2. A person with a conviction or other sanctions need not be permanently barred from obtaining a licence, but should be expected to remain free from conviction (or other sanction) for 3 to 5 years, according to the circumstances, before an application is considered. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances.
3. Where offences have led to a term of imprisonment the necessary period free from conviction will commence from the date the applicant was released from detention. All other periods will run from the date of sentence or in the cases of disqualification from the date of restoration of any licence.
4. Where, in these guidelines, an 'application' or 'applicant' is mentioned, this also refers to an application upon revocation of a licence and the renewal of existing licences, new grants, and reviews of existing licences.
5. Any applicant with 6 or more valid penalty points on their driving licence shall expect their application to be heard by the Council's Appointed Licence Committee or Sub-committee thereof (the Committee). For this purpose valid penalty points will mean points that are not more than 4 years old. This will be the trigger for a

referral to the committee, but will not preclude all relevant information being disclosed.

6. As a general guide the following test will be also be used to determine whether an applicant is fit and proper:

‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’

7. Notwithstanding any guidance within this document, at all times the overriding consideration will be the protection of the public. On that basis any application may be referred to the Committee for determination.
8. Where in this document it states that a period of time must elapse before the consideration of an application, there is no expectation that a licence will be granted after that period of time has elapsed. The Committee will still need to be satisfied that taking all circumstances into consideration an applicant is a fit and proper person.
9. Case law indicates that the Committee should not review the criminal convictions of an applicant, a conviction is a conviction. There is also a clear distinction between the criminal and civil standards of proof. Decisions taken by the Licensing Authority are to be taken on a balance of probabilities.

The Licensing Authority expects all those who are licensed drivers to show a regard for the law and public safety. The following examples afford a general guide on the action to be taken where convictions are declared:

### **TRAFFIC OFFENCES**

Licensed drivers are responsible for the safety of members of the public who are travelling in their vehicles. Therefore the Licensing Authority needs to be satisfied that licensed drivers are capable of driving safely and understand the need to comply with traffic regulations.

#### **Minor Traffic Offences**

Convictions or endorsements for a minor traffic offence, such as obstruction, waiting in a restricted street, speeding, etc should not prevent a person from making an application.

Where an applicant has more than one current conviction for such an offence (i.e. 6 or more penalty points issued by the DVLA) the Licensing Authority will need to consider whether the applicant is fit and proper to hold a licence.

If an applicant has accrued sufficient penalty points to require a period of disqualification a period of 24 months free from further conviction or endorsement after the restoration of the driving licence must elapse before the consideration of an application.

If an applicant has been disqualified from driving during the first 2 years since passing their driving test, then a period of 3 years free from further conviction or endorsement after the restoration of the driving licence must elapse before the consideration of an application. A strict warning as to future conduct may be given.

### **Major Traffic Offences**

An isolated conviction or endorsement for reckless or dangerous driving or driving without due care and attention, failing to disclose the identity of a driver etc may merit a warning as to the future conduct expected of a licensed driver, suspension or revocation depending on the circumstances.

However, where an isolated offence resulted in discretionary or obligatory disqualification, 24 months free from further conviction or endorsement must elapse before the consideration of an application.

More than one conviction or endorsement for this type of offence within 2 years of the application should merit refusal and no further application will be considered until a period free from conviction of at least 3 years has elapsed.

### **Driving Without Insurance or Driving Whilst Disqualified**

Licensed drivers are responsible for the safety of members of the public who are travelling in their vehicles, a serious view will always be taken of a conviction or endorsement for driving without insurance or driving whilst disqualified.

It must be shown that 24 months have elapsed without further conviction or endorsement before an application is considered. This period of 24 months would run consecutively to any other periods applicable. If more than one conviction or endorsement of this type has been accrued within the last 2 years then a period of 3 years (plus any other periods applicable) must elapse before an application will be considered.

### **Drunkenness**

### **i) With a Motor Vehicle**

A serious view will always be taken of driving or being in charge of any vehicle whilst under the influence of alcohol or drugs or failing to provide a specimen for analysis. If an applicant has been disqualified, a period of 24 months free of further conviction after restoration of the licence must pass before an application will be considered.

### **ii) Not in a Motor Vehicle**

An isolated conviction for a drink related offence should not debar an applicant from obtaining a licence. However, more than one conviction for such offences will raise serious doubts as to the applicant's fitness to hold a licence.

### **Penalty Points on a Driver's DVLA Licence**

Where an applicant or driver habitually commits motoring offences this clearly demonstrates a disregard for the safety of the public and the law. In such cases the Licensing Authority will consider this applicant as high risk and this may result in the refusal to grant an application or, in respect of current drivers, the suspension or revocation of a licence.

### **NON-DRIVING OFFENCES**

#### **Drugs**

An applicant with a conviction for a drug related offence will be required to show a period of at least 3 years free of conviction before an application is considered, or 5 years after detoxification treatment if the applicant was an addict.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail, where a custodial sentence has been imposed, is less than 5 years before the date of the application.

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail, where a custodial sentence has been imposed, is less than 10 years before the date of the application.

#### **Indecency Offences**

Applicants with conviction for indecent exposure, indecent assault, importuning, or of any offence of a sexual nature will be refused a licence until a period of 10 years free from conviction has elapsed. If the applicant was required to register on the National Sex Offenders

Register as a result of an offence, then no application will be considered whilst the applicant remains on the Register. In general 5 years would need to have elapsed since an applicant was removed from the Register before an application will be considered.

An applicant with more than one conviction of this type of offence will normally be refused. If a conviction of this type arose as a result of the person acting as a licensed driver then no application will be considered for at least 20 years after the conviction or the conclusion of the sentence imposed.

When considering applications, the Licensing Authority may take into account any information regarding an applicant's sexual behaviour or activity. This includes information that did not amount to a criminal offence where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

### **Violence**

A firm line will be taken with applicants with a conviction for grievous bodily harm, wounding, assault, public order or any other type of offence of a violent or aggressive nature. An applicant must be free of further convictions for at least 3 years before an application will be considered. In all cases, if a licence is granted, a strict warning will be given as to the standards expected of licensed drivers. Applicants with a history of committing offences of a violent or aggressive nature will normally be refused. Where an offence involves the loss of life, a licence will normally be refused.

### **Dishonesty**

A Licensed Driver is expected to be honest and trustworthy and is responsible for the security of the public. A serious view will be taken of any conviction involving dishonesty. In general a period of 5 years free of further conviction will be required before an application is considered. Applicants with a history of committing offences of dishonesty will normally be refused. (Offences of dishonesty would include offences against Section 111A and 112 of the Social Security Administration Act 1992).

### **Offences under the Town and Police Clauses Acts, Local Government (Miscellaneous Provisions) Act 1976 and any Local By-Laws and Conditions**

The main purpose of the Licensing regime is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the above, particularly offences of illegally plying for hire, when deciding if a person is a fit and proper person to hold a licence. If an applicant has more than one of this type of conviction, in

the 2 years preceding the date of the application, the application will likely be refused.

### **Refusal to carry an assistance dog**

The Licensing Authority is keenly aware of the duties placed on the licensed trade by the Equality Act 2010. Any driver found to be refusing to carry assistance dogs without the correct exemption certificate may be committing an offence which may be dealt with by way of prosecution. The matter would also be referred to the Licensing Committee for it to determine whether or not the driver is a fit and proper person.

### **Proven Complaints of rude or aggressive Behaviour**

In less serious cases a written warning of future conduct may be given. However, if the nature or level of aggression leads the Licensing Authority to be concerned about public safety, this may result in the refusal to renew, suspension, or revocation of a licence.

In all other cases where an alleged offence has been committed and not listed within this Policy, the Licensing Authority will deal with each case on its own merit.

### **Smoking in Vehicle**

Where an applicant is convicted or received a fixed penalty for smoking in a vehicle or permits smoking in a vehicle a serious view will be taken as this demonstrates a clear disregard for the law and public safety.

### **Formal/Simple and Police Cautions**

For the purposes of these guidelines, the Council will treat all Cautions as though they were a conviction before the Court. All Cautions must be declared on the application.

### **Other Sanctions**

Where a Binding over Order, Anti-Social Behaviour Order, Banning Order or Restraining Order etc has been imposed by a court, applications will not be considered whilst that order is current. A period of 12 months free of further sanction must have elapsed, after expiry of the order, before an application is considered. In general, the overriding consideration should be the protection of the public.

The Licensing Authority views fixed penalties and administrative penalties as a clear indication that the applicant has committed an offence. The body issuing the sanction has to be satisfied that there is sufficient evidence that an offence has been committed before they can issue such a sanction.

Similarly, case law has confirmed that the Licensing Authority can take into consideration information concerning offences where the prosecuting agency chose not to pursue the matter or the case was discharged. The Licensing Authority is keenly aware that the standard of proof applicable in criminal and civil proceedings is different.

### **Warnings**

The Licensing Authority will issue warnings as are appropriate to the circumstances. Minor or first time transgressions are likely to attract a written warning and/or suspension, repeated or more serious conduct may lead to suspension or revocation of any licence. The Licensing Authority will only expect to issue one warning. Further transgressions, that may normally warrant a warning, may be dealt with by way of prosecution, suspension, or revocation depending on the circumstances.

### **Serious Offences**

If an offence or conviction is deemed to be 'serious' and if granting a licence would be of detriment to the protection of the public, the Council will be minded not to grant a licence, subject to each application being considered on its own merits.

### **Foreign Offences**

Offences from any jurisdiction outside the United Kingdom of Great Britain and Northern Ireland must be declared in full. For applicants not of British Nationality a Certificate of Good Conduct/Behaviour must be provided from their Country of Origin. For applicants who have not lived in the UK for any part of the previous 5 years, a Certificate of Good Behaviour must be provided from all countries in which they have lived.

The Licensing Authority will deal with foreign offences in a similar way to comparable offences under UK law.

### **Decriminalised Offences**

If an applicant has been convicted of an offence which has since been decriminalised, the offence should still be declared. Consideration will be given to the circumstances including the length of time since decriminalisation and the nature of the offence. However, the Licensing Authority will also be mindful of the fact that an offence was committed and the applicant chose to contravene a law that was extant at the time the offence was committed.

### **Failure to report/declare a conviction**

The failure to report/declare a conviction or other sanction will normally be dealt with by the issuing of a written warning in addition to any further actions that may be warranted by the nature of the offence. Subsequent offences may be dealt with by way of suspension or revocation. However, if it is considered that there was a premeditated intent to deceive, the Licensing Authority will have to determine whether or not the applicant is a fit and proper person.

### **Knowingly or recklessly making a false statement or omitting any material**

The Licensing Authority considers this to be a serious offence as it is dishonest. The Licensing Authority will consider prosecuting any applicant who makes a false statement or omits any material requested on an application form or at a committee meeting.



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