



## **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

### **CABINET**

**24<sup>TH</sup> SEPTEMBER 2019**

#### **NEW POLICY GUIDANCE ON RELEVANCE OF CONVICTIONS IN DETERMINING THE SUITABILITY OF APPLICANTS AND LICENSEES IN THE HACKNEY AND PRIVATE HIRE TRADES**

#### **REPORT OF THE DIRECTOR OF PUBLIC HEALTH, PROTECTION AND COMMUNITY SERVICES IN DISCUSSION WITH THE RELEVANT PORTFOLIO HOLDER, CLLR LEWIS**

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#### **1. PURPOSE OF THE REPORT**

- 1.1 The purpose of the report is to seek approval of the implementation of the new policy of guidance on relevance of convictions for the determination and suitability of applicants and licence holders in the Hackney Carriage and Private Hire trade.

#### **2. RECOMMENDATIONS**

It is recommended that the Cabinet:-

- 2.1 Approve the new policy of guidance on relevance of convictions for the determination and suitability of applicants and licence holders in the Hackney Carriage and Private Hire trade, further to the recommendation made by the Licensing Committee held on the 29<sup>th</sup> July 2019. (Appendix 1).
- 2.2 Approve the implementation of the new policy of guidance with effect for all new applications received and existing licences in place on and after 1<sup>st</sup> November 2019.

#### **3 REASONS FOR RECOMMENDATIONS**

- 3.1 The Institute of Licensing (IOL) has published Guidance (April 2018) in response to concerns about the disparity in the criteria used by local authorities across the country to determine the suitability of applicants for hackney carriage and private hire licences. The IOL believes that widespread adoption of this Guidance would effectively

achieve a level of consistency when considering such applications. The Guidance has been produced in partnership with and endorsed by the LGA (and on behalf of the WLGA).

- 3.2 RCT Licensing Authority is a member of the 'All Wales Expert Licensing Panel', who have recommended adoption of the policy by all Wales local authorities.

#### **4. BACKGROUND**

- 4.1 RCTCBC already has a comprehensive Policy of Guidance covering the fitness of applicants and current licence holders (*Hackney Carriage (Taxi) & Private Hire Vehicle (PHV) Licensing Policy of Guidance on Relevance of Convictions*). It is therefore proposed that, where the IOL Guidance suggests a higher standard than the current guidance, the Council will adopt those higher standards. This will ensure that the Authority maintains its current standards whilst adopting the higher threshold changes suggested by the IOL.

- 4.2 This proposed change would not affect the current pre-requirement regarding the need for applicants to undergo the following checks and assessments:

- Enhanced Disclosure and Barring Service (criminal record) Check;
- Medical Standards of Fitness to Drive;
- Local Knowledge Test & Numeracy Assessment;
- BTEC Level 2 for Professional Taxi and Private Hire Drivers

- 4.3 The main changes to the proposed new Policy Guidance relate to:-

- a. Adherence to the IOL published guidance (April 2018) on 'determining the suitability of applicants and licensees in the hackney and private hire trades'.
- b. The removal of specific offences, to include a more generic approach to offence types as advocated by the IOL guidance.
- c. More robust & stringent relevant time periods for consideration following conviction.
- d. The 'bright line' approach in which the licensing authority state 'must' or 'never', though reminding that this is only a policy and not a statutory decision, and can therefore be departed from.
- e. Inclusion of the National Refusal and Revocation Register (NR3), the adoption of which has been advocated by the 'All Wales Licensing Expert Panel', as well as the IOL.

## **5 EQUALITY AND DIVERSITY IMPLICATIONS**

- 5.1 An Equality Impact Assessment (EqIA) screening form has been prepared for the purpose of this report. It has been found that a full EqIA is not required. The report does not impact on any one group more than others, except for in a positive nature towards the safeguarding of members of the travelling public.

## **6. CONSULTATION**

- 6.1 The IOL Guidance was prepared following widespread national consultation with trade organisations and local government representatives. It was published in consultation with the endorsement of the Local Government Association, Lawyers in Local Government, and the National Association of Licensing and Enforcement Officers.
- 6.2 The views of the Licensing Committee were sought on the 29<sup>th</sup> July 2019 and the Committee recommended the adoption of the new Policy of Guidance to Cabinet for approval. The Committee was satisfied that the new Guidance would enhance the current policy in place within RCT and improve protection for the travelling public. During the Committee, Members discussed the Scheme of Delegation that would underpin implementation of the Policy Guidance. It was agreed that the process for determining whether a licence should be revoked would be reviewed and strengthened to ensure the decision of the Chief Officer (in respect of matters set out in the current scheme of delegation) would now include appropriate consultation with the Chair or Vice Chair of Committee.

## **7. FINANCIAL IMPLICATION(S)**

- 7.1 There are no financial implications.

## **8. LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED**

- 8.1 Throughout this process the licensing authority has had due consideration of the Local Government (Miscellaneous Provisions) Act 1976, the Town Police clauses Act 1847, as well as the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002.

## **9. LINKS TO THE CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT.**

- 9.1 Due regard has been made to the five ways of working, as contained within the Wellbeing of Future Generations (Wales) Act 2015, when preparing, reviewing, consulting on and publishing this strategy. The authority has **collaborated** with other local authorities and partners when considering this policy for a consistent approach

nationally and locally. The Institute of Licensing (IoL) development of the guidance has **involved** in depth consultation with the trade and stakeholders to inform the policy content. The overriding aim of any licensing authority when carrying out its functions within the taxi trade must be the protection of the public and others who use the facilities and the **prevention** of harm.

## **10. CONCLUSION**

- 10.1 Adoption of the new Policy of Guidance on the relevance of convictions in determination and suitability of applicants for licences in the hackney carriage and private hire vehicle trade will enhance the safeguarding of the travelling public in RCT. Licensing Committee has endorsed the new Policy and if approved would take effect from the 1<sup>st</sup> November 2019 following prior notification to the licenced trade in RCT.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

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**Background Papers**

Licensing Committee - 29<sup>th</sup> July 2019

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## **Hackney Carriage (Taxi) & Private Hire Vehicle (PHV) Licensing**

### **Policy of Guidance on Relevance of Convictions**

#### **1. Introduction**

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by Rhondda Cynon Taf Council when determining whether or not an applicant or an existing licence holder is a **'fit and proper person'** to hold a hackney carriage and/or private hire driver or operator licence.
- 1.2 The term 'fit and proper person', within this policy will also reflect the term 'safe and suitable', as described within the guidance issued by the Institute of Licensing (IOL).
- 1.3 This policy is based on the IOL Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades, issued April 2018.
- 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 the licence holder is a fit and proper person
  - That the licence does not pose a threat to the public
  - That the public are safeguarded from dishonest persons
  - The safeguarding of children and young persons.
- 1.5 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
    - Applicants for drivers' licences
    - Existing licensed drivers whose licences are being reviewed
    - Licensing officers
    - Members of the licensing committee/panel (or other relevant decision making body)
    - Magistrates hearing appeals against the local authority decision.
  - 1.6 Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Licensing Committee. Whilst Officers and the 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/Officer may depart from the guidelines.**
- #### **2. General Policy**
- 2.1 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence, and that is a test to be applied

after any applicant has gained any reasonably required qualifications. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.

- 2.3 The standards of 'fit and proper' within this policy are not set as a base minimum. The public of Rhondda Cynon Taf deserve the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.
- 2.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 2.5 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.
- 2.6 There is currently no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision so it is a matter for RCT Licensing Authority to decide.
- 2.7 This document is intended to provide guidance on how we will determine suitability, taking into account the character of the applicant or licensee. In particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 2.8 Within this policy, RCT licensing authority will take a 'bright line approach' and say "never", but it remains a policy, and as such does not amount to any fetter on the discretion of the authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*<sup>2</sup>.
- 2.9 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.10 The otherwise good character and driving record of the subject of the decision will not be considered as exceptional circumstances.
- 2.11 Simply remaining free from conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

- 2.12 Where an applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].

### **3. Guidance on Determination**

- 3.1 This Policy contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that one class of crime is more serious than another. In each case, appropriate weight should be given to the evidence provided.
- 3.2 A person with an isolated conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.
- 3.3 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their fitness and propriety. The licensing authority has powers to take action against the holder of all types of licence (driver, vehicle and operator) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application may lead to that licence being revoked.
- 3.4 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 3.5 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 3.6 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted and there will be a presumption that it will not be renewed.
- 3.7 Where an applicant/licensee is convicted of an offence which is not detailed in this policy the licensing authority will take that conviction into account and use this policy as an indication of the approach that should be taken.
- 3.8 This policy does not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by this policy the

authority will consider the matter from first principles and determine the fitness and propriety of the individual.

3.9 If an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:

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

3.10 The following criteria is to be followed by RCT Licencing Authority when considering 1) Drivers, 2) Private Hire Operators & 3) Vehicle Proprietors:-

#### **Drivers**

3.11 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

3.12 As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will be given as to whether they are a safe and suitable person.

3.13 In relation to single convictions, the following time periods should elapse after completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.

#### Crimes resulting in death

3.14 Where an applicant 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**.

#### Exploitation

3.15 Where an applicant 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 exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

#### Offences involving violence

- 3.16 Where an applicant has a conviction for an offence of violence, 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.

#### Possession of a weapon

- 3.17 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 7 years** have elapsed since the completion of any sentence imposed.

#### Sex and indecency offences

- 3.18 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.**
- 3.19 In addition to the above, the licensing authority **will not grant a licence** to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

#### Dishonesty

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

#### Drugs

- 3.21 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 10 years** have elapsed since the completion of any sentence imposed.
- 3.22 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 5 years** have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

#### Discrimination

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

### Motoring convictions

- 3.24 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying 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 or may not result in action against an existing 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.
- 3.25 Where an applicant has been involved in driving offences that involved the loss of life, they **will not be licensed**.
- 3.26 No driver will be allowed to hold a taxi drivers licence if they have 12 or more current points on their DVLA licence.
- 3.27 In cases where the courts have imposed a disqualification in respect of a DVLA drivers licence an application for a drivers licence will not be granted until **at least 7 years** have elapsed following the reinstatement of that licence. Where a person has had more than one period of disqualification then the application will be refused.

### Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving

- 3.28 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 7 years** have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 3.29 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 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

### Other motoring offences

- 3.30 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, 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 5 years** have elapsed since the completion of any sentence imposed or the date on which the number of points on the DVLA licence dropped below 7.
- 3.31 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 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 7 years** have elapsed since the completion of any sentence imposed.

#### Hackney carriage and private hire offences

- 3.32 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 7 years** have elapsed since the completion of any sentence imposed.

#### Vehicle use offences

- 3.33 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until **at least 7 years** have elapsed since the completion of any sentence imposed.

#### **Private Hire Operators**

- 3.34 A private hire operator (“an operator”) does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or other unacceptable purposes.
- 3.35 As stated above, where an applicant has more than one conviction, serious consideration will be given as to whether they are a safe and suitable person.
- 3.36 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be affected by means of the individual staff member being required by the operator to obtain a basic DBS certificate and to make a statutory declaration. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority’s overall criteria, that will lead to the operator’s licence being revoked.
- 3.37 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, which are outlined above.

#### **Vehicle proprietors**

- 3.38 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.

Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.

Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.

- 3.39 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.

#### **Existing Licence holders**

- 3.40 As public trust and confidence in the overall safety and integrity of the system of taxi licensing is vital, where a licence holder has received a conviction for any category of offences detailed above, their licence(s) **will be revoked**.

#### **4. Powers**

- 4.1 Section 61 and Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 4.2 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an application or the holder of a private hire vehicle or hackney carriage driver's licence, whether spend or not. Therefore the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

#### **5. Overseas residents**

- 5.1 If a private hire operator applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal records check of the appropriate level, or a Certificate of Good Conduct from the country/countries covering the period.

#### **6. Non-conviction information**

- 6.1 If additional information is forthcoming regarding an applicant's antecedent history that brings into question their suitability as a fit and proper person to hold the licence applied for, or the applicant has, on more than one occasion, been arrested or charged but not convicted, for an offence which suggests they could be a danger to the public, consideration should be given to refusing the application.

6.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

## **7. Outstanding charges or summonses**

7.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed but the application will need to be reviewed at the conclusion of proceedings. Where information is received through the Notifiable Occupations Scheme on existing licence holders, consideration will be made at Committee.

7.2 The licencing authority need not wait for the outcome of any outstanding charge or summons to take action on a licence or application where it is in the interests of public safety to consider the information immediately.

7.3 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which the notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

## **8. Cautions**

8.1 Admission of guilt is required before a caution can be issued. Every case will be considered on its own merits including the details and nature of the offence.

## **9. Appeals**

9.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied that he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government (Miscellaneous Provisions) Act 1976, S 77 (1)].

## **10. Revocations and Refusals Register**

10.1 The licensing authority has access to a national database that includes details of individuals who have either been refused a licence or had their licence revoked. The local authority will check all applicants for a driver / operator licence against the database. If the applicant is included on the database the licensing authority will make contact with the relevant local authority who made the decision to refuse or revoke in order to obtain relevant information. This information will be included when determining whether to grant a licence within RCT. Should information become known of a current licenced driver being refused or revoked elsewhere, then the same procedures apply.