

**BRIDGEND COUNTY BOROUGH COUNCIL**

**LICENSING COMMITTEE**

**16 SEPTEMBER 2008**

**REPORT OF THE ASSISTANT CHIEF EXECUTIVE – LEGAL AND  
REGULATORY SERVICES**

**HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS  
PROPOSED STATEMENT OF POLICY REGARDING THE LICENSING OF  
EX-OFFENDERS**

**1 Purpose of Report**

- 1.1 To provide guidance on the criteria to be taken into account by 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 / private hire driver's licence.

**2 Link to Corporate Priorities**

- 2.1 Taxi licensing is a regulatory function which supports a number of the Council's Corporate priority themes and Community Strategy.

**3. Background**

- 3.1 The Home Office and Department of Transport issued guidelines in 1992 relating to the relevance of convictions for use in determining applications for hackney carriage and private hire vehicle driver licences. In the past, regard has been given to the guidance contained within Circulars 13/92 and 2/92 respectively, but the Department for Transport (DfT) best practice guidelines recommend that local authorities adopt their own policy for the consideration of criminal records.

- 3.2 The DfT best practice states that *"In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they will doubtless take a particularly cautious view of any offences involving violence, and especially sexual attack. In order to achieve consistency, and thus avoid the risk of successful legal challenge, local authorities will doubtless want to have a clear policy for the consideration of criminal records, for example the number of years they will require to have elapsed since the commission of particular kinds of offences before they will grant a licence."*

- 3.3 The proposed policy is not intended to fetter the discretion of an individual sub-committee and the overriding policy must be that each case will be determined on its merits. A person with a current conviction

need not be permanently barred from obtaining a licence but should be expected to remain free of conviction or caution for a reasonable period, according to the circumstances before an application is entertained. In coming to a decision, the Committee should have regard to the nature of the offence, how long ago it was committed, the age of the person at the time, any pattern of offending, and any penalty imposed.

- 3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances, but the overriding consideration for each case should be the protection of the travelling public, particularly children and vulnerable persons. Members must give consideration as to whether public safety considerations outweigh the right of an individual to hold a licence to drive hackney carriage or private hire vehicles.
- 3.5 The Rehabilitation of Offenders Act 1974 applies to England, Scotland and Wales, and is aimed at aiding people who have been convicted of a criminal offence. The Act provides for a “rehabilitation period”, and the length of this period depends on the sentence given for the original offence. If a person does not re-offend during this period, the conviction becomes ‘spent’. However, the Rehabilitation of Offenders Act 1974 [Exceptions] Order 1975 (as amended) enables previous convictions to be admissible in proceedings relating to a taxi driver licence.
- 3.6 The procedure to be adopted when admitting spent convictions before a local authority or justices considering the grant of a licence to drive a hackney carriage was considered in *Adamson v Waveney District Council* [1997] 2 All ER 898. Authorised Licensing Officers, in consultation with Legal Services will carry out a preliminary assessment of the Criminal Records Bureau Disclosure and if there are any concerns, an application will be made to the Licensing Sub-Committee to include only the relevant spent convictions into the decision making process.
- 3.7 The Sub-Committee hearing will provide the applicant or his/her representative with an opportunity to make formal representations as to whether the spent convictions are relevant (because of the age, circumstances or lack of seriousness) prior to any disclosure of information to the Sub-Committee. When making an application for spent convictions to be considered, the Licensing Officer will identify the issue to which the spent convictions would relate if they were admitted and then will provide a general summary of the class age and seriousness of each of those offences in order to assist the Sub-Committee decide whether they are material convictions.
- 3.8 Members should note that the Sub-Committee may consider a spent conviction only if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction. The Sub-Committee must have regard to the interests of both the applicant and the public in whose interests

the exceptional power to have regard to spent convictions is being exercised.

- 3.9 When determining any application or case, an individual Sub-Committee is required to determine that an applicant is a fit and proper person to hold a licence and the prime consideration must be the safety of the travelling public including children and vulnerable persons. An individual Sub-Committee has a duty to ensure, so far as possible, that the travelling public can have confidence that drivers are fit and proper persons with good driving records, and will not take advantage of their employment to endanger their passengers.
- 3.10 The Council requires pre-licensing checks as to medical fitness and driving standards but the conviction record is a significant indication of whether a person is fit and proper to hold a licence.
- 3.11 The Council has adopted the Checking Criminal Records Policy which is applicable generally to both the employment and regulatory process. This requires an Enhanced Criminal Records Bureau Disclosure in the majority of cases. This policy is subject to a review to take account of the Safeguarding Vulnerable Groups Act 2006. This lays the foundations for a new Vetting and Barring Scheme which will be phased in during 2009. A further report will therefore be presented to Members on the implications of this legislation on the taxi driver vetting process.
- 3.12 Until such time as Council policy on Disclosures is reviewed, it is recommended that taxi drivers should be required to comply with the overarching Council policy on Checking Criminal Records and provide consent to a CRB Disclosure at Enhanced level.
- 3.13 Minute 25 of the Licensing Committee of 20 June 2003 also approved the recovery of the CRB Disclosure fee from applicants as part of the application fee.
- 3.14 As CRB Disclosures do not reveal all motoring convictions, it has been the practice of the authority to require sight of the Driver and Vehicle Licensing Agency (DVLA) driving licence for each application and subsequent renewal. If the applicant has been unable to produce a driving licence, then the Council has commissioned a licence check at the DVLA at the applicants' own expense. It is recommended that this is adopted as a formal policy.
- 4.0 The proposed policy guidelines are attached at Appendix A
- 5.0 Legal Implications

A Committee must be satisfied that an applicant for a taxi driver licence is a fit and proper person. Best Practice guidelines recommend that the Council publishes a policy setting out how it will assess the relevance of criminal convictions in the licensing process.

6.0 Financial Implications

6.1 There are no financial implications contained within this report.

7.0 **Recommendation**

Committee is recommended to approve:

7.1 The Statement of Policy regarding the relevance of convictions and licensing of ex-offenders at Appendix A of this report.

**P A Jolley**

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**Date: 10 September 2008**

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Background documents:

Licensing Committee 20June 2003

Bridgend County Borough Council Policy on Checking Criminal Records  
available at [www.bridgend.gov.uk](http://www.bridgend.gov.uk)

Home Office Circulars 2/92 and 13/92

Department for Transport: Taxi and Private Hire Vehicle Licensing: Best  
Practice Guidance at [www.dft.gov.uk](http://www.dft.gov.uk)

APPENDIX A  
BRIDGEND COUNTY BOROUGH COUNCIL

**STATEMENT OF POLICY REGARDING THE RELEVANCE OF  
CONVICTIONS AND LICENSING OF EX-OFFENDERS**

**1.0 General Policy**

- 1.1 Each case will be dealt with on its merits. The overriding consideration is the safety of the public which may, in some cases outweigh the right of the applicant to hold or continue to hold a licence.
- 1.2 A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction and/or caution for five years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances but the overriding consideration when granting a licence will be the protection of the public. In coming to a decision, the Sub-Committee will have regard to the nature of the offence, how long ago it was committed, the age of the person at the time, any pattern of offending, any penalty imposed and the provisions relating to the rehabilitation of offenders. A Sub-Committee may consider spent convictions which are relevant to the role of a taxi driver.
- 1.3 When assessing whether a person is a fit and proper person, the Sub-Committee will have regard to the following risk factors relating to the role of a taxi driver:
  - 1.3.1 The potential for unsupervised access and responsibility for the carriage of persons under the age of 18.
  - 1.3.2 The potential for unsupervised access and responsibility for the carriage of vulnerable persons and persons with disabilities.
  - 1.3.3 The unsupervised responsibility for the calculation of taxi fares, handling of customers' money and goods, including goods left in taxis following the end of a journey.
  - 1.3.4 A working environment that will include dealing with aggressive, abusive or violent customers.
- 1.4 The Licensing Committee will undertake its responsibilities in line with the Council's Equal Opportunities policy. Members and authorised officers will be suitably trained to identify and assess the relevance and circumstances of offences.
- 1.5 Until such time as Council policy on Disclosures is reviewed, taxi drivers will be required to comply with the overarching Council policy on

Checking Criminal Records and provide consent to a CRB Disclosure at Enhanced level.

- 1.6 Applicants for the renewal of a licence will be required to provide a copy of the Driver and Vehicle Licensing Agency (DVLA) driving licence. If an applicant is unable or unwilling to produce a driving licence, then the Council will commission a licence check at the DVLA at the applicants' own expense.
- 1.7 Failure to give consent for disclosures to be undertaken will normally merit the refusal of an application.
- 1.8 Each Sub-Committee hearing will provide the applicant or his/her representative with an opportunity to make formal representations as to whether spent convictions are relevant prior to any disclosure of information. Applicants will be advised in advance of the full details of the spent convictions which will form part of the application to the Sub-Committee but that the Sub-Committee will receive no details as part of their report.
- 1.9 Having heard the application, the Sub-Committee may decide that only some of the spent convictions should be received and will give the applicant an opportunity to address the Sub-Committee as to whether he or she feels that any spent convictions are either irrelevant or should not prejudice the application because of the age, circumstances or lack of seriousness of the convictions. The Sub-Committee will consider a spent conviction only if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.
- 1.10 This policy will also apply to disciplinary hearings for holders of operator and vehicle licences where applicable.

## **2.0 Categories of offence**

- 2.1 The information set out below is not exhaustive, or listed in any order of priority. It is intended as a guide to applicants on how the licensing authority may determine the relevance of a conviction, prior to reaching a conclusion about the application or case before them.
- 2.2 Where there is evidence causing significant doubt about the fitness of an applicant or licence holder, the licensing authority will adopt a precautionary approach and may refuse the application, or revoke the licence as the case may be.

## **2.3 Minor traffic offences**

Convictions for minor traffic offences such as obstruction, parking offences, or isolated speeding offences, should not prevent a person

from obtaining a licence except where a pattern of offences emerges could give rise to concerns for public safety.

## **2.4 Major traffic offences**

- 2.4.1 An isolated conviction, without disqualification, for major traffic offence within the five year's preceding an application will be given careful consideration before a licence is granted. Where the conviction is within one year prior to the date of the application, the application will normally merit refusal. More than one conviction for this type of offence within the last five years will normally merit the refusal of a licence.
- 2.4.2 Major traffic offences are defined as those which give rise to disqualification, relate to driving without due care and attention, dangerous driving, and using a vehicle uninsured against third party risks.
- 2.4.3 Isolated short period disqualifications e.g. 7 days, will not necessarily prevent an applicant from obtaining a licence.
- 2.4.4 In "totting up" cases where the court does not disqualify from driving the Sub-Committee is likely to consider that different criteria apply to a person who has responsibility for driving members of the public and this may result in the refusal of an application or revocation of an existing licence unless there are exceptional circumstances. Generally, an applicant should remain free from conviction for at least 12 months following the restoration of a DVLA licence.
- 2.4.5 Notwithstanding the above, convictions for causing death by dangerous driving or similar will normally merit the refusal of a licence.

## **2.5 Alcohol or drug related offences with motor vehicle**

An application involving an isolated occurrence will only be considered in exceptional circumstances following a period of at least five years from the restoration of the driving licence and subject to a satisfactory medical report relating to alcohol/drug use and or evidence of satisfactory treatment. A conviction for the possession with intent to supply drugs will normally merit the refusal of a licence.

## **2.6 Alcohol or drug related offences not in motor vehicle**

An isolated conviction or caution for drunkenness or possession of a drug will not necessarily debar an applicant from gaining a licence. More than one conviction or caution for this type of offence in the five years preceding an application will normally merit the refusal of a licence. A conviction for the possession with intent to supply drugs will normally merit refusal of a licence.

## **2.7 Indecency offences**

As taxi drivers are placed in a position of trust and may be responsible for the carrying of persons under the age of 18 and other vulnerable persons, a conviction for indecent assault, rape, gross indecency, indecent assault on a child under 16 years or other relevant sexual offence, is likely to merit the refusal or revocation of a licence.

## **2.8 Violence**

2.8.1 As hackney carriage and private hire vehicle drivers are in close contact with the public, persons under the age of 18 and other vulnerable persons, any conviction for murder, manslaughter, arson or grievous bodily harm with intent will normally merit refusal of an application.

2.8.2 Applicants will be expected to demonstrate a period of at least five to ten years free from conviction for all other offences relating to violence depending on the circumstances. This policy also applies to convictions relating to possession of firearms or offensive weapons.

2.8.3 The Sub-Committee considers all forms of violence, including domestic violence, physical and verbal abuse, harassment and racially aggravated offences as being relevant to the fitness of an applicant.

2.8.4 The Sub-Committee is unlikely to grant an application from a person convicted of an offence involving the use of violence or threatening behaviour towards a police officer or police community support officer or similar.

2.8.5 The Sub-Committee will normally revoke a private hire or hackney carriage driver's licence where the holder has been convicted of an offence involving obstruction to, or making a false statement to, or the use of violence or threatening behaviour towards, a police officer or an authorised officer of the Council carrying out his or her duty.

## **2.9 Dishonesty**

As hackney carriage and private hire vehicle drivers are expected to be persons of trust, any conviction for fraud or theft within the past five years will normally merit refusal of a licence. More than one conviction is likely to result in the refusal of a licence. The Sub-Committee considers all levels of theft, including fraud, benefit fraud, forgery, obtaining money or property by deception and other deception to be relevant to the role of a taxi driver.



### **3.0 Offences under the Town Police Clauses Act 1847 and Part II of the Local Government (Miscellaneous Provisions) Act 1976**

3.1 A serious view will be taken of convictions for offences under these Acts when deciding whether an applicant is to be considered a fit and proper person to hold a licence.

### **4.0 Definition**

For the purposes of this policy, formal cautions and fixed penalty notices will be given equal weight to convictions.

### **5.0 Renewal and disciplinary measures**

5.1 Any conviction coming to light following the grant of a licence will be considered on its merits having regard to public safety. Any conviction for indecency, grievous bodily harm, alcohol or drug related offences serious motoring offences, and any other relevant conviction, committed whilst acting as a taxi driver or involving a licensed taxi, is likely to merit the revocation or the refusal to renew a licence. All other matters will be dealt with on merit.

### **6.0 Statement of Decision**

6.1 Any decision to refuse, suspend, revoke or refuse to renew a licence will be accompanied by a statement of reasons for the decision.

### **7.0 Consideration of spent convictions**

7.1 The Council will adopt the following procedure for Licensing Sub-Committee meetings:

7.2 In making an application for spent convictions to be considered, the officer will identify the issue to which the spent convictions would relate if they were admitted and then will provide a general summary of the class, age and seriousness of each of those offences in order to assist the Sub-Committee to decide whether, once it has heard any representations from the applicant on the matter, it wishes to be informed of the details of the spent convictions, so that it may treat them as material convictions. Applicants will be advised in advance that this application is to be made;

7.3 Having heard the application, the Sub-Committee may decide that only some of the spent convictions should be received and will give the applicant an opportunity to address the Sub-Committee as to whether he or she feels that any spent convictions are either irrelevant or should not prejudice the application because of the age, circumstances or lack of seriousness of the convictions;

7.4 The Sub-Committee must then resolve whether or not to have regard to spent convictions having regard to the interests of both the applicant and

the public in whose interests the exceptional power to have regard to spent convictions is being exercised.

## **8.0 Discretionary disciplinary procedure**

8.1 Where the Sub-Committee determines that suspension or revocation of a licence is not appropriate, it will consider issuing written warnings as to future conduct. A written warning does not fetter the discretion of any subsequent sub-committee to take appropriate action in respect of a licence. A written warning will generally remain relevant for five years according to the circumstances.

8.2 Any substantiated complaint made by a member of the public, or any complaints made by Council enforcement officers, police officers or traffic/parking officers for any other reasonable cause may also be referred to a sub-committee for disciplinary action. A serious view will be taken of any substantiated complaint relating to abuse, violence or aggression towards any member of the public, authorised officer of the Council, police constable or traffic warden whilst in the course of their duty.

8.3 All applicants have the right to be represented at any stage of the application process and at any subsequent hearing of their application. The above policy does not prevent an applicant or licensee from submitting an appeal against the decision of the Sub-Committee to suspend or revoke or refuse a licence where there is legal provision to do so.

8.4 In exceptional circumstances, authorised officers will exercise the powers granted under the Road Safety Act 2006 to suspend a licence with immediate effect where there are serious concerns regarding public safety following an arrest. Where relevant, the case will be referred to a Licensing Sub-Committee for final determination following the conclusion of any legal proceedings.

## **9.0 Scheme of Delegation to Officers**

9.1 Having regard to the above policy, the following classes of application will normally be determined under the Scheme of Delegation to Officers:

9.2 Grant of Licence: Clear Criminal Records Bureau (CRB) Disclosure and no endorsements on DVLA driving licence;

9.3 Renewal of Licence: No further cautions, criminal or civil convictions, motoring offences or complaints since the last renewal with a maximum of three penalty points on DVLA driving licence since last renewal. Where an applicant has accrued three penalty points since the last renewal, cases will normally only be referred to a Licensing Sub-Committee where the applicant has not remained free of conviction for a period of five years.

9.4 All other cases will be assessed on their merits may be referred to a Licensing Sub-Committee for determination.