

BRIDGEND COUNTY BOROUGH COUNCIL

LICENSING COMMITTEE

13 AUGUST 2009

**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 review the policy document relating to consideration of taxi driver applications and the relevance of convictions.

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 On 16 September 2008, the Committee adopted policy guidelines in respect of the relevance of convictions for the purposes of granting and renewing applications for taxi driver licences and for dealing with disciplinary issues.

- 3.2 The policy states that in determining individual applications some discretion may be appropriate if an 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. The current policy makes provision for assessing the relevance of convictions for both the grant and renewal of licences to drive hackney carriage and private hire vehicles.

4.0 Current Situation/Proposal

- 4.1 Members are advised that, in drawing up the policy, regard was given to the rehabilitation periods specified in The Rehabilitation of Offenders Act 1974. The minimum period of rehabilitation for convictions which incur fines or any other conviction which does not involve an imprisonment or probation or community orders is five years. The policy therefore states

that for different types of conviction, a minimum period should elapse before an application is considered. Members have requested a review of the time periods for alcohol related motoring offences.

- 4.2 In the interests of consistency, the proposed revision will require an amendment to the general timescale that should elapse for all convictions and this is reflected in the proposal.
- 4.3 The policy proposals are not intended to fetter the discretion of an individual Sub-Committee and any consideration of an application should take into consideration the individual merits of the application as well as whether there are multiple convictions or repeat patterns of offending. The policy provides for departure from the policy and timescales if Members feel there are exceptional circumstances to do so.
- 4.4 The proposals give greater discretion to the Sub-Committee in respect of the following matters: alcohol related motoring convictions, and short period disqualifications. Some revisions are also proposed in other categories such as violence and dishonesty to differentiate between minor and serious offences.
- 4.5 In addition, the proposals include clarification of the powers under Section 52 of the Road Traffic Act 2006 to provide for immediate suspension following disclosure of information by the Chief Officer of Police which gives rise to serious public safety concerns.
- 4.6 The revised proposals at Appendix A also set out minor amendments, and clarifications for consideration. These include a request to formalise certain administrative procedures such as the production of documents within the policy document. The proposed changes are shown in italics.
- 4.7 In recognition of the specific role of taxi drivers the Rehabilitation of Offenders Act 1974 [Exceptions] Order 1975 (as amended) enables previous i.e. spent convictions to be admissible in proceedings relating to a taxi driver licence. The procedure relating to the consideration of spent convictions has been amended to allow for relevant spent convictions to be included in the decision making process and reports to the Sub-Committee without the need for prior consideration or assessment by the Sub-Committee.

5.0 **Effect upon Policy Framework & Procedure Rules**

None

6.0 **Legal Implications**

- 6.1 A Sub-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.

7.0 Financial Implications

7.1 There are no financial implications contained within this report.

8.0 Recommendation

8.1 Committee is recommended to consider the proposals for amending the policy document as set out in Appendix A to this report.

P A Jolley

Assistant Chief Executive Legal and Regulatory Services

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Contact Officer:

**Yvonne Witchell
Licensing and Registration Officer**

Telephone:

01656 643105

e-mail:

Yvonne.Witchell@bridgend.gov.uk

Postal address:

**Civic Offices, Angel Street,
Bridgend,
CF31 4WB**

Background documents:

Licensing Committee 20 June 2003 and 16 September 2008

Bridgend County Borough Council Policy on Checking Criminal Records available at 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

BRIDGEND COUNTY BOROUGH COUNCIL

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

1.0 General Policy

1.1 No Change

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 Existing policy

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.

1.2 ***Proposed Revision***

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 a reasonable period, 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 No Change

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 No Change

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.

No Change to paragraphs 1.5 to 1.10

- 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 Existing Policy

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.

1.8 Proposed Revision

Applicants will be advised in advance of the full details of the spent convictions which will form part of the report to a Licensing Sub-Committee.

1.9 Existing Policy

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.

1.9 Proposed Revision

The Sub-Committee 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 *Prior to including spent convictions within a report, the officer concerned will assess spent convictions according to the age relevance and seriousness of the offence.*

1.11 *The officer will consider firstly the interests of both the applicant and the public in whose interests the statutory power to have regard to spent convictions is being exercised.*

1.12 *The following factors will be assessed;*

- ***The relevance of the conviction to the role of a taxi driver***
- ***The age of the applicant at the time of the offence***
- ***Whether the conviction was dealt with by a juvenile court***

- ***The severity of the sentence imposed, with greater weight being given to custodial sentences***
- ***Repeat patterns of offending and relevance to unspent convictions***

1.13 *Particular weight will be given to dishonesty, indecency, violence and serious motoring offences*

1.14 *The officer concerned will seek legal advice before including spent convictions within a report.*

1.15 *Minor amendment*

This policy document will also apply (where appropriate) to disciplinary hearings for holders of operator and vehicle licences.

2.0 Categories of offence

2.1 Existing Policy

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.

2.1 *Proposed Revision*

2.1 *The following classes of conviction are deemed to be especially relevant to the role of a taxi driver, and each Licensing Sub-Committee may give greater weight to a conviction in this category. 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. Whilst specific timescales have been indicated each Sub-Committee has the discretion to depart from the timescales and deal with each case on its merits by having regard to exceptional or mitigating circumstances.*

2.2 No Change

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 Existing Policy

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 which could give rise to concerns for public safety.

2.3 Proposed Revision

Convictions or fixed penalty notices for minor traffic offences such as obstruction, parking offences, construction and use offences (including mobile telephone use) or isolated speeding offences, should not prevent a person from obtaining a licence except where a pattern of offences emerges which could give rise to concerns for public safety. When considering renewal applications, greater weight will be given to those offences committed whilst driving a taxi.

2.4 Existing Policy

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.

2.4 Proposed Revision

2.4.1 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 and greater weight will give given to offences in this category.

2.4.2 Disqualifications under the “totting up” procedure usually arise because of repeat speeding offences but could also include convictions for failing to hold insurance or other driving offences.

2.4.3 If sufficient penalty points have accrued within a three year period under the “totting up” system to result in disqualification for a period not exceeding twelve months, an application for the initial grant of a private hire or hackney carriage driver's licence would be unlikely to be considered within a term of twelve months following the end of a disqualification period. An applicant would therefore be expected to have been driving as an ordinary motorist for at least a period of twelve months following restoration of the driving licence but this timescale may be re-evaluated should the applicant have committed further offences since the restoration of licence (either criminal and/or motoring offences). Longer disqualifications will follow the same principle.

2.4.4 Repeat disqualifications in this category of offence would normally merit the refusal of a licence as would disqualifications exceeding five years in duration.

2.4.5 Isolated short period disqualifications e.g. between seven to fifty six days, will not necessarily prevent an applicant from obtaining a licence. However, in the case of an initial application for a licence involving a disqualification period at the high end of the above scale, an application is unlikely to be granted unless a period of at least six months has elapsed from the end of the disqualification period. Applications for renewal of a licence following this type of disqualification, will be dealt with on a case by case basis.

2.4.5 In “totting up” cases where the court does not disqualify a licensed driver 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 to grant, or renew a licence or decision to revoke an existing licence unless there are exceptional circumstances.

2.5 Existing Policy

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.

2.5 Proposed Revision

2.5 Alcohol or drug related offences with motor vehicle resulting in disqualification

2.5.1 Greater weight will be given to convictions relating to alcohol or driving related offences involving motor vehicles than those relating to the “totting up” disqualifications.

2.5.2 A Sub-Committee will have regard to the length of the disqualification imposed and to whether an approved driving course was completed as part of the sentence. An application involving an isolated occurrence may therefore be considered in exceptional circumstances but a period of at least three years should elapse since the ending of the disqualification.

2.5.3 Applicants should note that they will be required to submit a certificate of medical examination on the grant of a licence which includes an assessment of alcohol/drug use and/or evidence of satisfactory treatment.

2.5.4 Unless there are exceptional circumstances, a conviction for the possession with intent to supply drugs involving a motor vehicle will normally merit the refusal of a licence.

2.6 Existing Policy

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.

2.6 Proposed Revision

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. Repeat convictions or cautions for these types of offence in the five years preceding an application will normally merit the refusal of a licence. Applications for renewal will be dealt with on merit. Unless there are exceptional circumstances, a conviction for

the possession with intent to supply drugs will normally merit refusal of a licence.

2.7 No Change

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.

2.8 *Proposed Revision*

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 years free from conviction for all other serious violent offences;*

this period may be longer if consistent with the statutory rehabilitation period for the offence. This policy also applies to convictions relating to possession of firearms or offensive weapons. All other offences will be assessed on a case by case basis.

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. Greater weight will be placed on repeat or patterns of offending.***

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 Existing Policy

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.

2.9 Proposed Revision

As hackney carriage and private hire vehicle drivers are expected to be persons of trust, any conviction for serious fraud or theft within the past five years will normally merit refusal of a licence. A pattern of offending is also 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 No Change

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 No Change

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.

5.1 Proposed amendment

Application of this policy to renewal and disciplinary cases

Any conviction coming to light following the grant of a licence will be considered on its merits having regard to public safety either at renewal or, in serious cases, at a disciplinary hearing. 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 serious consideration of the revocation or the refusal to renew the licence unless there are exceptional circumstances. All other matters will be dealt with on a case by case basis.

5.2 Proposed Addition

Existing taxi drivers who fail to submit an application for renewal prior to the expiry date but who subsequently wish to re-apply may be entitled to “grandfather rights” and therefore exempted from the requirement to produce the Driving Standards Agency Taxi Test Certificate on application. This exemption will only apply if an application is submitted within six months of the expiry date. Applicants in this category will be required to comply with the remaining pre-licensing checks. Determination of this category of application will follow the process outlined in this policy.

6.0 No Change

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 Existing Policy

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.

7.0 Replaced by 1.8 and 1.9 above

8.0 Minor clarifications

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. Warnings may be given at the following levels: first written warning, serious (**second**) written warning, and final written warning. 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 (**or other disciplinary action**) will generally

remain relevant for five years according to the circumstances **and be reported to the Sub-Committee.**

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 Existing Policy

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.

Proposed Revision

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 arrest or information provided by the Chief Officer of Police (or a body responsible for public or child protection). Where relevant, the case will be referred to a Licensing Sub-Committee for final determination following the conclusion of any legal proceedings.

9.0 No Change

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.