



PRCC.40 15/16

Prosperous Communities
Committee

2 February 2016

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**Subject: Recommendation from the Licensing and Regulatory
Committee – Approval of an Amended Convictions Policy**

Report by:

Chief Operating Officer

Contact Officer:

Phil Hinch
01427 676610
Phil.hinch@west-lindsey.gov.uk

Purpose / Summary:

To consider the recommendation from the
Licensing and Regulatory Committee Meeting
held on 15 December with regard to an
amended Convictions Policy.

RECOMMENDATION(S):

**That Members accept the recommendation from the Licensing and
Regulatory Committee and approve and adopt the amended draft
Convictions Policy as attached at Appendix 1**

IMPLICATIONS

Legal: See section 5 of Report LR22 15/16

Financial : Fin Ref 102-16

Staffing : None as a result of this report

Equality and Diversity including Human Rights :

See EIA assessment as attached as Appendix 2 to Report LR22 15/16

Risk Assessment : See section 6 of Report LR22 15/16

Climate Related Risks and Opportunities :

None as a result of this report

Title and Location of any Background Papers used in the preparation of this report:

Local Government (Miscellaneous Provisions) Act 1976

Town Police Clauses Act 1847

Local Government Association (Regulation) Convictions Template

The above documents are held within Licensing Section

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

Yes

☐

No

☒

Key Decision:

Yes

☒

No

☐

1 Background and Introduction

- 1.1 At its meeting on 15 December 2015, the Licensing and Regulatory Committee gave consideration to a report which informed Members of draft proposals to amend the Guidelines relating to relevance of Convictions Policy for Taxi and Private Hire Drivers and Operators.
- 1.2 The report the Committee considered is attached at Appendix A.
- 1.3 At this meeting the Committee resolved that: -
- (a) the draft Conviction Policy, attached as Appendix 1 to report LR.22 15/16 be approved subject to the two amendments agreed during the course of the debate namely: -
 - (i) that paragraph 5.3 be amended to read “In this policy the term “disqualification” refers to the period served, to take account of the fact that a period of disqualification may be reduced upon the successful completion of a relevant driver rehabilitation course. An applicant must provide the Licensing Authority with sufficient evidence to prove that the period of disqualification was so reduced” and
 - (ii) that the wording in paragraph 7.3 relating to the possession of a firearm be re-instated to the original LGA Regulation Section wordingand any changes made as part of the ongoing consultation process ; and
 - (b) Following the consultation period with the stakeholders, and further discussion with legal services regarding the wording of section 7.3, any arising proposed policy changes be **RECOMMENDED** to the Prosperous Communities Committee for approval and adoption (any adverse comments made through the consultation process to be dealt with by the Licensing Manager in consultation with the Chairman and Vice-Chairman of the Licensing and Regulatory Committee)
- 1.4 The Full Minute arising from this debate is set out below: -

EXTRACT FROM MINUTES OF A MEETING OF THE LICENSING AND REGULATORY COMMITTEE HELD ON 15/12/15

Consideration was given to a report which informed Members of draft proposals to amend the Guidelines relating to relevance of Convictions Policy for Taxi and Private Hire Drivers and Operators.

In presenting the report Officers advised that there was currently in place a "Guidance for Members General Policy" which contained within it, inter-alia a section referred to as *Guidelines relating to relevance of Convictions*. The specific document relating to convictions had last been reviewed in 2008 and provided advice for Members, officers and applicants in relation to taxi and private hire drivers with any convictions an applicant may have.

It was noted that the Members General Policy had been updated on several occasions since 2013, some amendments as a direct result of issues that had occurred in the Rotherham area, as detailed in the report, but to date the Convictions element of the Policy had not been reviewed. Officers stressed that in their professional view to do nothing was not an option.

A draft Convictions Policy template, had been made available to all licensing authorities to use and amend as they considered fit in order to reflect their concerns locally. This had been provided by the Regulation section of the Local Government Association and the document was to be considered by all the District and Borough council's within Lincolnshire.

In order for WLDC officers and Members to be in a position to grant licence applications, the Local Government (MP) Act 1976 at s.59(1)(a) stated that: *a district council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a fit and proper person*. The revised draft convictions policy would provide good clear guidance on the criteria which officers and Members could take into account when determining whether or not an applicant or an existing licence holder was a fit and proper person to hold a hackney carriage/private hire licence, bearing in mind that the overriding aim was to protect the safety of the public.

It was stressed that the greatest advantage in having a policy that was based on one common template was that, in the main, all the Lincolnshire authorities could apply a consistent approach when dealing with the relevant matters. The draft policy was almost five times greater than the current policy used and was much more in depth and far more comprehensive in its compilation.

It was noted that consultation had commenced and to date two consultation responses had been received, this being from Councillors Cotton and Councillor Smith.

Councillor Cotton's response related to paragraph 5.3 and concern had been raised that its current wording did not reflect the true position. A Court could not reduce the period of disqualification from driving, but rather offer a rehabilitation course, that if accepted and completed, would reduce the period of disqualification. In light of this the Licensing Team Manager shared with the Committee some proposed alternative wording for this paragraph, this being :

“In this policy the term “disqualification” refers to the period served, to take account of the fact that a period of disqualification may be reduced upon the successful completion of a relevant driver rehabilitation course. An applicant must provide the Licensing Authority with sufficient evidence to prove that the period of disqualification was so reduced.”

Agreement was sought and received from Members that the revised wording offered should be used in the Policy.

Councillor Smith’s consultation response had referred to the offences listed under paragraph 7.3 of the Policy in particular, possession of a firearm. There was a view that possessing a firearm, in some circumstances (ie with a licence) was not an offence and hence the wording of the paragraph had been amended for the avoidance of doubt to read “Possession of an illegal firearm / illegal possession of a firearm”. However, since having amended this section, the Licensing Team Manager advised that he had been liaising with colleagues across the County regarding this matter and their view was that as this was a Convictions Policy this was implicit.

Committee debated at length whether the Policy wording should remain amended and as currently stated, or whether the original Regulation section of the Local Government Association wording should be re-instated. Following much discussion as to the pros and cons it was agreed to re-instate the LGA Regulation section wording so as to read “Possession of a firearm”.

In responding to Members’ questions, the Licensing Team Manager confirmed that neighbouring authorities were currently taking similar proposals through their relevant governance structures, as referred to in paragraph 3.3 and 3.4 of the cover report. Furthermore, it was likely that this would happen nationwide, in response to the Rotherham enquiry and the findings therefrom. Officers also outlined the stringent process applicants must adhere to in applying for a licence, including an enhanced level DBS check and providing what were deemed “Group1” and/or “Group 2” documents by way of offering assurance that this process addressed the issue of identity fraud.

Finally debate turned to the wording of the first two offences listed under Section 7.3 of the report, namely: -

- Malicious wounding or grievous bodily harm which is racially aggravated.
- Actual bodily harm which is racially aggravated.

Some Members were of the view that these should be amended to read: -

- Malicious wounding or grievous bodily harm **including that** which is racially aggravated.

- Actual bodily harm **including that** which is racially aggravated.

as without this additional wording, there was concerns that malicious wounding / grievous bodily harm / actual body harm that was not racially motivated was not addressed in the Policy and could in effect create a “loop-hole”.

Lengthy debate ensued during which it was noted that the wording had been provided as a national template by Local Government Regulation, Officers had requested that Legal Services review the document in its entirety and it was therefore suggested that this matter be raised with them in the first instance and an amendment made thereafter if required. Committee were content with this proposed course of action.

Following much debate, on that basis it was resolved that (as set out at 1.3 above)

- 1.5 The changes agreed by the Committee are shown in red / strike through on the attached Policy at Appendix 1

2.0 Consultation with Legal Services (additional amendments)

- 2.1 Since the report was presented to the Licensing and Regulatory Committee meeting held on 15 December 2015, no further responses have been received as part of the consultation process other than from Legal Services.

- 2.2 As noted above Legal Services were contacted in order for them to review the draft Convictions Policy and in particular advice was sought on the wording at section 7.3. This section has caused some concern to Members due to the fact they felt a “loop-hole” may be present within the document, (as currently drafted) and therefore may require additional wording to be included.

- 2.3 The feedback from Legal Services is summarised as follows:

- It is not recommended to amend the wording at 7.3 (as previously suggested by Members) as it is clear that the intention from the policy is that Grievous Bodily Harm (GBH) and Actual Bodily (ABH) that are aggravated by a racial element, are offences that would receive a higher sentence because they are aggravated.
- In terms of GBH there are 2 different offences for GBH each having different sentencing guidelines. The section 18 offence – GBH with intent - is covered in section 7.3. However the offence of GBH – not being racially aggravated or without the intent element - does not appear to be covered in the convictions list and the advice is that it is not a similar offence as per the last

bullet point in 7.3. Therefore the advice is to include section 20 offence GBH to be included in section 7.5.

- 2.4 As a result of the feedback from Legal Services a meeting took place with the Licensing Manager and both the Chairman and Vice Chairman of the Licensing and Regulatory Committee. A discussion took place in order to understand the advice received and it was agreed by all to amend the draft policy as advised by Legal Services and recommend to the Members of Prosperous Communities Committee to approve and adopt the draft convictions policy.

3. Conclusion

- 3.1 In conclusion account has been taken of the two responses received as part of the consultation process and of the advice received from Legal Services, with the draft policy being amended accordingly at sections 5.3, 7.3 and 7.5.
- 3.2 It was agreed by both the Chairman and Vice Chairman that the draft policy (if approved) would be reviewed within 5 years, or sooner should the need arise.

4. Recommendation

- 4.1 That Members accept the recommendation from the Licensing and Regulatory Committee and approve and adopt the amended draft Convictions Policy as attached at Appendix 1



APPENDIX A
LR.22 15/16

Licensing and Regulatory
Committee

15 December 2015

Subject: Review of the Guidelines relating to relevance of Convictions Policy for Taxi and Private Hire Drivers and Operators

Report by:

Mark Sturgess
Chief Operating Officer

Contact Officer:

Phil Hinch
Licensing Manager
01427-676610
Phil.hinch@west-lindsey.gov.uk

Purpose / Summary:

To inform the Members of Licensing and Regulatory Committee of draft proposals to amend the Guidelines relating to relevance of Convictions Policy for Taxi and Private Hire Drivers and Operators

RECOMMENDATION(S):

1. Members are requested to approve the draft Conviction Policy attached as Appendix 1 subject to any changes made as part of the consultation process. Following the consultation period with the stakeholders, any arising proposed policy changes be **RECOMMENDED** to the Prosperous Communities Committee for approval and adoption (should any adverse comments be made through the consultation process then delegated authority be given to the Licensing Manager to deal with these in consultation with the Chairman and Vice-Chairman of the Licensing and Regulatory Committee) **OR**

2. That Members choose to do nothing and leave the existing policy which has been in place since 2008 unchanged.

IMPLICATIONS

Legal: See section 5

Financial :

Staffing : None as a result of this report

Equality and Diversity including Human Rights :

This matter has been considered and a EIA is attached as Appendix 2

Risk Assessment: See section 6

Climate Related Risks and Opportunities : N/A

Title and Location of any Background Papers used in the preparation of this report:

Local Government (Miscellaneous Provisions) Act 1976

Town Police Clauses Act 1847

Local Government Association (Regulation) Convictions Template

The above documents are held within Licensing Section

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

Yes

☐

No

X

Key Decision:

Yes

X

No

1. Introduction

1.1 West Lindsey District Council as licensing authority is responsible for licensing all drivers, operators and vehicles used to provide taxi services within the District. There is currently in place “Guidance for Members General Policy” which contains within it, inter-alia a section referred to as *Guidelines relating to relevance of Convictions*. The specific document relating to convictions was last reviewed in 2008 and provides advice for Members officers and applicants in relation to taxi and private hire drivers with any convictions an applicant may have. The convictions section is less than three pages long!

1.2 The Guidance for Members General Policy mentioned above was reviewed and amended and became effective in September 2013 whereby a knowledge test was made part of the initial application process for drivers and additionally a specific out of area “Intended Use Policy” section was inserted to offer guidance handed down from the High Court in relation to how this authority will deal with applications for Proprietors Licence who intend to operate outside of the WLDC administrative area.

1.3 From 2013 to date the General Policy has been updated several times which now has the following amendments which dictate that:-

- A low risk driving certificate is required for drivers who have incurred 6 points imposed upon their DVLA licence
- All new and existing drivers are required to sign-up to a drivers code of conduct
- All new and existing drivers are required to take part in an e-learning module in relation to safeguarding

The latter two bullet points were as a direct result of issues that had occurred in the Rotherham area relating to Child Sexual Exploitation (CSE).

2.0 Hackney Carriage and Private Hire Licensing

2.1 Licensing of taxis covers two areas:

2.2 The licensing for hackney carriages which requires two licences:

- Hackney carriage proprietors (vehicle) licence
- Hackney carriage driver's Licence

2.3 The licensing for private hire vehicles which requires three licences:

- Private hire operator's licence
- Private hire vehicle licence
- Private hire driver's licence

2.4 The difference between hackney carriage and private hire vehicles is that hackney carriages can stand on a taxi rank and ply for hire in the street, i.e. they can be flagged down whereas private hire can only be pre-booked.

3. Moving forward – why change the existing policy?

3.1 One of the key findings of Louise Casey whilst investigating CSE within the Metropolitan district of Rotherham, relative to taxi licensing, was that *the taxi policy was significantly out of date and dated back to 1974*, almost 40 years.

3.2 As noted above the Guidelines relating to relevance of Convictions policy here at West Lindsey was last reviewed in 2008 and was due to be considered for review in any case. Taking into account the above finding at Rotherham, this is an additional reason to ensure the document is kept up to date accordingly.

3.3 A draft Convictions Policy template, available to all licensing authorities to use and amend as they think fit in order to reflect their concerns locally was provided by the Regulation section of the Local Government Association. The draft convictions policy which is attached as Appendix 1 for Members perusal utilises the template provided by the LGA and has been considered by all the District and Borough council's within Lincolnshire.

3.4 The basic framework of the document has been used and each council will have made amendments as they think fit. So for example Members of WLDC licensing and regulatory committee highlighted at a training event earlier in the year that they would prefer applicants to have been authorised to drive a motor vehicle for at least 24 months before the date of the application and not just 12 months. Officers have also added the requirement that when applicants or existing licensee's incur 6 points or more on their DVLA licence that they will need to provide a Low Risk Driving assessment to the licensing authority. This reflects the local opinion here at West Lindsey and may not be the case with other Lincolnshire authorities.

3.5 In order for WLDC officers and Members to be in a position to grant licence applications, the Local Government (MP) Act 1976 at s.59(1)(a) states that: *a district council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a fit and proper person*. The revised draft convictions policy will provide good clear guidance on the criteria which officers and Members can take into account 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 licence, bearing in mind **that the overriding aim is to protect the safety of the public**.

3.6 The greatest advantage in having a policy that is based on one common template is that in the main all the Lincolnshire authorities can apply a consistent approach when dealing with the relevant matters. The draft policy is almost five times greater than the current policy used and is much more in depth and far more comprehensive in its compilation.

4. Consultation

4.1 A consultation exercise is currently ongoing and will last a minimum of 6 weeks. There are approximately 190 stakeholders identified to be included in the consultation process which are made up of:-

- Members of Licensing and Regulatory Committee
- Members of Taxi and General Licensing Sub-Committee

- All licensed drivers
- All pending driver and operator applicants
- Lincolnshire Police (Licensing)
- Lincolnshire County Council (Transport Services Group –Green Badge Authorisations)
- Draft Policy to be available on WLDC Website

4.2 Following the consultation period with the stakeholders, any arising proposed policy changes be **RECOMMENDED** to the Prosperous Communities Committee for approval and adoption (should any adverse comments be made through the consultation process then delegated authority be given to the Licensing Manager to deal with these in consultation with the Chairman and Vice-Chairman of the Licensing and Regulatory Committee).

5. Legal

5.1 S(17 Crime and Disorder Act 1998). - (1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

5.2 Any new or revised policy or any decisions made that are based on such policy could be open to a legal challenge via the Judicial Review process should the authority resolve to implement a policy that could be seen as Wednesbury unreasonable and/or disproportionate.

6. Risks

6.1 Failing to consult with the relevant stakeholders about any changes to policy will leave the authority open to legal challenge. There are corporate reputational risks associated with the failure to review, consult and approve and adopt a revised up to date convictions policy.

6.2 There are significant reputational risks associated with not implementing adequate changes to policy, particularly when this issue has been highlighted at another authority previously, therefore officers would suggest that to take no action is not an appropriate alternative.

7. Conclusion

7.1 Lessons must be learnt from the events that occurred in Rotherham and in this particular case the matter referred to was that there was a reliance on a very old convictions policy.

7.2 West Lindsey District Council as the licensing authority has an overriding aim to protect the safety of the public. In line with the corporate plan, the Council strives to continually improve the services it provides for its residents businesses and visitors. The adoption of a revised, up to date policy fits in with this corporate aim.

8. Reasons for Recommendation(s)

8.1 To ensure that a reasonable and proportionate up to date conviction policy is in place in order to assist Members and Officers in the determination of applications and the review of licenses.

8.2 The revised policy will also assist applicants and licensees in terms of how their application may be determined, taking into account many various factors. Each case would always be determined on its own merits.

9. Appendices

Appendix 1 – Revised draft convictions policy

Appendix 2 – Equality impact assessment

APPENDIX 1

Taxi and PHV Licensing Application and Convictions' Policy

1. Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria which are taken into account by the 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 licence.
- 1.2 The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:
- That a person is a fit and proper person.
 - That the person does not pose a threat to the public.
 - That the public are safeguarded from dishonest persons.
 - The safeguarding of children and young persons.
- 1.3 This policy provides guidance to any person with an interest in public 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 local authority decisions
- 1.4 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 sub-committee (or other relevant decision-making body). Whilst officers and the sub-committee will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits and, where the circumstances warrant, the sub-committee/officer may depart from the guidelines.**

*Please note officers always have the option to refer any matter delegated to them on to a Committee or Sub-Committee

2. General policy

- 2.1 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.2 A person with a conviction need not be automatically barred from obtaining a licence, but would be expected to show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce

such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

- 2.3 **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. Pre-requisites to making an application

- 3.1 It is the policy of the licensing authority that every application for a licence to drive a Hackney Carriage and/or Private Hire Vehicle must be accompanied by satisfactory evidence of the following matters (and that applications that are incomplete will not be deemed to have been made until such time as they are completed) -

- That the applicant has the right to live and work in the country.
- An enhanced criminal record check and evidence that they are not on a child and/or vulnerable adult barring list.
- A certificate of their current medical fitness [to DVLA Group 2 standard].
- That the applicant is authorised to drive a vehicle of the same classification as that which the licence will allow them to drive.
- That the applicant has a minimum of two year's post qualification driving experience.
- That the applicant has adequate literacy and numeracy skills to provide the service that they wish to be licensed for.
- That the applicant has sufficient ability to speak English and to understand spoken English to provide the service that they wish to be licensed for.
- That the applicant has, where available, completed safeguarding awareness training.
- That the applicant has signed the declaration relating to the drivers Code of Conduct.

- 3.2 If an applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries covering the period before a licence application can be made.

Criminal record checks/certificates of good conduct must be provided in accordance with the Home Office "Application processes for Foreign National

Criminality Information”. Any criminal record check must be translated into English by a recognised translation service provider.

4. Appeals

- 4.1 Any applicant refused a driver's 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)].
- 4.2 Any applicant refused an operator licence on the grounds that the licensing authority is not satisfied 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.
- 4.3 Any licensee whose licence is suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice of suspension or revocation.

5. Powers

- 5.1 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 applicant/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.
- 5.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the licensing authority will have regard to all relevant convictions (as defined in this policy), particularly where there is a long history of offending or a pattern of repeat offending.
- 5.3 ~~In this policy the term “disqualification” refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.~~

In this policy the term “disqualification” refers to the period served, to take account of the fact that a period of disqualification may be reduced upon the successful completion of a relevant driver rehabilitation course. An applicant must provide the Licensing Authority with sufficient evidence to prove that the period of disqualification was so reduced.

6. Consideration of disclosed criminal history

- 6.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to

ensure that an applicant for the grant or renewal of a licence to drive a hackney carriage and/or a private hire vehicle and/or a private hire vehicle operator's licence is a 'fit and proper' person to hold such a licence.

All conviction(s), criminal findings of guilt (including fixed penalty ticket(s)), caution(s) and warning(s), whether for motoring or other offences and County Court Judgment(s)/Order(s) (where the judgment or order relates to a debt or

charge to another Hackney Carriage/Private Hire driver, owner or operator) may be taken into account on or after the issue of a licence. During the currency of a licence the licence holder must, immediately after the date of arrest, conviction(s), criminal findings of guilt (including fixed penalty notice(s)), caution(s) and/or warning(s), advise the Licensing Authority of this information in writing.

The Licensing Authority will consider:

- How relevant the offence(s) are to the licence being applied for.
- The seriousness of the offence(s).
- When the offence(s) 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.

- 6.2 Applicants can discuss what effect a caution/conviction or other sanction may have on any application by contacting the licensing office in confidence for advice.
- 6.3 The licensing authority requires enhanced disclosures from the Disclosure and Barring Service (DBS) from any applicant for a driver licence. The licensing authority follows the DBS's Code of Practice on the fair use of disclosure information. A copy is available on request.
- 6.4 Applicants applying for the grant or a renewal of a drivers' licence and/or operator licence will be required to obtain an enhanced disclosure at their expense. The licensing authority abides by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.
- 6.5 The licensing authority encourages applicants and licence holders to register for the DBS's update service and to nominate the licensing authority to receive updates. Registration lasts for 1 year and costs £13 per year.

DBS certificates obtained for a Hackney Carriage or Private Hire Driver Licence cannot be used for the purpose of obtaining a Lincolnshire County Council School Transport Badge ("Green Badge") and vice versa. A separate check is required for each authorisation. However, applicants can register both checks with the DBS update service for a total cost of £13 per year.

- 6.6 More information about the DBS can be found on their website at <https://www.gov.uk/government/organisations/disclosure-and-barring-service>
- 6.7 The licensing authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police.
- 6.8 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

7 Serious offences involving violence

- 7.1 Licensed drivers have close regular contact with the public. A firm line will be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 7.2 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
 - Manslaughter
 - Any culpable homicide while driving
 - Terrorism offences
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 7.3 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:
- Arson.
 - Malicious wounding or grievous bodily harm which is racially aggravated.
 - Actual bodily harm which is racially aggravated.
 - S18 Grievous bodily harm with intent.
 - Robbery.
 - Possession of an illegal firearm / ~~illegal possession of a firearm~~
 - Riot.

- Common assault with racially aggravated features.
- Violent disorder.
- Resisting arrest.
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

7.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage.
- Any other racially-aggravated offence.
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

7.5 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm
- **S20 Grievous bodily harm**
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licensed Hackney Carriage/Private Hire driver found guilty of any of these offences should have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

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

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

8. Possession of a weapon

- 8.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give rise to serious concern as to whether the person is fit to carry the public. Depending on the circumstances of the offence, an applicant should be free of conviction for at least 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before an application for a licence is considered.

9. Sex and indecency offences

- 9.1 Licensed drivers often carry unaccompanied and vulnerable passengers, therefore applicants with convictions for sexual offences will be very closely scrutinised. Applicants with convictions for sexual offences will generally be refused.

- 9.2 An application will generally be refused where the applicant has a conviction for an offence such as:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Any offence involving child sexual exploitation and/or sexual exploitation of vulnerable adults
- Possession of indecent photographs, child pornography etc.
- Or **any** sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit).

- 9.3 In addition to the above the licensing authority will not generally grant a licence to any applicant who is currently on the Sex Offenders Register.

10. Dishonesty

- 10.1 Licensed Hire Drivers are expected to be trustworthy. The widespread practice of delivering unaccompanied property, taking children to school and families on holiday, is indicative of the trust that people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding

fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver.

Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by any lost property being kept by an unscrupulous driver. For these reasons a serious view should be taken of any conviction

involving dishonesty. In general, a period of 5 years free of conviction should be required before entertaining an application.

A licensed Hire Driver found guilty of a dishonesty offence should expect to have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

10.2 In general, a minimum period of 5 years free of conviction or at least 5 years from completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- and any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

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

11. Drugs

11.1 A serious view will be taken of any drug related offence.

11.2 A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and has not been free of conviction for 5 years.

not normally be granted where the applicant has a conviction for an offence related to the possession of drugs and has not been free of conviction for 3 years.

- 11.4 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.
- 11.5 A licence will not normally be granted if an applicant has more than one conviction for a drugs related offence.
- 11.6 A hackney carriage or PHV driver found guilty of driving whilst under the influence of drugs, or found guilty of any drug-related offence should expect to have his/her drivers licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

12 Driving offences involving the loss of life

- 12.1 A very serious view will be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted where the applicant has a conviction for an offence such as:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by careless driving
- or any similar offences

13 Drink driving – Excess Alcohol

13.1 In a Mechanically Propelled Vehicle

A serious view will be taken of convictions for driving or being in charge of a vehicle while under the influence of drink or with excess alcohol (Sections 4 and 5, Road Traffic Act 1988 – as amended) – hereinafter referred to as drink-driving. One isolated incident may not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for such offences should give rise to serious doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the DVLA driving licence) before an applicant is considered for a licence. If there is any

applicant is alcohol dependant, a special medical examination should be arranged before the application is decided. If the applicant is found to be alcohol dependant, a period of 5 years should elapse after treatment is complete before a further licence application is considered.

A Hire Driver found guilty of a drink-driving offence should expect to have his/her drivers licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

In a Licensed Vehicle

A driver found guilty of a drink-driving offence whilst carrying passengers for hire should expect to have his/her driver's licence revoked immediately and not be considered for the grant of a licence until a minimum period of 6 years has elapsed.

14. MAJOR TRAFFIC OFFENCES

- 14.1 An isolated conviction for dangerous driving or driving without due care and attention etc, should normally merit a strong warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.
- 14.2 Similarly, a first conviction during the period of a hackney carriage or PHV drivers licence will lead to a warning as to future conduct, and may lead to revocation of that licence for subsequent convictions. At least 3 years should elapse (after the restoration of the DVLA licence) before the individual is considered for a licence.

15 Insurance offences

- 15.1 A serious view will be taken of convictions for using, or causing or permitting the use of a motor vehicle without insurance. An isolated incident in the past will not necessarily prevent a licence being granted provided the applicant has been free of conviction for 3 years, however strict warning should be given as to future conduct.
- 15.2 A licence will not generally be granted if an applicant has more than one conviction for an insurance related offence.
- 15.3 A Private Hire Operator or Hackney Carriage Proprietor found guilty of causing or permitting the driving of passengers for hire whilst without insurance will

Operators' / Proprietor's licence revoked immediately and not be considered for the grant of a licence until a minimum period of 3 years has elapsed.

16 Using a mobile phone whilst driving

- 16.1 Applicants should be aware of the serious risk posed by driving whilst using a mobile phone.

There is a substantial body of research (see for instance <http://www.rospace.com/rospaweb/docs/advice-services/road-safety/drivers/mobile-phone-report.pdf>) which shows that drivers who use a mobile phone suffer physical and cognitive distraction which means they:

- are much less aware of what's happening on the road around them
- fail to see road signs
- fail to maintain proper lane position and steady speed
- are more likely to 'tailgate' the vehicle in front
- react more slowly, take longer to brake and longer to stop
- are more likely to enter unsafe gaps in traffic
- feel more stressed and frustrated.

- 16.2 There is evidence to show that drivers who use a mobile phone have slower reaction times than those who have consumed alcohol up to the legal limit. In light of this, an equally serious view will be taken of convictions for driving whilst using a mobile phone as for drink-driving or driving under the influence of drugs.
- 16.3 A licence will not normally be granted if an applicant has more than one conviction for an offence of driving whilst using a mobile phone.

17. MINOR TRAFFIC OFFENCES

New Applicants.

- 17.1 Conviction(s) for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. However, the number, type and frequency of this kind of offence will be taken into account. In certain instances it may be appropriate to issue a licence but with a strong warning as to future driving standards. If a significant history of offences is disclosed, refusal of an application may result.
- 17.2 New applicants who have received 6 or more DVLA penalty points (in respect of minor traffic offences) on their driving licence during the 12 months prior to the date of application may be refused.

current driver disqualified from holding a DVLA licence under the “totting-up” procedure should expect to have his/her hackney carriage or PHV driver licence revoked. At least 2 to 3 years should then elapse (after the restoration of the DVLA licence) before he/she is considered for a licence.

- 17.4 In the case of an existing hackney carriage or PHV driver where the “totting-up” disqualification of a DVLA licence is considered by the court, even if the court does not disqualify, the Council is likely to revoke the hackney carriage or PHV

licence. At least 2 to 3 years should elapse before the individual is considered for a licence.

18 Other offences involving alcohol

- 18.1 An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination. In some cases, a warning may be sufficient.
- 18.2 In cases of severe alcohol abuse, a significant period after the last conviction must elapse before an application is considered and then only after examination by a consultant with a special interest in such cases with confirmation being provided of satisfactory liver enzyme tests and mean cell volume (MCV).

19 Licensing offences

- 19.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally preclude a licence being granted or renewed until a period of 3 years has passed since conviction.
- 19.2 A licence will not normally be granted if an applicant has more than one conviction for a licensing related offence.

20 Outstanding charges or summonses

- 20.1 If the individual is the subject of an outstanding charge or summons their application can be processed, but the application will be reviewed at the conclusion of any outstanding proceedings.
- 20.2 If the outstanding charge or summons involves a serious offence and the individual’s conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

information

- 21.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application.
- 21.2 In assessing the action to take, the safety of the travelling public shall be the paramount concern.

22 Once a licence has been granted

- 22.1 If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.
- 22.2 This document applies equally to currently licensed drivers and operators as it does to applicants unless otherwise stated.

23 Licences issued by other licensing authorities

- 23.1 Applicants who already hold a licence with another licensing authority should not assume that a similar application will be granted by this Authority. Each case will be decided on its own merits.
- 23.2 Licensees who are licensed by several authorities are expected to inform each of those authorities about every licence they hold and to advise each authority of any changes in this respect. Licence holders should expect those authorities to share information regarding their conduct and to take it into account as appropriate.

24 DVLA Penalty Points

- 24.1 Applicants who have recently been disqualified from driving under the "totting-up" procedure will not normally be granted a licence unless they have held a licence for at least 2 years following the expiry of the period of disqualification.
- 24.2 New applicants who have 6 or more current penalty points will be required to undertake a driving assessment by the Lincolnshire Road Safety Partnership and submit a low risk driving certificate as part of the application process.

Existing Licence Holders

carriage or PHV driver receiving 6 or more penalty points during any three year period will be issued with a written warning as to future conduct and will be required to undertake a taxi driver training course with the Lincolnshire Road Safety Partnership and submit a low risk driving certificate.

25 Conclusion

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

However, there may be occasions when an application can be allowed before 3 years free from conviction have elapsed.

- 25.2 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history will be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion may be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public. This consideration is vital because taxi and private hire licence holders have unprecedented access to the public and are in a position to exercise control over an individual.
- 25.3 The Council generally considers that offences committed by licensed Hire Drivers should be considered more seriously than offences committed by individuals when not licensed. This is because current licensees have previously been judged as "fit and proper" and are aware of the standards required of them and are expected to maintain those high standards of personal conduct.
- 25.4 Whilst officers and the sub-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 sub-committee/officer may depart from the guidelines.

APPENDIX 2 - EQUALITY IMPACT ASSESSMENT

Name, brief description and objectives of policy, procedure, function?	This is about amending the current Convictions Policy in relation to Hackney Carriage/Private Hire Drivers. The changes have the potential to affect all new driver applications and any existing licensed drivers also who may wish to renew their licence. The revised convictions policy will provide clear, up to date guidance for all the stakeholders concerned in relation to Taxi/PH drivers. The outcome of the amendment to policy is to ensure that WLDC is striving to do all that it reasonably can in relation to continuous improvement regarding the protection of the public where appropriate.
Have you consulted on the policy, Procedure, function and, if so, what were the outcomes?	Yes over 190 consultee's were notified of the proposed change to policy – No major concerns identified to date.
What barriers may these individuals or groups face, and how can you promote equality (where possible)?	
Gender	There is no evidence that this policy would impact on people in any way because of this characteristic.
Age	One fundamental change proposed within the policy is that as a pre-requisite to making an application, the applicant has to have a minimum TWO year's post qualification driving experience. The justification for this is that licensed drivers will be carrying members of the public and it is felt that the criteria should be higher than the 12 month basic minimum period of experience. This aspect WILL apply to all applicants across the board, irrespective of what age the applicant is at the time of the application. There is no evidence that this policy would impact on people in any way because of this characteristic.
Disability	There is no evidence that this policy would impact on people in any way because of this characteristic.
Race	There is no evidence that this policy would impact on people in any way because of this characteristic.
Religion or Belief	There is no evidence that this policy would impact on people in any way because of this characteristic.
Sexual Orientation	There is no evidence that this policy would impact on people in any way because of this characteristic.
Gender Reassignment	There is no evidence that this policy would impact on people in any way because of this characteristic.
Pregnancy, Maternity and Paternity	There is no evidence that this policy would impact on people in any way because of this characteristic.
Marriage and Civil Partnership	There is no evidence that this policy would impact on people in any way because of this characteristic.

Rural Isolation	There is no evidence that this policy would impact on people in any way because of this characteristic.
Socio-economic factors	There is no evidence that this policy would impact on people in any way because of this characteristic.
Other (e.g. those with dependants/caring responsibilities, asylum seeker and refugee communities, children in the care system, etc)	There is no evidence that this policy would impact on people in any way because of this characteristic.
Is there any evidence or research that demonstrates why some individuals or groups are, or are not, affected	Whilst there is no particular hard evidence or research available, any individual/applicant who wishes to submit an application who has been convicted of any of the relevant offences contained within the policy prior to making an application OR anyone who is convicted of any of the relevant offences whilst licensed, may find that the revised policy impacts upon their application or licence. Each case would be considered on its own merits. The WLDC convictions policy is based on a template provided by the LGA (and amended where relevant). It is applicable to <u>all applicants</u> who must meet a set of standards and criteria intended to ensure that they are 'fit and proper' persons.
If there is a potential adverse impact, please state why and whether this is justifiable	None identified, each application or case will be judged upon its own merits.
Outcome of EIA	No major change needed <input checked="" type="checkbox"/> Adjust the policy/proposal <input type="checkbox"/> Adverse impact but continue <input type="checkbox"/> Stop and remove the policy/proposal <input type="checkbox"/>
How will you monitor your policy, procedure, function to ensure there is no adverse effect on the protected characteristics (e.g. gender, age, etc) in the future?	Any applications who cannot meet the criteria will be checked to ensure that the reason is not for any of the protected strands e.g. race, religion, gender, age etc. Each application will be judged on its own merits.