



Hackney Carriage & Private Hire Policy

Document 1 of 4

Regulatory Guidelines

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1. Introduction

1.1 Powers and Duties

Tewkesbury Borough Council has adopted the Local Government (Miscellaneous Provisions) Act 1976 (Minute 71, 23 April 1980). Through the 1976 Act and other relevant legislation the Council has a duty to carry out its licensing functions in respect of hackney carriage and private hire vehicles, drivers and operators. Hackney carriages are also known as taxis.

1.2 Objectives

Hackney carriage and private hire vehicles have a specific role to play in an integrated transport system. They are able to provide services in situations where other public transport is either not available (for example in rural areas, or outside “normal hours” of operation such as in the evenings or on Sundays), or provide public transport for those with mobility difficulties. In setting out its policy, the Council seeks to promote the following objectives:

- The protection of public health and safety;
- The establishment of a professional and respected hackney carriage and private hire trade;
- Access to an efficient and effective public transport service;
- The protection of the environment;
- Improve standards of service and the visibility of hackney carriages/private hire vehicles.

The aim of the licensing process, in this context, is to regulate the hackney carriage and private hire trade in order to promote the above objectives. It is the Council’s wish to facilitate well-run and responsible businesses, which display sensitivity to the wishes and needs of the general public.

1.3 Best Practice Guidance

In formulating this policy consideration has been given to the advice contained in the ‘Taxi and Private Hire Vehicle Licensing Best Practice Guidance’ issued by the Department for Transport in March 2010.

1.4 Status

In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and, in particular, the objectives set out above.

Notwithstanding the existence of this policy document, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Council to depart substantially from its policy document, clear and compelling reasons will be given for doing so. The purpose of this policy document is to formulate guidelines which detail the Council’s current stance on the relevance of convictions and cautions and other relevant factors in respect of applications for the grant of new licences, disciplinary action against existing licence holders, the renewal of existing hackney carriage and private hire drivers, operators and proprietor’s licences.

These policy document guidelines have been produced to assist Members of the Council’s Licensing Committee, Licensing Sub-Committees and Council Officers in their decision-making and to maintain the consistency of the decisions made. They have also been formulated to provide clearer information to current licence holders and potential applicants, with a view to minimising cost and time spent by a licence holder, an applicant and the Council.

The aim of the licensing regime to which these policy document guidelines relate is not to punish the applicant twice for an offence, where criminal action has already been taken, (which includes a conviction or caution), but to ensure that public safety is not compromised.

2 Qualifications and Requirements

2.1 General

All qualifications and requirements for applicants are set out in the respective 'Private Hire; Driver, Vehicle and Operator Rule Book' and 'Hackney Carriage; Driver and Vehicle Rule Book' available on the Council's website at [XXXXXXX](#) by contacting the Licensing Team at licensing@tewkesbury.gov.uk or by writing to:

Senior Licensing Officer
Tewkesbury Borough Council
Gloucester Road
Tewkesbury
Gloucester
GL20 5TT

2.2 Suitability

The Local Government (Miscellaneous Provisions) Act 1976 deals with the issue of driver suitability:

*"...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a **fit and proper person** to hold a driver's licence."*

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

"...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds –

1) that he / she has, since the grant of the licence,

i) been convicted of an offence involving dishonesty, indecency or violence,

or,

ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or Part of this Act,

or,

2) any other reasonable cause."

The wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is "**fit and proper**" – the onus is on the applicant to prove this on a balance of probabilities, NOT for the Council to demonstrate that they are not.

Whether someone is a "fit and proper person" to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, vulnerable people, foreign visitors and unaccompanied property.

Some areas to consider include –

- **Honesty and trustworthiness** – drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust. *For example, any passenger would expect to be charged the correct fare for a journey and then be given the*
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correct change; they would also expect a driver to hand in any article left by a passenger in a vehicle; and also the driver to maintain confidentiality between them and the passenger.

- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. However this does not excuse any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands.
- **A good and safe driver** – Passengers paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to their licence.
- **Health** – Drivers are expected to be both physically and mentally fit to perform their role.
- **Ability** – Both private hire and hackney carriage drivers are expected to be capable of transporting passengers to their destination in a timely manner.

2.3 Protecting the Public

The overriding consideration for the Members of the Licensing Committee, Licensing Sub-Committee and Council Officers is to protect the public. Having considered and applied the appropriate policy document guidelines, the following, generally accepted, question should be asked:

“Would you (as a member of the Licensing Committee, Licensing Sub-Committee or other person charged with the ability to grant a hackney carriage/private hire driver’s licence) allow your daughter or son, granddaughter or grandson, spouse, mother or father, or any other person you care for or any vulnerable person you know, to get into a vehicle with this person alone?”¹

If the answer to this question is an unqualified yes, then a licence should normally be approved or allowed to continue. If there are any doubts in the minds of those making the decision, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant/licence holder to satisfy the Council that they are a fit and proper person.

¹ Paragraph 10.45 Taxis – Licensing Law and Practice by James T. H. Button, Butterworths Third edition 2009

Case law also makes it clear the perception of hardship and that the impact of losing (or not being granted) a driver’s licence on the applicant and their family is not a consideration to be taken into account when deciding whether a person is a fit and proper. (Leeds City Council v Hussain [2002] EWHC 1145 (Admin). [2003] RTR 199 and Cherwell District Council v Anwar [2011] EWHC 2943 (Admin).

2.4 Convictions

The Council will look at all past indicators (convictions, cautions, fixed penalties, motoring convictions etc) that may affect a person’s suitability to hold a licence. Applicants (both new and on renewal) are required to declare all convictions, cautions and fixed penalties on their application and sign a statutory declaration to that effect. Applicants who are found to have given false information on an application form, or those existing licence holders who have failed to declare any relevant fact may have their licence suspended or revoked.

2.5 Soft information and information from other sources

The Council may receive soft information from other agencies or via complaints made from members of the public. This information will be considered in cases where it calls into question an applicant or licence holder’s ability to meet the “fit and proper person” test.

2.6 Options available to the Licensing Committee, Licensing Sub Committee and Council Officers

When determining an application or reviewing a licence holders' suitability to hold a licence the Members of the Committee, Sub-Committee or Council Officer making the decision will have the following options:

- To approve the licence / take no action.
- To impose additional conditions on the licence.
 - *This action may be taken with regard to either new applications or existing licence holders.*
- To give a written warning.
- To refuse/revoke the licence.
- For existing licence holders - to suspend the licence
 - *Suspension can be used where serious concerns are raised over the suitability of an individual to hold a licence. In this instance, on the balance of probabilities, the licence holder is not a "fit and proper person" but may become so at a later date. This may either be through an action they may take, such as in the case of a driver undergoing a further medical examination, or by demonstrating a satisfactory standard of driving by successfully undertaking a Driving Standards Agency Test. Any action required of the licence holder would be specified on the notice of suspension.*

In the interests of ensuring the safety of the travelling public the Members of the Licensing Committee, Licensing Sub-Committee and Council Officers will take any action they deem appropriate depending on the merits of the individual case. This may include requiring an applicant or licence holder to undergo any further examination or test (at their expense) as they deem fit, and in the case of an existing licence holder, suspending their licence pending the outcome of any such examination or test. In cases where licences are suspended or conditions imposed a right of appeal is available as detailed at section 5 of this document.

2.7 Each case on its merits

The test that must be applied is that on the balance of probabilities, is the licence holder or applicant a fit and proper person to hold a licence. Or in other words, would the safety of the travelling public be put at risk if the applicant/licence holder was permitted to retain or obtain a licence.

When reaching a decision each case will be treated on its merits. Factors that may be considered include:

- Any offences, cautions of fixed penalties received. When considering an offence the Council may also consider the following:
 - Details of the offence.
 - Severity of the sentence imposed,
 - Nature of the sentence imposed i.e. did the sentence aim to reform the individual such as a drink driving course or community service order.
 - The Court that tried the offence i.e. was it an offence that could have been heard in a Magistrates' Court but was referred to Crown Court due to the particular circumstances of the offence or did the offender elect for Crown Court trial, as of right.
 - Any history of good conduct since the offence, or character references from credible persons/agencies involved **(these must be supplied by the applicant/licence holder)**.
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- Any representations made, or supporting information provided by the applicant, including evidence from witnesses.
- Tewkesbury Borough Council's policy on the relevance of convictions.
- The licence holder's rights under the European Convention on Human Rights.
- Any complaints made against the licence holder.
- The licence holder's actions following any complaint/offence.
- Any breach of licence conditions or Council policy.
- Any warning letters issued to the licence holder.
- Any strikes received under the Council's Three Strikes Policy
- Any other relevant information.

It is for the applicant, or existing licence holder (if under review) to prove they are a "fit and proper person" to hold a licence. **Any supporting information that may help their case must be produced to the Council in order for it to be considered.**

3 Guidelines on the relevance of convictions

The Council's policy on the relevance of convictions, cautions and fixed penalties is as follows (the following policy applies to new applicants and existing licence holders):

Any changes in legislation will be dealt with as appropriate.

3.1 Each case will be decided on its own merits.

The overriding consideration must be the safety of the public. The council has a duty to ensure so far as is possible that all applicants and licence holders are fit and proper persons to do so.

3.2 A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain:

- (a) Free of convictions for an appropriate period, and
- (b) Show evidence of good character from the time of the conviction. Simply remaining free of conviction does not necessarily provide sufficient evidence of good character.

Discretion would be appropriate where an offence is an isolated one and there are mitigating circumstances. Multiple offences or a series of offences over a period of time would give greater cause for concern and may give indications of a pattern of criminal behaviour which would need to be taken into account.

3.3 The following examples afford a general guide on the action that will be taken in relation to applicants with the following convictions:

(a) Minor Traffic Offences

Isolated convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, etc., should not prevent a person from proceeding with an application. However the number,

type and frequency of the type of offence should be taken into account. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage or Private Hire Drivers Licence may be granted after its restoration but a warning should be issued as to future conduct.

(b) Major Traffic Offences

An isolated conviction for a major traffic offence should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire 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 7 years free from convictions has elapsed.

The following traffic offences are considered to be major:

- AC10** Failing to stop after an accident
 - AC20** Failing to give particulars or to report an accident within 24 hours
 - AC30** Undefined accident offences
 - BA10** Driving while disqualified by order of court
 - BA20** Attempting to drive while disqualified by order of court
 - BA40** Causing death by driving while disqualified
 - BA60** Causing serious injury by driving while disqualified
 - CD10** Driving without due care and attention
 - CD20** Driving without reasonable consideration for other road users
 - CD30** Driving without due care and attention or without reasonable consideration for other road users
 - CD40** Causing death through careless driving when unfit through drink
 - CD50** Causing death by careless driving when unfit through drugs
 - CD60** Causing death by careless driving with alcohol level above the limit
 - CD70** Causing death by careless driving then failing to supply a specimen for analysis
 - CD80** Causing death by careless or inconsiderate driving
 - CD90** Causing death by driving: unlicensed, disqualified or uninsured drivers
 - DD10** Causing serious injury by dangerous driving
 - DD40** Dangerous Driving
 - DD60** Manslaughter or culpable homicide while driving a vehicle
 - DD80** Causing death by dangerous driving
 - DD90** Furious driving
 - DR10** Driving or attempting to drive with alcohol level above the limit
 - DR20** Driving or attempting to drive while unfit through drink
 - DR30** Driving or attempting to drive then failing to supply a specimen for Analysis
 - DR31** Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity
 - DR40** In charge of a vehicle while alcohol level above limit
 - DR50** In charge of a vehicle while unfit through drink
 - DR60** Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
 - DR61** Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive
 - DR70** Failing to provide specimen for breath test
 - DR80** Driving or attempting to drive when unfit through drugs
 - DR90** In charge of a vehicle when unfit through drugs
 - DG10** Driving or attempting to drive with drug level above the specified limit.
 - DG40** In charge of a vehicle while drug level above specified limit
 - DG60** Causing death by careless driving with drug level above the limit
 - IN10** Using a vehicle uninsured against third party risks
 - LC20** Driving otherwise than in accordance with a licence
 - LC30** Driving after making false declaration about fitness when applying for a licence
 - LC40** Driving a vehicle having failed to notify a disability
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- LC50** Driving after a licence has been revoked or refused on medical grounds
- MS10** Leaving a vehicle in a dangerous position
- MS20** Unlawful pillion riding
- MS30** Play street offences
- MS50** Motor racing on the highway
- MS60** Offences not covered by other codes
- MS70** Driving with uncorrected defective eyesight
- MS80** Refusing to submit to an eyesight test
- MS90** Failure to give information as to identity of driver etc
- MW10** Contravention of special roads regulations (excluding speed limits)
- PC10** Undefined contravention of pedestrian crossing regulations
- PC20** Contravention of pedestrian crossing regulations with moving vehicle
- PC30** Contravention of pedestrian crossing regulations with stationary vehicle
- UT50** Aggravated taking of a vehicle

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN16 becomes IN16)

(i) Hybrid Traffic Offences

Hybrid Offences are borderline of being considered major Offences depending on how many points are obtained. Offences of the type listed below will be treated as major traffic offences if four or more penalty points were imposed for the offence.

- CU10** Using vehicle with defective brakes
- CU20** Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
- CU30** Using a vehicle with defective tyre(s)
- CU40** Using a vehicle with defective steering
- CU50** Causing or likely to cause danger by reason of load or passengers
- CU80** Using a mobile phone while driving a motor vehicle
- SP10** Exceeding goods vehicle speed limit
- SP20** Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
- SP30** Exceeding statutory speed limit on a public road
- SP40** Exceeding passenger vehicle speed limits
- SP50** Exceeding speed limit on a motorway
- SP60** Undefined speed limit offence

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

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

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any

sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Where an applicant has a conviction for using a hand-held mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed.

(d) Drugs

An applicant or existing licence holder with a conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years free of convictions before an application or re-application is entertained, or 5 years after detoxification treatment if he/she was an addict.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence holder will not be granted until at least 5 years have elapsed since completion of any sentence imposed.

The nature, quantity and class of drugs will be taken into account. Each case will be considered on its own merit.

(e) Sex and Indecency Offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

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

(i) Exploitation

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse.

(f) Offences involving Violence

Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

(i) Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

(ii) Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any weapon related offence, a licence will not be granted unless at least 7 years have elapsed since the completion of any sentence.

(g) Dishonesty

Hackney carriage and private hire drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver.

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

Any dishonesty by any applicant or the other person on the applicants behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.

(h) Hackney Carriage and Private Hire Offences

Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

(i) Vehicle construction of use offences

Where an applicant has a conviction for any offence which involved the use of a vehicle (including Hackney Carriages or Private Hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

(j) Offences of Discrimination

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

(k) Other Miscellaneous Offences

These could include local authority offences, byelaw offences, nuisance offences etc. which although may not be directly relevant to hackney carriage and private hire licensing would demonstrate a feckless or irresponsible attitude and should not be discounted lightly. Each case would need to be assessed on an individual basis and although they may not necessarily debar an applicant from receiving a licence a strict warning should be given.

(l) Spent Convictions

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that full consideration for determining the application cannot be given except by admitting or requiring evidence relating to that spent conviction.

(m) Cautions and Endorsable Fixed Penalties

For the purposes of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

4. Licensing Committee and Licensing Sub-Committee

Applicants or existing drivers may be referred to the Licensing Committee or Licensing Sub-Committee for their application/suitability to be considered. The Sub-Committee panel consists a minimum of three to a maximum of seven members. Prior to a hearing the licence holder or applicant will be advised of the date, time and place of the hearing and of their right to attend and be represented should they wish. A copy of the committee report will be supplied to them prior to the hearing.

4.1 Right to be Represented

Applicants or licence holders are entitled to be represented at a Committee hearing. Any such representative does not need to be legally trained. However should an applicant/licence holder decide to use a representative who is not legally trained they do so at their own risk. Given, in the case of an existing licence holder, their livelihood may be at stake the Council would recommend that any person going before a Committee gives serious consideration to seeking legal representation or advice.

Non-legal representatives may give character references of the applicant. Written character references will also be accepted.

4.2 Interpretation Services

Interpretation services are available for Committee hearings. If an applicant or licence holder requires this service they should advise the Officer dealing with their case of the required language at their earliest convenience in order for the necessary arrangements to be made.

An applicant/licence holder may provide their own interpreter. The Council will accept any such representative and assume they are fully qualified to perform the role.

4.3 Exclusion of the Public

In view of the nature of any such hearing and the personal facts that may emerge, the hearing will be conducted with the press and public excluded. Pursuant to Section 100A(4) of the Local Government Act 1972 (as amended), the public would be excluded on the grounds that the matter involves the likely disclosure of exempt information as defined in Section 100 of the Local Government Act 1972 (as amended). Only those permitted by the applicant or licence holder will be allowed to remain in the room.

4.4 Recommended Procedure

The Chair of the Committee will open the hearing stressing the Committee's independence and outlining the procedures which will be followed. The Committee can regulate the conduct of the hearing as it wishes, so long as it is acting fairly and reasonably to the parties thereto.

The recommended committee procedure is as follows:

- i. The Council's report is presented by the Environmental Health Manager or other authorised Officer.
 - ii. The Officer is questioned by the applicant/licence holder (or representative) and then by Members of the Committee if any points need clarification.
 - iii. The Chair invites the applicant/licence holder (or representative) to present his case.
 - iv. The applicant/licence holder (or representative) can be questioned by the Council's Officers and/or Members if any points need clarification. Even if represented, the applicant/licence holder can be asked questions directly.
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- v. Any party may call witnesses of fact or character, who may be questioned by the other party and the Committee. Details should be disclosed at the earliest opportunity and 7 days prior to the Committee, if possible, to the other party and Members.
- vi. Written evidence should be disclosed at the earliest opportunity and 7 days prior to the Committee if possible, to the other party and the Members.
- vii. Each side must be given the opportunity to sum up if they so wish, the applicant/licence holder (or representative) speaking last.
- viii. At the conclusion of the case the Chair will request all parties (with the exception of the Council's Legal Officer and Democratic Services Officer) to leave the room while the Committee deliberates. Alternatively, the Committee may retire to a separate room, if more convenient.
- ix. When the Committee has reached its decision, all parties will be invited to return to be informed of the decision.
- x. The decision will later be confirmed in writing and will include a statement of reasons for reaching that decision.

4.5 Failure to Attend

If the applicant/licence holder does not attend the hearing at the appointed time and day then the Committee can continue and consider the matter without the applicant/licence holder's presence. In such cases this will be conducted on the basis of the evidence provided by the Officer, together with any written comments received from the applicant/licence holder concerned.

4.6 The Committee's Powers

The committee has the following powers:

- i. To approve the licence / take no action;
- ii. To impose additional conditions on the licence;
- iii. To give a written warning;
- iv. To refuse / revoke the licence;
- v. For existing licence holders – to suspend the licence (pending a suitable outcome to be determined by the Committee)

4.7 Applicants/Licence Holders Rights

The applicant of licence holder has the following rights:

- i. To take legal advice at any time.
- ii. To be represented by a Solicitor or other representative during any part of the procedure. Applicant/licence holder to be responsible for all costs arising from such representation.
- iii. To produce all relevant evidence in respect of his case. However, such evidence must be disclosed to the Head of Legal Services at least 7 working days, if possible, prior to the hearing.
- iv. To ask questions of the Committee or Officers.
- v. To appeal to the appropriate Court against any decision to refuse, suspend or revoke a licence or against a licence condition.

4.8 Points to Note

- i. The Environmental Health Manager, Legal and Democratic Services Officers, or other authorised Officer, will act as Clerk to the Committee and provide advice when needed on matters which may be raised of a legal or procedural nature, either during the hearing or before the Committee's decision is announced.
- ii. Both sides must be given every reasonable opportunity to present their case.
- iii. In order to assist the applicant/licence holder to present his case, there should be no excessive formality about the hearing. The atmosphere should be such as to bring out all of the facts to enable the Committee to make a reasoned decision.
- iv. The Committee must not only act but must be seen to act fairly and impartially. The Committee will be acting in quasi judicial manner and must consider only the evidence which is put before it. The Committee must act reasonably on the basis of the evidence and not take into account extraneous or irrelevant facts.
- v. Applicants/licence holders must be made aware that the hearing may take a number of hours to complete and should be prepared to wait until the completion of the case before leaving. It may be that the Committee will be considering other business and several matters may be heard on the same day. This could result in several hours wait for an applicant/licence holder.

5. Rights of Appeal

In all cases where the Council:

- Refuses an application
- Refuses to renew a licence
- Suspends a licence
- Revokes a licence, or
- Imposes conditions on a licence,

The applicant or licence holder will be notified of the decision in writing, such notification will include full reasons for the decision. In any such case the applicant or licence holder will have the right of appeal to the Magistrates' or Crown Court (as appropriate). Any such appeal must be made with 21 days of receiving written notification of the Council's decision.

6. Complaints Investigation Procedure

6.1 When a complaint is lodged about any alleged improper activity on the part of a proprietor/operator or driver, a signed written statement shall be sought from the complainant. The statement shall include all relevant information in particular clearly identifying the licensee, his car and/or plate number, date, time and place of the alleged incident, and the name(s) and address(es) of any witnesses.

Complaints of a minor nature may be dealt with by telephone or visit. All complaints of a serious nature will be investigated.

6.2 Upon receipt of the written complaint, the substance thereof shall forthwith be sent to the licensee against whom the complaint is made, who shall be invited to submit a written statement answering the allegation made.

6.3 If the person about whom a complaint is made, has not responded to the invitation within 7 days of being so invited, then a reminder shall be sent, but after a further 7 days the complaint may be dealt with without further reference to him/her.

6.4 If on receipt of the licensee's reply, it appears that there is substance in the complaint, the parties involved shall be interviewed.

6.5 The Senior Licensing Officer, upon examination of all the information available shall decide which of the following courses of action he/she considers appropriate:

- To take no action,
- To impose additional conditions on the licence,
- To give a written warning,
- To revoke the licence, or
- To suspend the licence

6.6 Any written warnings shall be expunged from the licensee's record upon the expiry of 12 months following the date of issue.

7. Three Strikes Policy for Hackney Carriage and Private Hire Drivers

Tewkesbury Borough Council operates a Three Strikes Policy, which is designed to support the aims and objectives of the Council in that all operators, drivers and vehicle proprietors maintain the high standards required of them at all times.

The aim of the Three Strikes Policy is to work in conjunction with other enforcement options. It provides a formalised stepped enforcement plan. The purpose of the scheme is to record misdemeanours and to act as a record of a licence holder's behaviour and conduct so as to ascertain whether they are a fit and proper person. It does not prejudice the Council's ability to take other actions.

7.1 Policy

The Council operates a policy for dealing with complaints, allegations and witnessed incidents of misconduct or infractions of a type which is not considered sufficiently serious in itself to justify a review of a person's suitability to hold a taxi or private hire driver, vehicle or operator licence, but which may give rise to such concerns if repeated or if regarded cumulatively with other such incidents.

Where complaints are substantiated for an applicable infraction, the council may consider issuing a formal written warning, particularly if it would be disproportionate or inappropriate to take formal legal action for the infraction. Such warnings shall be issued only in situations where the investigating officer (or a reviewing officer) is satisfied that the infraction was committed, such as if they personally observed the infraction being committed, or if the results of the investigation into a complaint lead them to conclude on the balance of probabilities that the infraction was committed.

If a driver, operator or vehicle proprietor should receive three warnings for any combination of applicable infractions within a rolling period of two years, they shall be referred to the Council's Licensing Sub-Committee, for a review hearing into that individual's suitability to continue to hold the relevant licence.

In conducting such reviews, the Sub-Committee will take account of all of the pertinent facts, and of any representation made by the driver, operator or proprietor before considering what action, if any, would be appropriate to take. The Sub-Committee may also have regard to any previous warnings or Committee determinations in reaching a decision. The options available to the Sub-Committee, depending upon the severity of the infractions and any previous record of misconduct, will typically be: to take no further action; to warn the licensee as to their future conduct; to suspend the licence for a specified period, or until such time as certain conditions have been satisfied; or to revoke the licence.

The existence of this guidance does not bind the Council, its officers or members to reach a particular decision in every case, and if the circumstances of a particular case support doing so it shall be open to the Council to select a different course of action in respect of that case, such as prosecution for a single infraction of a type listed below, or issuing an informal warning which does not count towards the cumulative total.

7.2 Strikes

The following lists of applicable infractions are non-exhaustive, and similar infractions may be regarded in the same way, even if not specifically referred to below

Applicable infractions – operators

- Failing to declare convictions / cautions in a timely manner
- Failing to produce operator licence on request
- Failing to maintain operators records complying with licence conditions, or to produce on request
- Touting of hire car services
- Abusive/improper behaviour by operator or staff
- Use of unapproved door signs on vehicles
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

Applicable infractions – drivers / vehicle proprietors

- Failing to declare convictions / cautions / motoring endorsements in a timely manner
- Failing to report accident
- Failing to produce vehicle/driver licence on request
- Failing to wear driver badge
- Failing to produce vehicle insurance certificate on request
- Failing to return licence plate / badge (following expiry, suspension or revocation)
- Using vehicle which is mechanically unsound / unsafe / excessively soiled
- Using vehicle at a time when it would not satisfy compliance standards
- Charging more than metered fare / use of incorrect tariff / previously agreed fare
- Non-display of fare card
- Prolonging journeys
- Tampering with taximeter seal, altering taximeter with intent to mislead
- Meter, radio or other equipment installed in dangerous position
- Non-display / incorrect display of licence plates
- Non-display of roof sign / door signs
- Display of roof/taxi sign on vehicle other than a hackney carriage
- Failure to carry first aid kit / fire extinguisher in vehicle
- Abusive/improper behaviour
- Driver improperly attired
- Touting
- Misuse of taxi ranks (obstructing or hindering other driver, preventing hiring)
- Hackney carriage driver refusing fare from taxi rank
- Private hire vehicle stopping on taxi rank
- Leaving hackney carriage unattended on a taxi rank
- Failing to deliver lost property to police station
- Obstruction of authorised officer or constable
- Making false statement to authorised officer or constable
- Making a false statement in connection with a licence or application

Police infractions

In addition to work undertaken by Tewkesbury Borough Council officers, Gloucestershire Constabulary officers may issue warnings which will have the same effect under this policy, for any of the above infractions, or for the following general violations:

- Minor offences under Road Traffic Acts in respect of a hackney carriage or private hire vehicle
- Minor offences under the Road Vehicles (Construction and Use) Regulations in respect of a hackney carriage or private hire vehicle
- Minor public order offences in the course of use of a hackney carriage or private hire vehicle

In all cases, issue of a warning under this scheme by a police officer shall represent an alternative disposal option, and police shall retain the right to instead utilise any other disposal method (e.g. fixed penalty notice or legal proceedings) for any applicable offence where deemed appropriate.

More serious offences

The following offences are deemed sufficiently serious that they will be excluded from this scheme, with prosecution or committee referral likely to result from a single incident:

- Plying for hire without HCV licence (or driving or standing for hire)
 - Using an unlicensed vehicle for private hire
 - Driving a licensed vehicle without a valid HC/PH driver's licence
 - Employing an unlicensed driver to drive a licensed vehicle
 - Operating unlicensed vehicles, or operating vehicles without an operator's licence
 - Refusing to accept booking to carry disabled passenger, or passenger with assistance dog
 - Injuring or endangering any person or property through wanton and furious driving or other wilful misconduct
 - Carrying excessive number of passengers
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