



TO COUNCILLOR:

E R Barr
Miss A R Bond
G A Boulter
Mrs L M Broadley (Chair)

F S Broadley
M H Charlesworth
M L Darr (Vice-Chair)
R F Eaton

Mrs L Eaton JP
J Kaufman
Mrs L Kaufman
Mrs H E Loydall

Dear Sir or Madam

I hereby **SUMMON** you to attend a meeting of the **LICENSING AND REGULATORY COMMITTEE** to be held at the **COUNCIL OFFICES, STATION ROAD, WIGSTON** on **THURSDAY, 12 JULY 2018** at **6.30 PM** for the transaction of the business set out in the Agenda below.

Yours faithfully

Council Offices
Wigston
04 July 2018

Mrs Anne E Court
Chief Executive (Interim)

<u>ITEM NO.</u>	<u>AGENDA</u>	<u>PAGE NO'S</u>
1.	Apologies for Absence	
2.	Declarations of Interest Members are reminded that any declaration of interest should be made having regard to the Members' Code of Conduct. In particular, Members must make clear the nature of the interest and whether it is 'pecuniary' or 'non-pecuniary'.	
3.	Minutes of the Previous Meeting held on 05 April 2018 To read, confirm and sign the minutes of the previous meeting in accordance with Rule 17 of Part 4 of the Constitution.	1 - 7
4.	Action List Arising from the Meeting held on 05 April 2018 To read, confirm and note the Action List arising from the previous meeting.	8
5.	Petitions and Deputations To receive any Petitions and, or, Deputations in accordance with Rule 24 of Part 4 of the Constitution.	
6.	Environmental Health Update (Q1 2018/19) (Verbal Update) Verbal update of the Environmental Health & Licensing Team Leader	



7. Licensing Update (Q1 2018/19)	9 - 11
Report of the Licensing Enforcement Officer	
8. Adoption of the Institute of Licensing's "Fit and Proper" Criteria	12 - 28
Report of the Licensing Enforcement Officer	
9. Civil Penalties under the Housing and Planning Act 2016	29 - 37
Report of the Environmental Health Officer	

For more information, please contact:

Licensing, Environmental Health or Building Control

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**MINUTES OF THE MEETING OF THE LICENSING AND REGULATORY COMMITTEE HELD
AT THE COUNCIL OFFICES, STATION ROAD, WIGSTON ON THURSDAY, 5 APRIL 2018
COMMENCING AT 6.30 PM**

PRESENT

Councillor Mrs L M Broadley (Chair)

COUNCILLORS

G A Boulter
M H Charlesworth
J Kaufman
Mrs H E Loydall

OFFICERS IN ATTENDANCE

Mrs T L Aldwinckle	(Licensing Enforcement Officer)
S J Ball	(Senior Democratic Services Officer / Legal Officer)
D M Gill	(Head of Law & Governance / Monitoring Officer)
J Mortell	(Licensing Officer)
Ms P J Samuels	(Environmental Health & Licensing Team Leader)

24. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillors E R Barr, Mrs K M Chalk, Miss M V Chamberlain and R F Eaton.

25. DECLARATIONS OF INTEREST

None.

26. MINUTES OF THE PREVIOUS MEETING HELD ON 25 JANUARY 2018

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The minutes of the previous meeting of the Committee held on 25 January 2018 be taken as read, confirmed and signed.

27. ACTION LIST ARISING FROM THE MEETING HELD ON 25 JANUARY 2018

The Committee was advised that it would be difficult to justify the implementation of a policy requiring all hackney carriage vehicles to be compliant with the Equality Act 2010 for passenger accessibility or to be a specific colour as this would involve a considerable amount of expenditure that would yield only a relatively small benefit.

The Committee was informed that Officers had attended the last meeting hosted by the Leicestershire District Partnership Environmental Enforcement Forum on 22 March to devise a campaign across Leicestershire to target fly-tipping. Further details regarding the campaign are provided in the report at agenda item 6, paragraph 3.5.

Members requested that a clear definition of what constituted "household waste" was needed in order to clarify what was subject to charging at waste disposal sites.

The Committee was informed that a Letterbox article advising residents to first check if waste disposal firms held the relevant permits was necessary as householders were ultimately liable for the person(s) to whom they entrust the disposal of their waste.

The Committee was advised that the Council did not have any plans to introduce three, free bulk waste collections per year and that discretionary relief for the charging of the collection of bulk waste was available to those of limited means.

The Committee was advised that reports of private hire vehicles parking in the taxi ranks and other parking spaces on Leicester Road, Wigston had been investigated.

The Committee was advised that all Oadby and Wigston operators had been written to reminding them about their responsibilities under the law and policy for accepting assistance dogs and not charging an increased fare for disabled passengers.

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The Action List be noted by Members.

28. PETITIONS AND DEPUTATIONS

None.

29. CORPORATE ENFORCEMENT UPDATE

The Committee gave consideration to the report (at pages 7 - 14) as delivered and summarised by the Environmental Health & Licensing Team Leader which should be read together with these minutes as a composite document.

Dog Fouling

A verbal update was provided at the meeting which informed the Committee that between January and March 2018, a total of 26 dog-related service requests had been received: only one request related to dog fouling and three requests related to aggressive dogs. All service requests were said to have been dealt with efficiently.

It was raised by the Committee and advised upon by Officers that in view of reports by Members of a number of persistent dog fouling offenders at particular hotspots in the Borough, the review and tendering of the stray dog service contract was to include an enforcement element whereby action could be targeted accordingly.

Public Space Protection Orders (PSPO's)

The Committee noted its concern regarding the delay in bringing forward the enactment of the PSPO since its approval at Full Council on 22 February.

The Committee was advised that the final stages of the PSPO's implementation required the erection of bespoke signage which could not have been ordered until the detail of the PSPO was approved. Members were assured that the signage would be erected and an enactment date confirmed as soon as reasonably practicable.

Pest Control Service

The Committee was advised that a full and up-to-date financial appraisal in respect of the service, including a year-on-year analysis identifying any service trends, was brought back to the Committee in July so that a view could then be taken as to its commercial viability in terms of any significant capacity to generate additional income or to breakeven in the future taking into account seasonal variations in demand.

It was reported that the current financials as set out in the report were a true reflection of the service's income due to upfront payments being taken in accordance with the revised scales of fees and charges which were effective from 1 July 2017. It was also said that opportunities to promote and secure large commercial contracts were to be taken by Environmental Health Officer (EHO's) whilst out on fieldwork.

Fly-Tipping and Abandoned Vehicles

The Committee requested that a further breakdown of information be provided to Members in terms of how many reports of incidents perceived to be fly-tipping and abandoned vehicles were in fact deemed by Officers to be such incidents.

Food Hygiene

It was raised by the Committee and advised upon by Officers that, having been awarded a food hygiene score of '0', steps were being taken by the Satya Restaurant in Oadby to improve their rating. It was said that the restaurant's next inspection was due in three months, unless requested earlier by the restaurant, and that its progress was being closely monitored by EHO's during the interim period. If serious concerns remained, the option to serve a notice to force closure was available.

New Legislation/Policy

The Committee was advised that the introduction of the new Energy Performance Certificates requirements was a regulatory function under the remit of Environmental Health which affected both private and social housing. Information concerning the latter was said to be reported to the next meeting of the Service Delivery Committee.

The Committee was advised that under the Licensing of Houses in Multiple Occupation (HMO) (Prescribed Description) (England) Order 2018, the definition of a HMO was to be widened to include any property occupied by five or more people forming two or more separate households and that enforcement action would be taken against any person without the appropriate HMO license after 2 October. It was said that statutory protection from retaliatory eviction did exist should tenants lodge complaints regarding landlords' non-compliance with licensing requirements.

Licensing

The Licensing Enforcement Officer provided the Committee with a verbal update in relation to work undertaken by the Licensing Section between January and March 2018, a summary of which is filled together with these printed minutes at Annex A.

It was raised by the Committee and clarified by Officers that Members could continue to attend joint taxi-licensing enforcement activities as by-standers only. The Chair noted the educational value such opportunities afforded to new committee members.

Miscellaneous

It was raised by the Committee and advised upon by Officers that in view of a concern

regarding the inconsistent regulation of the Borough's highways and car parks, the outsourcing of an "all-round" enforcement package could be investigated.

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The contents of the report be noted by Members.

30. LICENSING OF SCRAP METAL DEALERS AND COLLECTORS

The Committee gave consideration to the report and appendix (at pages 15 - 26) as delivered and summarised by the Licencing Officer which should be read together with these minutes as a composite document.

The Committee was advised that a licensed scrap metal site or mobile collector was not entitled to receive or take scrap metal from any person without their consent or before verifying their name and address. It was also said that licence holders were required to keep a record of all scrap metal received and disposed of for 3 years.

The Committee raised concerns insofar as there were: a number of scrap metal collectors within the Borough without the appropriate licence; a number of scrap metal sites within the Borough believed to be holding the appropriate licence yet did not feature at paragraph 3.2 of the report; and one scrap metal dealer named at paragraph 3.2 had been issued with two licences contrary to the Council's adopted Licensing of Scrap Metal Dealers Policy ("the Policy").

Officers assured Members that further investigations would be undertaken in response to the concerns raised and would report back to the Committee. Further clarification of the Policy with reference to the legislation was also to be provided.

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The contents of the report be noted by Members.

31. EXCLUSION OF PRESS AND PUBLIC

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The press and public be excluded from the remainder of the meeting in accordance with Section 100(A)(4) of the Local Government Act 1972 (Exempt Information) during consideration of the item(s) below on the grounds that it involved the likely disclosure of exempt information, as defined in the respective paragraph(s) 1, 2 and 7 of Part 1 of Schedule 12A of the Act and, in all the circumstances, the public interest in maintaining the exempt item(s) outweighed the public interest in disclosing the information.

32. ASBESTOS CONTAMINATION AT MARSTOWN AVENUE, SOUTH WIGSTON (VERBAL UPDATE)

The Committee gave consideration to exempt verbal update as delivered by the Head of

Law & Governance / Monitoring Officer in closed session.

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The exempt verbal update be noted by Members.

The Committee expressed its retirement wishes to the outgoing Licensing Officer.

THE MEETING CLOSED AT 8.10 PM



Chair

Thursday, 12 July 2018

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Council Offices, Station Road, Wigston, Leicestershire, LE18 2D*

Corporate Enforcement Update

Verbal Update of the Licensing Enforcement Officer

Since the last Committee in January.

Vehicles

Licensing has processed 30 new vehicles and 32 vehicle renewals. 8 vehicles failed inspection.

Drivers

On the 4 April, 8 new applicants sat the competency test of which only a 1/4 of the people passed.

From the 1 January 2018, all new applicants have to undergo Child Sexual Exploitation (CSE) training session prior to a driver's badge being issued. In addition to this, all applicants who applied prior to January but had not passed the competency test are being made to undergo CSE training prior to issuing a badge.

Renewal applications will not be completed until the CSE input has been completed. Renewal letters are being sent out with course dates attached to ensure that the drivers are not disadvantaged.

There are monthly CSE sessions.

We are presently processing:

- 58 applications awaiting the applicant to pass the competency test who have previously failed;
- 27 applicants are booked onto the 9 May competency test; and
- 10 applicants are booked onto the 6 June competency test.

If the applicants do not have a good comprehension of the English language, there is little chance of them passing the revised competency test.

Enforcement

There are presently 3 complaints from members of the public appertaining to our drivers which are being investigated: one is subject to sub judice, but will be progressed when appropriate.

Officers have been out to the taxi rank on Leicester Road, Wigston which is outside of the Co-Op funeral building. On none of the occasions a visit was made were there any private hire vehicles. There were however, unattended hackney carriages and those drivers located were advised that they can only use the rank if they remain with the vehicle and are ready to be hired.

Regular visits to Bell Street, Wigston have been made in relation to shops leaving wire york carriages outside the Peace Memorial. A community Protection Warning notice has been issued and since the date of issue, there have been no reoccurrences.

The next joint taxi operation is scheduled for the 26 April 2018 at East Midlands Airport, which is being hosted by North West Leicestershire District Council.

In relation to local Oadby and Wigston joint enforcement operations, a meeting has been arranged for Tuesday 10 April, when the calendar for operational dates will be agreed with the Neighbourhood Policing Area (NPA) Commander.

Upon speaking, to the NPA Commander Insp Cawley, in relation to the request that new Councillors be allowed to attend joint operations. He has stated that he is not prepared to allow/authorise Councillors to be involved in joint enforcement operations as the potential to operational risk is too high. However, he stated that Leicestershire Police operated a Lay Observers scheme which would allow Councillors to observe the Police in action but not in enforcement roles.

A letter has been sent to all taxi operators outlining their duties and responsibilities in relation to disabled passengers and assistance dogs. To date, OWBC have not received any complaints.

A premises Licence was granted on the 3 April 2018 to Lidl in South Wigston.

Agenda Item 4

LICENSING AND REGULATORY COMMITTEE

ACTION LIST

Arising from the Meeting held on Thursday, 05 April 2018

Min. Ref.	Item of Business	*Details of Action <i>Action Due Date</i>	Responsible Officer(s)' Initials	Status / Update
27.	Action List Arising from the Meeting held on 25 January 2018	A clear definition of what constituted "household waste" be provided to Members in order to clarify what was subject to charging at waste disposal sites. <i>Due by Jul-18</i>	PS	Verbal Update
29.	Corporate Enforcement Update	A further breakdown of information be provided to Members in terms of how many reports of incidents perceived to be fly-tipping and abandoned vehicles were in fact deemed by Officers to be such incidents. <i>Due by Jul-18</i>	PS	Verbal Update
30.	Licensing of Scrap Metal Dealers and Collectors	Further investigations be undertaken in response to Members' concerns and further clarification of the Policy with reference to the legislation be provided (See full minute). <i>Due by Jul-18</i>	DMG PS	Verbal Update

* | All actions listed are those which are informally raised by Members during the course of debate upon a given item of business which do not form part of - but may be additional, incidental or ancillary to - any motion(s) carried. These actions are for the attention of the responsible Officer(s).



Licensing and Regulatory Committee	Thursday, 12 July 2018	Matter for Information
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Report Title: **Licensing Update (Q1 2018/19)**

Report Author(s): **Tracey Aldwinckle (Licensing Enforcement Officer)**

Purpose of Report:	This report provides an overview of the work undertaken by the Licensing Section for the first quarter of 2018/19.
Report Summary:	This report covers the following subjects: taxi licensing, matters arising under the Licensing Act 2003 and licensing enforcement.
Recommendation(s):	That the contents of the report be noted by Members.
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Interim Chief Executive) (0116) 257 2602 anne.court1@oadby-wigston.gov.uk</p> <p>David Gill (Head of Law & Governance / Monitoring Officer) (0116) 257 2626 david.gill@oadby-wigston.gov.uk</p> <p>Tracey Aldwinckle (Licensing Enforcement Officer) (0116) 257 2689 tracey.alwinckle@oadby-wigston.gov.uk</p>
Corporate Priorities:	Effective Service Provision (CP2)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	There are no implications arising from this report.
Financial:	There are no implications arising from this report.
Corporate Risk Management:	No corporate risk(s) identified.
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable.
Human Rights:	There are no implications arising from this report.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	None.

Background Papers:	None.
Appendices:	None.

1. Taxi Licensing

1.1 Vehicles

Since 06 April until 02 July 2018, the Licensing Section has processed 107 vehicle applications. All vehicles have undergone visual inspections and, in total, 203 vehicle inspections have taken place.

New Hackney	59
Renewal Hackney	45
6-month inspections	62
Re-test inspections	31
Total inspections	197

New Private Hire	3
Renewal Private Hire	3
Failed inspections Private Hire	3
Re-test inspections	3

1.2 Drivers

Since 06 April 2018 until 02 July 2018, 52 new applicants have sat the competency test, of which only 14 met the required standard.

The monthly Child Sexual Exploitation (CSE) sessions continue to be delivered on the first Wednesday of each month.

1.3 Driver Applications Presently Being Processed

- 56 applications are awaiting the applicant to pass the competency test who have previously failed.
- 30 applicants are booked onto the 04 July 2018 competency test.
- 30 applicants are booked onto the 01 August 2018 competency test.
- 4 applicants are booked onto the 04 September 2018 competency test.

1.4 Refusal of Drivers Licences

Since 06 April 2018, 5 driver applications have been refused in line with Licensing Policy.

2. Licensing Act 2003

- 2.1 On receipt of a request for a review of a Premises Licence from Trading Standards, a premises licence for The Fresh Market, Wigston was removed as it had lapsed due to the liquidation of the parent company.
- 2.2 At the time of writing the report, no application for a transfer of the licence had been received. Officers are continuing to monitor the premises with the assistance of partner

agencies to ensure that no sales of alcohol take place until such time as the licence is transferred or a new application is received.

3. Enforcement

- 3.1 There are presently 6 complaints from members of the public appertaining to drivers and taxis which are being investigated; one is sub-judice, but will be progressed when appropriate.
- 3.2 Officers continue to conduct licensing checks. Officers have been out to the taxi rank on Leicester Road where enforcement action is being taken against Hackney Carriage drivers who are abusing the rank by leaving their vehicles unattended.
- 3.3 Officers have conducted several joint licensing checks with the Police; as a result, one licensee from Oadby was invited in to the office and given an action plan on how to manage issues at the premises. Progress will be reviewed in four weeks.
- 3.4 Officers have been working closely with Trading Standards, the Police and Environmental Health in relation to the illegal importation of an animal without quarantine from a pet shop within the Borough.

Agenda Item 8



Licensing and Regulatory Committee	Thursday, 12 July 2018	Matter for Information and Decision
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Report Title: Adoption of Institute of Licensing "Fit and Proper" Criteria

Report Author(s): Tracey Aldwinckle (Licensing Enforcement Officer)

Purpose of Report:	The purpose of this report is for Members to consider the guidance issued by the Institute of Licensing regarding the suitability of applicants and licensees in the hackney and private hire trades.
Report Summary:	The Institute of Licensing and its partners encourage the adoption of the guidance as a means of standardising the approach to the grant of licences across the country to ensure consistency and transparency in decision-making.
Recommendation(s):	<p>A. That the Institute of Licensing's guidance entitled 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' be adopted; and</p> <p>B. The Head of Law & Governance / Monitoring Officer be given delegated authority, following consultation with the Chair and Vice-Chair of the Committee, to review the Council's Hackney Carriage and Private Hire Licensing Policy and the Guidelines on Relevant Convictions contained therein to ensure there is a consistent approach to that advocated in the Guidance.</p>
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Interim Chief Executive) (0116) 257 2602 anne.court1@oadby-wigston.gov.uk</p> <p>David Gill (Head of Law & Governance / Monitoring Officer) (0116) 257 2626 david.gill@oadby-wigston.gov.uk</p> <p>Tracey Aldwinckle (Licensing Enforcement Officer) (0116) 257 2689 tracey.alwinckle@oadby-wigston.gov.uk</p>
Corporate Priorities:	Effective Service Provision (CP2) Green & Safe Places (CP4)
Vision and Values:	Accountability (V1) Customer Focus (V5)
Report Implications:-	
Legal:	The adoption of the national guidance would promote consistency and transparency in the decision making process.
Financial:	There are no implications arising from this report.

Corporate Risk Management:	Reputation Damage (CR4) Regulatory Governance (CR6)
Equalities and Equalities Assessment (EA):	There are no implications arising from this report. EA not applicable at this stage.
Human Rights:	A decision to revoke, suspend or refuse to renew a licence will engage the licensee's rights under the Human Rights Act 1998.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	In preparing this document, the Institute of Licensing Working Party consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.
Background Papers:	Hackney Carriage and Private Hire Licensing Policy (July 2013)
Appendices:	1. Guidance of the Institute of Licensing (April 2018)

1. Background

- 1.1 In April 2018, the Institute of Licensing published a document entitled "Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades" ("the Guidance"). A copy of the Guidance is attached at **Appendix 1**.
- 1.2 The Guidance has been produced in conjunction with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO) following widespread consultation.
- 1.3 The Guidance has been produced because there is no recent statutory or ministerial guidance on how Committee's, Sub-Committee's and/or Officers should make a determination on whether an applicant or licensee is a "fit and proper person".
- 1.4 The intention is to provide guidance on determining suitability, taking into account the character of the applicant or licensee and that it be used as a basis for the Council's own policies and in particular how regard should be had in the antecedent history of the applicant or licence holder and its relevance to their "fitness and propriety" or "character".
- 1.5 The Guidance is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. The Council aims to be a well-managed Council providing efficient service based on identified customer needs and consideration of this issue will enhance this.

2. Issues

- 2.1 As the Committee is aware, the Council has a comprehensive Policy for the Licensing of Hackney Carriage Drivers and Vehicles Private Hire Operators, Drivers and Vehicles and a

Statement of Policy and Guidelines on Relevant Convictions etc. which were approved or recommended by the Committee in July 2013. Having reviewed these against the Guidance, they mirror its intent on the majority of issues but a different approach is taken in the Guidance on several issues: such as the requirement for DBS checks for vehicles licence holders and the imposition of conditions requiring Private Hire Operators to check the suitability of those who they employ to work in the office taking bookings.

- 2.2 The importance of a consistent approach with other authorities is recognised and it is proposed that the Committee adopt the Guidance and authorise the Head of Law & Governance / Monitoring Officer to review the Council's Hackney Carriage and Private Hire Licensing Policy and the Guidelines on Relevant Convictions contained therein to ensure there is a consistent approach to that advocated in the Guidance. The amended documentation will be brought back to Committee for approval at a later date.

Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades



April 2018



Produced by the Institute of Licensing in partnership with:



Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades

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Foreword

The function of licensing is the protection of the public. A member of the public stepping into a motor vehicle driven by a stranger must be able to trust the driver. Are they honest? Are they competent? Are they safe? Are they trustworthy? When we transact with others, we usually have time and opportunity to make such assessments. When we transact with taxi drivers, we don't. Therefore, we must, and do, rely on the licence as the warranty of the driver's safety and suitability for the task at hand.

It follows that a licensing authority has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey the passenger from A to B in safety. That passenger may be you, or your elderly mother, or your teenage daughter, or a person who has had too much to drink, or who is vulnerable for a whole host of other reasons.

Everybody working in this field should acquaint themselves with the facts of the Rotherham case, which stands as a stark testament to what can happen when licensing performs its safeguarding role inadequately. But the extremity of that appalling story should not distract us from the job of protecting the public from more mundane incompetence, carelessness or dishonesty. The standards of safety and suitability do not have to be set as a base minimum. To the contrary, they may be set high, to give the public the assurance it requires when using a taxi service. It is good to know that one's driver is not a felon. It is better to know that he or she is a dedicated professional.

Crucially, this is not a field in which the licensing authority has to strike a fair balance between the driver's right to work and the public's right to protection. The public are entitled to be protected, full stop. That means that the licensing authority is entitled and bound to treat the safety of the public as the paramount consideration. It is, after all, the point of the exercise.

Therefore, this guidance is to be welcomed. It rightly emphasises that any circumstance relating to the licensee is potentially relevant, provided of course that it is relevant to their safety and suitability to hold a licence. It provides useful and authoritative guidelines to licensing authorities as to how they ought to approach their important task of making determinations about the safety and suitability of drivers and operators.

While, of course, licensing is a local function, it seems absurd that precisely the same conduct might result in a short period without a licence in one district, and a much longer period in a neighbouring district. If a driver is suitable in district A, they are surely suitable in district B, and vice versa. If, as is hoped, this guidance becomes widely adopted, this will result in a degree of national uniformity, which serves the public interest in consistency, certainty and confidence in the system of licensing. Adherence to the guidance may also provide protection to licensing authorities on appeal.

The guidance is therefore commended to licensing authorities. It is hoped that, in due course, it will sit at the elbow of every councillor and officer working in taxi licensing.

Philip Kolvin QC
Cornerstone Barristers

April 2018

Chapter 1: Introduction

- 1.1 This guidance has been produced by the Institute of Licensing working in partnership with the Local Government Association (LGA), Lawyers in Local Government (LLG) and the National Association of Licensing and Enforcement Officers (NALEO), following widespread consultation. We are grateful to all three organisations for their contributions. This guidance is formally endorsed by all of those organisations.
- 1.2 The overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators, must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the authority that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications¹. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 There is no recent Statutory or Ministerial guidance as to how such decisions should be approached or what matters are relevant or material to a decision. This guidance complements the LGA's Taxi and Private Hire Licensing Councillor's Handbook and any forthcoming Government guidance. Local authorities should also be aware of the forthcoming National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences.
- 1.6 This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It can then be used by local authorities as a basis for their own policies: in particular it considers how regard should be had to the antecedent history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it need not be slavishly followed but it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.
- 1.7 A licensing authority policy can take a 'bright line approach' and say "never" in a policy, but it remains a policy, and as such does not amount to any fetter on the discretion of the

¹ Except vehicle proprietors. In those cases there is no "fit and proper" requirement, but the authority has an absolute discretion over granting a licence.

authority. Each case will always be considered on its merits having regard to the policy, and the licensing authority can depart from the policy where it considers it appropriate to do so. This will normally happen where the licensing authority considers that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority*².

- 1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy. Given the important function of licensing to protect the public, any bar should be set at the highest level which is reasonable, albeit subject to the exercise of discretion as is set out in paragraph 1.7 and Chapters 3 and 4.
- 1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife and should lead to differentiation. In each case, appropriate weight should be given to the evidence provided.
- 1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards.
- 1.11 In preparing this document the Institute's Working Party has consulted with and considered the issues from all perspectives including, Councillors, Licensing Officers, Lawyers, the Hackney Carriage and Private Hire Trades, Academics, the Probation Service and the Police.

² [2007] 1 WLR 2067

Chapter 2: Offenders and Offending - An Overview

- 2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.³ With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person" to hold a licence.
- 2.2 This section aims to provide a brief overview of public protection, how to determine risk and factors to be considered when an applicant seeks to demonstrate a change in their offending behaviour.
- 2.3 The licensing process places a duty on the local authority to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trades meet the required standards. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the decision maker considers all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.
- 2.4 There has been extensive research into the reasons behind why some individuals commit crimes, why some learn from their mistakes and stop offending whilst others find themselves in a cycle of repeat offending. Several theories have evolved over many years offering insight into the reasons behind offending behaviour. One common theme is that no two crimes are the same and that risk cannot be eliminated, or the future predicted. What can be done, is to examine each case on its individual merits, look at the risks involved along with any change in circumstances since any offences were committed to assist in making the decision.
- 2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm⁴. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of re-offending in generic terms.

³ DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 8

⁴ Kemshall, H. (2008). Understanding the Management of High Risk Offenders (Crime and Justice). Open University Press

- 2.6 Flaud⁵ noted that risk is in principle, a matter of fact, but danger is a matter of judgment and opinion. He goes on to note that risk may be said to be the likelihood of an event occurring; danger may be the degree of damage (harm) caused should that event take place⁶.
- 2.7 The National Offender Management Service refers to risk in two dimensions. That being the likelihood that an offence will occur, and the impact / harm of the offence should it happen. Generally, when making a decision around probability and likelihood of re-offending, consideration is needed towards static and dynamic factors.
- 2.8 Static factors are historical and do not change such as age, previous convictions and gender. They can be used as a basis for actuarial assessments and are fundamental in considering an individual's potential to reoffend in future⁷. For example, recent published statistics revealed that 44% of adults are reconvicted within one year of release. For those serving sentences of less than twelve months this increased to 59%⁸. It is also widely accepted that generally persons with a large number of previous offences have a higher rate of proven reoffending than those with fewer previous offences⁹.
- 2.9 Dynamic factors are considered changeable and can vary over time. They include attitudes, cognitions and impulsivity¹⁰. It is documented that the greater their unmet need, the more likely an individual is to re-offend. When considering whether an individual has been rehabilitated, it is important to have regard towards the motivation behind their offending and dynamic risk factors present at the time, against the steps taken to address such factors thus reducing the risk of re-offending.
- 2.10 It is of note that problems and/or needs are more frequently observed in offender populations than in the general population¹¹. Many of these factors are interlinked and embedded in an individual's past experiences. This can impact upon that person's ability to change their behaviour, particularly if the areas identified have not been addressed or support has not been sought. Needs will vary from individual to individual and will rely upon their level of motivation and the nature of the offence committed.

⁵ Flaud, R. (1982). Cited in, Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁶ Gendreau, P., Little, T. and Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: what works! *Criminology*, 34, 557-607.

⁷ Craig, L. A. and Browne, K. B (2008). *Assessing Risk in Sex Offenders: A Practitioner's Guide* Paperback.

⁸ Ministry of Justice (2017) *Proven reoffending statistics: July 2014 to June 2015*, London: Ministry of Justice.

⁹ Ministry of Justice (2015): *Transforming Rehabilitation: a summary of evidence on reducing reoffending*. London: Ministry of Justice.

¹⁰ McGuire, J. (2008). A review of effective interventions for reducing aggression and violence. *Philosophical Transactions of the Royal Society B: Biological Sciences*, 363(1503), 2577-2597

¹¹ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

Risk of re-offending:

- 2.11 The issue of recidivism and increase in serious crime rates has given rise to extensive publications, theories and changes in legislation with many focusing upon the need for more rehabilitation projects as a means of reducing re-offending rates. Central to the rehabilitation of offenders is the concept of criminogenic needs. This has been described by the National Offender Management Service as "any area where the offender has needs or deficits, in which a reduction in the need or deficit would lead to a reduction in the risk of re-conviction. An individual's ability to address and reduce such needs relies heavily upon their motivation to change and desist and often takes place over a period of time"¹².
- 2.12 Kurlychek, 2007 in her study noted that "a person who has offended in the past has been found to have a high probability of future offending, but this risk of recidivism is highest in the time period immediately after arrest or release from custody and, thereafter, decreases rapidly and dramatically with age"¹³.
- 2.13 A consistent finding throughout criminological literature is that male offenders tend to desist from crime aged 30 years and over¹⁴. It is well documented that the change occurs for various reasons; for example, as a result of successful treatment, natural maturation or the development of positive social relationships¹⁵. Female offenders are also considered more likely to desist from offending as they mature. The peak age of reported offending for females was 14 compared to 19 for males¹⁶.
- 2.14 Desisting from crime for people who have been involved in persistent offending is a difficult and complex process, likely to involve lapses and relapses. Some individuals may never desist¹⁷. As a result, it is important for individuals to evidence change in their behaviour before they can be considered to present a low or nil risk of re-offending. Often the only way of achieving this is through lapse of time.
- 2.15 The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime. It is noted that the more a life is lived crime-free, the more one comes to see the benefits of desistance¹⁸. Demonstrating a change in offending behaviour and an ability to make effective choices takes time and comes with some

¹² National Offender Management Service (2016). *Public Protection Manual Edition. Proven Reoffending Statistics Quarterly Bulletin*, October 2015 to December 2015

¹³ Kurlychek, M C, Brame, R (2007). *Scarlet letters and recidivism: Does an old criminal record predict future offending?* University of South Carolina.

¹⁴ Serin, R, C. and Lloyd, C.D (2008). *Examining the process of offender change: the transitions to crime desistance*. 347-364.

¹⁵ Nash, M. (1999) *Police, Probation and Protecting the Public*. London: Blackwell Press.

¹⁶ Trueman, C.N. (2015). *Women and Crime*. The History Learning Site. Ingatstone: Essex.

¹⁷ Farrell, S (2005). *Understanding Desistance from Crime: Emerging Theoretical Directions in Resettlement and Rehabilitation (Crime and Justice) Paperback*.

¹⁸ Maguire, M., Morgan, R. and Reiner, R. (2002). *The Oxford Handbook of Criminology*. 3rd Edition. Oxford: Oxford University Press.

ambiguity for those who have committed offences. A study in 2007 looking into previous convictions and the links to re-offending concluded that “individuals who have offended in the distant past seem less likely to recidivate than individuals who have offended in the recent past”¹⁹.

- 2.16 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce risk and protect the public can be achieved by following correct processes and guidance. Having regard to an individual’s previous behaviour and their potential to cause harm as a result of the choices they have made plays a significant part when making a decision as to whether to grant a licence. Being able to evidence change in behaviour will involve consideration of the circumstances at the time of the offence, steps taken to address any issues identified and that person’s ability to sustain such change. This can be a long process that can only be achieved over time.

¹⁹ Kurlychek, M C, Brame, R (2007). Scarlet letters and recidivism: Does an old criminal record predict future offending? University of South Carolina.

Chapter 3: ‘Taxi’ Licensing Overview

- 3.1 Taxis are used by almost everyone in our society occasionally, but they are used regularly by particularly vulnerable groups: children; the elderly; disabled people; and the intoxicated, and a taxi driver has significant power over a passenger who places themselves, and their personal safety, completely in the driver’s hands.
- 3.2 Local authorities (districts, unitaries and Welsh Councils) and TfL are responsible for hackney carriage and private hire licensing.
- 3.3 The principal legislation is the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. The purpose of taxi licensing is detailed in the DfT “*Taxi and Private Hire Licensing – Best Practice Guide*” para 8 which states:

“The aim of local authority licensing of the taxi and PHV trades is to protect the public.”
- 3.4 Within the two licensing regimes, there are 5 types of licence: hackney carriage vehicle; private hire vehicle; hackney carriage driver; private hire driver and private hire operator.
- 3.5 In relation to all these licences, the authority has a discretion over whether to grant. Whilst there is some guidance issued by the DfT, there are no national standards.
- 3.6 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 3.7 There are no statutory criteria for vehicle licences; therefore, the authority has an absolute discretion.
- 3.8 In each case, the authority has powers to grant a licence, renew it on application and, during the currency of the licence, suspend or revoke it.
- 3.9 What is the role of each of these, and how do authorities determine an application, or take action against a licence?

Taxi Drivers

- 3.10 The term “taxi driver” encompasses two different occupations: hackney carriage drivers and private hire drivers. “Taxi driver” is therefore used as a broad, overarching term to cover both hackney carriage and private hire drivers. In each case there are identical statutory

criteria to be met before a licence can be granted and many authorities grant “dual” or “combined” licences to cover driving both types of vehicle.

- 3.11 An applicant must hold a full DVLA or equivalent driver’s licence, have the right to work in the UK, and be a “fit and proper” person²⁰.
- 3.12 The driving licence element is a question of fact. Although there are some issues with foreign driving licences, ultimately a person either has, or does not have a driving licence.
- 3.13 An applicant must also have the right to remain, and work in the UK²¹.
- 3.14 Again, this is ultimately a question of fact and the local authority should follow the guidance issued by the Home Office.²²
- 3.15 It is the whole issue of “fit and proper” that causes local authorities the most difficulties. It has never been specifically judicially defined but it was mentioned in *Leeds City Council v Hussain*²³. Silber J said:

“... the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose [and], therefore [the test of fitness and propriety], is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.”

- 3.16 This is reflected in a test widely used by local authorities:
- ‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?’²⁴
- 3.17 It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper” but brings the concept up to date.

²⁰ Local Government (Miscellaneous Provisions) Act 1976. Section 51(1) covers private hire drivers, and section 59(1) covers hackney carriage drivers.

²¹ Local Government (Miscellaneous Provisions) Act 1976 S51(1)(a)(ii) in respect of private hire drivers and S59(1)(a)(ii) in respect of hackney carriage drivers.

²² “Guidance for Licensing Authorities to Prevent Illegal Working in the Taxi and Private Hire Sector in England and Wales” - Home Office, 1st December 2016 available at <https://www.gov.uk/government/publications/licensing-authority-guide-to-right-to-work-checks>

²³ [2002] EWHC 1145 (Admin), [2003] RTR 199

²⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 10.21

- 3.18 How can a local authority assess and then judge whether or not someone is safe and suitable to hold a drivers’ licence?

- 3.19 The local authority has the power to require an applicant to provide:
- “such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence.”²⁵

This “information” can include any pre-conditions or tests that they consider necessary

- 3.20 Some of these are universal, such as medical assessments²⁶. Others are required by some authorities, but not others. These include:
- Enhanced DBS certificates and sign-up to the update service;
 - Knowledge tests;
 - Driving tests;
 - Disability Awareness;
 - Signed Declarations;
 - Spoken English tests.
- 3.21 The provision of information in these terms can satisfy the local authority that a person has the skills and competencies to be a professional driver to hold a licence. However, the concepts of safety and suitability go beyond this. There is the character of the person to be considered as well.
- 3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no “spent” convictions and that any and all criminal convictions (apart from “protected convictions” and “protected cautions” where they have been declared²⁷) can be taken into account by the local authority in assessing safety and suitability, but only relevant spent convictions should be considered by the decision maker²⁸.
- 3.23 All Applicants/Licensees should be required to obtain an Enhanced DBS Certificate with Barred Lists checks²⁹ and to provide this to the Licensing Authority. All Licensees should also be required to maintain their Certificates through the DBS Update Service throughout the currency of their licence.

²⁵ Local Government (Miscellaneous Provisions) Act 1976 s57(1)

²⁶ See Local Government (Miscellaneous Provisions) Act 1976 s57(2)

²⁷ “Protected convictions” and “protected cautions” are single, minor and elderly matters that do not appear on any DBS Certificates.

²⁸ See *Adamson v Waveney District Council* [1997] 2 All ER 898

²⁹ “For Taxi [driver] Licensing purposes the correct level of check is always the Enhanced level check, with the Adults and Children’s Barred list check. Other Workforce should always be entered at X61 line 1 and Taxi Licensing should be entered at X61 line 2” DBS email 31st August 2017.

- 3.24 If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check from the country/countries covering the relevant period should be required.
- 3.25 Local authorities should have a policy to provide a baseline for the impact of any convictions, cautions or other matters of conduct which concern a person's safety and suitability³⁰.
- 3.26 The character of the driver in its entirety must be the paramount consideration when considering whether they should be licensed. It is important to recognise that local authorities are not imposing any additional punishment in relation to previous convictions or behaviour. They are using all the information that is available to them to make an informed decision as to whether or not the applicant or licensee is or remains a safe and suitable person.
- 3.27 There are occasions where unsuitable people have been given licences by local authorities, or if refused by the authority, have had it granted by a court on appeal.
- 3.28 Often this is because of some perceived hardship. Case law makes it clear that the impact of losing (or not being granted) a driver's licence on the applicant and his family is not a consideration to be taken into account³¹. This then leads to the question of whether the stance taken by local authorities is robust enough to achieve that overriding aim of public protection.
- 3.29 However, all too often local authorities depart from their policies and grant licences (or do not take action against licensees) without clear and compelling reasons. It is vital that Councillors recognise that the policy, whilst remaining a policy and therefore the Authority's own guidelines on the matter, is the baseline for acceptability. It should only be departed from in exceptional circumstances and for justifiable reasons which should be recorded.
- 3.30 One common misunderstanding is that if the offence was not committed when the driver was driving a taxi, it is much less serious, or even if it was in a taxi but not when passengers were aboard. This is not relevant: speeding is dangerous, irrespective of the situation; drink driving is dangerous, irrespective of the situation; bald tyres are dangerous, irrespective of the situation. All these behaviours put the general public at risk. Violence is always serious. The argument that it was a domestic dispute, or away from the taxi, is irrelevant. A person who has a propensity to violence has that potential in every situation. Sexual offences are always serious. A person who has in the past abused their position (whatever that may have been)

³⁰ As recommended by the DfT "Taxi and Private Hire Licensing – Best Practice Guide" para 59

³¹ *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 and *Cherwell District Council v Anwar* [2011] EWHC 2943 (Admin)

- to assault another sexually has demonstrated completely unacceptable standards of behaviour.
- 3.31 Applicants may claim that they have sought employment in other fields and been precluded as a result of their antecedent history particularly if that contains convictions. They therefore seek to become a licensed driver as an occupation of last resort. This is unacceptable as the granting of a licence would place such a person in a unique position of trust. The paramount responsibility of a licensing authority is to protect the public, not provide employment opportunities.
- 3.32 Licensees are expected to demonstrate appropriate professional conduct at all time, whether in the context of their work or otherwise. Licensees should be courteous, avoid confrontation, not be abusive or exhibit prejudice in any way. In no circumstances should Licensees take the law into their own hands. Licensees are expected to act with integrity and demonstrate conduct befitting the trust that is placed in them.
- 3.33 There are those who seek to take advantage of vulnerable people by providing services that they are not entitled to provide; for example, by plying for hire in an area where they are not entitled to do so. Licensees are expected to be vigilant of such behaviour and to report any concerns to the Police and the relevant licensing authority. Passengers should feel confident to check that the person offering a service is entitled to do so. Licensees should willingly demonstrate that they are entitled to provide the offered service by, for example, showing their badge.
- 3.34 As a society, we need to ask the question "who is driving my taxi?" and be secure in the knowledge that the answer is "a safe and suitable person". The vast majority of drivers are decent, law abiding people who work very hard to provide a good service to their customers and the community at large. However poor decisions by local authorities and courts serve to undermine the travelling public's confidence in the trade as a whole. Unless local authorities and the courts are prepared to take robust (and difficult) decisions to maintain the standards the local authority lays down, and in some cases tighten up their own policies, the public cannot have complete confidence in taxi drivers. This is detrimental to all involved.

Private Hire Operators

- 3.35 A private hire operator ("PHO") is the person who takes a booking for a private hire vehicle ("PHV"), and then dispatches a PHV driven by a licensed private hire driver ("PHD") to fulfil that booking. All three licences (PHO, PHV and PHD) must have been granted by the same

authority³². A local authority cannot grant a PHO licence unless the applicant has the right to work in the UK and is a fit and proper person³³.

- 3.36 As with taxi drivers the role of the PHO goes far beyond simply taking bookings and dispatching vehicles. In the course of making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked, but local authorities should be mindful that where that booking is made by anybody other than a hackney carriage driver, there are no controls or vetting procedures in place in relation to the person who takes that booking and holds that personal information.
- 3.37 How then does a local authority satisfy itself as to the “fitness and propriety” or “safety and suitability” of the applicant or licensee?
- 3.38 Spent convictions can be taken into account when determining suitability for a licence, but the applicant (or licensee on renewal) can only be asked to obtain a Basic Disclosure from the Disclosure and Barring Service.
- 3.39 Although this is by no means a perfect system, it does give local authorities a reasonable basis for making an informed decision as to fitness and propriety of an applicant or existing licensee.
- 3.40 To enable consistent and informed decisions to be made, it is important to have a working test of fitness and propriety for PHOs and a suitable variation on the test for drivers can be used:
- “Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”³⁴
- 3.41 There is a further point to consider in relation to PHOs and that concerns the staff used on the telephones and radios. There is no reason why a condition cannot be imposed on a PHO licence requiring them to undertake checks on those they employ/use within their company to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance to the local authority. Any failure on the part of the PHO to either comply with this requirement, or act upon information that they

³² See *Dittah v Birmingham City Council, Choudhry v Birmingham City Council* [1993] RTR 356 QBD

³³ Section 55(1) Local Government (Miscellaneous Provisions) Act 1976

³⁴ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 12.35

obtain (thereby allowing unsuitable staff to work in positions of trust), would then have serious implications on the continuing fitness and propriety of the PHO.

- 3.42 Care should be taken in circumstances where a PHO Licence is sought in the name of a limited company, partnership or other business structure that all the requirements applicable to an individual applicant are made of each director or partner of the applicant organisation³⁵. Only by so doing can a decision be made as to the fitness and propriety of the operating entity.

Vehicle Proprietors

- 3.43 Similar considerations apply to the vehicle proprietors, both hackney carriage and private hire (referred to here generically as “taxis”). Although the vehicle proprietor may not be driving a vehicle (and if they are they will be subject to their own fitness and propriety test to obtain a driver’s licence), they clearly have an interest in the use of the vehicle. They will also be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 3.44 Taxis are used to transport people in many circumstances, and are seen everywhere across the United Kingdom, at all times of the day and night, in any location. Therefore, taxis could provide a transportation system for illegal activities or any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 3.45 In relation to both hackney carriages and private hire vehicles, the local authority has an absolute discretion over granting the licence³⁶ and should therefore ensure that both their enquiries and considerations are robust. It is much more involved than simply looking at the vehicle itself and it is equally applicable on applications to transfer a vehicle as on grant applications.
- 3.46 Again, this is not an exempt occupation for the purposes of the 1974 Act, but exactly the same process can be applied as for private hire operators – Basic DBS, statutory declaration and consideration of spent convictions. This can then be used in the light of a similar policy in relation to suitability as the authority will already have for drivers and PHOs.
- 3.47 A suitable test would be:
- “Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be

³⁵ See s57(1)(c) of the 1976 Act.

³⁶ S37 of the 1847 Act in relation to hackney carriages; section 48 of the 1976 Act to private hire vehicles.

satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?”³⁷

³⁷ Button on Taxis – Licensing Law and Practice 4th Ed Bloomsbury Professional at para 8.98

Chapter 4: Guidance on Determination

- 4.1 As is clear from the overview of Offenders and Offending above, there is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk reduces over time. In light of that, the suggested timescales below are intended to reduce the risk to the public to an acceptable level.
- 4.2 Many members of our society use, and even rely on, hackney carriages and private hire vehicles to provide transportation services. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 4.3 Ideally, all those involved in the hackney carriage and private hire trades (hackney carriage and private hire drivers, hackney carriage and private hire vehicle owners and private hire operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 4.4 The purpose of this document is to offer guidance on how licensing authorities can determine whether a particular person is safe and suitable either to be granted a licence in the first place or to retain such a licence. As outlined above, a policy can be robust, and if necessary, say never, and each case is then considered on its own merits in the light of that policy.

Pre-application requirements

- 4.5 Licensing authorities are entitled to set their own pre-application requirements. These will vary depending upon the type of licence in question but can include some or all of the following (these are not exhaustive lists):

Vehicles:

- Basic DBS checks;
- Specifications e.g. minimum number of doors, minimum seat size, headroom, boot space etc;
- Mechanical tests and tests of the maintenance of the vehicle e.g. ripped seats etc;
- Emission limits/vehicle age limits;
- Wheelchair accessibility requirements.

Drivers:

- Enhanced DBS checks with update service;
- Checks made to the National Anti Fraud Network database on refusals and revocations of hackney carriage and private hire licences (when available);
- Medical checks;
- Knowledge of the geographic area;
- Spoken and written English tests;
- Disability awareness training;
- Child sexual exploitation and safeguarding training.

Operators:

- Basic DBS checks;
- Details of their vetting procedures for their staff;
- Knowledge of the licensing area.

- 4.6 In relation to each of these licences, the licensing authority has discretion as to whether or not to grant the licence.
- 4.7 Drivers and operators cannot be granted a licence unless the authority is satisfied that they are a “fit and proper person” to hold that licence (see Local Government (Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).
- 4.8 There are no statutory criteria for vehicle licences, therefore the authority has an absolute discretion over whether to grant either a hackney carriage or private hire proprietor’s licence.
- 4.9 “Fit and proper” means that the individual (or in the case of a private hire operator’s licence, the limited company together with its directors and secretary, or all members of a partnership³⁸) is “safe and suitable” to hold the licence.
- 4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person’s behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual’s attitude and temperament.

³⁸ Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

- 4.11 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction³⁹. Fixed penalties and community resolutions will also be considered in the same way as a conviction⁴⁰.
- 4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to “conviction” will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- 4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.
- 4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.
- 4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 4.17 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 4.18 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated

³⁹ This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

⁴⁰ This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.

- 4.19 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (driver's, vehicle and operator's) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.
- 4.20 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 4.21 As the direct impact on the public varies depending upon the type of licence applied for or held, it is necessary to consider the impact of particular offences on those licences separately. However, there are some overriding considerations which will apply in all circumstances.
- 4.22 Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 4.23 Where an applicant/licensee is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.
- 4.24 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by these guidelines, the authority must consider the matter from first principles and determine the fitness and propriety of the individual.

Drivers

- 4.25 As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 4.26 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.

- 4.27 As stated above, where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.
- 4.28 In relation to single convictions, the following time periods should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted.

Crimes resulting in death

- 4.29 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.

Exploitation

- 4.30 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, but this is not an exhaustive list.

Offences involving violence

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

Possession of a weapon

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

Sex and indecency offences

- 4.33 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.
- 4.34 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

Dishonesty

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

Drugs

- 4.36 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 4.37 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

- 4.38 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.

Motoring convictions

- 4.39 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

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

- 4.40 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.
- 4.41 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, whichever is the later.

Other motoring offences

- 4.42 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 4.43 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Hackney carriage and private hire offences

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

Vehicle use offences

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

Private Hire Operators

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

Acknowledgements

In December 2015, the Institute of Licensing established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

The core project group comprised:

- Stephen Turner, Solicitor at Hull City Council, Licensing Lead for Lawyers in Local Government and Vice Chair of the North East Region IoL (Project Group Chair)
- Jim Button, Solicitor at James Button & Co and President of IoL
- Philip Kolvin QC, Cornerstone Barristers and Patron of IoL
- John Miley, Licensing Manager for Broxtowe Borough Council, National Chair for NALEO and Vice Chair of the East Midlands Region IoL
- Linda Cannon, previously Licensing Manager for Basingstoke & Dean and Hart Councils, and now private licensing consultant and Chair of the South East Region IoL
- Phil Bates, Licensing Manager for Southampton City Council
- Sue Nelson, Executive Officer of IoL

This Guidance is the result of the work of the project team and includes consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

The Institute is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government contributing to and supporting this project with IoL.

The Institute is also grateful to others who have contributed to the work of the project group, including former probation officer Hannah Jones (now Housing Officer at Flintshire Council) who has assisted the group in providing the chapter on 'Offenders and Offending'.

Vehicle proprietors

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

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

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

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

4.53 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.

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

This project has been further enhanced by invaluable contributions from the following individuals and organisations:

- Ellie Greenwood and Rebecca Johnson, Local Government Association
- Tim Briton, Lawyers in Local Government
- Ben Atrill
- Suzy Lamplugh Trust
- Councillor Richard Wright, North Kesteven District Council
- Professor of Criminology Fiona Measham, Durham University
- Councillor Philip Evans, Conwy County Borough Council
- Councillors Catriona Morris and Mick Legg, Milton Keynes Council
- Louise Scott Garner
- Jenna Parker, Institute of Licensing

Finally, grateful thanks go to all those who responded to the initial fact-finding survey and the subsequent consultation on the draft guidance.

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Licensing and Regulatory Committee	Thursday, 12 July 2018	Matter for Information
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Report Title: **Civil Penalties under the Housing and Planning Act 2016**

Report Author(s): **Tony Cawthorne (Environmental Health Officer)**

Purpose of Report:	To inform Members of an amendment to legislation to impose civil penalties for breaches of housing legislation and to note the Policy as required by the statutory guidance issued under section 23(10) and Schedules 1 and 9 of the Housing and Planning Act 2016.
Report Summary:	The Housing and Planning Act 2016 amends the Housing Act 2004 to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences. A proposed Policy was recommended for approval to the Service Delivery Committee on 10 July 2018.
Recommendation(s):	The contents of the report and appendices be noted.
Responsible Strategic Director, Head of Service and Officer Contact(s):	<p>Anne Court (Interim Chief Executive) (0116) 257 2602 anne.court1@oadby-wigston.gov.uk</p> <p>David Gill (Head of Law and Governance / Monitoring Officer) (0116) 257 2626 david.gill@oadby-wigston.gov.uk</p> <p>Tony Cawthorne (Environmental Health Officer) (0116) 257 2670 tony.cawthorne@oadby-wigston.gov.uk</p>
Corporate Priorities:	Effective Service Provision (CP2)
Vision and Values:	<p>"A Strong Borough Together" (Vision)</p> <p>Accountability (V1)</p> <p>Innovation (V4)</p> <p>Customer Focus (V5)</p>
Report Implications:-	
Legal:	The implications are contained within the report.
Financial:	There are no implications directly arising from this report.
Corporate Risk Management:	<p>Decreasing Financial Resources (CR1)</p> <p>Reputation Damage (CR4)</p> <p>Regulatory Governance (CR6)</p> <p>Failure to Respond to a Significant Incident (CR7)</p> <p>Economy/Regeneration (CR9)</p>
Equalities Assessment (EA):	There are no implications directly arising from this report.

Human Rights:	The proposed Policy does not impact on any particular human rights in the Borough area as it applies to all tenants in privately-rented properties covered by the regulations and all landlords and letting agents.
Statutory Officers' Comments:-	
Head of Paid Service:	The report is satisfactory.
Chief Finance Officer:	The report is satisfactory.
Monitoring Officer:	The report is satisfactory.
Consultees:	During the drawing-up of the Policy with the aid of the Local Government Association, all national agencies dealing with landlords and tenants were consulted.
Background Papers:	Housing Act 2004 Housing and Planning Act 2016 Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences – Sentencing Council Definitive Guideline Report entitled 'Civil Penalties under the Housing and Planning Act 2016' to the Service Delivery Committee held on 10 July 2018
Appendices:	1. Civil Penalties under the Housing Act 2004 Policy

1. Introduction

- 1.1 The Housing and Planning Act 2016 ("the 2016 Act") amends the Housing Act 2004 ("the 2004 Act") to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.
- 1.2 The proposed Policy (as set out at **Appendix 1**) sets out guidance as to how Oadby and Wigston Borough Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

2. Background

- 2.1 Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) has stated that:

'[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000. It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants.'
- 2.2 Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:
 - section 30 (failure to comply with improvement notice);

- section 72 (licensing of Houses in multiple occupation (HMOs));
- section 95 (licensing of houses under Part 3);
- section 139(7) (failure to comply with overcrowding notice); or
- section 234 (management regulations in respect of HMOs).

- 2.3 A new Schedule 13A has also been inserted into the 2004 Act which prescribes the procedures that a local housing authority must follow before imposing a financial penalty, for imposing the penalty, the appeal process and the procedure for recovery of the penalty.
- 2.4 The Government's Department for Communities and Local Government (DCLG) have published the following document: '[Civil Penalties under the Housing and Planning Act 2016:- Guidance for Local Authorities](#)'. This is statutory guidance to which local housing authorities must have regard. This statutory guidance recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

3. Basis of this Policy

- 3.1 In accordance with the new section 249A(4) of the 2004 Act, the amount of a financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding on the level of penalty, it does not go into any level of detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of civil penalty in a particular case and seeks to set out further guidance through this policy as to how it will do so.
- 3.2 The Council has decided to largely base this policy on the principles set out in the '[Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guide](#)' which is considered to be the most relevant sentencing guidance issued by the Sentencing Council. The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.
- 3.3 The range of financial penalties in this guidance use similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

4. Guidance for Officers

- 4.1 The proposed Policy provides guidance to Officers on how to make these decisions on the level of financial penalty under the 2016 Act.



Oadby & Wigston
BOROUGH COUNCIL

Civil Penalties under the Housing Act 2004

Civil penalty as an alternative to prosecution under the Housing Act 2004

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Date Approved	Committee	Report Author	Review Date
	Service Delivery	T Cawthorne	

Civil penalty as an alternative to prosecution under the Housing Act 2004

Oadby and Wigston Borough Council policy on deciding on a financial penalty amount

Introduction

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.

Marcus Jones MP (Parliamentary under Secretary of State at the Department for Communities and Local Government) has stated that:

'[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000. It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants.'

This policy sets out guidance as to how Oadby and Wigston Borough Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

Consultation

Views were sought from landlords, agents and tenants and were taken into consideration when finalising this guidance. See appendix 1 for a list of the consultees.

Acknowledgment to Bristol City Council and the Local Government Association in the formation of this Policy.

Government Guidance

The Government's Department for Communities and Local Government (DCLG) have published the following document: "[Civil Penalties under the Housing and planning Act 2016:- Guidance for Local Authorities](#)". This is statutory guidance to which local housing authorities must have regard. This statutory guidance recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

The purpose of this policy

This is Oadby and Wigston Borough Council's published policy in line with DCLG's recommendation that it should have a policy on determining the appropriate level of financial penalty in a particular case.

Local Government Association guidance

Oadby and Wigston Borough Council has used the guidance issued by the Local Government Association in the compilation of their policy on Civil Penalty Notices.

Basis of this policy

In accordance with the new section 249A(4) of the 2004 Act the amount of a financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding on the level of penalty, it does not go into any level of detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of civil penalty in a particular case and seeks to set out further guidance through this policy as to how it will do so.

The Council has decided to largely base this policy on the principles set out in the [Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guide](#) which this Council considers to be the most relevant sentencing guidance issued by the Sentencing Council. The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.

The range of financial penalties in this guidance use similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

Guidance for officers.

Appendix 2 of this policy gives guidance to officers on how to make these decisions on the level of financial penalty under the 2016 Act.

Appendix 1 – List of Consultees

Association of Residential Letting Agents
Considerate/ National Accreditation Scheme
Chartered Institute of Environmental Health
Citizens Advice Bureaux
National Landlord Association
National Approved Letting Scheme
Residential Landlord Association
Royal Institutions of Chartered Surveyors
SARI
Shelter
Local Government Association

Local Authorities :

Bath and North East Somerset
North Somerset
Leeds
Oxford
South Gloucestershire

Appendix 2 - Oadby and Wigston Borough Council process for determining the level of penalty to set -

Schedule 9, Housing and Planning Act 2016

STEP ONE – Determining the offence category

The Council will determine the offence category using only the **culpability** and **harm** factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

Very high

- Where the offender intentionally breached, or flagrantly disregarded, the law or
- Who has a high public profile and knew their actions were unlawful

High

- Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Medium

- Offence committed through act or omission which a person exercising reasonable care would not commit

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable¹

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

Category 3- Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

We will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm.'²

STEP TWO - Starting point and category range

Having determined the category, the LA should refer to the following starting points to reach an appropriate level of civil penalty within the category range. The LA should then consider further adjustment within the category range for aggravating and mitigating features.

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

An Oadby and Wigston Borough Council specific example.

As many offenders will be owners of one or more properties in the Borough, they are likely to have assets that they can sell or borrow against. Property values in parts of the Borough are high, and have consistently increased so even those offenders with mortgaged properties are likely to have value in the property that can be released. Therefore, if an offender claims that they are unable to pay a financial penalty and shows that their income is small, consideration should be given to properties owned that can be sold or refinanced.

¹ A wide definition of vulnerability will be used. See appendix 3 for a non-exhaustive list.

² [Housing Health and Safety Rating System Operating Guidance February 2006](#) Para 2.09-2.10

Starting points and ranges

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability

		Range	
	<i>Starting point</i>	<i>Min</i>	<i>Max</i>
Low Culpability			
Harm category 3	£50	£25	£175
Harm category 2	£125	£50	£350
Harm category 1	£300	£125	£750

Medium Culpability

Harm category 3	£350	£175	£750
Harm category 2	£1,000	£350	£2,000
Harm category 1	£2,500	£750	£4,500

High Culpability

Harm category 3	£1,000	£500	£2,250
Harm category 2	£3,000	£1,000	£5,500
Harm category 1	£6,250	£2,500	£12,500

Very High Culpability

Harm category 3	£2,500	£1,250	£4,500
Harm category 2	£6,250	£2,500	£12,500
Harm category 1	£15,000	£6,250	£30,000

Context

Below is a list of some, but not all factual elements that provide the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. ***In particular, relevant recent convictions³ are likely to result in a substantial upward adjustment.*** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to
 - a) the nature of the offence to which the conviction relates and its relevance to the current offence;
 - and
 - b) the time that has elapsed since the conviction
- Other aggravating factors include:
 - Motivated by financial gain
 - Deliberate concealment of illegal nature of activity
 - Established evidence of wider/community impact

- Obstruction of justice
- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements.
- Refusal of free advice or training
- member of Accreditation scheme

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

STEP THREE - Review any financial element of the penalty

Check whether the proposed level of financial penalty is proportionate to the overall means of the offender. The Council may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range in the table above.

Full regard should be given to the totality principle at step seven where multiple offences are involved.

General principles to follow in setting a penalty

The Council should finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the offender.

The level of financial penalty should reflect the extent to which the offender fell below the required standard. **The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences and that funds from the financial penalties should fund private rented sector teams in the Council. To cover the costs of the work put into the serving any financial penalty notice the costs of serving the notice will be added to the overall penalty. This will also act as a deterrent to non-compliant landlords as it is clear that landlords or agents who do not apply will know that they will have to pay for the cost of any enforcement action (where that has not been recovered under other powers) and this will be added to the penalty as a deterrent to non-compliant landlords or agents. This may be reduced or increased where a case is either very straightforward or alternatively takes longer than normal.

Review of the penalty

³ See appendix 4 for a non-exhaustive list of relevant convictions.

The Council should review the penalty and, if necessary adjust the initial amount reached at step two to ensure that it fulfils the general principles set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP FOUR - Reductions

Consider any factors which indicate a reduction in the penalty and in so doing the LA should have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- impact of the financial penalty on employment of staff, service users, customers and local economy.

STEP FIVE – Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt. The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour. Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

STEP SIX - Additional actions

In all cases the Council must consider whether to take additional action. These may include works in default, Interim Management Orders or Rent Repayment Orders. The Council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.

STEP SEVEN - Totality principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality. [Total financial penalty is cumulative](#)

The Council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LA.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalties. There are a number of ways in which this can be achieved.

For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no double-counting.'

STEP EIGHT – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Appendix 3 – Non exhaustive list of vulnerable people

- Young adults and children
- Disabled persons
- People on a low income
- Persons with a Drug or alcohol addiction
- Victims of domestic abuse
- Looked after children
- People with complex health conditions
- People exploited where English is not their first language.
- Victims of Trafficking or sexual exploitation
- Refugees
- Asylum seekers
- People at risk of harassment or eviction
- People at risk of homelessness.

Appendix 4 – Non exhaustive list of relevant offences

Housing law or landlord and tenant

- Offences under:
- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004

Offences involving fraud

- Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:
- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as the company director

Offences involving violence

A conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery

- Racially aggravated criminal damage
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

Offences involving drugs

- Consideration should be given to the nature of the offence and what bearing it could have on the management of a private rented property. The nature, quantity and class of drugs should be taken into account.

Offences involving sexual offences

- An offence contained in schedule 3 of the Sexual Offences Act 2003.

Unlawful discrimination

- Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.