

- 3.2 The DfT standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, therefore the “importance of thoroughly considering these standards cannot be overstated.”

Fit and proper test

- 3.3 The statutory guidance defines “fit and proper” as:

“Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?”

- 3.4 The statutory guidance goes on to say at paragraphs 5.13 and 5.14:

If, on the balance of probabilities, the answer to the question is ‘no’, the individual should not hold a licence.

Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that **an applicant or licensee should not be ‘given the benefit of doubt’. If the committee or delegated officer is only “50/50” as to whether the applicant or licensee is ‘fit and proper’, they should not hold a licence.** The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction. [Emphasis added]

4. Policy Considerations

- 4.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the licensee/applicant and the risks to the safety and comfort of the public.
- 4.2 Each case will be decided on its own merits. The authority will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 4.3 The overriding consideration is the safety of the public. The authority has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 4.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.
- 4.5 The council has adopted a local policy to reflect the manner in which it will carry out its licensing responsibilities under the hackney carriage and private hire legislation. The sub - committee must have regard to this policy in making its decision, but it may depart from it where it is considered appropriate to do so. If the sub – committee do depart from it they should provide cogent reasons for doing so.
- 4.6 The council has revised its own convictions policy at Appendix B of its Taxi Policy following the implementation of the Statutory Taxi and Private Hire Guidance, which updates and continues to reflect the council’s local policy in respect of these matters. The local policy should take precedence over the statutory guidance if and when there is a conflict between the two documents. This is because the council worked with other local authorities to ensure the statutory guidance was followed, and yet local circumstances were considered and the council’s policy in this respect reflected a harmonised and consistent Gloucestershire based approach reflecting local conditions appropriately. Details of the relevant policy extracts can be found in the background papers.

5. Licensing Comments

- 5.1 The licensing sub-committee must have regard to the statutory guidance and the provisions of its own policy when coming to a determination of this application.
- 5.2 The authority is under a statutory obligation to ensure that persons licensed as Hackney Carriage drivers are fit and proper people. Public safety is the authority's primary concern and therefore applicants are expected to demonstrate a high standard of driving and behaviour.
- 5.3 Members are advised that the applicant still needs to complete all of the tests, assessments and requirements to obtain a Hackney Carriage driver's licence of which one is a driving assessment. Therefore, if Members are minded to grant the application, delegated authority is requested for officers to grant the application once those matters are addressed satisfactorily, namely the following:-
- Driving assessment
 - Local Knowledge Test
 - Safeguarding training
 - Medical report
 - Receipt of an enhanced DBS certificate with no convictions, and the applicant signing up to the update service,
 - Certificate of good character
- 5.4 Members will note from the accompanying background papers at ANNEX 2 that the applicant does not satisfy the policy requirements in respect of points on his DVLA driving licence.
- 5.5 However, Members should note the initial paragraphs of Appendix B (the council's conviction policy), where it states:-

- 1. This policy is intended to provide guidance on determining suitability of new applicants and existing licence holders where the applicant or licence holder has been convicted of a criminal or driving offence.*
- 2. The policy lists the types of offences that may give concern to the Licensing Authority. For the more serious offences the expectation is that an application will be refused or an existing licence holder will have their licence revoked. For other offences the policy gives the times scales that it is expected will have elapsed since the conviction before an application will be granted.*
- 3. The Policy states that each case will be treated on its own merits. Where an applicant or Licence Holder has an offence listed in this policy it will not necessarily mean an automatic barring or 26 revocation. However, the applicant or licence holder can expect that their application or licence will be put before a Licensing Sub-Committee for consideration who will take account of this policy. The obligation will on the applicant or licence holder to put forward reasons and/or evidence in support of their case for the Licensing Sub-Committee to consider.*
- 4. If an application is refused or a licence is revoked the applicant or licence holder will have right of appeal to the Magistrate's Court. The application to the Magistrates Court should be made within 21 days of the applicant or licence holder being notified by the Licensing Authority of the decision to refuse or revoke.*

If Members are minded to grant this application contrary to the provisions of the authority's licensing policy, the sub-committee is under duty to provide clear and comprehensive reasons for doing so.

- 5.6 **Members are reminded of the council's policy in relation to motoring convictions in Appendix 1. The applicant has more than 1 minor traffic offence and 1 of his convictions was received within the last 12 months. Both of these facts go against policy.**
- 5.7 The applicant has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented.
- 5.8 In considering the application on its own merits Members should have regard to the adopted Probity Guide.

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