



**Statement of Fitness & Suitability (Private Hire,
Hackney Carriage & Social Needs Transport)**



Department
for Transport

Chief Executive
Local licensing authorities

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Our Ref:

Dear Colleagues

Taxi and private hire vehicle drivers

I am writing to you about the important issue of ensuring that licensed taxi and private hire vehicle drivers are safe to drive the travelling public.

National and local government have a joint interest in ensuring personal safety of passengers. We recognise the good work that many local authorities have already done through stringent licensing procedures to protect passengers and maintain confidence in taxi and private hire vehicle services.

Licensing authorities have power to undertake enhanced Disclosure and Barring Service checks on all applicants for taxi and private hire vehicle driver licences. These checks will highlight convictions for sex offences and other relevant information that can be taken into consideration when deciding who to license. Furthermore, once a licence has been issued, licensing authorities should have systems in place, including maintaining links with the police, to ensure that drivers continue to be 'fit and proper'. While the decision to revoke or suspend a licence should never be considered lightly, the licensing system is designed to protect the public and it would be wrong to avoid this course of action where it is clearly appropriate.

In the interests of public safety and the reputation of the licensed trade, I encourage you to use all the tools available to ensure that all licensed drivers have undergone a thorough vetting process, their conduct is monitored once licensed, and all available information is fully considered when making licensing decisions.

Kramer

BARONESS KRAMER

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1. Introduction

In the statement and guidance the term 'licence' has the following meaning:

- a) A licence to drive a private hire vehicle*
- b) A licence to drive a hackney carriage vehicle*
- c) A licence to operate private hire vehicles*
- d) A private hire vehicle licence*
- e) A hackney carriage vehicle licence*

In the Statement and guidance the term 'person' includes:

- a) A person applying for a licence to drive a private hire or hackney carriage vehicle (both new and renewal)*
- b) A person that holds a licence to drive a private hire or hackney carriage vehicle*
- c) A person applying for a licence to operate private hire vehicles (both new and renewal)*
- d) A person that holds a licence to operate private hire vehicles*
- e) A person applying for a private hire or hackney carriage vehicle licence (both new and renewal)*
- f) A person that holds a private hire or hackney carriage vehicle licence*
- g) Providers of social needs transport under a contract*

The Statement of Fitness and Suitability aims to provide guidance to anyone with an interest in private hire, hackney carriage or the provision of social needs transport, these may include:

- a) A person applying for a licence to drive a private hire or hackney carriage vehicle
- b) A person that currently holds a licence to drive a private hire or hackney carriage vehicle and whose licence is being reviewed
- c) A person applying for a licence to operate private hire vehicles
- d) A person that currently holds a licence to operate private hire vehicles and whose licence is being reviewed
- e) Providers of social needs transport
- f) Officers of the Council
- g) Members of the Licensing & Environmental Regulation Committee, Subcommittees or other relevant decision making body
- h) The Magistrates Court and Crown Court hearing appeals against Council decisions
- i) Greater Manchester Police and any other partner agencies or service

The statement and guidance is modelled on the framework developed by the Association of Greater Manchester Authorities (AGMA), with the objective of ensuring transparency and consistency across the region. There may be variations in the content of the statement across the region due to each Councils own policy requirements.

The statement and guidance is drafted in accordance with the principles of good enforcement and in compliance with the relevant regulatory compliance codes.

In the Council's view the statement and guidance are compatible with the rights and freedoms under the European Convention on Human Rights.

2. The Councils Responsibility & Commitment

2.1 The Council is responsible for issuing a licence:

- To drive a private hire or hackney carriage vehicle
- To operate private hire vehicles
- For private hire or hackney carriage vehicles

- 2.2 A person's character, behaviour and history of criminal activity are of particular importance when judging their suitability to hold a licence. The Statement of Fitness and Suitability outlines the Council's criteria in relation to the 'fit and proper' test contained within the legislation.
- 2.3 The Department of Transport Best Practice Guidance 2006 sets out the aim of the licensing regime - *'the aim of the local authority licensing of the taxi and PHV trades is to protect the public'* - this guidance also provides the following example - *'it is clearly important that somebody using a taxi or PHV to go home alone late at night should be confident that the driver does not have a criminal record for assault and that the vehicle is safe'*.
- 2.4 Licence holders are in a unique position of trust and are often in one to one contact with children, young persons and vulnerable adults. They often have custody of property belonging to others, or have knowledge which might facilitate crime. The Council is committed to ensuring that:
- All persons that hold a licence are 'fit and proper persons' or in simpler terms they are both 'safe and suitable'
 - The public are not exposed to persons with a history of dishonesty, indecency or violence or any other offence or inappropriate behaviour which may question the persons 'fit and proper' status
 - The safety of children, young persons and vulnerable adults is protected
- 2.5 The Statement of Fitness and Suitability enables the Council to ensure a robust licensing regime that protects safety and commands the confidence of members of the public. The Council will always put the protection of the public first when considering any information recorded against a person applying for a licence, renewing a licence, or having a licence reviewed.
- 2.6 Power to issue a licence
- A licence is issued pursuant to the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 (copies of the Acts are available at www.legislation.gov.uk). The '1976 Act' prohibits the Council granting a licence to a person unless they are satisfied that the person is 'a fit and proper person'.
- Officers in the Council's Licensing Unit have delegated authority to grant a licence where the person meets the Council's criteria. Where Officers have delegated authority to grant a licence, they will consider the statement and guidance to determine whether or not a person meets the 'fit and proper' criteria.
- 2.7 Section 57 - Power to request information
- Section 57 of the '1976 Act' gives the Council power to require a person to submit information about them self. This is so the Council can be satisfied the person is 'a fit and proper person'. Section 57 (3) creates an offence if a person makes a false statement.
- 2.8 Sections 61 & 62 - Suspension and revocation of driver and operator licences
- The '1976 Act' creates an ongoing responsibility for the Council to ensure that licence holders meet the 'fit and proper' test for the duration of the licence period. Sections 61 & 62 of the '1976 Act', gives the Council the power to suspend, revoke or to refuse to renew a driver or operator licence.

3. The Council's Scheme of Delegation

3.1 Scheme of Delegation

The authority to grant a licence is contained in the 'Councils Scheme of Delegation' a copy of the Scheme of Delegation is available on the download tab at www.bolton.gov.uk/website/pages/Councilconstitution.aspx).

Where the authority to deal with a case is not delegated to Officers in the Licensing Unit, it will be considered at a hearing of the Licensing and Environmental Regulation Committee or the Licensing Sub-committee Traffic Offences; Licensing Sub-committee Sensitive Cases or the Director of Place as set out in the 'Councils Scheme of Delegation'.

The statement and guidance outlines minimum periods to be applied to a range of convictions, other formal action, intelligence and 'non conviction' and it explains in very general terms a 'fit and proper person' test. Officers, Committee or other relevant decision making body must consider each case on its own individual merits, but will have regard to the statement and guidance.

In some circumstances it may be appropriate for an Officer, Committee or other relevant decision making body to depart from the statement and guidance. In these circumstances a record of the reason for departing from the statement and guidance will be made in the formal decision.

3.2 Officer and Committee hearing procedure

Where a hearing is convened to consider if a person meets the 'fit and proper' test, the person will be provided with a date, time and location of the hearing and a copy of the report to be considered. This will allow the person time to seek independent legal advice and to attend and be represented.

There may be a need to urgently convene a hearing where there are serious public safety concerns. In those cases the reason for immediate referral will be recorded within the report by the Officer referring the matter.

Where an urgent hearing is convened, there may not be time to complete a written report. In these circumstances a verbal outline of the case will be presented. The person will still be provided with the date, time and location of the hearing and the right to representation remains.

3.3 Members of the public

Members of the public (this excludes an individual supporting a person who is applying for a licence, or having a licence reviewed and a member of the public providing evidence following a complaint or incident etc.) are not normally permitted to attend a hearing in relation to a private hire or hackney carriage licence matter, however, in determining whether to grant or take action against a licence holder, an Officer, Committee or other relevant decision making body, will take into account the human rights of the wider public and balance these against the human rights of the person.

4. Social Needs Transport

Various types of transport are used to provide this vital service and this includes private hire vehicles, hackney carriage vehicles and larger passenger carrying vehicles (over eight passenger seats licensed by the Traffic Commissioners).

The transport provider needs to meet strict guidelines set out by the Council and the fitness and suitability of a person is a key factor when considering granting a contract.

Where a licence has not been issued by the Council, then the Statement of Fitness and Suitability and guidance, together with the tender framework and the terms and conditions of the contract will be used to determine if a contract will be granted or withdrawn.

5. Fit & Proper Standard

In this section of the statement and guidance the term 'non conviction' can include:

- a) *Any breaches of licensing condition or byelaw*
- b) *Any complaint*
- c) *Any allegation*
- d) *Any intelligence made available to the Council by the Police, private hire operator or any other partner agency or service*
- e) *Anything considered by a Court that hasn't resulted in a conviction e.g. acquittal or failure to reach a verdict*
- f) *Any other matter which questions the person's ability to meet the 'fit and proper' test*

5.1 The statement and guidance set out the Councils minimum standard when applying the 'fit and proper' test to a person convicted, cautioned, or who receives any other formal action or a 'non conviction'. It is not however an attempt to define what 'a fit and proper person' is.

5.2 There is no judicially approved test of fitness and propriety and accordingly, a number of local tests have developed - suggested tests:

- a) Drivers - would you (as a member of the licensing committee or other person charged with the ability to grant a private hire or 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?
- b) Private hire operators - 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 purpose?
- c) Vehicle proprietors - 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 satisfied that he/she would not allow it to be used for criminal or other unacceptable purpose.

If the answer to the question (or a similar test) is an unqualified 'Yes', then the test is probably satisfied. If there are any doubts in the minds of the Officer, Committee or other relevant decision making bodies, then further consideration should be given as to whether the person is a 'fit and proper person' to hold a licence.

5.3 When submitting an application for a licence a person is required to declare all:

- a) Convictions – including fixed penalties
- b) Cautions – all forms of caution
- c) Other formal action – any matter of restorative justice
- d) 'Non convictions' – see the definition above for guidance on '*the term 'non conviction'*'
- e) Matters currently the subject of criminal investigation or prosecution

This is so the Council can apply the 'fit and proper' test and ensure:

- a) That a person is 'a fit and proper person'

- b) The public are not exposed to persons with a history of dishonesty, indecency or violence or any other offence or inappropriate behaviour which may question the persons 'fit and proper' status
- c) The safety of all members of the public and in particular children, young persons and vulnerable adults

- 5.4 A person applying for a licence should be aware that the Council is empowered by law to carry out verification with the Disclosure & Barring Service to confirm the existence and content of any criminal record and any other intelligence held in the person's name.
- 5.5 The Council may also contact other agencies and services for information held about a person. Other agencies may include Housing Services, Children's Services, Greater Manchester Police, UKBA, DWP, etc.
- 5.6 The 'fit and proper' test is not solely based on convictions, Officers, Committee and other relevant decision making bodies are able to take into account 'non convictions' provided by the Police, other agencies and services, etc. The evidential threshold is based on the balance of probabilities, and not the 'beyond reasonable doubt' standard which is the criminal standard of proof for criminal trials.

Where a 'non conviction' did not result in a criminal conviction or other formal action, it may still be considered by Officers, Committee or other relevant decision making body. For example - a 'non conviction' which resulted in a Police investigation, but where no further action was taken due to the criminal burden of proof, may still be considered, if the 'non conviction' questions a person's ability to meet the 'fit and proper' test. The Officer, Committee or other relevant decision making body must satisfy themselves that the 'non conviction' occurred based on the balance of probabilities.

- 5.7 Where the Council is made aware of a 'non conviction' and the information is relevant in relation to the 'fit and proper' test and to ensure there is a comprehensive understanding of the case Officers may consult with other agencies and services.
- 5.8 Where appropriate the 'non conviction' may be referred to a hearing with an Officer, Committee or other relevant decision making body for consideration. There may be a need to urgently convene a hearing where there are serious public safety concerns. Any additional information gathered during this process may then be taken into account at any hearing convened.
- 5.9 Information submitted will be used to assist the Council in determining whether a person is 'a fit and proper person', for the purposes of Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under Sections 61 and 62 of the Act.
- 5.10 Information received from the Disclosure & Barring Service, or any other agency or service is treated in confidence and in accordance with the requirements of the Data Protection Act 1998 and good practice guidelines, and will be used to support the safeguarding agenda. Information is retained no longer than is necessary to determine if a person is 'a fit and proper person' and to assist the Council in fulfil its ongoing responsibilities.
- 5.11 The disclosure of convictions, cautions, other formal action or 'non conviction', may not automatically bar a person from being granted a licence, renewing a licence, or retaining a licence. This will depend on whether the person can satisfy the Council that they are 'a fit and proper person' to hold a licence.
- 5.12 The Council may not be satisfied that a person is 'a fit and proper person' to hold a licence for any good reason. If a person fails to provide satisfactory evidence that they are 'a fit

and proper person', or if there is good reason to question or doubt the evidence provided, then this can amount to good reason to refuse, revoke or suspend a licence.

- 5.13 Where there is evidence of a conviction, caution, other formal action or 'non conviction' which questions the person's suitability to hold a licence the Council will consider:
- a) The nature of the offence or 'non conviction'
 - b) Any penalty imposed
 - c) When it was committed (took place)
 - d) The date of conviction or 'non conviction'
 - e) The length of time which has elapsed
 - f) The individual's age when the offence or 'non conviction' was committed
 - g) Whether or not it is part of a pattern of behaviour (criminal or otherwise)
 - h) The intent and harm which was or could have been caused
 - i) Any other factors which might be relevant
- 5.14 Where a person has been convicted of a criminal offence, the Council cannot review the merits of the conviction (Nottingham City Council v. Mohammed Farooq 1998).
- 5.15 The statement and guidance will be considered when reviewing the 'fit and proper' status of an application for a licence, the renewal of a licence and when reviewing an existing licence.
- 5.16 The guidance outlines a range of offences, it is however not possible to deal with every type of offence. This does not however prevent the Council from taking into account any offences not specifically addressed, or any other conduct which may be relevant. If a person has a conviction, caution, any other formal action or 'non conviction' which is not covered in the guidance, then the factors outlined above will be considered.
- 5.17 Where an offence is described in the guidance and it may have a different title/name, or a different title/name in a statutory provision, modification or re-enactment it will be considered in accordance with the guidance and the information provided above.
- 5.18 Where a licence is refused, suspended or revoked the person has a right of appeal to the Magistrates' or Crown Court. An appeal must be lodged with the court within 21 days of the notice of refusal, suspension or revocation. .
- 5.19 It is common practice for a person to submit simultaneous applications for licences. Officers, Committee or other relevant decision making body are asked to apply the 'fit and proper' test to each application. Similarly when reviewing an existing licence Officers, Committee or other relevant decision making body will apply the 'fit and proper test' to each licence held.
- 5.20 Where a person is subject to further convictions, cautions, other formal action or 'non conviction' whilst an application is being considered by the Council, then the person must notify the Council of all additional matters immediately.
- 5.21 Licence holders are required to notify the Council of all convictions by virtue of the conditions attached to their licence. All licence holders are now required to notify the Council of all matters, immediately, if it impacts on their ability to meet the 'fit and proper' test and this will be for the Council to determine.

6. Safeguarding & Child Sexual Exploitation (CSE)

Licence holders are in a position of trust and it is vital that any information concerning safeguarding or CSE is reported to the Council immediately.

In carrying out its duties under the safeguarding agenda the Council has a duty to take action when matters concerning safeguarding and CSE are brought to its attention. Safeguarding and CSE may include:

- a) Physical – Including hitting, slapping, pushing, kicking, restraint or inappropriate behaviour
- b) Sexual – Including rape and sexual assault or sexual acts to which the vulnerable person (including any young person) has not consented, could not consent or was pressured into consenting
- c) Psychological – Including emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supportive networks
- d) Financial – Including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, the misuse or misappropriation of property, possessions or benefits
- e) Neglect/failure to act – Including ignoring medical or physical care needs, failure to provide access to appropriate health care, social care, education services or misuse of medication, adequate nutrition or heating
- f) Discriminatory – Including racist, sexist behaviour and harassment based on a person's ethnicity, race, culture, sexual orientation, age or disability, and other forms of harassment, slurs or similar treatment
- g) Institutional abuse – This can sometimes happen in residential homes, nursing homes or hospitals when people are mistreated because of poor or inadequate care, neglect and poor practice that affects the whole of that service.
- h) Grooming - sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive 'something' e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money as a result of them performing, and/or another or others performing on them, sexual activities. An example of CSE may include inappropriate contact - both physically and by use of any forms of communication e.g. text messaging, Facebook messaging, telephone call; allegation of sexual contact or sexual assault on a child or young person

7. Previous (spent) Convictions

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 'taxi' drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.

The Council can take into account a previous (spent) conviction but must do so in a fair and proportionate way. The Council will consider a previous (spent) conviction if it appears to be relevant when deciding if a person meets the 'fit and proper' test and that justice cannot be done in the case except by admitting or requiring evidence relating to the previous (spent) conviction. The Council will consider the nature of the offence, the history or pattern of offending, the lapse of time and whether the conviction has previously been considered and any of the other relevant matters.

8. Verbal & Written Warnings

A person will be brought before the Committee or other relevant decision making body where it is clear that the person's behaviour is not influenced by verbal or written warnings administered by Licensing Unit.

9. All Cautions and Endorsable Fixed Penalties

For the purpose of these guidelines all cautions - formal/simple/conditional etc. and endorsable fixed penalties shall be treated as though they were convictions.

Where the Council administers a caution to a person this does not preclude a referral to the Committee or other relevant decision making body for the matter to be considered.

10. Multiple Convictions from a Single Incident

Where a person has multiple convictions arising from a single incident, the convictions will generally be treated as one conviction for the purposes of the guidance.

In these circumstances the minimum period applied will be the longest applicable period calculated by reference to each offence.

11. 'Non Conviction' - Breach of Conditions, Bye-laws and Complaints

Any breach of condition, breach of bye-law, complaint or 'non conviction' relating to a person's conduct may be referred to an Officer, Committee or other relevant decision making body for consideration.

The options available in these circumstances are:

- a) no further action
- b) a formal warning
- c) period of suspension or revocation
- d) refusal to grant or renew the licence
- e) any other sanction e.g. retraining

Decisions taken by Council Officers and Committees will be taken in accordance with the Council's Scheme of Delegation and with reference to all current policy guidance.

12. Renewal of licence

All licences expire on the date outlined on the licence.

The following will not be permitted under any circumstances:

- 'Over-runs' (if a licence is not applied for and granted before the expiry of the old licence it cannot be used until the renewal is determined and the new licence granted)
- Informal acceptance of the old licence 'continuing' until the determination of a renewal provided and the new licence granted
- 'Turning a blind eye' to use of expired licence

The Council may consider issuing a full or short term 'without prejudice' licence, until the determination of a renewal, but only where certain criteria is triggered and provided an application to renew is made before expiry.

13. Reapplication

Where a person's licence application is refused or a licence is revoked, any subsequent application would normally be refused, if it is made within 12 months of the date of the previous decision. Unless there are substantial material changes in the circumstances.

In more serious circumstances the reapplication period may be longer.

14. Human Rights

A decision to revoke, suspend or refuse a licence will engage the persons rights under the Human Rights Act 1998 by providing a right to a fair hearing and a right to an independent and impartial appeal tribunal by the Magistrates' or Crown Court.

There have been a number of challenges to decisions to suspend or revoke licences on the basis that a licence is a possession, and therefore revocation infringes the driver's human rights.

However *Cherwell District Council v Anwar* [2011] has established that a decision maker dealing with a currently licensed driver should not regard the licence as a possession for the purpose of the Human Rights Act 1998.

The Council has reviewed this Statement and the attached guidance to ensure that they remain relevant and up to date and to achieve an approach which is consistent with other Councils within AGMA (Associated Greater Manchester Authorities) together with the North West Unitary Authorities of Blackburn with Darwen, Blackpool & Warrington

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This policy and guidelines supersede all others and take effect from:

Date:

Review Date: