

Gloucester **City Council**

Hackney Carriage & Private Hire Regulatory Guidelines

Draft Document

Contents

Contents	2
1. Introduction.....	3
1.1 Powers and Duties.....	3
1.2 Objectives	3
1.3 Best Practice Guidance	3
1.4 Status.....	3
2. Qualifications and Requirements.....	4
2.1 General.....	4
2.2 Suitability.....	4
2.3 Protecting the Public	5
2.4 Convictions	6
2.5 Soft Information and Information from Other Sources.....	6
2.6 Options Available to the Licensing & Enforcement Committee, Licensing Sub-Committee and Council Officers.....	6
2.7 Each Case on its Merits.....	7
3. Guidelines on the Relevance of Convictions.....	8
4. Licensing & Enforcement Committee.....	16
4.1 Right to be Represented.....	16
4.2 Interpretation Services.....	16
4.3 Exclusion of the Public.....	17
4.4 Recommended Procedure.....	17
4.5 Failure to Attend.....	18
4.6 The Committee’s Powers.....	18
4.7 Applicant/Licence Holder’s Rights.....	18
4.8 Points to Note.....	19
5. Rights of Appeal.....	19
6. Complaints Investigation Procedure.....	19
7 Penalty Point System for Hackney Carriage and Private Hire Drivers.....	20
7.1 Policy.....	21
7.2 Points.....	22

1. Introduction

1.1 Powers and Duties

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

1.2 Objectives

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

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

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

1.3 Best Practice Guidance

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

1.4 Status

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

Notwithstanding the existence of this policy document, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Council to depart substantially from its policy document, clear and compelling reasons will be given for doing so. The purpose of this policy document is to formulate guidelines which detail

the Council’s current stance on the relevance of convictions and cautions and other relevant factors in respect of applications for the grant of new licences, disciplinary action against existing licence holders, the renewal of existing hackney carriage and private hire drivers, operators and proprietor’s licences.

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

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

2 Qualifications and Requirements

2.1 General

All qualifications and requirements for applicants are set out in the respective ‘Private Hire; Driver, Vehicle and Operator Rule Book’ and ‘Hackney Carriage; Driver and Vehicle Rule Book’ available on the Council’s website at www.gloucester.gov.uk or by contacting the Licensing Team on 01452 396396 or heretohelp@gloucester.gov.uk

2.2 Suitability

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

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

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

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

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

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

or,

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

or,

2) *any other reasonable cause.*”

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

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

Some areas to consider include –

- **Honesty and trustworthiness** – drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust. *For example, any passenger would expect to be charged the correct fare for a journey and then be given the correct change; they would also expect a driver to hand in any article left by a passenger in a vehicle; and also the driver to maintain confidentiality between them and the passenger.*
- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. However this does not excuse any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands.
- **A good and safe driver** – Passengers paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to their licence.
- **Health** – Drivers are expected to be both physically and mentally fit to perform their role.
- **Ability** – Both private hire and hackney carriage drivers are expected to be capable of transporting passengers to their destination in a timely manner. To this end all applicants must pass the appropriate knowledge test.

2.3 Protecting the Public

The overriding consideration for the Members of the Licensing & Enforcement Committee, Licensing Sub-Committees and Council Officers is to protect the public. Having considered

and applied the appropriate policy document guidelines, the following, generally accepted, question should be asked:

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

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

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

2.4 Convictions

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

2.5 Soft information and information from other sources

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

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

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

- To approve the licence / take no action.
- To impose additional conditions on the licence.
 - *This action may be taken with regard to either new applications or existing licence holders.*
- To give a written warning.

- To refuse/revoke the licence.
- For existing licence holders - to suspend the licence
 - *Suspension can be used where serious concerns are raised over the suitability of an individual to hold a licence. In this instance, on the balance of probabilities, the licence holder is not a “fit and proper person” but may become so at a later date. This may either be through an action they may take, such as in the case of a driver undergoing a further medical examination, or by demonstrating a satisfactory standard of driving by successfully undertaking a Driving Standards Agency Test. Any action required of the licence holder would be specified on the notice of suspension.*

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

2.7 Each case on its merits

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

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

- Any offences, cautions or fixed penalties received. When considering an offence the Council may also consider the following:
 - Details of the offence.
 - Severity of the sentence imposed,
 - Nature of the sentence imposed i.e. did the sentence aim to reform the individual such as a drink driving course or community service order.
 - The Court that tried the offence i.e. was it an offence that could have been heard in a Magistrates’ Court but was referred to Crown Court due to the particular circumstances of the offence or did the offender elect for Crown Court trial, as of right.
 - Any history of good conduct since the offence, or character references from credible persons/agencies involved **(these must be supplied by the applicant/licence holder).**
- Any representations made, or supporting information provided by the applicant, including evidence from witnesses.

- Gloucester City Council’s policy on the relevance of convictions.
- The licence holder’s rights under the European Convention on Human Rights.
- Any complaints made against the licence holder.
- The licence holder’s actions following any complaint/offence.
- Any breach of licence conditions or Council policy.
- Any warning letters issued to the licence holder.
- Any penalty points received under the Council’s penalty point system
- Any other relevant information.

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

3 Guidelines on the relevance of convictions

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

Any changes in legislation will be dealt with as appropriate.

3.1 Each case will be decided on its own merits.

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

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

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

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

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

(a) Minor Traffic Offences

Isolated convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, etc., should not prevent a person from proceeding with an application. However the number, type and frequency of the type of offence should be taken into account. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage or Private Hire Drivers Licence may be granted after its restoration but a warning should be issued as to future conduct.

(b) Major Traffic Offences

An isolated conviction for a major traffic offence should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

The following traffic offences are considered to be major:

- AC10 Failing to stop after an accident
- AC20 Failing to give particulars or to report an accident within 24 hours
- AC30 Undefined accident offences
- BA10 Driving while disqualified by order of court
- BA20 Attempting to drive while disqualified by order of court
- CD10 Driving without due care and attention
- CD20 Driving without reasonable consideration for other road users
- CD30 Driving without due care and attention or without reasonable consideration for other road users
- CD40 Causing death through careless driving when unfit through drink
- CD50 Causing death by careless driving when unfit through drugs
- CD60 Causing death by careless driving with alcohol level above the limit
- CD70 Causing death by careless driving then failing to supply a specimen for analysis
- DD40 Dangerous Driving
- DD60 Manslaughter or culpable homicide while driving a vehicle
- DD80 Causing death by dangerous driving
- DR10 Driving or attempting to drive with alcohol level above the limit
- DR20 Driving or attempting to drive while unfit through drink
- DR30 Driving or attempting to drive then failing to supply a specimen for analysis
- DR40 In charge of a vehicle while alcohol level above limit
- DR50 In charge of a vehicle while unfit through drink
- DR60 Failure to provide a specimen for analysis in circumstances other than

driving or attempting to drive
DR70 Failing to provide specimen for breath test
DR80 Driving or attempting to drive when unfit through drugs
DR90 In charge of a vehicle when unfit through drugs
IN10 Using a vehicle uninsured against third party risks
LC20 Driving otherwise than in accordance with a licence
LC30 Driving after making false declaration about fitness when applying for a licence
LC40 Driving a vehicle having failed to notify a disability
LC50 Driving after a licence has been revoked or refused on medical grounds
MS50 Motor racing on the highway
MS60 Offences not covered by other codes
UT50 Aggravated taking of a vehicle

Aiding, abetting, counselling or procuring
Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

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

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

(i) Hybrid Traffic Offences

Offences of the type listed below will be treated as major traffic offences if four or more penalty points were imposed for the offence.

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

Aiding, abetting, counselling or procuring
Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

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

Inciting

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

(c) Drunkenness

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour.

More than one conviction for this type of offence should raise grave doubts as to the applicant's fitness to hold a licence, in either instance (i.e. whether there is one or more convictions) at least 3 years from the date of restoration of the drivers licence should have elapsed before the application is considered.

If there is any suggestion that the applicant or licence holder is an alcoholic a special medical examination should be arranged and if the applicant is found to be an alcoholic there should be a period of at least 5 years from the completion of detoxification treatment before an application is entertained.

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence or an existing licence holder losing their licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination. In some cases, a warning may be sufficient.

However if there is any suggestion that the applicant or licence holder is an alcoholic a special medical examination should be arranged and if the applicant or licence holder is found to be an alcoholic there should be a period of at least 5 years from the completion of detoxification treatment before an application or re-application is entertained.

(d) Drugs

An applicant or existing licence holder with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application or re-application is entertained, or 5 years after detoxification treatment if he/she was an addict.

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

(e) Indecency Offences

As hackney carriage and private hire drivers often carry unaccompanied passengers convictions for indecency offences will be treated particularly seriously.

(i) Very serious sexual offences

An application will normally be refused where the applicant has a conviction for a very serious sexual offence less than 15-20 years prior to the date of application (subject to the provisions of paragraph (e)(iii)). Very serious sexual offences include:

- Rape
- Assault by penetration
- Sexual assault
- Causing a person to engage in sexual activity without consent;
- Administering a substance with intent;
- Committing an offence with intent to commit a sexual offence;
- Trespass with intent to commit a sexual offence;
- Sex with an adult relative: penetration;

(ii) Serious sexual offences

Where an applicant or licence holder has a conviction for a serious sexual offence they will (subject to the provisions of paragraph (e)(iii)) normally be refused a licence until they can show a substantial period (usually between 5 and 15 years) free from any such conviction. Serious sexual offences include:

- Soliciting;
- Importuning;
- Causing or inciting prostitution for gain;
- Controlling prostitution for gain;
- Keeping a brothel used for prostitution;
- Sex with an adult relative: consenting to penetration;
- Exposure;
- Voyeurism;
- Intercourse with an animal;
- Sexual penetration of a corpse;
- Sexual activity in a public lavatory

(iii) Children and other vulnerable persons

Where a very serious or serious sexual offence has been committed involving children or other especially vulnerable persons, it is highly unlikely that an applicant or existing licence holder would be in a position to satisfy the “fit and proper person” test, having regard in particular to the higher risk, when compared to other crime,

that such offending behaviour could be repeated. Generally such offending conduct will permanently debar an applicant. Departure from this policy will only be made in the most exceptional of circumstances. Such exceptional circumstances are unlikely to be shown in the absence of an application being supported by persuasive evidence of the applicant's suitability, which should include a full risk assessment from suitably qualified professionals. Where the offender occupied a position of trust in relation to the victim this will be considered a further aggravating factor. This paragraph applies in respect of any sexual offending behaviour where the aggravating features described above occur. For the purposes of this policy a child is any person aged under 13. A list of offences to which this paragraph will always apply is available on request

(f) Violence

As hackney carriage and private hire drivers maintain close contact with the public, in general a period of 3 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will be required before an application or re-application is likely to be considered favourably. If granted a strict warning should be issued.

In particular:-

(i) An application will normally be refused where the applicant has a conviction for an offence of:-

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Arson
- Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998),

and the conviction is less than 10 years prior to the date of application.

(ii) An application will normally be refused where the applicant has a conviction for an offence of:-

- Grievous bodily harm with intent (s.18 Offences Against the Person Act)
- Grievous bodily harm (s.20 Offences Against the Person Act)
- Robbery
- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear or provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional

- harassment, alarm or distress) (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence
- (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence
- (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)

and the conviction is less than 8 years prior to the date of application.

Between 8 and 10 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(iii) An application will normally be refused where the applicant has a conviction for an offence of:-

- Common assault
- Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act 1861)
- Assault police
- Affray
- Racially aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- Riot
- Obstruction
- Possession of offensive weapon
- Possession of firearm
- Criminal damage
- Violent disorder
- Resisting arrest

and the conviction is less than 3 years prior to the date of application.

Between 3 and 8 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(g) Dishonesty

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

conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

In particular, an application will normally be refused where the applicant has a conviction for an offence where 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 (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception,

and the conviction is less than 3 years prior to the date of the application.

Between 3 and 5 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(h) Licensing Offences

Any contravention of licensing laws or conditions, irrespective of whether or not these are related to hackney carriage or private hire licensing, are important as they suggest a disregard of the importance of those requirements. Depending on the nature and seriousness of the offence 1 to 3 years should have elapsed following conviction before an application is entertained.

(i) Offences of Discrimination

Offences of discrimination are a serious concern to all as they represent unacceptable treatment of certain sections of our society. A conviction for this type of offence should be taken extremely seriously. Each case would need to be assessed on an individual basis and although the applicant may not necessarily be debarred from receiving a licence a strict warning should always be given. On considering any case care should be taken before issuing a licence to assess if the applicant is deemed to be a 'fit and proper person' to hold a licence.

(j) Other Miscellaneous Offences

These could include local authority offences, bylaw offences, nuisance offences etc. which although may not be directly relevant to hackney carriage and private hire licensing would demonstrate a feckless or irresponsible attitude and should not be

discounted lightly. Each case would need to be assessed on an individual basis and although they may not necessarily debar an applicant from receiving a licence a strict warning should be given.

(k) Spent Convictions

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

(l) Cautions and Endorsable Fixed Penalties

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

4. Licensing & Enforcement Committee and Licensing Sub-Committee

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

4.1 Right to be Represented

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

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4.2 Interpretation Services

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

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

4.3 Exclusion of the Public

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

4.4 Recommended Procedure

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

The recommended committee procedure is as follows:

- i. The Council's report is presented by the Group Manager, Environmental Health and Regulatory Services or other authorised Officer.
- ii. The Officer is questioned by the applicant/licence holder (or representative) and then by Members of the Committee if any points need clarification.
- iii. The Chair invites the applicant/licence holder (or representative) to present his case.
- iv. The applicant/licence holder (or representative) can be questioned by the Council's Officers and/or Members if any points need clarification. Even if represented, the applicant/licence holder can be asked questions directly.
- v. Any party may call witnesses of fact or character, who may be questioned by the other party and the Committee. Details should be disclosed at the earliest opportunity and 7 days prior to the Committee, if possible, to the other party and Members.
- vi. Written evidence should be disclosed at the earliest opportunity and 7 days prior to the Committee if possible, to the other party and the Members.
- vii. Each side must be given the opportunity to sum up if they so wish, the applicant/licence holder (or representative) speaking last.
- viii. At the conclusion of the case the Chair will request all parties (with the exception of the Council's Legal Officer and Democratic Services Officer) to leave the room

while the Committee deliberates. Alternatively, the Committee may retire to a separate room, if more convenient.

- ix. When the Committee has reached its decision, all parties will be invited to return to be informed of the decision.
- x. The decision will later be confirmed in writing and will include a statement of reasons for reaching that decision.

4.5 Failure to Attend

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

4.6 The Committee's Powers

The committee has the following powers:

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

4.7 Applicants/Licence Holders Rights

The applicant of licence holder has the following rights:

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

4.8 Points to Note

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

5. Rights of Appeal

In all cases where the Council:

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

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

6. Complaints Investigation Procedure

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

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

- 6.2** Upon receipt of the written complaint, the substance thereof shall forthwith be sent to the licensee against whom the complaint is made, who shall be invited to submit a written statement answering the allegation made.
- 6.3** If the person about whom a complaint is made, has not responded to the invitation within 7 days of being so invited, then a reminder shall be sent, but after a further 7 days the complaint may be dealt with without further reference to him/her.
- 6.4** If on receipt of the licensee's reply, it appears that there is substance in the complaint, the parties involved shall be interviewed.
- 6.5** The Food Safety and Licensing Service Manager, upon examination of all the information available shall decide which of the following courses of action he/she considers appropriate:
- To take no action,
 - To impose additional conditions on the licence,
 - To give a written warning,
 - To revoke the licence, or
 - To suspend the licence
- 6.6** Any written warnings shall be expunged from the licensee's record upon the expiry of 12 months following the date of issue.

7. Penalty Point System for Hackney Carriage and Private Hire Drivers

Gloucester City Council operates a Penalty Points system, which is designed to support the aims and objectives of the Council in that all operators, drivers and vehicle proprietors maintain the high standards required of them at all times.

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

A driver or operator accumulating more than 12 points in any rolling 12 month period will be referred to the Licensing & Enforcement Sub-Committee of the City Council for consideration of disciplinary action.

7.1 Policy

The Penalty Points Scheme operates as follows:

The City Council's Enforcement Policy will be fully considered by the Licensing & Enforcement Officer when determining the manner in which any breach of legislation or the requirements of this Policy are dealt with. Where it is decided that the use of the penalty points system is appropriate, the points will be issued in accordance with this policy. Where the policy allows a range of points for a particular incident, the Licensing & Enforcement Officer will determine the appropriate number of points proportionate to the offence.

Before any penalty points are issued, there must be sufficient evidence to prove the offence or breach of licensing requirements.

Points issued to a licence holder will be confirmed, in writing, within 10 working days. Any appeal should also be submitted, in writing, within 10 working days to the Food Safety & Licensing Service Manager at the following address:

Licensing Department
Herbert Warehouse
The Docks
Gloucester
GL1 2EQ

Or via email to licence.team@gloucester.gov.uk

If after considering any such appeal the Food Safety & Licensing Service Manager determines that the points issued were done so as a result of a valid complaint then they will have the discretion to award a greater number of points than displayed on the tariff.

When issued, penalty points will remain 'live' for a rolling 12 month period.

A maximum of 12 penalty points will be issued on any one occasion, which will result in an immediate referral to the Licensing Enforcement Sub-Committee. However, the Sub-Committee will be advised of the extent of the offences, should they have potentially attracted a higher points total.

If a licence holder accumulates 12 or more points in any rolling 12 month period, he will be required to attend a disciplinary hearing with the Licensing Sub-Committee, for the appropriate action to be taken in accordance with this policy.

Where a licence holder or applicant is brought or appears before a Licensing Sub-Committee, the Committee will have all options detailed at section 2.6 of this document available to them.

Licence holders and applicants retain the right to be represented, legally or otherwise at any Licensing & Enforcement Committee or Licensing Sub-Committee meeting and to state any

mitigating circumstances they deem necessary. It is strongly recommended that any licence holder or applicant before the committee reads all relevant sections of this document prior to the hearing in order that they are fully aware of their rights and the committee's powers.

The penalty points system will operate without prejudice to the Council's ability to take other action under other appropriate legislation.

7.2 Points

Points may be awarded for the following offences/breaches of conditions:

	Offence/Breach of Condition	Maximum* Points Applicable	Driver	Vehicle Owner or Operator
1	Providing false or misleading information on licence application or renewal, or failing to provide any relevant information.	12	X	X
2	Carrying more passengers than stated on vehicle licence	6	X	
3	Failure to display vehicle licence plates	4	X	X
4	Failure to wear drivers badge	4	X	
5	Failure to display tariff card where meter installed	4	X	X
6	Failure to maintain tyres, lights, wipers, exhaust, bodywork etc in good order. (multiple points may be awarded for a number of breaches i.e. more than one bald tyre)	6	X	X
7	Failure to display roof sign (HCV only)	4	X	X
8	Failure to carry working fire extinguisher of correct type and size	4	X	X
9	Failure to carry adequate first aid kit	4	X	X
10	Unsatisfactory condition of vehicle, interior or exterior	4	X	X
11	Failure to display bus lane stickers (PHV only)	4	X	X
12	Displaying unauthorised signs	4	X	X
13	Changes to specification, design or appearance of a vehicle without prior approval	4	X	X
14	Failure to notify of change of address in writing within seven days	4	X	X
15	Failure to notify of any caution, conviction or fixed penalty within seven days of being formally notified of any such charge or/and	4	X	X

	of conviction			
16	Refusing to carry assistance dog without requisite exemption	12	X	
17	Refusing to take a fare without reasonable cause	12	X	X
18	Charging more than the agreed or metered fare	6	X	X
19	Failure to notify of change in medical circumstances	6	X	
20	Smoking in a licensed vehicle	6	X	X
21	Failure to pay a Fixed Penalty Notice for smoking in a licensed vehicle	4	X	X
22	Unreasonable prolongation of journey or any misconduct regarding the charging of fares	6	X	
23	Private hire driver plying for hire	12	X	
24	Using unlicensed vehicle	12	X	X
25	Failure to produce 6 monthly MoT check	4		X
26	Failure to produce vehicle for testing or inspection when required/requested	4		X
27	Failure to notify of an accident within 72 hours (where accident causes damage to vehicle materially affecting safety, performance or appearance of vehicle)	4		X
28	Carrying an offensive weapon in vehicle	12	X	
29	Failure to notify of a transfer of ownership of licensed vehicle	4		X
30	Obstruction of authorised officer or police officer	12	X	X
31	Displaying any feature on a private hire vehicle that suggests it is a hackney carriage vehicle (taxi)	6	X	X
32	Using a vehicle the appearance of which suggests that it is a taxi	6	X	X
33	Failure to meet standards of dress or appearance	4	X	
34	Unsatisfactory behaviour or conduct	12	X	X
35	Failure to issue receipt on request	12	X	X
36	Failure to provide reasonable assistance with loading/unloading of luggage	12	X	
37	Failure to offer reasonable assistance to passengers with a disability	12	X	
38	Failure to attend punctually at appointed time and place without reasonable cause	4	X	X
39	Any other reasonable cause	6	X	X
40	Failure to produce any relevant document	4	X	X

	within timescale on request			
41	Failure to produce or allow inspection of records (operator)	6		X
42	Failure to keep records in prescribed form (operator)	4		X
43	Failure to honour booking without just cause	4		X
44	Misleading use of the words 'Taxi' or 'Cab' on advertising materials for private hire	4		X

Crosses indicate the potential recipients of penalty points for infringements. Certain infringements may result in both drivers, proprietors or operators receiving penalty points. Points can be awarded to one or several persons depending upon the nature of the infringement however each case will be determined on its own merits.

Certain matters are specific to certain types of licence.

*by Officers. If the matter is referred to the Licensing & Enforcement Sub-Committee they may impose any number of points they deem necessary.