Appendix A

Rother District Council

Hackney Carriage and Private Hire Driver – Proposed changes to the licensing guidelines in Council's Criminal Convictions Policy

(Material changes to the existing document are highlighted in red)

1. Introduction

1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an applicant, or an existing licence holder, is a fit and proper person to hold a dual drivers licence; a hackney carriage or private hire vehicle licence; and/ or a private hire operators licence.

1.2 The overriding aim of the Licensing Authority is to protect the safety of the public. The Licensing Authority is concerned to ensure that:

- A person is a fit and proper person.
- The person does not pose a threat to the public.
- The public are safeguarded from dishonest persons.
- The safeguarding of children and young persons.

1.3 This policy provides guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:

- Applicants for drivers'/ vehicles/ operators licences
- Existing licensed drivers whose licences are being reviewed
- Licensing officers
- Members of the licensing committee/ panel (or other relevant decision making body)
- Magistrates' hearing appeals against local authority decisions

1.4 Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the licensing committee/ panel (or other relevant decision-making body). Whilst officers and the committee/ panel will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits and, where the circumstances demand, the committee/ officer may depart from the guidelines.**

2. General policy

2.1 These guidelines do not replace the duty of the Licensing Authority to refuse to grant a licence, or to revoke a licence, where they are not satisfied that the applicant or licensee is a fit and proper person. There may be circumstances where it is appropriate to depart from the guidelines or where a situation is not covered by them. In these cases the Authority will consider the matter from first principles and determine the fitness and propriety of the individual.

2.2 In determining whether an individual is fit and proper 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.

2.3 As the Licensing Authority will be looking at the entirety of the individual, the fit and proper test will not simply 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. 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.

2.4 In all cases the Licensing Authority will consider the conviction or behaviour in question, and what weight should be attached to it. Each and every case will be determined on its merits and with regard to these guidelines.

2.5 In this policy any reference to 'conviction' shall be construed to include matters that amount to criminal behaviour, but which may not have resulted in conviction.

2.6 Matters which have not resulted in a criminal conviction (be that due to an acquittal; a conviction being quashed; a decision not to prosecute; or a continuing investigation) can and will be taken into account by the Licensing Authority.

2.6.1 Complaints where there has been no police involvement can and will also be taken into account by the Licensing Authority.

2.7 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. Cautions, fixed penalty notices, and community resolutions shall also be considered in the same way as convictions.

2.8 Where a new applicant is under investigation; has been charged with any offence; or is awaiting trial; the determination of the licence application will be deferred until the trial has been completed, or the charges/ summonses withdrawn. Where an existing licensee has been arrested; is under investigation; or has been charged/ summonsed; it will be for the Licensing Authority to decide what action to take in the light of these guidelines.

2.9 Once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their fit and proper status. The Licensing Authority has powers to take action against the holder(s) 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.

2.10 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.

2.11 Whilst a single conviction will not necessarily be an automatic bar to obtaining a licence, an applicant would normally be expected to:

a. Remain free of conviction for an appropriate period;
b. Demonstrate that they are an exceptional case sufficient for the Council to deviate from these guidelines; and
c. Show adequate evidence that he/ she is a fit and proper person to hold a licence.

Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

In determining time elapsed 'free of conviction' shall be measured from the date of completion of any sentence, or driving ban, imposed; or, in the case of a fine, from the date of conviction (whichever is the longer).

The onus for proving that an applicant is a fit and proper person lies with the applicant.

3 Where an applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].

4 Pre-requisites to making an application

4.1 It is the policy of the Licensing Authority that every application for a licence to drive a hackney carriage and/ or private hire vehicle must be accompanied by satisfactory evidence of the following matters (and that applications that are incomplete will not be deemed to have been made until such time as they are completed):

- That the applicant has the right to live and work in the country;
- An enhanced criminal record check and evidence that they are not on a child and/ or vulnerable adult barring list;
- A certificate of their current medical fitness to DVLA Group 2 standard;
- That the applicant is authorised to drive a vehicle of the same classification as that which the licence will allow them to drive;
- That the applicant has a minimum of three years post-qualification driving experience (or if not, has completed an advanced driving assessment);
- That the applicant has adequate literacy and numeracy skills to provide the service that they wish to be licensed for;
- That the applicant has sufficient ability to speak English and to understand spoken English to provide the service that they wish to be licensed for.
- That the applicant has had child sexual exploitation and safeguarding training.
- That the applicant has been checked against National Anti Fraud Network (NAFN) database.

4.2 If an applicant has spent six continuous months or more overseas, the Licensing Authority will expect to see evidence of a criminal record check from the country/ countries covering the period before a licence application can be made. This period will be for ten years.

5 Appeals

5.1 Any applicant refused a driver's licence on the grounds that the Licensing Authority is not satisfied that he or she is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 52 (1)].

5.2 Any applicant refused an operator licence on the grounds that the Licensing Authority is not satisfied he/ she is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal. [Local Government Miscellaneous Provisions Act 1976, s 55 (4)]

5.3 Any licensee whose licence is suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice of suspension or revocation. [Local Government Miscellaneous Provisions Act 1976, s 61 and 62]

6 Powers

6.1 Sections 61 and 62 of the Local Government Miscellaneous Provisions Act 1976 allow the Licensing Authority to suspend, revoke or refuse to renew a licence if the application/ licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

6.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

6.3 In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

7 Consideration of disclosed criminal history

7.1 Under the provisions of sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/ or a private hire vehicle drivers' licence and/ or private hire vehicle operators licence is a 'fit and proper' person to hold such a licence. However, if an applicant has any convictions, warnings, cautions, charges or summonses awaiting trial, or pending investigations, the licensing authority will look into:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) were

- When the offence(s) were committed
- The date of conviction
- Circumstances of the individual concerned
- Sentence imposed by the court
- The applicant's age at the time of conviction
- Whether they form part of a pattern of offending
- Any other character check considered reasonable (e.g. personal references)
- Any other factors that might be relevant

7.2 Existing holders of drivers'/ operators licences or the proprietors of hackney carriage / private hire vehicle licences are required to notify the Licensing Authority in writing within 7 days of being arrested, receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions).

7.3 The Licensing Authority requires enhanced disclosures from the Disclosure and Barring Service (DBS) of any applicant for a driver licence. Standard level checks are required for applicants for an operators licence. The Licensing Authority follows the DBS's Code of Practice on the fair use of disclosure information. A copy is available on request.

7.4 Applicants applying for the grant or a renewal of a drivers' licence will be required to obtain an enhanced disclosure at their expense. Similarly applicants for the grant or renewal of an operators licence will be required to obtain a standard level disclosure at their own expense. The Licensing Authority abides by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.

7.5 Where a driver has received penalty points because they have failed to notify the Council of a relevant conviction, the Licensing Authority will require applicants to register for the DBS's update service and to nominate the Licensing Authority to receive updates. These licensees are expected to provide evidence of continuous registration and nomination throughout the duration of their licence. The cost of the registration will be met by the driver concerned.

7.6 More information about the DBS can be found on their website at:

https://www.gov.uk/government/organisations/disclosure-and-barring-service

7.7 The Licensing Authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Licensing Authority or other licensing authorities, and information disclosed by the police.

8 Crimes resulting in death/ serious injury

8.1 Where an applicant or licensee has been convicted of a crime which resulted in the death of another person; was intended to cause the death or serious injury of another person; or was reckless as to whether death or serious injury would be caused; they will not be licensed. This will include the offences of causing death by dangerous driving; death by careless driving whilst under

the influence of drink or drugs; death by driving whilst disqualified, un-licensed or uninsured; or any similar offence(s).

9 Exploitation

9.1 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.

10 Terrorism

10.1 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with terrorism they will not be licensed.

11 Sex and indecency offences

11.1 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.

11.2 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.

12 Offences involving violence

12.1 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.

13 Dishonesty

13.1 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.

14 Drugs

14.1 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.

14.2 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.

15 Possession of a weapon

15.1 Where an applicant has a conviction for possession of a firearm, or imitation firearm, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

15.2 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.

16 Criminal damage

16.1 Where an applicant has a conviction for criminal damage, including arson that does not endanger life, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

17 Public Order

17.1 Where an applicant has a conviction for a public order offence a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed

18 Discrimination

18.1 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.

19 Motoring convictions

19.1 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.

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

20.1 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.

20.2 Where an applicant has a conviction for using a held-hand 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.

21 Other motoring offences

21.1 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.

21.2 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.

21.3 An operator who aids and abets the driving of passengers for hire and reward without insurance will normally have his/ her operators' licence revoked immediately and be prevented from holding a licence for at least 7 years.

22 Hackney carriage and private hire offences

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

23 Once a licence has been granted

23.1 If, following the grant of a licence, the licensee's conduct is such that were they applying for a new licence their application would not be granted, then consideration will be given to revocation of their existing licence. In determining such cases any reference to 'applicant' in this policy shall be construed as to include an existing licensee and it shall be for the Licensing Authority to decide what action to take in the light of these guidelines.

23.2 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

23.3 A suspension or revocation of the licence of an operator takes effect at the end of the period of 21 days beginning with the day on which notice is given to the operator.

24 Licences issued by other Licensing Authorities

24.1 Applicants who hold a licence with one Licensing Authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.

24.2 Licensees who are licensed by multiple Authorities are expected to inform all such Authorities of the Authorities that they are licensed by and to advise each Authority of any changes in this respect; and should expect those Authorities to share information regarding their conduct and to take it into account as appropriate.