

Officer under Scheme Of Delegation? Is one person alone capable of an entire character examination? If so, what qualifications will that person need to have attained to make such a decision?

(1) Can the local authority, without prejudice, and with full confidence, assure the trade that an Officer under a Scheme of Delegation is acting impartially in their decision process?

1.8 In Chapter 2 this Guidance explores the current thinking behind an individual's tendencies to reoffend. It is clear that this is not an exact science and that there is no meaningful and precise statistical evidence that can assist in the setting of policy.

The trade should take this very seriously. This proposal is a back door to allow the Licensing authority to act with impunity when making decisions as to whether a person is fit and proper. If we do not challenge it now it will come back to bite us in the very near future.

1.9 This Guidance contains no detailed list of offences. All offences are allocated to a general category such as 'dishonesty' or 'drugs'. This prevents it being argued that a specific offence is not covered by the Policy as it 'is not on the list' and also prevents arguments that a firearm is more serious than a knife.

(3) Surely generalising all offenses is unfair? Is this being suggested to make it easier for the Licensing authority to apply decisions by bypassing current proper procedure?

1.10 This Guidance cannot have the force of legislation, new or amended; the need for which is both abundantly clear to, and fully supported by the Institute and the other organisations working with it. It is intended to help local authorities achieve greater consistency so that applicants are less able to shop between authorities. It is acknowledged that this cannot be fully achieved without the imposition of national minimum standards

(4) Is the Institute of Licensing attempting to push these recommendations onto the trade without proper Government consultancy? If this is indeed the case, this proposal in its entirety should be rejected by the trade.

2.1 The aim of local authority licensing of the taxi and PHV trades is to protect the public'.3 With this in mind, Public Protection must be at the forefront of the decision maker's mind when determining whether an individual is considered a "fit and proper person to hold a licence.

(5) It must be made clear to the trade who or what the decision maker is. Also this proposal does not mention the procedure after revocation or refusal.

1) Will the current procedures remain in place? If the answer is yes they should be clearly

written in this proposal.

2) If the current process is to change, the new process should be clearly written in this proposal.

2.5 A key factor when considering an application from an individual with any convictions, cautions or complaints recorded is Public Protection. This includes assessing the risk of re-offending and harm. Risk assessment tools are regularly employed by those who are responsible for managing individuals who have committed offences. **Local Authorities are not always privy to this information so it is important when they are making decisions around suitability that they have an understanding of offending behaviour and risk of reoffending in generic terms.**

What courses have the decision makers been on to help them determine the risk of re-offending? If none, then how are they qualified to make such a decision? The question 'Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?' is subjective.

We are not all destined to get along, personal differences between current or potential new drivers and individual decision makers could sway the decision unfairly in the authorities favour.

Especially when this proposal seeks to remove all claim by the applicant to a free and fair decision by grouping all offences into a general category such as 'dishonesty' or 'drugs'. **This prevents it being argued by the applicant that a specific offence is different from another, it also prevents the applicant from arguing that a knife offense is different to a minor roadside altercation.**

3.22 Both hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974. This means that there are no "spent" convictions and that any and all criminal convictions (apart from "protected convictions" and "protected cautions" where they have been declared) can be taken into account by the local authority in assessing safety and suitability, **but only relevant spent convictions should be considered by the decision maker**²⁸.

(7) This proposal is untenable when it seeks to allow the Licensing Authority to make a decision based on anything other than a conviction.

4.12 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. **In addition, complaints where there was no police involvement will also be considered. Within this document, any**

reference to "conviction" will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.

(How is this fair? According to this, an Applicant can be judged unfit based on an unconfirmed complaint from anyone. THIS IS VERY DANGEROUS TO THE TRADE AND SHOULD BE QUESTIONED AT ALL LEVELS. The following 4 paragraphs should be scrutinised and questioned with the same level of voracity.

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4.13 In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.

4.14 In all cases, the licensing authority will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of these guidelines.

4.15 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.

4.16 As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.

"4.10 In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person's behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual's attitude and temperament."

With regards to the new policy proposal and its relation to spent convictions.

All Drivers

Please pay particular attention to the following changes relating to spent convictions. If you commit one of the following offences and get a suspended sentence you will not be eligible for a licence until the whole term of the new conditions. Please also remember that in Paragraph 4.12 the policy states; "Within this document, any reference to "conviction" will also include matters that amount to criminal behaviour, but which have not

resulted in a conviction.” This is unfair at best and unlawful at worst.

Crimes resulting in death will not be licensed.

Exploitation will not be licensed.

Offences involving violence at least **10 years** have elapsed since the completion of any sentence imposed.

Possession of a weapon at least **7 years** have elapsed since the completion of any sentence imposed.

Sex and indecency offences a licence will not be granted.

Dishonesty at least **7 years** have elapsed since the completion of any sentence imposed.

Drugs, supply of at least **10 years** have elapsed since the completion of any sentence imposed.

Drugs, possession of at least **5 years** have elapsed since the completion of any sentence imposed.

Discrimination at least **7 years** have elapsed since the completion of any sentence imposed.

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.

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.

Summing up

Clarity is required on the following points.

- 1) Will licensing enforcement officers be given officer under a Scheme of Delegation status?
- 2) Where a decision to revoke or refuse a licence is made; Will all the current procedures of appeal remain unchanged?

- 3) Generalising all offences into one category is wholly unfair. To make an assumption that a minor argument is the same as any other offence is ludicrous. This part of the proposal should be removed in full.
- 4) When making a decision based on an applicants propensity to reoffend; What qualifications will the decision maker have attained to help make such a decision?
- 5) The Rehabilitation of Offenders Act 1974 states; “only relevant spent convictions should be considered by the decision maker” This act alone should persuade the policy makers that this proposal is unlawful when it states; **Within this document, any reference to “conviction” will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.**
- 6) The proposed introduction of new timescales for spent convictions is in some cases fully welcomed. But; clarification is required as in point 5. The two following proposals are, in our opinion overly zealous. We would like to discuss these two in particular in much greater detail.

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.

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

7. All the other proposals relating to spent convictions require FULL clarification as to whether this document is lawful in its aim to;

- i) Include matters that amount to criminal behaviour, but which have not resulted in a conviction.
- ii) Continue with the assumption that; All offences are allocated to a general category such as ‘dishonesty’ or ‘drugs.