

# Licensing Committee Meeting

Wednesday, 2 November 2016

Dear Councillor

## LICENSING COMMITTEE - WEDNESDAY, 2ND NOVEMBER, 2016

I am now able to enclose, for consideration at next Wednesday, 2nd November, 2016 meeting of the Licensing Committee, the following reports that were unavailable when the agenda was printed.

| <b>Agenda No</b> | <b>Item</b> |
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| 8 | <b><u>Guidelines Relating to Relevance of Convictions and Breaches of Licence Conditions Relating to Hackney Carriage and Private Hire Vehicle Proprietors and Drivers and Private Hire Vehicle Operators APPENDIX (Pages 3 - 16)</u></b> |
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**CITY OF WOLVERHAMPTON CITY  
COUNCIL**

**HACKNEY CARRIAGE AND PRIVATE HIRE  
VEHICLE PROPRIETORS AND  
DRIVERS AND PRIVATE HIRE  
VEHICLE OPERATORS**

**GUIDELINES RELATING TO RELEVANCE OF CONVICTIONS AND  
BREACHES OF LICENCE CONDITIONS**

**1.0 Purpose of Guidelines**

- 1.1 Licensing issues are dealt with by both Councillors and employees. Employee is defined to include Head of ~~Regulatory Services Governance~~, Licensing Manager and ~~Service Managers from within the Regulatory Services Division~~, and in the case of new and review applications Section Leaders from Licensing Services. Responsibility for decision making at employee level will “normally” be as follows:-
- (a) Head of ~~Regulatory Service Governance~~ - new/review or renewal
  - (b) ~~Service Managers – new/review or renewal~~
  - (c) Section Leaders Licensing ~~--~~ new/review
- 1.2 This document provides guidance outlining how drivers/proprietors of hackney carriage and private hire vehicles and operators can expect to be treated. In particular, but not exclusively it will affect:
- Applicants for driver’s licences.
  - Applicants for operators licences
  - Existing licensed drivers whose licences are being reviewed.
  - Magistrates hearing appeals against Local Authority decisions.
- 1.3 Whilst employees and Councillors will have regard to the guidelines, each case will be considered on its individual merits, and where reasonable, the Employees/Committee may depart from the guidelines.
- 1.4 Any decision to suspend, revoke or refuse to renew a licence will be applied to an applicant/licence holder who is considered not to be a 'fit and proper' person to drive hackney carriages or private hire vehicles. The application of the Human Rights Act will be considered carefully **and balanced against the overriding consideration to protect the public.**

- 1.5 The Licensing Committee is concerned to ensure:
- That a person is a fit and proper person.
  - That a person does not pose a threat to the public.
  - That the public are safeguarded from dishonest persons.
  - The safeguarding of children, young and vulnerable persons.
- 1.6 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 or charges awaiting trial, 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
- 1.7 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the local authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence as outlined in the guidance 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.
- 1.8 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the local 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 local authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 1.9 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.
- 1.10 In appropriate circumstances a suspension may be abated by the licence holder demonstrating to the satisfaction of the Council that they have successfully completed and passed appropriate training which should be evidenced in writing to the Council.

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| <b>2.0</b> | <b>Relevant Convictions, Cautions/Fixed Penalties and Persons Charged with a Serious Offence(s)</b> |
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**2.1 New Applicants**

2.1.1 A conviction/caution or relevant information relating to the alleged committing of an offence falling within any of the categories outlined in Section 5.0 of this document will result in a new applicant for a hackney carriage or private hire vehicle driver's/operators licence being referred to the employees to determine the application.

**2.2 Existing Licence Holders**

2.2.1 A conviction/caution or relevant information relating to the alleged committing of an offence falling within any of the categories outlined in Section 5.0 of this document will result in an existing hackney carriage or private hire driver's/proprietor's/operators licence being referred to employees to determine a course of action detailed in Section 5.0 below. (In the event of a serious breach or allegation in respect of a licensed operator, the matter will be referred to Licensing Committee for consideration).

2.2.2 In cases where it is in the interests of public safety, the employees may suspend, refuse to renew or revoke a driver's licence with immediate effect following a review. In such cases a written explanation will be given as to why it is in the interests of public safety to suspend, refuse to renew or revoke immediately.

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| <b>3.0</b> | <b>Complaints</b> |
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3.1 A complaint relating to the conduct of an operator, hackney carriage driver, private hire vehicle driver, proprietor of a hackney carriage or proprietor of a private hire vehicle may, depending on the severity of the allegations, result in a written warning or suspension of the licence.

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| <b>4.0</b> | <b>Further Guidance</b> |
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4.1 Where an application is made for a new licence, and the applicant has previously held a hackney carriage or private hire drivers, proprietors or operators licence or on review of an existing licence and relevant convictions have previously been considered in decision making by the Local Authority in connection with any further or existing licence any decision on a new application or on review will normally be made by the employees or Licensing Committee, with reliance only on any relevant convictions or behaviour which have arisen since any previous application or review. However there will be occasions when previously considered convictions or behaviour will be of value and can be referred to in order to indicate a pattern of behaviour which may result in them again being considered in decision making particularly if the conviction(s) is/are of a similar nature to those which have arisen since any previous application or review.

- 4.2 An applicant or licence holder whose application/licence is subject to a formal review hearing will be advised in writing of the date and time of the meeting. He or she has the right to appear in person at the hearing to give verbal or written information in support of the application/licence and to be represented if required. If the applicant or licence holder fails to attend the review hearing without reasonable excuse, the determination or review may proceed in his or her absence.
- 4.3 In all cases involving suspension, revocation and refusal to grant or renew the applicant or licence holder has the right to appeal against the decision of the Licensing Committee or the employees through the Magistrates Court.
- 4.4 For the avoidance of doubt where a person is sentenced to a period of imprisonment or detention at a Young Offenders Institution reference to expiry of sentence shall be deemed to mean expiry of the actual term imposed and not any earlier release date.
- 4.5 Any person who has been cautioned for an offence will be dealt with using the criteria relating to convictions.
- 4.6 Decisions will normally be made in accordance with these guidelines; however each case will be decided on its merits. Regard will be had to:-
- (a) The nature of the offence.
  - (b) The age of the individual concerned at the date of the offence.
  - (c) Whether the driver was acting as a private hire or hackney carriage driver at the time. In the case of an operator, whether the operator was acting in the course of business as a private hire operator at the time.
  - (d) Any other relevant circumstances.

Dependant on the facts and where deemed appropriate the employees may make a decision contrary to that suggested by the guidelines or where appropriate refer a matter to Councillors of the Licensing Sub-Committee for decision. Where decisions are made which are contrary to the guidelines or where the matter is referred to the Licensing Sub-Committee employees will give reasons for this.

- 4.7 Any list of offences outlined in section 5.0 of this report, show examples of the type of offence in a particular category. The lists are not exhaustive and offences outside of these examples may be considered by the employees/Committee.
- 4.8 Hackney carriage and private hire vehicle drivers should be able to communicate satisfactorily in English with customers, in order to be considered a fit and proper person to hold a Licence.

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| <b>5.0</b> | <b>Determination of Action to be Taken</b> |
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- 5.1 In determining the course of action to be taken in connection with an application for a hackney carriage, proprietors or drivers licence, private hire vehicle or driver's

licence, or private hire vehicle operator's licence or the review of an existing driver's licence or operator's licence, or proprietor's licence the following sanctions will be applied as a guide. In all cases where it is possible to calculate two or more different periods of time, the calculation which results in the longer period shall be used or both periods of time may be considered consecutively or concurrently at the discretion of the employees/Councillors.

### 5.1.1 Minor Traffic Offences

The Licensing Committee takes driving offences very seriously, particularly when the applicant displays a pattern of offences.

- (a) Single offences resulting in a maximum of 3 current penalty points relevant for 'Totting Up' purposes as outlined at 5.1.2 – Issued with written warning. A new licence will normally be granted with a warning.
- (b) Repeat offences resulting in a combined total of 6 current penalty points relevant for 'Totting Up' purposes as outlined at 5.1.2 – Issued with final written warning. A new licence will normally be granted with a warning.
- (c) Repeat offences resulting in a combined total of 9 or more penalty points currently relevant for totting purposes as outlined 5.1.2 – normally *revoke or refuse to renew*. A new licence will not normally be granted.

### 5.1.2 "Totting Up" – Section 35 Road Traffic Offenders Act 1988

If the total of penalty points reaches 12 or more within 3 years the driver is liable to be disqualified from driving under the "Totting Up" procedure.

- (a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted until a period equal to the length of the disqualification has elapsed since the end of the disqualification period.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted.

### 5.1.3 Major Traffic Offences (Other than drink driving and drug offences)

A major traffic offence is a road traffic offence (other than for totting and drink driving) that can result in four or more penalty points and/or leave a period of disqualification and/or imprisonment.

For the purpose of these guidelines the following motoring offences are classed as 'Major Traffic offences'. However this is not an exhaustive list.

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| 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                         |
| BA30 | Attempting to drive while disqualified by order of Court             |

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| CD10 | Driving without due care and attention   |
| DD40 | Dangerous driving  |
| DD80 | Causing death by dangerous driving   |
| IN10 | Using a vehicle uninsured against third party risks                                |
| LC20 | Driving otherwise than in accordance with a licence                                |
| LC30 | Driving after making a 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  |
| MS90 | Failure to give information as to identity of driver, etc                          |
| UT50 | Aggravated taking of a vehicle   |

- (a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the expiration of the disqualification period or if not disqualified 5 years from the date of conviction.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 10 years following the expiration of the last disqualification period or if not disqualified 10 years from the date of the most recent conviction.

#### **5.1.4 Drink Driving Offences and Driving under the Influence of Drugs**

Any drink driving or drug related driving offence is treated very seriously by the Local Authority. An offence of this nature is highly relevant to the individual's role as a hackney carriage or private hire driver.

- (a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the expiration of the disqualification period or if not disqualified 5 years from the date of conviction.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 10 years following the expiration of the last disqualification period or if not disqualified 10 years from the date of conviction.

#### **5.1.5 Anti-Social Behaviour and Public Order Offences**

Drivers of hackney carriages and private hire vehicles should display a measured and calming manner in the face of provocation and difficult situations.

- (a) *First offence* – will normally suspend for up to 6 months or refuse to renew. A new licence will not normally be granted for 2 years following the date of conviction.



- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction.

#### **5.1.6 Drug Related Offences**

In the case of drivers with convictions for the possession of illegal drugs or other drug related offences (excluding the supply or dealing of drugs, for which there is a separate guideline at 5.1.7), the applicant may be required to satisfy the Local Authority that they are free of addiction subject to a licence being granted.

- (a) First offence – will normally suspend for up to 6 months or refuse to renew. A new licence will not normally be granted for 3 years following the date of conviction or expiry of a prison sentence.
- (b) Repeat offences – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction or expiry of a prison sentence.

Applicants or licence holders who have committed repeat offences for drug possession may have to undertake additional medical testing to ensure that they are not using drugs or showing physical symptoms of drug addiction.

#### **5.1.7 Dealing/Supply of Drugs**

Due to the nature of work carried out in the hackney carriage and private hire industry, a conviction for the supply of drugs is treated very seriously and will normally preclude a licence being issued for a considerable time.

- (a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 10 years following the date of conviction or expiry of a prison sentence.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted.

#### **5.1.8 Indecency Offences**

Any offence for indecency is treated very seriously as hackney carriage/private hire drivers often work in isolation with members of society.

- (a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction or expiry of a prison sentence.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 10 years following the date of conviction or expiry of a prison sentence.

### 5.1.9 Sexual Offences

Drivers of hackney carriage and private hire vehicles often work in isolation with members of society.

The Local Authority seeks to minimise risks associated with these persons and for that reason a more serious view will be taken where sexual offences occur.

Decisions relating to the determination of an application or review of an existing licence may be informed by discussions with the Police and/ or Wolverhampton Safeguarding Unit: The Local Authority Designated Employee.

Any offence(s)/conviction(s) of a sexual nature against any person will normally result in revocation or refuse to renew. A new licence will not normally be granted.

### 5.1.10 Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. For these reasons a serious view is taken of any offences involving dishonesty.

For the purpose of these guidelines the following offences are classed as 'Dishonesty':

- Theft.
- Burglary.
- Fraud.
- Benefit fraud (including offences under Section 111A and 112 of the Social Security Administration Act 1992).
- Handling or receiving stolen goods.
- Forgery (eg. producing false insurance policy).
- Conspiracy to defraud.
- Obtaining money or property by deception
- Other deception.

(a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction or expiry of a prison sentence.

(b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 10 years following the date of conviction or expiry of a prison sentence.

### 5.1.11 Obstruction of Police Officer/Authorised Officer

(a) *First offence* – will normally suspend for up to 6 months or refuse to renew. A new licence will not normally be granted for 6 months following the date of conviction or expiry of a prison sentence.

- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction or expiry of a prison sentence.

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| <b>5.1.12</b> | <b>Violence</b> |
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For the purpose of these guidelines the following are classed as ‘violent offences’:

- Battery
- Common assault.
- Affray.
- S5 Public Order Act 1986 offence or distress/harassment, alarm.
- S4 Public Order Act 1986 (fear of provocation of violence).
- S4A Public Order Act 1986 (intentional harassment, alarm or distress).
- Possession of offensive weapon.
- Criminal damage.
- Other violent offences.

- (a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction or expiry of a prison sentence.

- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 10 years following the date of conviction or expiry of a prison sentence.

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| <b>5.1.13</b> | <b>Violence (Serious)</b> |
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For the purpose of these guidelines the following are classed as ‘Serious Violent offences’:

- Arson
- Malicious wounding or grievous bodily harm
- Actual bodily harm
- Racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Violent disorder
- Resisting arrest
- Kidnapping
- Wounding
- Other serious violence

- (a) *First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 7 years following the date of conviction or the expiry of a prison sentence.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted.

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| <b>5.1.14</b> | <b>Violence resulting in Loss of Life or with Intent to Cause Loss of Life</b> |
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A conviction for the following offences would normally preclude the applicant / licence holder from holding a licence due to the nature of the work involved.

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Attempted murder

A conviction – will normally result in revocation or refusal to renew. A new licence will not normally be granted.

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| <b>5.1.15</b> | <b>Terrorism</b> |
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Terrorism means the use or threat of action where designed to influence the Government or an international governmental organisation or to intimidate the public or a section of the public, for the purpose of advancing a political, religious or ideological cause.

‘Action’ includes serious violence against a person, serious damage to property, endangering a person’s life, other than that of the person committing the action, creating a serious risk to the health or safety of the public or a section of the public, or an act designed to seriously interfere with or seriously to disrupt an electronic system, or the use of firearms or explosives.

This also includes any offence, act or omission linked to a terrorism offence.

A conviction – will normally result in revocation or refusal to renew. A new licence will not normally be granted.

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| <b>5.1.16</b> | <b>Hate Crime</b> |
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A hate crime is any criminal offence that is motivated by hostility or prejudice based upon the victim’s disability, race, sexual orientation, transgender, religion or belief.

*First offence* – will normally revoke or refuse to renew. A new licence will not normally be granted for 5 years following the date of conviction.

*Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted.

### **5.1.17 Plying for Hire**

Convictions for plying for hire and related no insurances offences show that a driver is unable to work within the legal restrictions of a private hire/hackney carriage driver's licence. Offences of this nature generally result in passengers being uninsured during the journey.

- (a) *First offence* – will normally suspend for up to 6 months or refuse to renew. A new licence will not normally be granted for 6 months following the date of conviction.
- (b) *Repeat offences* – will normally revoke or refuse to renew the private hire or hackney carriage driver's licence. A new licence will not normally be granted for 3 years following the date of conviction.

### **5.1.18 Non-Disclosure/Late Disclosure of a Conviction/Caution/Fixed Penalty**

Declarations of criminal and motoring convictions, cautions and fixed penalties are vitally important in order for the Local Authority to review the suitability of licence holders. Failure to declare any of the above can result in unsuitable drivers holding a licence.

- (a) *First offence* – will normally result in a written warning.
- (b) *Second offence* – will normally suspend for up to 2 months or refusal to renew. A new licence will not normally be granted for 2 months following the date of conviction/caution/fixed penalty.
- (c) *Three or more offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 3 years following the date of conviction/caution/fixed penalty.

### **5.1.19 Breach of Licence Conditions / Byelaws**

Licences are issued with conditions and byelaws, applying to them; this is to ensure that the trade operates in a fair and consistent manner. Breaches of conditions/byelaws can result in poor service to customers. Serious breaches of conditions/byelaws will result in a review. A review will also normally be called where a driver/proprietor has persistently breached conditions, in accordance with Regulatory Services enforcement policy.

- (a) *First offence* – will normally suspend for up to 2 months or refuse to renew. A new licence will not normally be granted for 2 months from the date of revocation or refusal to renew.
- (b) *Second offence* – will normally suspend for up to 6 months or refuse to renew. A new licence will not normally be granted for 6 months from the date of revocation or refusal to renew.

- (c) *Three or more offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 3 years from the date of revocation or refusal to renew.

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| <b>5.1.20</b> | <b>Any other relevant offences (including ‘touting’, using/operating private hire vehicles without a licence, offences under the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847)</b> |
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- (a) *First offence* – will normally suspend for up to for 4 months, or refuse to renew. A new licence will not normally be granted for 4 months following the date of conviction.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 3 years following the date of conviction.

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| <b>5.1.21</b> | <b>Physical Fitness and Medical Conditions</b> |
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Applicants for hackney carriage and/or private hire drivers licences must satisfy the medical fitness standards issued by the Driver and Vehicle Licensing Agency (DVLA). The agreed standard is the Group 2 Standard for vocational drivers.

- (a) In the case of a new application or an application to renew a licence, if the applicant fails to meet the required medical standard the licence will normally be refused. A new licence will not normally be granted for one year after the date of the medical examination or any period advised by an approved medical practitioner.
- (b) In the case of existing licence holders, if a person has a medical condition which falls below the standard outlined in the Group 2 Standard of the published medical standards, the licence may be suspended, revoked, or the renewal of a licence refused, dependent on the nature of the condition along with any recuperation or rehabilitation periods.

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| <b>5.1.22</b> | <b>Investigation of Serious Offences (involving violence, sexual offences, etc)</b> |
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Where information is received in relation to an existing licence holder from the Police or other enforcement bodies that an individual(s) are under investigation or have been under investigation for a matter that relates to any of the offences outlined in sections 5.1.1 – 5.1.25, the Local Authority may consider the information provided and take action in relation to the information provided. This may mean a licence is suspended, revoked or a renewal of a licence is refused. The power to suspend or revoke immediately as set out in section 2.2.2 may also be used in these circumstances if it is in the interests of public safety.

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| <b>5.1.23</b> | <b>Mobile Phones</b> |
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This type of offence is treated very seriously as it increases the likelihood of an accident.

- (a) *First offence* – will normally suspend for up to 6 months or refusal to renew. A new licence will not normally be granted for 6 months following the date of conviction.
- (b) *Repeat offences* – will normally revoke or refuse to renew. A new licence will not normally be granted for 1 year following the date of conviction.

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| <b>5.1.24</b> | <b>Health Act</b> |
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Drivers must not smoke in a licensed vehicle. Any offence under this act can risk the health of both the driver and passengers.

- (a) *First offence* – will normally suspend for up to 2 months. A new licence will not normally be granted for 2 months following the date of conviction.
- (b) *Repeat offences* – will normally suspend for up to 6 months. A new licence will not normally be granted for 1 year following the date of conviction.

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| <b>5.1.25</b> | <b>Conduct of Hackney Carriage and Private Hire Vehicle Drivers, Proprietors and Operators</b> |
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A hackney carriage or private hire drivers badge is a badge of approval, it states the Local Authority feels the holder is fit and proper and suitable in every way. The standard of behaviour and level of trust expected should be demonstrated in the conduct of those licensed at all times.

If the applicant or driver/proprietor/operator licence holders behaviour falls below that expected from a licence holder the following will apply;

- (a) *First instance* – will normally suspend for up to 4 months, or refuse to renew. A new licence will not normally be granted for 4 months following the outcome of any review hearing in relation to the incident.
- (b) *Repeat instance* – will normally revoke or refuse to renew. A new licence will not normally be granted for 3 years following the outcome of any review hearing in relation to the incident.

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