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22 November 2016

To: All Councillors

As a Member or Substitute of the **Licensing and Appeals Sub - Committee**, please treat this as your summons to attend a meeting on **Wednesday 30 November 2016 at 10.30am in the Committee Room, Town Hall, Matlock DE4 3NN.**

Yours sincerely

A handwritten signature in black ink, appearing to be 'Sandra Lamb', written in a cursive style.

Sandra Lamb
Head of Corporate Services

AGENDA

1. APOLOGIES/SUBSTITUTES

Please advise Democratic Services on 01629 761133 or e-mail committee@derbyshiredales.gov.uk of any apologies for absence and substitute arrangements.

2. ELECTION OF A CHAIRMAN

Proposal that a Member of the Committee be elected Chairman.

3. INTERESTS

Members are required to declare the existence and nature of any interests they may have in subsequent agenda items in accordance with the District Council's Code of Conduct. Those interests are matters that relate to money or that which can be valued in money, affecting the Member her/his partner, extended family and close friends.

Interests that become apparent at a later stage in the proceedings may be declared at that time.

4. EXCLUSION OF PUBLIC AND PRESS

At this point the Committee will consider excluding the public and press in order to consider its decision in private in accordance with the hearing procedure.

5. TAXI / PRIVATE HIRE VEHICLE DRIVER LICENSING

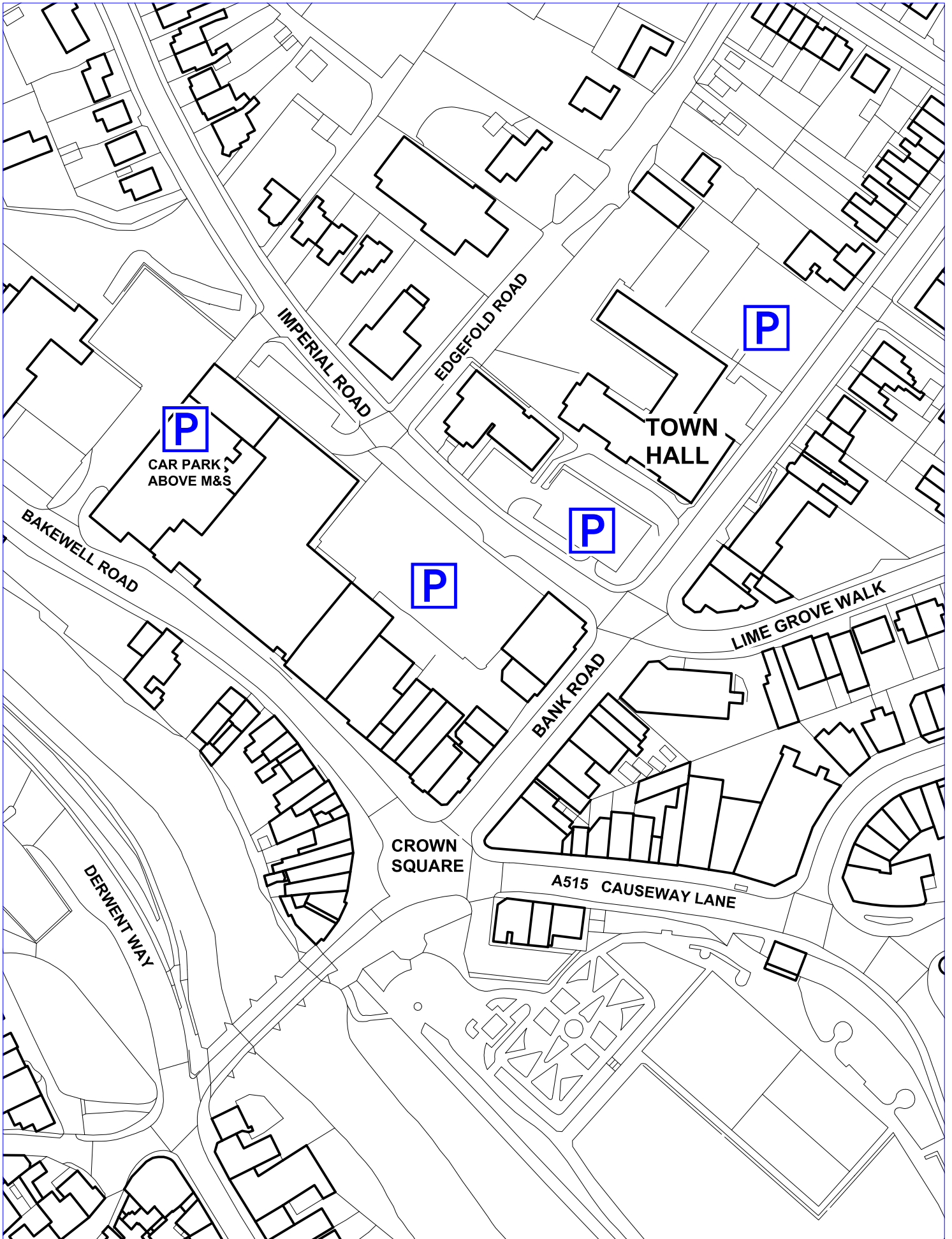
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To determine whether the applicant is a fit and proper person to hold a Licence to drive a Hackney Carriage/Private Hire Vehicle in Derbyshire Dales.

Members of the Committee Nominated to hear this Appeal:

Councillors: Tom Donnelly, Graham Elliott and Tony Millward BEM.

Substitute: Councillor Helen Froggatt



LICENSING AND APPEALS COMMITTEE

30 NOVEMBER 2016

Report of the Head of Regulatory Services

TAXI/PRIVATE HIRE VEHICLE DRIVER LICENSING

SUMMARY

The District Council's Taxi Licensing Policy requires any driver who is licensed by the Council to disclose any conviction and the penalty involved to the Council within 7 days of receipt. Where the criminal conviction is considered to be relevant, the matter is brought to the attention of this Committee for consideration.

A Licensed Driver has notified the Licensing Manager of a relevant conviction relating to common assault.

The legal issue to be determined by the Committee is whether the Licensed Driver is a fit and proper person to continue to hold a licence to drive a hackney carriage (taxi) or a private hire vehicle.

RECOMMENDATION

That the Committee determines whether the Licensed Driver is a fit and proper person to continue to hold a licence to drive a Hackney Carriage/Private Hire Vehicle.

WARDS AFFECTED

All

STRATEGIC LINK

An effective licensing regime contributes towards the District Council's priority of a thriving district, particularly in relation to business growth and job creation. Effective enforcement of this regime contributes to our vision of a distinctive rural environment with towns and villages that offer a high quality of life.

1 BACKGROUND

1.1 The Licensed Driver

The District Council's Taxi Licensing Policy requires any licensed driver to notify the Council of any conviction and the penalty received within 7 days.

1.2 On 3 November 2016, a Licensed Driver reported that he had recently been convicted at the Magistrates' Court, of common assault on his partner.

1.3 The driver has been licensed by the District Council twice; once between February 1987 and February 1989 and again from 1st May 1991 until present day. The Council has not received any complaints about the Licensed Driver during this time.

1.4 The Conviction

The Licensed Driver had attended Court and pleaded guilty to the offence with mitigation put forward on his behalf. He was given a Conditional Discharge of 12 months, and ordered to pay a contribution to Prosecution costs.

1.5 The Licensed Driver has provided a letter from his Solicitor explaining the events, and this will be made available to the Committee for consideration.

1.6 The reported offence is a relevant one for the purpose of determining whether or not the Licensed Driver is a fit and proper person to drive a licensed vehicle. Paragraph 3.7 of Appendix F of the District Council's Taxi Licensing Policy outlines the guidelines specifically in relation to offences involving violence.

1.7 Guidance in relation to Criminal Convictions/Cautions

The guidelines produced in Appendix F of the Council's Taxi and Private Hire Licensing Policy are generally used to determine the relevance of criminal convictions in relation to applications for hackney carriage and private hire vehicle driver's licences.

1.8 The Council has adopted the guidelines set out in the Department of Transport Circular 2/92 and Home Office Circular 13/92, subject to certain limited modifications. A copy of these is produced in **Appendix 1** to this report.

1.9 The Legal Aid Sentencing and Punishment of Offenders Act 2012 introduced changes to the Rehabilitation of Offenders Act 1974 in respect of spent convictions. These came into force on 10 March 2014.

The main changes are:

- to increase the length of maximum sentence capable of becoming spent;
- starting the rehabilitation period from the end of the sentence;
- reducing most rehabilitation periods,
- increasing some rehabilitation periods; and
- exempting immigration and nationality decisions by the UK Border Agency from the Act.

1.10 Details of the revised rehabilitation periods are reproduced in the table on penultimate page of the DoT and Home Office Guidelines in Appendix F of the Policy, and reproduced in **Appendix 1** to this report.

1.11 Fit and Proper 'Test'

There is no judicially approved test of fitness and propriety and, accordingly, a number of local tests have developed. These tend to be based on a test similar to the following:

"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?"

1.12 If the answer to this question (or a similar test) is an unqualified 'Yes', then the test is probably satisfied. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether this person is a fit and proper person to hold a Hackney Carriage/Private Hire Vehicle driver's licence.

1.13 Duration of a Combined Hackney Carriage/Private Hire Vehicle Driver's Licence

From 1st October 2015 a combined Hackney Carriage/Private Hire Driver's Licence granted by the District Council is now renewable every three years. This change was introduced with the enactment of section 10 of the Deregulation Act 2015 which amended the Local Government (Miscellaneous Provisions) Act 1976.

1.14 The Licensed Driver's licence was renewed on 30 April 2016 for a period of 3 years.

2 OPTIONS

The Committee has the following options:

1. To resolve that the applicant is a fit and proper person to continue to hold a Hackney Carriage/Private Hire Driver's Licence subject to the conditions attached to the Licence as set out in Appendix H of the District Council's Taxi Licensing Policy, or any additional conditions which Members consider reasonably necessary.
2. To revoke the driver's licence on the grounds that the applicant is not a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence.

Members are reminded that the applicant has the right of appeal to the Magistrates' Court, on refusal to grant a licence.

3 PROCEDURE

The procedure for the Committee is set out in **Appendix 2**.

4 RISK ASSESSMENT

4.1 Legal

The Committee must exercise their discretion reasonably.

Section 52 of the Local Government (Miscellaneous Provisions) Act 1976 states that any person aggrieved by:

- I. The refusal of the District Council to grant a licence under Section 51 of the Act, or
- II. Any conditions attached to the grant of a driver's licence may appeal to a Magistrates Court.

Any appeal must be made to the Magistrates Court within 21 days of notification of such a decision.

4.2 Financial

There are no financial risks arising from this report.

4.3 Corporate Risk

These decisions are one of the functions in which the Council acts in a quasi-judicial function. It is important that these decisions are robust to protect the reputation the Council has for sound decision making that stands up to scrutiny.

5 OTHER CONSIDERATIONS

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

6 CONTACT INFORMATION

For further information contact:

Eileen Tierney, Licensing Manager

Tel: 01629 761374 Email: eileen.tierney@derbyshiredales.gov.uk

7 BACKGROUND PAPERS

None.

8 ATTACHMENTS

Appendix 1 – Appendix F of DDDC Taxi and Private Hire Licensing Policy

Appendix 2 - Committee Hearings Procedure

DERBYSHIRE DALES DISTRICT COUNCIL'S TAXI LICENSING POLICY

APPENDIX F - RELEVANCE OF CONVICTIONS TO APPLICATIONS

The following guidelines will be used to determine the relevance of criminal convictions in relation to applications for hackney carriage and private hire vehicle driver's licences. In so stating, this Council has adopted the guidelines set out in the Department of Transport Circular 2/92 and Home Office Circular 13/92, subject to certain limited modifications.

General Policy

1. Each application will be determined on its own merits.
2. A person with a current conviction for a serious crime need not be permanently barred from obtaining a licence but will be expected to remain free of conviction for 3 to 5 years, according to the circumstances of the offence, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However the overriding consideration should be the protection of the public.
3. Listed below are some general principles relating to the determination of applications for drivers and operators of hackney carriages and private hire vehicles, which will generally be followed where convictions are admitted.

3.1 Minor Traffic Offences

Convictions for minor traffic offences e.g. obstruction, waiting in a restricted street, speeding etc will not prevent a person from proceeding with an application. Multiple occurrences of similar current offences, however, merit the issue of a warning as to future driving standards. If sufficient penalty points have been accrued to require a period of disqualification of the applicant's driving licence then a hackney carriage or private hire vehicle driver's licence may be granted after the restoration of the DVLA driving licence, but only after a period of 12 months has elapsed since the expiry of the disqualification or from the date of any subsequent conviction. A warning will, however, be given about future driving standards.

In circumstances where a driver acquires 12 or more penalty points on his DVLA driving licence but is not disqualified from driving because of the mitigating circumstances put before the Magistrates' Court, the driver's hackney carriage/private hire vehicle licence may still be revoked or suspended. Such a matter will always be dealt with by way of an appeals panel.

3.2 Major Motoring Offences

An isolated conviction for reckless driving or driving without due care and attention etc will normally merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. More than one conviction for this type of offence within the last 2 years will normally merit refusal with no further application then being considered until a period of 1 to 3 years free from convictions has elapsed. A single conviction for causing death by careless driving or by dangerous driving will be reported to the Panel for determination on the merits of the case.

3.3 Applications where Minor Traffic Offences are not Declared

Where an applicant has failed to disclose one or more of the offences mentioned above on their application form but such offences are subsequently uncovered during a DVLA check or by any other means, the delegated Officer may, if he/she thinks fit, still issue the licence subject to a warning regarding future conduct. If, however, he/she considers that there was a premeditated intent to deceive, he/she will normally refer the matter to the Panel to be dealt with by way of a disciplinary hearing.

3.4 Drunkenness

3.4.1 With a motor vehicle

A serious view will be taken of convictions of driving or being in charge of a vehicle whilst under the influence of drink. An isolated incident may not necessarily debar an applicant but strict warnings will be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should have elapsed (after the restoration of the driving licence) before such an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination will be arranged before the application is entertained. If the applicant is found to be an alcoholic, a period of 3 years must elapse after treatment is complete before a further licence application is considered.

3.4.2 Not in a motor vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

3.5 Drugs

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

3.6 Sexual or Indecency Offences

Hackney carriage and private hire vehicle drivers often carry passengers who are alone or may be vulnerable. Consequently applicants, who have convictions for rape, indecent assault, any sexual offence involving children or other vulnerable victims or any conviction for an offence under the Sexual Offences Act 2003, will, therefore normally be refused a Licence.

No application will be considered from a person currently on the Sex Offender's Register. Where an applicant has a conviction for a lesser sexual offence, such as indecent exposure, they will normally be refused a licence until they can show a substantial period, usually at least 5 years, free of any such convictions from the date of conviction or the date of release from custody where a custodial sentence has been imposed.

More than one conviction of this kind will raise grave doubts as to the applicant's fitness to hold a licence and will normally require at least a 10 year clear period from conviction before an application is likely to be considered favourably. In all cases, consideration will be given to the circumstances of the offence and any evidence to show that an applicant is a fit and proper person to hold a licence.

When considering applications, the Council may take into account any information of a sexual nature, which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

3.7 Violence

As hackney carriage and private hire vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for offences involving violence. Applicants with a conviction or caution for grievous bodily harm, wounding serious assault, possession of a dangerous weapon or other serious offence will normally be refused a licence. At least 5 years free of such conviction or caution, from either the date of conviction or caution, or from completion of any custodial sentence imposed, whichever is the latter must be shown before an application is entertained and even then careful consideration will be given to circumstances of the offence and a strict warning will be administered. Convictions for minor violence related offences, e.g. threatening, abusive or insulting behaviour will not necessarily prevent a person from proceeding with an application. In deciding whether to grant such an application the Council will consider the nature of the offence, how long ago it was and what age the applicant was when it was committed and any other factors which may be relevant.

3.8 Dishonesty

Hackney carriage and private hire vehicle 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 dishonest drivers to defraud the public, for example, by demanding more than the legal fare. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. For these reasons a serious view will be taken of any convictions involving dishonesty. In general, a period of 3 to 5 years free of convictions will be required before an application is entertained.

3.9 Persistent Criminality

Due to potential risks to the public, applications from persons with a persistent record of criminality, where the record suggests a persistent lack of regard for the wellbeing of others or for their property, would normally be refused. Other offences and special circumstances: If the applicant has declared any other offences not listed above or the circumstances of the case justify it, the Licensing Officer will refer the application to the Licensing and Appeals Committee for determination.

PRINCIPLES OF THE REHABILITATION OF OFFENDERS ACT 1974

1. Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely.
2. The possibility of rehabilitation and the length of time before rehabilitation occurs, depends on the sentence imposed, and not the offence committed.
3. Where a person is sentenced to imprisonment for a period exceeding 48 months, the conviction can never become spent.

4. Despite the above, **the principles of the Act do not apply to applicants for hackney carriage and private hire vehicle drivers' licences.** This is because the driving of taxis is listed as a "Regulated Occupation" in relation to which questions may be asked as to the suitability of individuals to be granted a licence.
5. Although the Act does not prevent judicial authorities (inclusive of the Licensing Authority) from taking spent convictions into account, such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a fit and proper person to hold a licence.
6. The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.
7. The rehabilitation periods to which reference is most commonly made are set out below. For a detailed commentary on the periods of rehabilitation applicable to all sentencing options, reference will need to be made to a specialist textbook on the Act.

(The information contained in Appendix F of the Council's current Taxi Licensing Policy document will be formally revised on review, to reflect the following changes to the Rehabilitation Act 1974 introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, with effect from 10 March 2014).

Sentence	End of rehabilitation period for adult offenders	End of rehabilitation period for offenders under 18 at date of conviction
A custodial sentence of more than 30 months and up to, or consisting of, 48 months	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of more than 6 months and up to, or consisting of, 30 months	The end of the period of 48 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of 6 months or less	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 18 months beginning with the day on which the sentence (including any licence period) is completed
Removal from Her Majesty's service	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
A sentence of service detention	The end of the period of 12 months beginning with the day on which the sentence is completed	The end of the period of 6 months beginning with the day on which the sentence is completed
A fine	The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
A compensation order	The date on which the payment is made in full	The date on which the payment is made in full
A community or youth rehabilitation order	The end of the period of 12 months beginning with the day provided for by or under the order as the last day on which the order is to have effect	The end of the period of 6 months beginning with the day provided for by or under the order as the last day on which the order is to have effect
		<i>continued over/.....</i>

Sentence	End of rehabilitation period for adult offenders	End of rehabilitation period for offenders under 18 at date of conviction
A relevant order	The day provided for by or under the order as the last day on which the order is to have effect	The day provided for by or under the order as the last day on which the order is to have effect

(3) Where no provision is made by or under a community or youth rehabilitation order or a relevant order for the last day on which the order is to have effect, the rehabilitation period for the order is to be the period of 24 months beginning with the date of conviction.

(4) There is no rehabilitation period for—

(a) an order discharging a person absolutely for an offence, or

(b) any other sentence in respect of a conviction where the sentence is not dealt within the Table or under subsection (3), and, in such cases, references in this Act to any rehabilitation period are to be read as if the period of time were nil.

[Driving endorsements have not changed and the rehabilitation period remains at 5 years]



LICENSING AND APPEALS COMMITTEE PROCEDURE (Taxi Licensing)

1. Introduction by the Chair explaining that the process is not an adversarial one and all comments should be directed through the Chair
2. Report of the Licensing Officer
3. Any questions for the Licensing Officer from Councillors
4. Any questions for the Licensing Officer from the Applicant/Licence Holder (or representative)
5. Statement from Licence Holder/Applicant (or representative)
6. Any questions from Councillors
7. Any questions from the Licensing Officer
8. Summing up by the Licensing Officer
9. Summing up by the Applicant/Licence Holder (or representative)
10. Clarifications required by any party.
11. Councillors retire in order to consider whether the Licensee is/remains a fit and proper person to hold the relevant Licence, whether or not to impose a sanction and if so what it should be.
12. The Chairman will announce the Committee's decision.