

# Taxi Licensing Committee



Date of meeting:	08 June 2023
Title of Report:	<b>Request for delegated authority to deal with initial driver applications with no Certificate of Good Conduct</b>
Lead Member:	Councillor Sally Haydon (Cabinet Member for Community Safety, Libraries, Cemeteries and Crematoria)
Lead Strategic Director:	Dr Ruth Harrell (Director of Public Health)
Author:	Nicola Horne
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Your Reference:	PPS/LIC/NH/COGC
Key Decision:	No
Confidentiality:	Part I - Official

## **Purpose of Report**

For Members of the Committee to review the number of cases considered under delegated powers in relation to COGC during the Municipal Year 2022 – 2023 and to consider whether or not to continue to authorise the Strategic Director of Public Health, in consultation with Chair and Vice Chair of the Taxi Licensing Committee and the lead Taxi Licensing Committee opposition member, to depart from the Hackney Carriage and Private Hire Licensing Policy 2022 and exempt applicants from producing a Certificate of Good Conduct from the relevant country, in exceptional, clear and compelling cases.

## **Recommendations and Reasons**

**It is recommended that Members consider the matters set out below and resolve to adopt one of the options:**

### **Option 1:**

Continue to authorise the Strategic Director of Public Health, in consultation with the Chair and Vice Chair of the Taxi Licensing Committee and lead Taxi Licensing Committee opposition member, to depart from the Hackney Carriage and Private Hire Licensing Policy 2022 and exempt an applicant from the requirement to produce a Certificate of Good Conduct (COGC), in exceptional, clear and compelling cases as set out in the report

### **Option 2:**

For the Strategic Director of Public Health to revert to the written Hackney Carriage and Private Hire Licensing Policy 2022 process of bringing a report to committee for a decision to be taken on whether to depart from policy and exempt an applicant from the requirement to produce a COGC where the Strategic Director is satisfied that there are exceptional, clear and compelling circumstances in a particular case.

## **Reasons:**

### **Option 1:**

Whilst the Strategic Director of Public Health has delegated powers to deal with taxi licensing matters, any decisions made under the delegation have to be made in line with the Taxi Licensing policy. However, the Taxi Licensing Committee may, having regard to all the information available, authorise a departure from its policy documents where there are exceptional, clear and compelling reasons (Chapter 1, paragraph 8.1 of the Taxi Licensing Policy). The Committee is asked to consider whether or not it wishes to continue to authorise the Strategic Director of Public Health to depart from the policy of requiring a COGC as part of the application process in exceptional, clear and compelling cases. By continuing to authorise this departure from policy would free up Committee and officer time in preparing for committee meetings, and would have the potential to provide the applicant with an earlier indication of whether they could continue with completing rest of the application process. The exceptional, clear and compelling reasons that are applicable to a departure from policy in these cases are set out in the main body to the report.

**Option 2:**

If the decision is made to revert to the Policy, this will mean that the Committee will have to make decisions on whether to authorise a departure from policy on a case by case basis with the Strategic Director of Public Health deciding on which cases to refer to committee that appear to have exceptional, clear and compelling reasons as to why they cannot satisfy the policy requirements for an application.

**Alternative option**

All relevant options are listed above

**Relevance to the Corporate Plan and/or the Plymouth Plan**

This report links to the delivery of the City and Council priorities. In particular:

**Unlocking the city's potential:** By ensuring Plymouth: is a clean and tidy city and a green and sustainable city that cares for its environment; has a vibrant economy offering quality jobs and skills; is an exciting, cultural and creative city and has a varied, efficient and sustainable transport network.

**Caring for people and communities:** By ensuring Plymouth is a friendly, welcoming city, making sure people feel safe in the city, protecting children, young people and adults.

**Implications for the Medium Term Financial Plan and Resource Implications:**

Not Applicable

**Financial Risks**

None

**Carbon Footprint (Environmental) Implications:**

Not Applicable

**Other Implications: e.g. Health and Safety, Risk Management, Child Poverty:**

*\* When considering these proposals members have a responsibility to ensure they give due regard to the Council's duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not.*

Members should be aware that Section 17 of the Crime Disorder Act 1998 put a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

**Appendices**

\*Add rows as required to box below

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
		1	2	3	4	5	6	7
A	Briefing report title							
B	Equalities Impact Assessment (if applicable)							


**Background papers:**

\*Add rows as required to box below

Please list all unpublished, background papers relevant to the decision in the table below. Background papers are unpublished works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based.

Title of any background paper(s)	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
	1	2	3	4	5	6	7

**Sign off:**

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Originating Senior Leadership Team member: Dr Ruth Harrell											
Please confirm the Strategic Director(s) has agreed the report? Yes Date agreed: 25/05/2023											
Cabinet Member approval: 											
Date approved: 31/05/2023											



## Report

### BACKGROUND

1. The Council cannot grant a licence to a hackney carriage or private hire driver, or a private hire operator unless they are satisfied that the applicant is a 'fit and proper person'. The overriding aim of the Hackney Carriage and Private Hire Licensing regime is to protect the public.
2. The main consideration in reaching a decision on whether an applicant is a fit and proper person is the consideration of any criminal convictions, cautions or conduct. This information is obtained through a DBS certificate. However, where a person has resided outside of the UK for a period in excess of 3 months, a DBS certificate will not account for any convictions received in that time. Therefore, any applicant who has resided outside of the UK that period since the age of 18 years old, is required to produce a Certificate of Good Conduct (COGC).
3. The Hackney Carriage and Private Hire Licensing Policy 2022, specifies certain pre-requisite tests that must be completed before an application can be considered to be complete. The full list is set out in the Policy section below (see Chapter 2, paragraph 4.1). The Policy is clear that no licence can be granted until all these pre requisites have been successfully completed (Chapter 2, paragraph 1.4). One of those requirements relates to the production of a COGC where applicant for a driver licence, private hire operator licence or vehicle licence has lived outside of the UK for a continuous period of 3 months or more since the age of 18.
4. The Department of Transport Statutory Taxi and Private Hire Vehicle Standards (Statutory Standards) were reissued on the 21 July 2020(<https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards>).
5. These standards makes a number of recommendations and there is a section entitled 'Oversees convictions' on page 17 -18 which states:

*4.34 The DBS cannot access criminal records held overseas, only foreign convictions that are held on the Police National Computer may, subject to the disclosure rules, be disclosed. Therefore, a DBS check may not provide a complete picture of an individual's criminal record where there have been periods living or working overseas; the same applies when an applicant has previously spent an extended period (three or more continuous months) outside the UK.*

*It should however be noted that some countries will not provide a 'Certificate of Good Character' unless the individual has been resident for six months or more.*

*4.35 Licensing authorities should seek or require applicants to provide where possible criminal records information or a 'Certificate of Good Character' from overseas in this circumstance to properly assess risk and support the decision-making process. It is the character of the applicant as an adult that is of particular interest, therefore an extended period outside the UK before the age of 18 may be less relevant. As with all licensing decisions, each case must be considered on its own merits. For information on applying for overseas criminal record information or 'Certificates of Good Character' please see the Home Office guidance.*

*4.36 Where an individual is aware that they have committed an offence overseas which may be equivalent to those listed in the annex to this document (Annex – Assessment of previous convictions), licensing authorities should advise the applicant to seek independent expert or legal advice to ensure that they provide information that is truthful and accurate.*

6. The Home Office guidance (<https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>) has been issued by the Government specifically on how to obtain overseas criminality information for use when considering the requirements of the UK Immigration Rules. It is clear that this information cannot be obtained from all countries.
7. Neither publication mentions how to deal with applications from asylum seekers, refugees or others who are not able to obtain COGC's where, for example, contacting their embassy or other official agency would put them or their family in some form of danger.
8. The Taxi Licensing Team have sought further advice from the Home Office Immigration Team who have advised that if an applicant has refugee status, then they would be considered as stateless by the UK and no longer able to gain assistance from their embassy. In some cases, people are granted refugee status on the basis of state persecution so would have additional reasons not to contact the embassy. Likewise their embassy would be unwilling to provide a COGC if the individual had left the country on the basis of state persecution. In any event, if an individual is a refugee, the Council cannot request the person to attend their embassy.
9. The Council has recognised in its policy that some applicants may have difficulties in obtaining a COGC (set out in Chapter 2, paragraph 7.2 of the policy) in that an exemption from providing the COGC is granted to an applicant where:
  - There is no process for obtaining a COGC from a country (As set out in Home Office guidance), and
  - The applicant has lived in the UK since 18 years old, and
  - Has been resident in the UK for a period of five continuous years
10. However, this does not address the situation that applies to asylum seekers or refugees, for example, who very often arrive in the UK after the age of 18 years old.
11. In the previous municipal year, the Taxi Committee made a decision to delegate the Strategic Director of Public Health authority to depart from policy as per Chapter 1, paragraph 8.1 of the Taxi Licensing Policy, referred to above for the municipal year.
12. In the last municipal year, to put into context the numbers of cases considered, 7 cases in total have been considered using delegated powers, 5 of which were granted and 2 of which were refused.

## CONSIDERATIONS

13. In order to address the situation, the committee is being asked to consider two options:

### Option 1:

Any decision made by the Strategic Director of Public Health under their delegated powers has to be made in line with the Taxi Licensing policy. However, the Taxi Licensing Committee may, having regard to all the information available, authorise a departure from its policy documents where there are exceptional, clear and compelling reasons (Chapter 1, paragraph 8.1 of the Taxi Licensing Policy). Therefore, if the Committee wish for the Strategic Director of Public Health to continue to make decisions to allow an applicant to continue with their application without a requirement to produce a COGC, the Committee would need to authorise the Strategic Director to depart from policy as per Chapter 1, paragraph 8.1 of the Taxi Licensing Policy, referred to above, for this municipal year. Authorising this departure from policy would maintain the current approach and continue to free up Committee and officer time in preparing for committee meetings, and would

have the potential to provide the applicant with an earlier indication of whether they could continue with completing rest of the application process.

The exceptional, clear and compelling reasons that would be that an applicant has spent the majority of their adult life in this country (including five continuous years immediately prior to applying for the licence), cannot obtain a COGC from the relevant country (for example, they are an asylum seeker or a refugee) and the DBS will provide information covering a sufficient period of their adult life to allow a determination on the applicant's fitness and propriety to be made. This would apply to cases where anything on the COGC would be so long ago that it would be highly unlikely to be relevant to any fit and proper considerations or the COGC is only likely to reveal juvenile/youth convictions which are of lesser relevance according to paragraph 4.35 of the Statutory Standards.

The basis for suggesting that the exemption only applies to those who have resided in the UK for the majority of their adult life is that this would mean that the DBS is likely to provide sufficient information for a decision to be made on their fitness to be a licensed driver in that it will cover the largest part of their adult life. Requiring an applicant to have resided in this country for five continuous years prior to applying for the licence is in line with the current exemption for providing COGC set out in paragraph 7.2 of the policy.

It is acknowledged that proceeding in this way will mean that there is a period of years in the applicant's life in which the Council will not have information on any convictions they may have received. Therefore, the Committee would need to consider whether public safety can be maintained by allowing an opportunity for a licence to be granted to somebody where there is no mechanism to establish whether or not they have any criminal convictions that would conflict with the convictions policy for a period of their life. Whenever a decision of this type is being made the decision maker must ask themselves, whether they are able to be satisfied (as per the statutory duty) that a person is fit and proper when they cannot assess whether an applicant has any convictions for that period.

If the Committee were to adopt this option, an annual report would be brought to committee detailing the number of exemptions granted for the preceding year and seeking renewal of the delegation for another municipal year. In addition where a decision is taken under option 1 it will be reported to the next available committee meeting.

#### Option 2:

To follow the policy whereby the Strategic Director of Public Health assesses each case and where satisfied that exceptional circumstances exist, prepares a report for the Taxi Licensing Committee to consider whether to depart from policy and allow the applicant to continue with their application without the necessity to produce a COGC. The considerations that apply to committee decisions made in this way are the same as laid out in the preceding paragraph.

14. If the committee is minded to grant the authorisation to depart from policy, it should be noted that any decision to accept an application as valid without the COGC will not involve any consideration of the suitability of the applicant to hold a licence.
15. If a determination was made to exempt an applicant from producing a COGC, Officers would continue to process the application in the same way that any other application would proceed. Should anything be revealed on the DBS check then the matter would be referred back to the committee for a determination in the usual way.
16. There would be no right of appeal to the Magistrates' Court against the decision, as it is not a decision to grant or refuse the licence under S.9 Plymouth City Council Act 1975.

17. As accepting an application without there being a COGC is a departure from policy, it follows that there is no criteria recorded in the current Policy on which such a determination could be made. Therefore, Appendix A to the report sets out the factors that are deemed appropriate to be considered in taking such decisions. If the committee is minded to grant the authorisation, then these criteria will be applied in each applicable case.

## **POLICY**

### **Chapter One**

#### **Statement of Policy**

##### **3.0 Purpose of this Policy**

- 3.1 The policy will provide a framework that will assist in delivering a safe, regulated hackney carriage and private hire licensed trade. The Council, in adopting this policy recognises both the needs of residents and visitors to expect a safe, healthy, convenient and effective hackney carriage and private hire transport service.
- 3.3 The Council in its decision making will consider each case on its own merits, having regard to the requirements of this policy, any relevant specific policy documents, national best practice guidance and any other information considered relevant.

##### **4.0 Licensing Objectives**

- 4.1 The Council will carry out its hackney carriage and private hire licensing functions with a view to promoting the following licensing objectives:
1. Safety and health of drivers and the public
  2. Vehicle safety, comfort and access
  3. Prevention of crime and disorder and protection of consumers
  4. To encourage environmental sustainability
  5. Protection of children and other vulnerable persons from harm
- 4.2 As a guide, in promoting these objectives the Council will consider the following matters:

###### **Safety and health of drivers and the public**

- Consideration of history of convictions and cautions
- Driver training, qualification and performance
- Knowledge of Plymouth

###### **Prevention of crime and disorder and protection of consumers**

- Vetting, qualification, training and monitoring of licensees
- Commitment to work with the police and other relevant agencies

###### **Protection of children and other vulnerable persons from harm**

- Training to cover issues such as disability awareness, safeguarding, etc.
- Criminal records checks, police records or information held by any other agency

##### **8.0 Departure from this Policy**

- 8.1 In exercising its discretion in carrying out its regulatory functions in respect to taxi licensing, the Council will have regard to its relevant policy documents. Notwithstanding the content of this policy, each matter will be considered on its own merits. Where there are exceptional, clear and compelling reasons the Taxi Licensing Committee may, having regard to all the available information authorise a departure from its policy documents. Reasons for any deviation from policy will be recorded in decision making



## CHAPTER 2

### DRIVERS

- 1.2 The Council may issue a licence provided the applicant has held a full driving licence for at least 12 months and is a 'fit and proper' person.
- 1.5 In determining whether a person is 'fit and proper' to hold or retain a driver's licence, the Council will consider relevant skills, knowledge, experience, qualifications, spoken and written English, medical fitness, criminal record, motoring endorsements, an understanding of local byelaws and conditions of licence, enhanced training requirements, the Code of Good Conduct and any other information thought to be relevant.
- 1.6 These requirements apply to new applicants and existing licence holders

#### 4.0 Driver Qualifications, Skills and Knowledge

##### 4.1 Pre-requisites

Before an application for a drivers licence can be approved, the individual must have passed the:

- a) Medical (see 5.0)
- b) Submit an Enhanced DBS and Certificate of Good Conduct (if required) (see 6.0)
- c) Topographical Knowledge of Plymouth (KOP) test
- d) Driving Standard's Test (DST)
- e) Spoken English Test (if applicable)
- f) Safeguarding training
- g) Plymouth Ambassador training.

These pre-requisite tests are an essential part of the application process that ensures an applicant has the appropriate baseline skills to function as a licensed driver in the City of Plymouth. The licence application is not considered to be completed until all of the above elements have been provided. Please refer to the flow chart overleaf.

#### 7.0 Certificates of Good Conduct (COGC)

7.1 The Council recognise there are occasions when an enhanced DBS disclosure will not achieve its aim, for example, where the applicant has resided in this country for a short period of time. In these cases the Council require all applicants to obtain a Certificate of Good Conduct from the relevant UK embassy or consulate, authenticated, translated and sealed by that embassy or consulate, which accounts for all periods (in excess of 3 months) that they have not been resident in the UK.

7.2 If you have lived outside of the UK for a continuous period of 3 months or more since the age of 18 you must obtain a certificate of good conduct from the country or countries that you have lived in.

The certificate must be less than 3 months old at the date of the application.

However, if you are unable to provide a certificate of good conduct due to there being no process for obtaining criminal record certificates from the home country authorities (as set out in Home Office guidance), and you have lived in the UK from the age of 18 years and have been resident here for 5 continuous years you will be exempt from provision of this certificate.

Where an applicant has resided in this country for more than 3 months, they are also required to apply for an enhanced DBS disclosure, at the time of application.

Any costs associated with obtaining a Certificate of Good Conduct are the responsibility of the applicant.

## **GUIDANCE ON RELEVANCE OF CONVICTIONS AND CONDUCT**

### **2.0 DRIVERS**

2.1 The Council cannot grant a drivers licence unless they are satisfied that the applicant is a “fit and proper person” to hold a hackney carriage or private hire drivers licence. Once a licence has been granted, there is a continuing requirement that the driver remains a fit and proper person, and if they fall below the required standard, the licence can be suspended or revoked.

2.2 To be a “fit and proper” person means that they must be “safe and suitable” to drive a hackney carriage or private hire vehicle. The overriding consideration for the Council is to protect the public. The licensing regime is intended, among other things, to ensure so far as is possible that those licensed to drive vehicles are safe and suitable persons to do so, namely that they are: “...safe drivers, with good driving records and adequate experience, sober, mentally and physically fit and not persons who would take advantage of their employment to abuse or assault passengers.”

(Lord Bingham in *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889

2.3 Having considered and applied the appropriate guidelines, the following question should be asked: “...Would you (as a member of the Licensing Board 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?..”

(Paragraph 10.21 Button on Taxis – Licensing Law and Practice; Fourth Edition; Ed Bloomsbury Professional)

2.4 If the answer to this question is an unqualified yes, then a licence will normally be approved. 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 or existing driver to satisfy the Council they are a ‘fit and proper’ person.

2.5 In deciding whether an applicant or existing licensed driver is a ‘fit and proper’ person the Council will consider the overall character of the person, and in doing so will take the following factors into account (this is not an exhaustive list):

- relevant skills
- knowledge
- experience
- qualifications
- spoken and written English
- medical fitness
- criminal record
- motoring endorsements
- good conduct
- any other relevant information

2.6 Refusal, revocation or suspension of a licence is not to be considered lightly. However, the licensing system is designed to protect the public and this is the overriding consideration. The drivers’ livelihood and the impact of not being licensed (or any other action) on that livelihood and their family will not be taken into account when deciding if a person is fit and proper to hold or retain a licence. [*Cherwell District Council v Anwar* (2011)] [*Leeds City Council v Hussain* (2002)]

### **9.0 VEHICLE PROPRIETORS**

#### **Safe and Suitable test**

9.1 The objective of vehicle licensing is to ensure public protection. This is done by ensuring all vehicles are safe, and that anyone granted a vehicle licence pose no threat to the public and have no links to serious criminal activity.

9.2 All applicants must provide a Basic Disclosure from the Disclosure and Barring Service (DBS) and list all unspent convictions on their application.

9.3 All vehicle proprietors, who are not also holders of a valid hackney carriage or private hire drivers licence granted by Plymouth City Council, must obtain a Basic Disclosure from the Disclosure and Barring Service (DBS) every year.

9.4 The results of the DBS disclosure will be reviewed and any previous history of vehicle inspection and maintenance will be taken into account when considering an application or whether to review a licence.

9.5 To enable consistent and informed decision to be made, the Council will apply the following test: 'Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at any time of day or night without arousing suspicion and be satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?' (Paragraph 8.98, Button on Taxis - Licensing Law and Practice; Fourth Edition; Bloomsbury Professional).

## **10.0 Private Hire Operators (PHO)**

### **Fit and Proper Test**

10.1 The aim of the licensing regime is to protect the public. It is therefore important to ensure that anyone granted a licence poses no threat to the public and has no links to serious criminal activity.

10.2 Under S.13 of the Plymouth City Council Act 1975, the Council cannot grant a PHO licence unless they are satisfied that the applicant is a fit and proper person to hold such a licence.

10.3 PHOs are not an exempt profession under the provisions of the Rehabilitation of Offenders Act 1974 and therefore, the Council can only take account of convictions which are not spent under the provisions of that Act, when deciding if they are fit and proper (or safe and suitable) to hold a licence.

10.4 All applicants (including for renewal of a licence) must produce a Basic DBS disclosure certificate.

10.5 All existing Private Hire Operators must produce a Basic DBS disclosure certificate annually.

10.6 If the Operator/applicant) has lived outside of the UK for a continuous period of 3 months or more since the age of 18, then they must also obtain a certificate of good conduct from the country or countries that they have lived in.

10.7 The results of the DBS disclosure and any previous history of as a PHO will be taken into account when considering an application or whether to review a licence.

10.8 If you are already a licensed hackney carriage or private hire driver, the Council will rely on this fact when considering if you are a suitable to hold a PHO licence.

10.9 When determining an application or when reviewing a licence, the Council will apply the following test to ensure consistent and informed decisions are made: 'Would I be comfortable allowing this person to have control of a business that knows where any licensed vehicle is travelling, at any time of day or night and be satisfied that he/she would not allow the business to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain their records to an acceptable standard throughout the period of the licence?'

APPENDIX A

## DECISION TO EXEMPT APPLICANT FROM REQUIREMENT TO PRODUCE CERTIFICATE OF GOOD CONDUCT



Name of Applicant:	
Date of Application:	
Country of Birth:	
Date of Birth:	
How long did the applicant resided outside of the UK?	
How old was the applicant when they lived outside of the UK?  (For example, have they spent the majority of their adult life within the UK and, as such, a DBS alone will account for a sufficient period of time to allow the Council to be satisfied that they are fit and proper to hold a licence)	
How old was the applicant when they arrived in the UK?	
How many of the applicant's adult years has been spent in the UK?	
How many years of their adult life would be unaccounted for on a DBS certificate?	
Given the length of time that a person has lived in the UK, how relevant would any convictions be to a determination of fit and proper? (For example, is it only likely to reveal juvenile convictions?)  Note: The Statutory Standards, section 4.35 states that it is the character of the applicant as an adult that is of particular interest, therefore an extended period outside the UK before the age of 18 may be less relevant. As with all licensing decisions, each case must be considered on its own merits	
How far outside the Council's police relating to the COGC requirement is the applicant?	<p>1. Is there a process for obtaining a COGC from the relevant country?</p> <p>2. Was the applicant 18 years old when they <u>arrived in</u> this country?</p> <p>3. Has the applicant lived in the country for a continuous period of five years?</p>