

## HAVANT BOROUGH COUNCIL

At a meeting of the Licensing Committee held on 25 September 2012

Present

Councillor Johnson (Chairman)

Councillors Branson, Brown, Farrow, Hunt, Kennedy (Vice-Chairman), Shimbart, Mrs Smallcorn and Tarrant

### **8. Apologies**

Apologies for absence were received from Councillors B Gibb-Gray, K Smith and M Wilson

### **9. Minutes**

RESOLVED that the minutes of the meeting of the Licensing Committee held on 6 June 2012 be approved as a correct record.

### **10. Matters Arising**

In response to a query from a member, the Solicitor to the Committee undertook to circulate details of members' rights under the Legislation to sit on the Licensing Sub-Committee when determining applications from premises within their ward or near to where they lived.

### **11. Declarations of Interests**

There were no declarations of interests from any of the members present

### **12. Chairman's Report**

The Chairman referred to a recent joint training session held at East Hampshire District Council and reminded members that a further joint training session would be held at Havant on 10 October.

### **13. Criminal Records Bureau Disclosure Policy**

The Committee considered a report setting out a new Criminal Records Bureau policy for Hackney Carriage and Private Hire vehicle driver licensing.

RECOMMENDED to Full Council that the draft Criminal Records Bureau policy for Hackney Carriage and Private Hire vehicle driver licensing be approved and adopted.

**The meeting commenced at 5.00 pm and concluded at 5.17 pm**



NON EXEMPT

## HAVANT BOROUGH COUNCIL

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LICENSING COMMITTEE

25 September 2012

### CRIMINAL RECORDS BUREAU DISCLOSURE POLICY

Report of the Licensing Officer

REPORT NO 6

FOR DECISION

YES

Environment and Neighbourhood Quality Portfolio: Councillor Collins

Key Decision: N/A

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#### 1.0 Purpose of Report

- 1.1 To consider adoption of the draft Criminal Records Bureau (CRB) Disclosure Policy for Hackney Carriage and Private Hire Vehicle Driver Licensing.

#### 2.0 Recommendation

- 2.1 That the Draft Criminal Records Bureau Disclosure Policy as set out in Appendix A be approved and adopted.

#### 3.0 Summary

- 3.1 A new CRB disclosure policy has been drawn up within the service to formalise the Council's policy, both for Havant Borough Council (HBC) and East Hants District Council (EHDC). If the Committee is in agreement then the same policy will be adopted by both Councils.

#### 4.0 Subject of Report

- 4.1 Under the Local Government (Miscellaneous Provisions) Act 1976, before granting a licence to a Hackney Carriage (HCD), Private Hire Driver (PHV) or Private Hire Vehicle Operator (Operator) the licensing authority must be satisfied that the individual is a fit and proper person to hold that licence. As part of this process, applicants are required undergo a CRB check.

There are two levels of disclosure available for drivers, the Standard Disclosure and the Enhanced Disclosure. Both HBC and EHDC currently demand Enhanced Disclosures for all drivers.

Private Hire Vehicle Operators do not have a 'regulated role' and therefore are only required to provide Basic Disclosures. In practice most Operators are also drivers.

A new disclosure policy has been drawn up within the service to formalise the Council's policy, both for Havant Borough Council and East Hants District Council. If the committee is in agreement then the same policy will be adopted by both Councils.

## **5.0 Implications**

### **5.1 Resources:**

None – Checks are already carried out by existing staff and associated costs are met by the applicant.

### **5.2 Legal:** None

### **5.3 Strategy:** A formal policy contributes to Public Service Excellence, one of the three priorities for the 2012 Corporate Strategy

### **5.4 Risks:**

None

### **5.5 Communications:**

None

### **5.6 For the Community:**

Assists towards ensuring public safety.

### **5.7 The Integrated Impact Assessment (IIA) has been completed and concluded the following:**

N/A

## **6.0 Consultation**

Licensing officers across both Councils

## **Appendices:**

Appendix A – Draft Criminal Records Bureau (CRB) Policy for Hackney Carriage and Private Hire Vehicle Driver Licensing.

Background Papers: None

Agreed and signed off by:

Legal Services: 09/08/2012

Executive Head for Environment and Neighbourhood Quality: 06/09/2012

**Contact Officer:** Steve Abolins  
**Job Title:** Licensing Officer  
**Telephone:** 023 9244 6657  
**E-Mail:** [stephen.abolins@havant.gov.uk](mailto:stephen.abolins@havant.gov.uk)



# **Criminal Records Bureau (CRB) Disclosure Policy**

**For**

**Hackney Carriage and Private Hire Vehicle Driver  
Licensing**

**April 2012**

**Document Version Control**

<b>Issue No</b>	<b>Date</b>
Version 1	14.04.12

DRAFT

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## 1. Statement of Intent

- 1.1 East Hampshire District Council (EHDC) and Havant Borough Council (HBC) have a responsibility to ensure that criminal record checks are undertaken in accordance with the requirements contained within the Criminal Records Bureau (CRB) Code of Practice and all relevant legislation.
- 1.2 EHDC and HBC are both 'Registered Bodies' with the CRB for the purpose of obtaining CRB Disclosures for taxi driver licences.

## 2. Scope

- 2.1 For the purposes of this Policy the term 'taxi' driver refers to hackney carriage and private hire vehicle drivers. EHDC/HBC means either East Hampshire District Council or Havant Borough Council.
- 2.2 The CRB Disclosure procedure will apply to:
  - persons applying to become taxi drivers
  - licensed taxi drivers
  - Private Hire Vehicle Operators.
- 2.3 Service providers must ensure that their vetting procedures are appropriately applied where a CRB Disclosure is required.
- 2.4 This Policy will be reviewed from time to time and may be amended to ensure compliance with statutory requirements and the CRB Code of Practice.

## 3. Principles

- 3.1 Under sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, a Licensing Authority (EHDC/HBC) must not grant a Private Hire or Hackney Carriage driver's licence or Private Hire Vehicle Operator's licence unless they are satisfied that the individual is a fit and proper person to hold that licence. In addition, EHDC/HBC may suspend, revoke or refuse to renew a driver's licence if, since the licence was granted, the holder has been convicted of an offence involving dishonesty, indecency or violence, or for any other reasonable cause.



- 3.2 EHDC/HBC will not unfairly discriminate against any person with a criminal conviction, however, EHDC/HBC reserve the right to consider the nature of the conviction and to assess this against set criteria to determine suitability. (For further information see *Appendix B*)
- 3.3. EHDC/HBC require honesty and integrity from existing and prospective licensed drivers. Non disclosure of information will be considered to be a serious matter and may result in an application being refused or an existing licence being suspended or revoked.
- 3.4 EHDC/HBC are committed to complying fully with the CRB Code of Practice to ensure fair and appropriate use of information provided through the CRB. For further information on the CRB Code of Practice please refer to [www.crb.gov.uk](http://www.crb.gov.uk)
- 3.5 EHDC/HBC will ensure that Disclosure information is kept secure and confidential in line with the CRB Code of Practice. All Disclosure information will be treated in the strictest confidence and only used for the purposes for which it was provided. Access to Disclosure information will only be available to staff who are authorised to view it in the course of their duties.

## 4. Types of Disclosure

- 4.1 The Criminal Records Bureau was established under Part V of the Police Act (1997) to provide wider access to criminal information for employers who recruit to roles which require contact with children and/or vulnerable adults or roles where a higher degree of integrity is required. As taxi drivers are also in contact with children and vulnerable adults, access to CRB information applies to Councils assessing their suitability. These roles are known as 'regulated' roles and are exempt from the Rehabilitation of Offenders Act 1974 (Appendix A), meaning that 'spent' convictions can be considered for the purposes of recruitment or licensing taxi drivers.
- 4.2 For regulated roles, the Criminal Records Bureau will check records held by the Police National Computer, local police forces and (where relevant) the Department of Health and the Department for Education and Skills. This ensures that Councils can make safer decisions when considering licences for taxi drivers.

- 4.3 There are two levels of Disclosure available for regulated roles – a ‘Standard Disclosure’ and an ‘Enhanced Disclosure’. The level of Disclosure required for taxi drivers is an ‘Enhanced Disclosure’.

**Standard Disclosure**

This is primarily available to anyone involved in working with children or vulnerable adults, as well as certain other occupations and entry into professions as specified in the Exceptions Order to the Rehabilitation of Offenders Act (1974).

Standard Disclosures show current and spent convictions, cautions, reprimands and warnings held on the Police National Computer.

If the post involves working with children and/or vulnerable adults, searches may also be conducted of a) children and/or vulnerable adult barred lists (known as POCA & POVA lists) and b) information that is held under section 142 of the Education Act (2002).

**Enhanced Disclosure**

This is the highest level of check available to anyone involved in regularly caring for, training, supervising or being in sole charge of those under the age of 19 or vulnerable adults. It is also required for certain licensing purposes, such as taxi drivers, and judicial appointments.

An Enhanced Disclosure will contain the same details as a Standard Disclosure, however, it may also contain non-conviction information from local police records which the chief police officer may think relevant and proportionate to the role applied for.

- 4.4 All applicants will be notified in advance that a CRB Disclosure is a requirement. Application forms will contain a statement that a Disclosure will be requested. It will also state that the Council will have regard to the Council’s Policy on Convictions (Appendix B) and CRB Code of Practice and provide copies of these documents on request.
- 4.6 The grant of a licence requires, together with other checks, a satisfactory CRB Disclosure. EHDC/HBC must not grant a taxi driver licence unless satisfied that the applicant is a fit and proper person.
- 4.7 The Principal Licensing Officer/Commercial Team Leader or delegated officer will be responsible for ensuring that there are adequate controls in place and that licences are not granted unless satisfied that the applicant is considered to be a fit and proper person. Where there may be doubt as to whether someone is a fit and proper person, the application may be referred to EHDC/HBC Licensing Committee for determination.

### Private Hire Vehicle Operator

- 4.8 The role of Private Hire Vehicle Operator is not a regulated role, meaning that spent convictions cannot be considered. The level of check required is a Basic CRB Disclosure. This is obtained by the applicant from CRB Scotland [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk). A Basic Disclosure will be sent direct to the applicant. The application form, policy, guidance and advice will state this requirement. However, in most cases an Operator will also want to be able to drive licensed vehicles and will therefore require an Enhanced CRB Disclosure.

#### Basic Disclosure

Any individual can apply for a Basic Disclosure about themselves and this will be issued to such an individual, subject to confirmation of identity and payment of the appropriate fee. This is normally sent to the individual's home address, however, with the written consent of the individual, the certificate will instead be sent to another address, for example the licensing department.

The Basic Disclosure contains:

- Unspent convictions held on central records in the UK or states that there are no such convictions; and
- Whether the individual is included on the sex offenders register.

## 5. CRB Process

- 5.1 EHDC and HBC have an appointed Lead Signatory (Service Manager Human Resources) and a number of Counter Signatories within the Licensing function.

The purpose of the Lead Signatory role is to oversee the use of CRB Disclosures in EHDC/HBC.

The purpose of the Counter Signatory roles is to countersign CRB applications and receive the CRB Disclosure.

- 5.2 Applications for a CRB Disclosure will be made by the applicant at the request of EHDC/HBC. Each applicant will be required to complete a CRB Disclosure Application Form. This will need to be returned to the Counter Signatory for countersigning and then sent to the CRB for processing.

- 5.3 Once the application has been processed, the CRB will send a copy of the Disclosure to the applicant and the Counter Signatory who signed the form. Occasionally, 'additional' information may be released by the police to the Counter Signatory in the interests of the prevention or detection of crime. This will be sent in a separate letter and the applicant will not receive this information.
- 5.4 This 'additional' information will be held in the same way as the Disclosure information but will never be revealed or shown to the applicant or anyone else not involved with the licensing decision without the written permission of the Chief Police Officer.

## 6. Consideration of Disclosure Information

- 6.1 When a CRB Disclosure identifies that an applicant possesses a criminal conviction(s) or there is indication of any other matter, EHDC/HBC will not necessarily bar that person from being licensed.
- 6.2 EHDC/HBC will refer to the Council's Policy on Convictions to determine suitability of the applicant. These criteria will take into account a number of factors in respect of the Disclosure, such as:
- the seriousness of the offence
  - the length of time since the offence occurred
  - the relevance of the offence to the role
  - whether there is a pattern of offending
  - whether the applicant's circumstances have changed since this date
  - whether the offence(s) or other relevant matters have been disclosed by the applicant.
- 6.3 EHDC/HBC will discuss any matter revealed in a Disclosure with the applicant prior to reaching a decision.
- 6.4 The licence will be issued where all relevant checks are satisfactory including the CRB Disclosure.

## 7. Non Disclosure or Unsatisfactory Disclosure

### During application process

- 7.1 Applicants are provided with a number of opportunities to disclose any spent or unspent convictions they have, eg application form, interview and CRB Disclosure Form. Both forms contain a warning that it is an offence to omit information or provide false information.
- 7.2 If an applicant declares a conviction during the application process, which had not previously been detailed, then advice will be sought from the Principal Licensing Officer/Commercial Team Leader or delegated officer.
- 7.3 The final decision on whether an applicant will be licensed will rest with the Principal Licensing Officer/Commercial Team Leader or delegated officer and, where appropriate, the Licensing Committee.
- 7.4 The licence will be issued where all relevant checks are satisfactory including the CRB Disclosure.
- 7.5 In circumstances where pre-application checks are unsatisfactory, a meeting will be arranged with the applicant to discuss this and determine whether there is a satisfactory explanation. Any explanation should be formally documented. In cases where there is no satisfactory explanation, the determination of the licence application may be by the Licensing Committee. In these circumstances the applicant will be asked if they wish to proceed with the application or withdraw.
- 7.6 Where determination of the licence will be by the Licensing Committee the applicant will be invited to attend to give evidence at a hearing.

### Licensed Drivers

- 7.7 There is an obligation for licensed drivers, within seven days, to notify EHDC/HBC in writing of any motoring or criminal convictions or cautions are imposed on them. In these circumstances the Licensing Officer will consider:
- the seriousness of the offence
  - the length of time since the offence occurred
  - the relevance of the offence to the role
  - whether there is a pattern of offending

And determine whether the matter should be referred to the Principal Licensing Officer/Commercial Team Leader or delegated officer to consider whether the driver remains fit and proper or whether the

continuation of the licence should be considered by the Licensing Committee. The Licensing Committee may suspend, revoke, issue penalty points or take no action against the licence.

- 7.8 Where it comes to light that a licence holder has failed to declare a conviction or caution, this will be investigated by EHDC/HBC and the driver may be required to complete an Enhanced CRB Disclosure form and/or attend a Licensing Committee Hearing.

## 8.Storage, Handling, Use, Retention and Disposal of Information

- 8.1 Disclosure information will be stored securely in secure lockable cabinets.. Access will be strictly controlled to licensing staff entitled to see it as part of their duties. We will maintain a record of all those to whom certificates or certificate information has been revealed.
- 8.2 Disclosure information will not be kept for longer than required. This is generally six months to allow for the consideration and resolution of any disputes or complaints.
- 8.3 This period of retention will only be exceeded in exceptional circumstances. An example of this would be due to the appeals process. EHDC/HBC will notify the individual concerned of the reasons if this is the case.
- 8.4 Throughout the retention period the usual conditions regarding safe storage and strictly controlled access will apply.
- 8.5 The following information will be kept for longer than six months for recording purposes by licensing as follows:
- date of issue of the Disclosure
  - the name of the subject
  - the unique reference number of the Disclosure
  - details of the decision taken

## 9. Renewal Process

- 9.1 Renewals of CRB Disclosures will occur on a rolling three year basis unless there is a change in circumstances which requires a further Disclosure to be undertaken in the intervening period.
- 9.2 Where there has been a break in a licensed period a new CRB Disclosure must be obtained.
- 9.3 A licensed driver may apply to renew their licence prior to the expiry to their existing licence. The application form will request the same information as requested on first licensing including all criminal convictions. Failure to make a full declaration may mean that the decision on whether to renew the licence is referred Licensing Committee.

## 10. Responsibilities

### Responsibilities of Licensed Drivers

- 10.1 Licensed drivers must notify their Council's Licensing Department in writing within seven days of any motoring or criminal convictions or cautions (or if the licence holder is a company or partnership, on any of the directors or partners) they receive.
- 10.2 Licensed drivers are required to attend any meeting called by the Licensing Department to discuss matters relating to their CRB Disclosure or other licensing matters.

### Responsibilities of Licensing Department

- 10.3 The authorised officer will ensure that where they are informed of criminal convictions, cautions or other relevant information concerning a licensed driver's suitability to hold a licence they refer to the Council's Policy on Convictions – Appendix B. The authorised officer will decide if the matter should be referred to the Principal Licensing Officer/Commercial Team Leader or delegated officer.
- 10.4 Where a matter is referred to the Principal Licensing Officer/Commercial Team Leader or delegated officer it may be referred to the Licensing Committee for decision.

- 10.5 The applicant/licence holder will be kept informed on the progress of the decision making process.
- 10.6 Where matters are referred to the Licensing Committee they will determine, on the evidence provided, the suitability of the applicant/licence holder. They may refuse/suspend or revoke the licence. The applicant/licence holder can appeal the decision to refuse, suspend or revoke to the Magistrates' Court. The applicant/licence holder will be notified of this right in taxi policies/guidance and at the Licensing Committee hearing.
- 10.7 Licensing Committee hearing procedures will ensure that confidentiality is maintained and that licence holders are treated fairly.
- 10.8 The Licensing Department are responsible for ensuring that application forms, guidance and advice include the requirement for CRB Disclosures. Applicants/licence holders will be advised of the Council's Policy on Convictions and the CRB Code of Practice, both of which will be available on request.

## 11. Review of Policy

- 11.1 This Policy will be reviewed in two years and when EHDC/HBC review or write taxi policies.

*Note: This Policy Statement is modelled on the sample policy produced by the CRB. For further information go to the CRB website <http://www.homeoffice.gov.uk/agencies-public-bodies/crb/> or click on this link to the [Criminal Records Bureau](#). In respect of Basic Disclosures enter or click on this link [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)*



## Appendix A

### REHABILITATION OF OFFENDERS ACT 1974

(Applicable for custodial sentences of less than 2.5 years)

1. If you have been convicted of a criminal offence in either England, Scotland or Wales and have not re-offended for the time specified within the Rehabilitation of Offenders Act (1974) then your conviction becomes 'spent'. This means that in most circumstances you would not be required to reveal your offence to a prospective employer.
2. There are, however, exceptions to this which are detailed in the Exceptions order of the ROA 1974 (Exceptions) Order 1975. These include jobs working with children and vulnerable adults and taxi drivers. In these circumstances, a CRB Disclosure would be required and would reveal both spent and unspent convictions.
3. A rehabilitation period is a set length of time from the date of your conviction. After this period, you are not normally obliged to mention your conviction when applying for a job.
4. The length of your rehabilitation period depends on the sentence given - not the offence committed. For a custodial sentence, the length of time actually served is irrelevant: the rehabilitation period is decided by the original sentence. Custodial sentences of more than 2 1/2 years can never become spent. If this applies in your circumstances, you would always be required to disclose your conviction to a future employer.
5. For custodial sentences below six months - the rehabilitation period is seven years. If there is no re-offending in this period of time, then the sentence is considered to be 'spent'. For custodial sentences of between six months and 2.5 years the rehabilitation period is ten years before becoming spent.

**An applicant for the position of taxi driver or a licensed taxi driver must, on the application form and CRB Disclosure Form, declare all convictions, cautions, warnings and reprimands whether spent or unspent. Failure to do so may result in prosecution under s75(3) of the Local Government (Miscellaneous Provisions) Act 1976.**

## Appendix B

### GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

#### General Policy

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, 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. The following examples afford a general guide on the action to be taken where convictions are admitted:
  - a) Minor Traffic Offences - Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding, etc..., should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence, then a taxi licence may be granted after its restoration but a warning should be issued as to future conduct.
  - b) Major Traffic Offences – An isolated conviction for reckless driving or driving without due care and attention etc..., should normally merit a warning as to future driving and advice on the standard expected of taxi drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from conviction has elapsed.
  - c) Drunkenness –
    - (i) With Motor Vehicle – A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the

application is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence application is considered.

- (ii) Not in a Motor Vehicle – An isolated conviction for drunkenness need not debar 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, warning may be sufficient.
- d) Drugs - An applicant with a conviction for a drug related offence should be 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.
- e) Indecency Offences – As taxi drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.
- f) Violence - As taxi drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.
- g) Dishonesty – Taxi 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 a dishonest driver to defraud the public by demanding more than the legal fare etc., overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general a period of 3 to 5 years free of conviction should be required before entertaining an application.

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