

## Hackney Carriage and Private Hire Licensing Criminal Convictions Policy



### 1. Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an **applicant** or an **existing licence holder** is a fit and proper person to hold a hackney carriage and/or private hire vehicle driver's licence or a private hire vehicle operator's licence.
- 1.2 The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:
- That a person is a fit and proper person
  - That the person does not pose a threat to the public
  - That the public are safeguarded from a dishonest person
  - That children, young persons and vulnerable adults are safeguarded.
- 1.3 This policy provides guidance to any person with an interest in hackney carriage and private hire licensing; in particular, but not exclusively:
- Applicants for drivers and operator licences
  - Existing licensed persons whose licences are being reviewed
  - Licensing officers
  - Members of the licensing committee/panel (or other relevant decision making body)
  - Magistrates hearing appeals against local authority decisions.
- 1.4 Where licensing officers or the Licensing Panel have delegated powers to grant, revoke or suspend licences, they will utilise these guidelines when making their decision. Whilst officers and the panel will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits and, where the circumstances demand, the committee/officer may depart from the guidelines.** Clear cogent reasons would be set out in any decision letter where there is a departure from the guidance.

### 2. General policy

- 2.1 There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances, or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.2 A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
- a) remain free of conviction for an appropriate period; and
  - b) show adequate evidence that he or she is a fit and proper person to hold a licence

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The onus is on the applicant to produce such evidence and simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

- 2.3 **Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction** [Nottingham City Council v. Mohammed Farooq (1998)].

### 3. Pre-requisites to making an application

- 3.1 It is the policy of the licensing authority that every application for a licence to drive a hackney carriage and/or private hire vehicle must be accompanied by satisfactory evidence of the following matters and that applications that are incomplete will not be deemed to have been made until such time as they are complete:

- That the applicant has the right to live and work in the country.
- An enhanced criminal record check (DBS) and evidence that they are not on a child and/or vulnerable adult barring list.
- A certificate of their current medical fitness to DVLA Group 2 standard.
- That the applicant is authorised to drive a vehicle of the same classification as that which the licence will allow them to drive.
- That the applicant meets the required post-qualification driving experience and demonstrates the required level of competency.
- That the applicant has sufficient ability to speak English and to understand spoken English to provide the service that they wish to be licensed for.
- That where specified the applicant has completed safeguarding awareness training specific to the service that they wish to be licensed to provide.
- For persons who seek to be authorised to drive a wheelchair accessible vehicle, that the applicant has the ability to safely load and secure wheelchair users in a wheelchair accessible vehicle whilst in their wheelchair.

- 3.2 If an applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries covering the period before a licence application can be made.

### 4. Appeals

- 4.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].
- 4.2 Any applicant refused an operator licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.
- 4.3 Any licensee whose licence is suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice of suspension or revocation.

## **5. Powers**

- 5.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence 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.
- 5.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 allows the licensing 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 licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 5.3 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.

## **6. Consideration of disclosed criminal history**

- 6.1 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 caution/conviction
  - Circumstances of the individual concerned
  - Sentence imposed by the court
  - The applicant's age at the time of caution/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.
- 6.2 Existing licence holders are required to notify the licensing authority in writing within 28 days of being arrested, receiving a driving licence endorsement, fixed penalty notice, caution or criminal conviction.
- 6.3 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the licensing team in confidence for advice.
- 6.4 Applicants for the grant of a driver licence will be required to obtain an enhanced disclosure from the Disclosure and Barring Service (DBS). Existing licensed drivers are required to obtain an enhanced disclosure every 3 years or as required by the licensing authority.

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- 6.5 Applicants for the grant of an operator licence, where that person is not the holder of a current driver licence issued by the Council, will be required to obtain a basic criminal record disclosure from Disclosure Scotland. Existing licensed operators are required to obtain a basic criminal record disclosure every 3 years or as required by the licensing authority.
- 6.6 The licensing authority follows the DBS's Code of Practice on the fair use of disclosure information, and the DBS's policy on the secure storage, handling, use, retention and disposal of disclosure information. Copies of these documents are available on request. More information about the DBS can be found on their website at: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>.
- 6.7 The licensing authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police.
- 6.8 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

## 7. Serious offences involving violence

- 7.1 Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life or serious injury. Exceptional circumstances may permit the Council to make an exception to this general policy statement.
- 7.2 In other cases anyone of a violent disposition will normally be refused to be licensed until at least 3 years free of such conviction. However, given the range of the offences that involve violence, consideration must be given to the nature of the conviction.
- 7.3 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
  - Manslaughter
  - Manslaughter or culpable homicide while driving
  - Terrorism offences
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 7.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:
- Arson
  - Malicious wounding or grievous bodily harm
  - Actual bodily harm which would be classified as "hate crime"
  - Robbery

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- Possession of firearm
- Riot
- Assault on a Police officer, or a Council officer acting in the course of their duty
- Common assault which would be classified as "hate crime"
- Violent disorder
- Resisting arrest, when subsequently charged or convicted.
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

7.5 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 5 years prior to the date of application:

- Criminal damage would be classified as "hate crime"
- Any other hate crime offence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

7.6 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

7.7 A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

7.8 In the event of a licence being granted, a strict warning both verbally and in writing should be administered.

## **8. Possession of a weapon**

8.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public.

8.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted.

## **9. Sex and indecency offences**

9.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with

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convictions for sexual offences must be closely scrutinised. Those with convictions for the more serious sexual offences will generally be refused. For other offences, applicants will be expected to show a substantial period (normally at least 5 years) free of conviction for such offences before a licence will be granted.

9.2 (a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for a serious offence such as:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Possession of indecent photographs, child pornography etc.
- Or **any** sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

9.3 (b) Before an application is allowed, an applicant should be free of conviction for at least 10 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:

- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit).

9.4 In addition to the above the licensing authority will not normally grant a licence to any applicant who is currently on the Sex Offenders Register.

## 10. Dishonesty

10.1 A licensed driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Licensed drivers are required to deposit such property with the police within 24 hours and inform their operator where applicable. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

10.2 In general, a minimum period of 3 years free of conviction or at least 3 years from completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

- Theft
- Burglary
- Fraud
- Benefit fraud

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- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

10.3 A licence will not normally be granted if an applicant has more than one conviction for a dishonesty offence.

### **11. Drugs**

11.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.

11.2 A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and has not been free of conviction for 5 years.

11.3 A licence will not normally be granted where the applicant has a conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.

11.4 An applicant who has an isolated conviction for an offence related to the possession of drugs (other than for supply) within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.

11.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

11.6 A licence will not normally be granted if an applicant has more than one conviction for a drugs related offence.

### **12. Driving offences involving the loss of life**

12.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life. Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by driving: unlicensed, disqualified or uninsured drivers
- Or any similar offences

### **13. Drink driving/driving under the influence of drugs/using a mobile phone whilst driving**

13.1 As licensed drivers are professional vocational drivers, a serious view is taken of convictions for driving or being in charge of a vehicle while under the influence of drink or drugs.

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Normally at least 3 years after the restoration of the driving licence following a drink/drug drive conviction should elapse before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.

13.2 Applicants should also be aware of the serious risk posed by driving whilst using a mobile phone. There is a substantial body of research (see for instance <http://www.rospa.com/rospaweb/docs/advice-services/road-safety/drivers/mobile-phone-report.pdf>) which shows that drivers who use a mobile phone suffer physical and cognitive distraction which means they:

- Are much less aware of what's happening on the road around them
- Fail to see road signs
- Fail to maintain proper lane position and steady speed
- Are more likely to 'tailgate' the vehicle in front
- React more slowly, take longer to brake and longer to stop
- Are more likely to enter unsafe gaps in traffic
- Feel more stressed and frustrated.

13.3 There is evidence to show that drivers who use a mobile phone have slower reaction times than those who have consumed up to the legal alcohol limit. In light of this, an equally serious view should be taken of convictions for driving whilst using a mobile phone as for driving under the influence of drink or drugs.

13.4 A licence will not normally be granted if an applicant has more than one conviction for an offence of driving under the influence of drink or drugs or whilst using a mobile phone.

### **14. Licensing offences**

14.1 Certain offences which relate to licensing matters such as illegal plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed until a period of 3 years has passed since the offence.

14.2 A licence will not normally be granted if an applicant has more than one conviction for such licensing related offences.

### **15. Insurance offences**

15.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for 3 years; however a strict warning should be given as to future behaviour.

15.2 A licence will not normally be granted if an applicant has more than one conviction for an insurance related offence.

15.3 An operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance will normally have their operator licence revoked immediately and be prevented from holding a licence for at least three years.

**16. Outstanding charges or summonses**

- 16.1 If an individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.
- 16.2 If the outstanding charge or summons involves a serious offence or the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

**17. Non-conviction information**

- 17.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application.
- 17.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

**18. Cautions**

- 18.1 Admission of guilt is required before a caution can be issued. Every case will be considered on its own merits including the details and nature of the offence.

**19. Once a licence has been granted**

- 19.1 If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect serious consideration to be given to the suspension or revocation of their licence.
- 19.2 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]
- 19.3 A suspension or revocation of the licence of an operator takes effect at the end of the period of 21 days beginning with the day on which notice is given to the operator.

**20. Licences issued by other licensing authorities**

- 20.1 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.
- 20.2 Licensees who are licensed by multiple authorities are expected to inform all such authorities of the authorities that they are licensed by and to advise each authority of any changes in this respect; and should expect those authorities to share information regarding their conduct and to take it into account as appropriate.

**21. Summary**

- 21.1 To summarise, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases an applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed before the stated period free from conviction has elapsed.
- 21.2 Any person who has committed an offence and has to wait before an application is positively considered is more likely to value their licence and act accordingly.
- 21.3 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration must remain the protection of the public.