

## 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/sub-committee (or other relevant decision making body)
  - Magistrates hearing appeals against local authority decisions.
- 1.4 Where licensing officers or the sub-committee 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. 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. Crimes resulting in death**
- 7.1 Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.
- 8. Exploitation**
- 8.1 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.
- 9. Offences involving violence**
- 9.1 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 10. Possession of a weapon**
- 10.1 Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.
- 11. Sex and indecency offences**
- 11.1 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

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- 11.2 In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

### **12. Dishonesty**

- 12.1 Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### **13. Drugs**

- 13.1 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 13.2 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

### **14. Discrimination**

- 14.1 Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### **15. Motoring convictions**

- 15.1 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

### **16. Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving**

- 16.1 Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 16.2 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

**17. Other motoring offences**

- 17.1 A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.
- 17.2 A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

**18. Hackney carriage and private hire offences**

- 18.1 Where an applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

**19. Vehicle use offences**

- 19.1 Where an applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

**20. Outstanding charges or summonses**

- 20.1 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.
- 20.2 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.

**21. Non-conviction information**

- 21.1 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.
- 21.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

**22. Cautions**

- 22.1 Admission of guilt is required before a caution can be issued. Every case will be considered

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on its own merits including the details and nature of the offence.

- 22.2 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction. Fixed penalties and community resolutions will also be considered in the same way as a conviction.

### **23. Once a licence has been granted**

- 23.1 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.
- 23.2 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]
- 23.3 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.

### **24. Licences issued by other licensing authorities**

- 24.1 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.
- 24.2 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.

### **25. Summary**

- 25.1 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.
- 25.2 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.
- 25.3 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.