

Appendix 5(a) Taxi and PHV 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 licence. Whilst criminal convictions will play a significant part in the licensing authority's determination on whether an individual is fit and proper or not, the Council will also take into account other factors such as demeanour, general character, non-criminal behaviour, driving ability, complaints and other police information etc.

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 dishonest persons.
- The safeguarding of children, young persons and vulnerable adults.

1.3 The term "fit and proper person" for the purposes of licensing is not legally defined. When determining whether a person is fit and proper to hold a licence, those tasked with determining applications are effectively asking the following question:

"Would you allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?"

If the answer to the question is an unqualified yes, then the person can be considered to be fit and proper. If there are any doubts in the minds of those who make the decision then further consideration should be given as to whether a licence should be granted to that person.

In assessing whether someone is "fit and proper" the Council will consider the following together with any other relevant information:

- Criminality
- Human rights
- Period of holding a driver's licence
- Number of penalty points endorsed on driving licence

- Right to work
- Medical fitness
- **Standard of driving/driving ability**
- Conduct of the applicant in making the application (e.g. whether they have acted with integrity during the application process)
- Previous licensing history of existing and former licence holders
- **Previous complaints about a driver including whether the complaints demonstrate a pattern of conduct which causes concern.**

In addition the Council will also consider further information provided by sources such as the Police (including abduction notices), Children and Adult Safeguarding Boards and other statutory agencies.

1.4 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' licenses
- Existing licensed drivers whose licences are being reviewed
- Licensing officers
- Members of the Public Protection Sub-Committee
- Magistrates hearing appeals against local authority decisions

1.5 Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Public Protection Sub-Committee. Whilst officers and the Sub-Committee 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.**

1.6 **In this policy the word "conviction" is to be defined as including convictions, cautions, warnings, reprimands and other relevant information.**

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.~~

The standards and criteria set out in below are those that will normally be applied to applications and licences. The Council may depart from these criteria however it must only do so in exceptional circumstances. The otherwise good character and driving record of the applicant or licence holder will not normally be considered as exceptional circumstances.

- 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:
- Remain free of conviction for an appropriate period; and
 - Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).
- (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)].
- 2.4 Where an individual has had an application refused or a licence revoked the Public Protection Sub-Committee will normally refuse any subsequent application made within 12 months of the previous refusal or revocation unless there has been a substantial material change in the individual's circumstances. Applications received more than 12 months after the refusal/revocation will be considered in accordance with this policy.

3 Appeals

- 3.1 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)].
- 3.2 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.
- 3.3 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.

4. Powers

- 4.1 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.
- 4.2 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.

- 4.3 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.

5. Consideration of disclosed criminal history

- 5.1 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 conviction
- Circumstances of the individual concerned
- Sentence imposed by the court
- The applicant’s age at the time of 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 **for example**
 - **The previous conduct of an existing or former licence holder including any complaints received**
 - **Whether the applicant has intentionally misled the Council or lied as part of the application process**
 - **Information provided by other agencies/Council departments**

- 5.2 Existing holders of drivers’ licences are required to notify the licensing authority in writing within seven days of being arrested, receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions).
- 5.3 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the licensing office on 01253 478343 in confidence for advice.
- 5.4 The licensing authority conducts enhanced disclosures from the Disclosure and Barring Service (DBS) of any applicant for a driver licence. The licensing authority follows the

DBS's Code of Practice on the fair use of disclosure information. A copy is available on request.

- 5.5 Applicants applying for the grant or a renewal of a drivers' licence and/or operator licence will be required to obtain an enhanced disclosure at their expense. The licensing authority abides by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.
- 5.6 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.
- 5.7 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.
- 5.8 For renewal applications and current licence holders the policy will not be applied retrospectively where there are no new concerns or convictions. The policy will be applied to existing licence holders if any additional convictions are incurred or they are otherwise brought to the attention of the Council for conduct that would call into question a person's suitability to hold a licence.
- 5.9 Offences not covered by this Policy will be considered by the Council when determining whether the applicant/licensed driver is a fit and proper person.

6 Serious offences involving violence

- 6.1 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.
- 6.2 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.
- 6.3 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

6.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence to those below and the conviction is less than 10 years prior to the date of application:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.5 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence to those below and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

6.6 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)
- S.4 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

6.7 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.

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

7. Possession of a weapon

7.1 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.

7.2 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.

8. Sex and indecency offences

8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely scrutinized. ~~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.~~ **All sexual and indecency offences will be considered as serious**

8.2 Unless there are exceptional circumstances, an application will **normally** be refused where the applicant has a conviction for an offence such as:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Grooming, Trafficking for sexual exploitation or other sexual exploitation related offences
- 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.

- 8.3 Before an application ~~is allowed~~, **will be considered** an applicant should be free of conviction for at least 10 years (or at least 5 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).
- 8.4 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.
- 8.5 A licence will not normally be granted if an applicant has more than one conviction for a sexual/indecency offence.

9. Dishonesty

- 9.1 A licensed PHV or taxi driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. 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. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused. For all these reasons, a serious view is taken of any conviction involving dishonesty.
- 9.2 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
 - 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

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

9.4 Applicants or existing licence holders that are found to have intentionally misled the Council, or lied as part of the application process, will not normally be issued with a licence.

10. Drugs

10.1 A serious view is taken of any drug related offence. **Taking drugs and driving poses an obvious risk to public safety, whilst applicants who have convictions for the supply of drugs should be treated with considerable concern.** The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.

10.2 ~~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.~~ **Because of the nature of a driver's involvement with the public, a licence will not be granted where the applicant has a conviction for an offence related to the supply of drugs.**

10.3 ~~A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.~~

10.4 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 **once the following time periods have passed since the completion of any sentence**, but consideration should be given to the nature and quantity of the drugs.

Class B/C 3 years

Class A 5 years

10.5 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.

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

11 Driving offences involving the loss of life

- 11.1 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

12 Drink driving/driving under the influence of drugs/~~using a mobile phone whilst driving/dangerous driving~~

- 12.1 As licensees 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. ~~An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA driving licence but he should be warned as to the significant risk to his licence status in the event of re-offending. 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.~~ **More than one conviction for these offences raises serious doubts as to the applicant's fitness to drive the public and a licence will not be granted. In the case of an isolated offence, at least 5 years after the restoration of the driving licence following drink/drug driving conviction should elapse before an application will be granted. 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 granted. An application will normally be refused where the applicant has a conviction for driving/being in charge under the influence which does not result in a disqualification within two years of the date of application.**

- 12.2 ~~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.~~

~~12.3 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.~~

12.4 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.~~

12.5 A serious view is also taken of convictions for dangerous driving. A licence will not be granted where an applicant has a conviction for dangerous driving unless the applicant can demonstrate that at least 10 years has passed since the return of the driving licence and that since that date they have been free from conviction (including fixed penalty tickets)

13 Licensing offences

13.1 Certain offences under taxi legislation such as 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 conviction.

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

14 Insurance, Use of Mobile Phone whilst driving and other motoring offences not otherwise specifically referred to in this policy

14.1 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 strict warning should be given as to future behaviour.

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

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

14.3 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 will be taken of convictions for driving whilst using a mobile phone.

14.4 As they carry members of the public there is an expectation that applicants/licensed drivers will have good driving records. The driver record will be considered carefully. Consideration will be given to the date, nature and the number of penalty points attached to the offence. Isolated driving offences will not in itself preclude an applicant from being licensed. Applicants whose record discloses 9 or more penalty points will be referred to the Public Protection Sub-Committee for consideration.

15 Outstanding charges or summonses

15.1 If the 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.

15.2 If the outstanding charge or summons involves a serious offence and 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.

16 Non-conviction information

16.1 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. The Council will also take into account situations and circumstances that have not led to a conviction. This will include acquittals, circumstances in which convictions were quashed due to misdirection to the jury, circumstances where the decision was taken not to prosecute, situations where the person has been arrested and bailed but not yet charged and complaints from the public. In considering the most appropriate action to take in relation to non-conviction information/complaints the credibility of both the witness/complainant and the licence holder will be taken into account. Consideration will be given to whether complaints received demonstrate a pattern of conduct which causes concern.

16.2 If an applicant/licence holder has been arrested or charged but not convicted of a serious offence which suggests that they could be a danger to the public consideration should be given to refusing the application. Such offences will include violent and/or sexual offences or allegations of driving a vehicle under the influence of alcohol or drugs.

16.3 Licence holders will be referred to the Public Protection Sub-Committee where it is clear that their behaviour is not influenced by verbal or written warnings administered by Licensing Enforcement Officers.

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

17 Cautions

17.1 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. **Cautions must be declared on the application form. Existing drivers should notify the Licensing Service within 7 days of a caution being accepted.**

18 Licences issued by other licensing authorities

18.1 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.

18.2 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.

19 Summary

19.1 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 3 years free from conviction have elapsed.

19.2 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.

19.3 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 is the protection of the public.

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