



LICENSING & REGULATORY COMMITTEE

HACKNEY CARRIAGE AND PRIVATE HIRE – VEHICLE DRIVER'S LICENSES

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

Introduction

In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This policy aims to provide guidance to all parties with an interest in public and private hire licensing thereby providing transparency and consistency in accordance with the principles of good enforcement and relevant Regulatory Compliance Codes.

1. In this policy the word "individual" includes an existing licence holder, an applicant for a new licence, and an applicant for the renewal of an existing licence.
2. Licences for drivers of hackney carriages and private hire vehicles may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence.
3. The policy is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous convictions, formal/simple cautions, has been the subject of restorative justice and/or other matters
4. The Council is concerned to ensure:
 - a. That a person is a fit and proper person.
 - b. That a person does not pose a threat to the public.
 - c. That the public are safeguarded from dishonest persons.
 - d. The safeguarding of children and young persons.
5. When submitting an application for a licence to drive a hackney carriage or private hire vehicle, applicants are required to declare all previous convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.
6. The information given will be treated in confidence and will only be taken into account in relation to the relevant application to assist the Council in determining whether the individual is a fit and proper person to hold a driver's licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise

any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a licence).

7. Individuals should be aware that the Council is empowered by law to check with the Disclosure & Barring Service for the existence and content of any criminal record held in their name. Information received from the Disclosure & Barring Service will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the application/renewal or review of licence is determined or any appeal against such determination is decided.
8. New Applicants - The disclosure of a criminal record or other information relating to criminal and/or other matters will not necessarily debar an applicant from obtaining a driver's licence. Whether or not an applicant will be granted a licence will depend upon whether or not they can satisfy the Council that they are a fit and proper person to hold such a licence.
9. Re-licence/Existing drivers - the disclosure of a criminal record or other information when re-licensing or during the currency of a licence relating to criminal and/or other matter will not necessarily debar the renewal or continuance of a driver's licence. Whether a licence will be renewed or continued depends upon whether the Council can be satisfied that the driver remains a fit and proper person to hold such a licence.
10. The Council may fail to be satisfied that an individual is a fit and proper person to hold a driver's licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that may provide sufficient grounds to refuse a licence.
11. In considering evidence of an individual's good character and fitness to hold a driver's licence, where previous convictions or other information relating to criminal and/or other matter(s) is disclosed, the Council will consider the nature of the offence, when it was committed, the date of conviction, and/or other matter(s), the individual's age when the offence was committed and any other factors which might be relevant. Where an individual has been convicted of a criminal offence, the Council cannot review the merits of the an individual conviction [Nottingham City Council v. Mohammed Farooq (1998)].
12. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining new/re-licence applications for drivers' licences, and when considering whether to take any action against an existing licence.
13. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or any other conduct, which may be relevant to an individual.
14. If an individual has a conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 11 when deciding whether any action should be taken. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines

15. The guidelines are not an attempt to define what is a “fit and proper person”.
16. Any individual who is refused a driver’s licence or has such a licence suspended or revoked on the ground that the Council is not satisfied he is a fit and proper person to hold such a licence has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.

General Policy

1. Each case will be considered on its own merits.
2. A person with a current conviction for serious crime need not be permanently bared from obtaining a licence, but should be expected to remain free of convictions for 5 years, according to the circumstances, before an application is determined. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration must be the protection of the public. Any disclosures should be considered in the light of the following:
 - nature of the offence(s)
 - circumstances in which any offence was committed
 - circumstances of the individual concerned
 - subsequent periods of good behaviour
 - overall conviction history
 - sentence imposed by the court
 - any other character check considered reasonable (e.g. personal references)
3. It must be remembered that for the purposes of considering whether or not an applicant is a ‘fit and proper’ person to hold a drivers’ licence, the Rehabilitation of Offenders Act 1974 does not apply, in that no convictions are considered to be ‘spent’. On 1 March 2002 the Exceptions Order 1975 was amended to include taxi drivers. The Exceptions Order to the Rehabilitation of Offenders act 1974 sets out those occupations and positions exempt from the provisions of the Rehabilitation of Offenders Act. These are generally positions of trust, where there is a valid need to see a person’s full criminal history in order to assess their suitability for a position. Any previous offences may therefore be taken into consideration.
4. The following examples afford a general guide on the action to be taken where convictions are admitted:

Violence

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 loss of life.

In other cases anyone of a violent disposition must not be licensed until at least 5 years free of such convictions. However, given the range of offences that involve violence consideration must be given to the nature of the conviction. For the purposes of this guidance the phrase 'free of conviction' means from the date of conviction.

In particular:

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

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Any other offences 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.

(b) Before an application is allowed, an applicant should be free of conviction for at least 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for an offence such as:

- Arson
- Kidnapping
- Threats to kill
- Wounding with intent to cause grievous bodily harm
- Grievous bodily harm
- Assault occasioning actual bodily harm that is racially aggravated
- Robbery
- Aggravated burglary
- Racially aggravated criminal damage
- Racially aggravated public order offences
- any offence or any similar offence that replaces the above.

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

- Common assault
- Assault occasioning actual bodily harm
- Assault with intent to resist arrest

- Assault on Police
- Public order offences
- Criminal damage
- Harassment
- or any similar offences or offences which replace the above.

Where an applicant has a conviction for an offence of violence against the person, 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.

Possession of a weapon

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.

Depending on the circumstances of the offence, an applicant should be free of conviction for 7 years (or at least 7 years must have passed since the completion of the sentence, whichever is longer), before an application is allowed.

Sex and Indecency Offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted.

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.

In particular:

(a) 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
- Possession of indecent photographs, child pornography etc.
- Exploitation of prostitution
- Trafficking for sexual exploitation
- or any similar offences or offences which replace the above
- or **any** sex or indecency offence that was committed in the course of employment as a taxi or PHV driver.

(b) Before an application is allowed, an applicant should be free of conviction for at least 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for an offence such as:

- Indecent exposure
- Soliciting (kerb crawling)
- or any similar offences or offences which replace the above.

An application will normally be refused if an applicant has more than one conviction for an indecency offence.

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 abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

Dishonesty

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. Taxi drivers are required to deposit such property with police within 24 hours. Drivers must pass lost property to the operator. 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.

In general, a minimum period of 7 years free of conviction or at least 7 years from completion of sentence (whichever is longer) should be required before allowing an application to proceed. 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

An application will normally be refused if an applicant has more than one conviction in the last 7 years for an offence involving dishonesty.

Drugs

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.

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 five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

If there is evidence of persistent drugs use, misuse or dependency (e.g. two or more convictions for possession) a specialist medical examination may be required to ensure that the applicant meets the DVLA Group 2 medical standards in relation to drug misuse and dependency.

Driving offences involving the loss of life

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.

An application would normally be refused where an applicant has a conviction for:

- Causing death by dangerous driving
- any similar offence.

Before an application is allowed, an applicant should be free of conviction for 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer) if he has a conviction for:

- Causing death by careless driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers

Drink Driving/Driving Under the Influence of Drugs

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. More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public. At least 7 years, after the restoration of the driving licence, following any such 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.

Using a hand-held device whilst driving

Where a new grant applicant has a conviction for using a hand-held mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since conviction or completion of any sentence or driving ban imposed, whichever is the later.

Motoring Convictions and Endorsable Traffic Offences

All current endorsable offences will be shown on an individual's driving licence and should be taken into account, since a poor driving record may raise doubts about the applicant's fitness to drive the public or indicate disrespect for the law.

An endorsable offence will usually attract penalty points and/or a period of disqualification. Some endorsable offences can be only be dealt with by a court prosecution, others can be dealt with by either prosecution or fixed penalty notice (FPN(E)). Applicants with more than 6 points endorsed on their ordinary driving licence will have their application determined by the Regulatory Committee.

Endorsable offences include:

- Accident offences
- Driving whilst disqualified
- Careless driving
- Construction and Use offences
- Dangerous driving
- Drink or drugs offences
- Insurance offences
- Licence offences
- Speed limit offences
- Traffic direction and sign offences
- Theft or Unauthorised Taking

More than one conviction for this type of offence within the last two years resulting in more than 6 points endorsed on their licence would normally merit refusal and no further application would be considered until a period of 1 to 3 years free from conviction had elapsed.

Convictions for minor (non-endorsable) traffic offences, e.g. obstruction, waiting in a restricted street should not prevent an application from proceeding. Non-endorsable traffic offences are not recorded on driving licences.

A licence will not be granted until at least five years has lapsed following a conviction for driving whilst using a hand held device or completion of any sentence or driving ban imposed, whichever is the later.

Outstanding charges or summonses

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If the outstanding charge or summons is for an offence that would result in refusal if convicted, then the application must be put on hold until proceedings are concluded.

Non-conviction information

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. Such offences would include serious violent offences and serious sex offences.

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

ASBOs / Community Protection Orders

Anti Social Behaviour Orders (ASBOs) are civil, not criminal, sanctions (although breaches are punishable by up to five years in prison) and are handled by police and local authorities working in partnership.

ASBOs are aimed at tackling serious, persistent but relatively low-level disorder that can blight communities. The orders often include restrictions on entering a geographical area or shop but can include bans on specific acts. A specific act specified in an ASBO issued in 2010 was 'not apply to become a licensed PHV driver'.

By their very nature, ASBOs are issued to individuals who have committed anti-social behaviour which may not be compatible with becoming a licensed driver. If an applicant is the subject of an ASBO, consideration must be given to the nature of the order and any conditions that the applicants must meet. If the behaviour that led to the ASBO appears incompatible with being a licensed driver, the application should be refused.

Hate crimes

A licensed driver is expected to come into contact with people from all walks of life, and they must deal with all their passengers in a courteous manner. For this reason, applicant should not have been convicted of any offence which is classed as a hate crime or which is motivated by prejudice in the last 7 years.

More than one conviction of such a crime would normally lead to the application being refused.

Summary

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 7 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.

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.

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.

Guidance for the suspension / revocation of a current driver licence.

Information which comes to light during the period of a drivers' licence should be considered and a decision taken as to whether or not to suspend or revoke the licence. In considering the course of action to be taken, the nature or the offence (or alleged offence) should be taken into account. In general terms, any suggestion that the driver may pose a threat or danger to the public if they were allowed to continue to work as a licensed driver would lead to the immediate suspension of their licence, pending the outcome of any investigation.

A subsequent conviction for a serious offence would lead to the licence being revoked.