

Taxi and PHV Licensing Application and Convictions' Policy

1. Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria which are 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 driver 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 dishonest persons
 - The safeguarding of children and young persons
- 1.3 This policy provides guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:
- Applicants for drivers' licences
 - Existing licensed drivers 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 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 licensing sub-committee (or other relevant decision-making body). 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 warrant, the sub-committee/officer may depart from the guidelines.**

*Please note officers always have the option to refer any matter delegated to them on to a Committee or Sub-Committee

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 need not be automatically barred from obtaining a licence, but would be expected to 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)].

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 completed) -

- That the applicant has the right to live and work in the country
- An enhanced criminal record check 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 has a minimum of two year's post qualification driving experience
- That the applicant has adequate literacy and numeracy skills to provide the service that they wish to be licensed for
- 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 the applicant has, where available, completed safeguarding awareness training
- That the applicant has signed the declaration relating to the drivers Code of Conduct

- 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.

Criminal record checks/certificates of good conduct must be provided in accordance with the Home Office “Application processes for Foreign National Criminality Information”. Any criminal record check must be translated into English by a recognised translation service provider.

4. Appeals

- 4.1 Any applicant refused a driver’s 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 applicant/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 (as defined in this policy), particularly where there is a long history of offending or a pattern of repeat offending.
- 5.3 In this policy the term “disqualification” refers to the period served, to take account of the fact that a period of disqualification may be reduced upon the successful completion of a relevant driver rehabilitation course. An applicant must provide the Licensing Authority with sufficient evidence to prove that the period of disqualification was so reduced.

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 licence to drive a hackney carriage and/or a private hire vehicle and/or a private hire vehicle operator's licence is a 'fit and proper' person to hold such a licence.

All conviction(s), criminal findings of guilt (including fixed penalty ticket(s)), caution(s) and warning(s), whether for motoring or other offences and County Court Judgment(s)/Order(s) (where the judgment or order relates to a debt or charge to another Hackney Carriage/Private Hire driver, owner or operator) may be taken into account on or after the issue of a licence. During the currency of a licence the licence holder must, immediately after the date of arrest, conviction(s), criminal findings of guilt (including fixed penalty notice(s)), caution(s) and/or warning(s), advise the Licensing Authority of this information in writing.

The Licensing Authority will consider:

- How relevant the offence(s) are to the licence being applied for
 - The seriousness of the offence(s)
 - 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
- 6.2 Applicants can discuss what effect a caution/conviction or other sanction may have on any application by contacting the licensing office in confidence for advice.
- 6.3 The licensing authority requires enhanced disclosures from the Disclosure and Barring Service (DBS) from 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.
- 6.4 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.

- 6.5 The licensing authority encourages applicants and licence holders to register for the DBS's update service and to nominate the licensing authority to receive updates. Registration lasts for 1 year and costs £13 per year. DBS certificates obtained for a Hackney Carriage or Private Hire Driver Licence cannot be used for the purpose of obtaining a Lincolnshire County Council School Transport Badge ("Green Badge") and vice versa. A separate check is required for each authorisation. However, applicants can register both checks with the DBS update service for a total cost of £13 per year.
- 6.6 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 will 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.
- 7.2 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
 - Any culpable homicide while driving
 - Terrorism offences
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 7.3 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 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 features
- Violent disorder
- Resisting arrest
- 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 5 years prior to the date of application:

- Racially-aggravated criminal damage
- Any other racially-aggravated offence
- 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 3 years prior to the date of application:

- Common assault
- Assault occasioning Actual Bodily Harm
- S.20 Grievous Bodily Harm
- Affray
- S.5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S.4A 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

A licensed Hackney Carriage/Private Hire driver found guilty of any of these offences should have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

7.6 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.

7.7 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 rise to 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 at least 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before an application for a licence is considered.

9. Sex and indecency offences

9.1 Licensed drivers often carry unaccompanied and vulnerable passengers, therefore applicants with convictions for sexual offences will be very closely scrutinised. Applicants with convictions for sexual offences will generally be refused.

9.2 An application will generally 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
- Trafficking for sexual exploitation
- Any offence involving child sexual exploitation and/or sexual exploitation of vulnerable adults
- 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.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit).

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

10. Dishonesty

- 10.1 Licensed Hire Drivers are expected to be trustworthy. The widespread practice of delivering unaccompanied property, taking children to school and families on holiday, is indicative of the trust that people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by any lost property being kept by an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 5 years free of conviction should be required before entertaining an application.

A licensed Hire Driver found guilty of a dishonesty offence should expect to have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

- 10.2 In general, a minimum period of 5 years free of conviction or at least 5 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

- 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 will be taken of any drug related offence.
- 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 an offence related to the possession of drugs and has not been free of conviction for 3 years.
- 11.4 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.
- 11.5 A licence will not normally be granted if an applicant has more than one conviction for a drugs related offence.
- 11.6 A hackney carriage or PHV driver found guilty of driving whilst under the influence of drugs, or found guilty of any drug-related offence should expect to have his/her drivers licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

12 Driving offences involving the loss of life

- 12.1 A very serious view will be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

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 careless driving
- or any similar offences

13 Drink driving – Excess Alcohol

13.1 In a Mechanically Propelled Vehicle

A serious view will be taken of convictions for driving or being in charge of a vehicle while under the influence of drink or with excess alcohol (Sections 4 and 5, Road Traffic Act 1988 – as amended) – hereinafter referred to as drink-driving. One isolated incident may not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for such offences should give rise to serious doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the DVLA driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is alcohol dependant, a special medical examination should be arranged before the application is decided. If the applicant is found to be alcohol dependant, a period of 5 years should elapse after treatment is complete before a further licence application is considered.

A Hire Driver found guilty of a drink-driving offence should expect to have his/her drivers licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

In a Licensed Vehicle

A driver found guilty of a drink-driving offence whilst carrying passengers for hire should expect to have his/her driver's licence revoked immediately and not be considered for the grant of a licence until a minimum period of 6 years has elapsed.

14. MAJOR TRAFFIC OFFENCES

14.1 An isolated conviction for dangerous driving or driving without due care and attention etc, should normally merit a strong warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

14.2 Similarly, a first conviction during the period of a hackney carriage or PHV drivers licence will lead to a warning as to future conduct, and may lead to revocation of that licence for subsequent convictions. At least 3 years should elapse (after the restoration of the DVLA licence) before the individual is considered for a licence.

15 Insurance offences

- 15.1 A serious view will be taken of convictions for using, or causing or permitting the use of a motor vehicle without insurance. An isolated incident in the past will not necessarily prevent a licence being granted provided the applicant has been free of conviction for 3 years, however strict warning should be given as to future conduct.
- 15.2 A licence will not generally be granted if an applicant has more than one conviction for an insurance related offence.
- 15.3 A Private Hire Operator or Hackney Carriage Proprietor found guilty of causing or permitting the driving of passengers for hire whilst without insurance will normally have his Operators' / Proprietor's licence revoked immediately and not be considered for the grant of a licence until a minimum period of 3 years has elapsed.

16 Using a mobile phone whilst driving

- 16.1 Applicants should 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.rosipa.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
- 16.2 There is evidence to show that drivers who use a mobile phone have slower reaction times than those who have consumed alcohol up to the legal limit. In light of this, an equally serious view will be taken of convictions for driving whilst using a mobile phone as for drink-driving or driving under the influence of drugs.
- 16.3 A licence will not normally be granted if an applicant has more than one conviction for an offence of driving whilst using a mobile phone.

17. MINOR TRAFFIC OFFENCES

New Applicants

- 17.1 Conviction(s) for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. However, the number, type and frequency of this kind of offence will be taken into account. In certain instances it may be appropriate to issue a licence but with a strong warning as to future driving standards. If a significant history of offences is disclosed, refusal of an application may result.
- 17.2 New applicants who have received 6 or more DVLA penalty points (in respect of minor traffic offences) on their driving licence during the 12 months prior to the date of application may be refused.

Existing Licence Holders

- 17.3 Any current driver disqualified from holding a DVLA licence under the “totting-up” procedure should expect to have his/her hackney carriage or PHV driver licence revoked. At least 2 to 3 years should then elapse (after the restoration of the DVLA licence) before he/she is considered for a licence.
- 17.4 In the case of an existing hackney carriage or PHV driver where the “totting-up” disqualification of a DVLA licence is considered by the court, even if the court does not disqualify, the Council is likely to revoke the hackney carriage or PHV licence. At least 2 to 3 years should elapse before the individual is considered for a licence.

18 Other offences involving alcohol

- 18.1 An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination. In some cases, a warning may be sufficient.
- 18.2 In cases of severe alcohol abuse, a significant period after the last conviction must elapse before an application is considered and then only after examination by a consultant with a special interest in such cases with confirmation being provided of satisfactory liver enzyme tests and mean cell volume (MCV).

19 Licensing offences

- 19.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally preclude a licence being granted or renewed until a period of 3 years has passed since conviction.

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

20 Outstanding charges or summonses

- 20.1 If the individual is the subject of an outstanding charge or summons their application can be processed, but the application will be reviewed at the conclusion of any outstanding proceedings.

- 20.2 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.

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 shall be the paramount concern.

22 Once a licence has been granted

- 22.1 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 consideration to be given as to the suspension or revocation of their licence.

- 22.2 This document applies equally to currently licensed drivers and operators as it does to applicants unless otherwise stated.

23 Licences issued by other licensing authorities

- 23.1 Applicants who already hold a licence with another licensing authority should not assume that a similar application will be granted by this Authority. Each case will be decided on its own merits.

- 23.2 Licensees who are licensed by several authorities are expected to inform each of those authorities about every licence they hold and to advise each authority of any changes in this respect. Licence holders should expect those authorities to share information regarding their conduct and to take it into account as appropriate.

24 DVLA Penalty Points

- 24.1 Applicants who have recently been disqualified from driving under the “totting-up” procedure will not normally be granted a licence unless they have held a licence for at least 2 years following the expiry of the period of disqualification.
- 24.2 New applicants who have 6 or more current penalty points will be required to undertake a driving assessment by the Lincolnshire Road Safety Partnership and submit a low risk driving certificate as part of the application process.

Existing Licence Holders

- 24.3 A hackney carriage or PHV driver receiving 6 or more penalty points during any three year period will be issued with a written warning as to future conduct and will be required to undertake a taxi driver training course with the Lincolnshire Road Safety Partnership and submit a low risk driving certificate.

25 Conclusion

- 25.1 To conclude, 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 between 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.

- 25.2 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history will 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 may be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public. This consideration is vital because taxi and private hire licence holders have unprecedented access to the public and are in a position to exercise control over an individual.
- 25.3 The Council generally considers that offences committed by licensed Hire Drivers should be considered more seriously than offences committed by individuals when not licensed. This is because current licensees have previously been judged as “fit and proper” and are aware of the standards required of them and are expected to maintain those high standards of personal conduct.

- 25.4 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 sub-committee/officer may depart from the guidelines.