

Relevant Extracts from the Council's Current Relevance of Convictions & Cautions Guidelines

1. Introduction

1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council (the Licensing Authority) 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. The policy also relates to applicants for a private hire vehicle operator licence and holders of a current private hire vehicle operator licence.

1.2 In drafting and adopting these guidelines the Licensing Authority took into consideration the Statutory Taxi & Private Hire Vehicle Standards issued by the Department of Transport in July 2020.

1.3 The purpose of setting guidelines and standards is to protect children and vulnerable adults, and by extension the wider public, when using hackney carriages and private hire vehicles.

1.4 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

1.5 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 drivers and operators whose licences are being reviewed
- Licensing Officers
- Members of the Council's Licensing Committee
- Magistrates hearing appeals against Local Authority decisions

1.6 The Licensing Authority has a duty to ensure that any person to whom it grants a hackney carriage or private hire vehicle driver's licence is a 'fit and proper' person to be a licence holder. Where appropriate and when considering whether an applicant or licensee is fit and proper may decide to pose itself the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

1.7 If, on the balance of probabilities, the answer to the above question is 'No', the individual will not be granted or hold a licence.

1.8 Licensing Authorities have to make difficult decisions but the safeguarding of the public is paramount. All decisions on the suitability of a licence applicant or licence holder will be made on the balance of probability. This means that an applicant or licence holder will not be 'given the benefit of doubt'. If the Licensing Authority is only "50/50" as to whether the applicant or licence holder is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a

criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

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1.10 Where Licensing Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision whether or not to grant a licence. Should there be any doubt, in the Officer's opinion, as to whether the applicant is a 'fit and proper' person, then the application will not be granted under delegated powers. Such applications will be referred to the Council's Licensing Committee (consisting of Councillors) for determination. Whilst Officers and the Licensing 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 or Officer may depart from the guidelines, as long as the reasons for doing so are recorded in the decision.

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. However, the overriding consideration should always be the protection of the public.

2.2 A person with a relevant 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 A series of offences over a period of time is more likely to give cause for concern than an isolated, minor conviction. A serious view will be taken when an applicant shows a pattern of offending and unfitness.

2.4 Where an applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction (*see Nottingham City Council v. Mohammed Farooq (1998)*) and, for instance, determine that the applicant should never have been convicted.

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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. The Authority must not grant a licence unless it is satisfied that the applicant is a fit and proper person to hold it.

6.2 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 potentially be taken into account when deciding to grant a licence or on a review after the issue of a licence. During the currency of a licence the licence holder should, immediately after being told that/she is being reported for an offence, being arrested, convicted or has admitted guilt (including fixed penalty notice(s)), caution(s) and/or warning(s), advise the Licensing Authority of this information in writing.

6.3 The Licensing Authority will consider:

- How relevant the offence(s) are to the licence being applied for (or licence being reviewed)

- How serious the offence(s) were
- When the offence(s) were committed
- The date of conviction
- 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 relevant factors

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7 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.

7.2 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.

7.3. Given the wide range of the offences that involve violence, consideration will be given to the nature and type of the conviction.

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7.5 A licence will not be granted where the applicant has a conviction for an offence below (or similar offence(s) which replace the below offences) or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence and the conviction (or completion of sentence - whichever is longer) is less than 10 years prior to the date of application:

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

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7.7 A licence will not normally be granted where the applicant has a conviction for an offence below (or similar offence(s) which replace the below offences) or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence 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

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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 will be administered.

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18 Drunkenness (Not in a Motor Vehicle)

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 strict warning may be sufficient.

18.2 In cases of severe alcohol abuse, a period of 5 years 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).

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26. Conclusion

26.1 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 will be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered.

26.2 While it is possible that an applicant may have a number of convictions that, individually, would not prevent him/her being licensed, 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 (including children and vulnerable adults).

26.3 A man or woman who has committed an offence and has to wait a period of time before being accepted as a hackney carriage or private hire vehicle driver (or operator) is more likely to value his/her licence and act accordingly.