



Statement of Policy and Guidelines relating to the Relevance of Convictions when considering applications for Hackney Carriage and Private Hire Licences

This Policy has been produced having regard to the Statutory Taxi and Private Hire Vehicle Standards issued pursuant to the Policing and Crime Act 2017 as well as guidance published by the Institute of Licensing, April 2018. The purpose of this policy is to explain how the Council will carry out its licensing functions when considering one aspect of whether an applicant is a fit and proper person to hold a licence.

Decision Making

The powers of the Council will be exercised in accordance with the Council's Constitution. Each application for a licence will be considered on its merits, and the Council will provide reasons when an application is refused.

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1 INTRODUCTION

- 1.1 The function of licensing is the protection of the public and the Council has an onerous responsibility. In making decisions regarding grant and renewal of licences it is, in effect, holding out the licensee as someone who can be trusted to convey passengers in safety.
- 1.2 The overriding aim of any Council when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Private Hire Operators (“operators”), must be the protection of the public and others who use, or can be affected by, Hackney Carriage and Private Hire services.
- 1.3 The relevant legislation provides that any person must satisfy the Council that they are a fit and proper person to hold a licence and that is a test to be applied after any applicant has gained any reasonably required qualifications. It is the final part of the process of an application when the decision is made, whether by a committee, sub-committee, panel, or an officer under a Scheme of Delegation. It involves a detailed examination of their entire character in order to make a judgment as to their fitness and propriety.
- 1.4 If a licence holder falls short of the fit and proper standard at any time, the licence should be revoked or not renewed on application to do so.
- 1.5 Licences for drivers, **proprietors and operators** of Hackney Carriages and Private Hire Vehicles may only be granted where the Council is satisfied that the applicant is a fit and proper person to hold such a licence.
- 1.6 This document 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 committed a criminal offence.
- 1.7 This document aims to provide guidance to any person with an interest in public hire and private hire licensing. In particular, but not exclusively:
 - **Applicants for Private Hire and Hackney Carriage Licences (drivers, vehicles, and operators)**
 - Licensing Officers
 - Members of the **Regulatory Panel**
 - **Courts** hearing appeals against local authority decisions
- 1.8 This guidance will be used for the determination of **applications** in relation to Hackney Carriage Drivers and Private Hire Drivers, **Hackney Carriage and Private Hire Vehicles and Private Hire Operator Licences**.
- 1.9 Where Licensing Officers have delegated powers to grant licences they will utilise these guidelines when making a decision to grant a licence. **In all cases where applicants fall outside of this policy** applications for licences will be referred to the **Regulatory Panel** (the Panel). Whilst Officers and the Panel will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the Panel may depart from the guidelines. **In such cases the Panel will give reasons for this departure**. Offences not specifically identified in these guidelines may also be considered depending on the circumstances.
- 1.10 In exercising its powers the Council must ensure:

- That a person is a fit and proper person
- That a person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children, young and vulnerable persons

2 DISCLOSURE AND BARRING SERVICE (DBS) CRIMINAL RECORD CHECK

- 2.1 **In respect of applications for Hackney Carriage and Private Hire Driver licences** the Council can consider all convictions, including spent convictions as appropriate, in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002.
- 2.2 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 applicant is **a fit and proper person to hold a licence**.
- 2.3 Information received from the Disclosure and Barring Service (DBS) 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 **2018** and in accordance with good practice after the application is determined or any appeal against such determination is decided.
- 2.4 The disclosure of a criminal record or other information relating to criminal matters will not necessarily debar an applicant from obtaining a **licence**. **In respect of driver applications** the Council will consider all information on an enhanced DBS and will take a serious view of any special Police warnings contained therein. 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.
- 2.5 The Council may not be satisfied that an applicant is a fit and proper person to hold a **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 could amount to good reason to refuse a licence.
- 2.6 In considering evidence of an applicant's good character and fitness to hold a **licence**, where previous offences or other information relating to criminal matters is disclosed, the Council will consider the nature of the offence, the date of offence, the applicant's age when the offence was committed, the penalty imposed and any other factors which might be relevant.

3 FAILURE TO DISCLOSE A CONVICTION

- 3.1 When completing an application form for a Private Hire or Hackney Carriage Driver Licence it is an absolute requirement:
- To disclose **ALL** offences, including driving offences and all spent convictions, cautions, Police warnings and reprimands, and fixed penalties in the relevant box on the application form
 - To inform the Council if you are under investigation in respect of any criminal offence, if you are on police bail pending the outcome of a police investigation or whether any criminal proceedings in the Magistrates, Crown Court or other Tribunal/Court have been commenced against you

- To inform the Council if you have had any anti-social behaviour orders (or other orders/injunctions made by a court) issued against you, including details of any sentences upon breach relating to anti-social behaviour.

- 3.2 Failure to fully disclose any of these matters may lead to an application being refused and to a prosecution.
- 3.3 The Council has a responsibility to protect the public and, in this regard, may use information provided to prevent and detect fraud, to enforce legislation and to comply with statutory obligations, and may share the information, for the same purposes, **with other services within the Council as well as** other organisations.

Please contact us by emailing taxilicensing@wirral.gov.uk if you would like to discuss your application in confidence.

4 REGULATORY PANEL

- 4.1 In circumstances where an applicant has convictions which are outside of the timeframes referred to in this guidance and/or if there are any concerns about an applicant being 'fit and proper', the application will be referred to the **Regulatory** Panel who will consider the application. Applicants will be advised of the procedure which will enable their attendance before **the Panel** and they will be able to attend the Panel to put their case forward. Any person refused a licence has a right of appeal to the Magistrates' Court against the Council's decision within 21 days of being notified of the Council's decision.
- 4.2 Each applicant referred to **the Panel** will be considered on their individual merits. In those circumstances **the Panel** will decide whether the applicant is a fit and proper person to hold a licence. In certain cases, the Panel may consider it appropriate to grant a licence before the relevant period has elapsed, for instance where an offence is isolated and the circumstances of its commission are such that the Panel consider it is not relevant to the applicant's **suitability to hold a licence**. Alternatively, the Panel may consider that, notwithstanding the applicant being free of offences for the relevant period, it would not be appropriate to grant a licence.
- 4.3 The overriding consideration of the Panel will always be to protect the public. Applicants should be aware that the grant of a licence places a significant responsibility on the holder which by the nature of **the contact** with members of the public requires the holder to be a person proven to be capable of fulfilling the trust placed in them by the hirers of vehicles.
- 4.4. **Holding a Hackney Carriage or Private Hire Licence** is a responsible position and the Panel takes its public protection role very seriously. The Panel will only issue a licence if satisfied that a person is 'fit and proper'. If in doubt then a licence will not be issued.
- 4.5 **When considering applications for Hackney Carriage and Private Hire Driver Licences** the Panel can consider all criminal offences, including spent convictions and will also take into consideration cautions, police warnings and reprimands, fixed penalties and any anti-social order (or other order) issued by a court. The Panel will also consider factors such as whether someone is on police bail pending the outcome of an investigation or whether any criminal proceedings in a court have commenced.
- 4.6 Whilst an applicant may have a number of offences that, individually, meet the Council's policy guidelines, the overall offending history will be considered when assessing suitability for a licence. The Panel may depart from these guidelines at its discretion subject to the

circumstances. The policy guidelines provide a general guide to **applicants** on various types of offences.

5 GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS

- 5.1 The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining applications for **licences**.
- 5.2 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 other conduct, which may be relevant to an **application**.
- 5.3 If an applicant has a conviction for an offence not covered by the guidelines, regard will be had to the nature of the offence, the date of offence, the applicant's age when the offence was committed, the penalty imposed and any other factors which might be relevant when deciding whether to grant an application. 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.
- 5.4 An applicant with a current criminal conviction will not be permanently barred from obtaining a licence, but an applicant will generally be expected to be free from convictions for a number of years, depending on the nature of their particular offences, before a licence will be issued. Each case will be decided on its own merits.
- 5.5 Multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which may be taken into account despite being outside the timeframes referred to in these guidelines. Such cases will generally be referred to the **Panel**.
- 5.6 **For the purpose of clarity, reference in these guidelines to “the completion of any sentence” shall be taken to mean the completion of any Community Order, or the end of the term of imprisonment (meaning the date the offender would have been released from custody had they served the full term of imprisonment imposed by the Court whether or not the term of imprisonment was suspended), whichever is later.**

6 SEXUAL AND INDECENCY OFFENCES

- 6.1 **Where an applicant has a conviction for any offence involving, or connected with, illegal sexual activity a licence will not be granted. In addition, the Council will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.**

7 VIOLENT OFFENCES

- 7.1 **Where an applicant 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. Where an applicant has committed more than one violent offence then the application will be refused.**

Where an applicant has a conviction for 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 either the date of the offence, the date of conviction, or the completion of any

sentence imposed, whichever is later. Given the range of offences that involve violence the Council will carefully consider the nature of the offence and the sentence imposed when determining an application.

8 POSSESSION OF A WEAPON

- 8.1 **Where an applicant has a conviction for possession of a weapon or any weapon related offence, a licence will not be granted until at least 7 years have elapsed since either the offence, the date of conviction, or the completion of any sentence imposed, whichever is later.**

9 PUBLIC ORDER OFFENCES

- 9.1 **Where an applicant has a conviction for a public order offence a licence will not be granted until at least 5 years have elapsed from the date of the offence, the date of conviction or the completion of any sentence imposed, whichever is later.** An applicant with more than one such offence in the previous 10 years will be expected to show a period of at least 7 years free of such offences from either the offence, the date of conviction, **the date of conviction or the completion of any sentence imposed, whichever is later.**

10 DRUG OFFENCES

- 10.1 A serious view is taken of any drug related offence, in particular offences involving possession with intent to supply.
- 10.2 Where an applicant has committed an offence relating to the supply of drugs, or for the production or cultivation of drugs, **a licence will not be granted until a period of at least 10 years have elapsed** from either the offence, **the date of conviction or the completion of any sentence imposed, whichever is later.**
- 10.3 Where an applicant has committed an offence for **possession of drugs** or relating to the possession of drugs a licence **will not be granted until at least 5 years have elapsed** from either the offence, **the date of conviction, or the completion of any sentence imposed, whichever is later.**
- 10.4 If there is evidence of persistent drug use or dependency a specialist medical examination or a drugs test may be required at the applicant's expense. If an applicant was an addict then they would generally be required to show evidence of **at least 7 years** free from drug taking after detoxification treatment.

11 DISHONESTY OFFENCES

- 11.1 **Licence holders** are expected to be honest and trustworthy. Drivers deal with cash transactions and valuable property may be left in their vehicles. Drivers often deliver unaccompanied property which gives an idea of the trust that is placed in licensed drivers. It would also be reasonably easy for a dishonest driver to defraud the public by demanding more than the legal fare. For all these reasons, a serious view is taken of any offence involving dishonesty. **Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since either the offence, the date of conviction, or the completion of any sentence imposed, whichever is later.**

12 PERVERTING THE COURSE OF JUSTICE

- 12.1** Where an applicant has a conviction for any offence where perverting the course of justice is an element of the offence, a licence will not be granted until at least 7 years have elapsed since either the offence, the date of conviction, or the completion of any sentence imposed, whichever is later.

13 DISCRIMINATION

- 13.1** Where an applicant has a conviction involving, or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since either the offence, the date of conviction, or the completion of any sentence imposed, whichever is later.

14 EXPLOITATION

- 14.1** Where an applicant 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 but is not limited to the following: slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse.

15 HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING OFFENCES

- 15.1** Where an applicant has been convicted of an offence concerned with or connected to Hackney Carriage or Private Hire activity a licence will not be granted until at least 7 years have elapsed since either the offence, the date of conviction, or the completion of any sentence imposed, whichever is later.

16 MOTORING OFFENCES

- 16.1** An applicant's driving record will be taken into account when considering applications for driver licences. The Council will consider the nature and volume of motoring offences when considering applications. Hackney Carriage and Private Hire Drivers are professional drivers charged with the responsibility of carrying the public, and as such a higher standard of driving is expected compared to other road users. Multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally. A poor record of driving will raise doubts about an applicant's fitness and indicate a disregard for the law.

- 16.2** When considering motoring offences the Council will consider the nature and seriousness of the offence(s) and will have regard to the following categories of offences.

16.3 DRIVING OFFENCES INVOLVING LOSS OF LIFE

- 16.3.1** An extremely serious view is taken of a driving offence resulting in the loss of life. Such offences include causing death by dangerous driving, causing death by careless driving whilst under the influence of drink or drugs, or other similar offences. In such circumstances an application **will not be granted**.

16.4 DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

16.4.1 A serious view is taken of any motoring offence for driving, attempting to drive, being in charge of a motor vehicle whilst under the influence of alcohol or drugs, and failure to supply a specimen. **Where an applicant has a conviction for drink driving or driving under the influence of drugs a licence will not be granted until at least 7 years have elapsed since either the date of the offence, the date of conviction, the completion of any sentence imposed, or the completion of a driving disqualification, whichever is later.** An applicant with more than one offence of this type will not be granted a licence.

16.5 SERIOUS MOTORING OFFENCES

16.5.1 Generally, the Council **classes a serious motoring offence as having occurred** when 6 or more penalty points have been imposed on a DVLA driving licence in respect of any single offence. However, some offences where less than 6 penalty points are imposed may, subject to the circumstances, be classed as a serious offence. Types of offences classed as a serious offence **can include, but are not limited to**, driving without insurance, dangerous driving, failure to stop after an accident and a driving disqualification under the 'totting up' procedure.

16.5.2 **Where an applicant has a conviction for a serious motoring offence, a licence will not be granted until at least 7 years have elapsed since either the date of the offence, the date of conviction, the completion of any sentence imposed, or the completion of a driving disqualification, whichever is later.**

16.6 USING A HAND-HELD DEVICE WHILST DRIVING

16.6.1 **Where an applicant has a conviction for using a hand-held mobile telephone or hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since either the date of the offence, the date of conviction, the completion of any sentence imposed, or the completion of a driving disqualification, whichever is later.**

16.7 MINOR MOTORING OFFENCES

16.7.1 **A minor motoring or vehicle related offence is considered to be one which does not involve the loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone and has not resulted in injury to any person or damage to any property including another vehicle and will normally result in less than 6 penalty points being imposed on a DVLA driving licence.**

16.7.2 **Where an applicant has 7 or more points on their DVLA driving record for minor motoring or similar offences a licence will not be granted until at least 5 years have elapsed since either the date of the offence, the date of conviction, the completion of any sentence imposed, or the completion of a driving disqualification, whichever is later.**

If you have any queries regarding your application please contact us by email at taxilicensing@wirral.gov.uk