



**Walsall Council**

**Taxi and PHV Licensing, Motoring and Criminal**

**Convictions Guidelines**

## Taxi and PHV Licensing, Motoring and Criminal Convictions Guidelines

### 1. Introduction

- 1.1 The purpose of these guidelines 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 driver or operator 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 person.
  - The safeguarding of children and young persons.
- 1.3 This document provides guidance to any person with an interest in taxi 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 committee/panel (or other relevant decision-making body). Whilst officers and the committee/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 committee/officer may depart from the guidelines.**

### 2. General guidelines

- 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 for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
- a. Remain free of conviction for an appropriate period; and

- b. 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. Appeals**

- 3.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he/she 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)].

### **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 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.
- 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.
- 4.4 It should be noted that "any reasonable cause" includes conduct falling short of a criminal conviction(s).

### **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.
- 5.2 Existing holders of driver licences are required to notify the licensing authority in writing within seven days of 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 officer [01922 653581] in confidence for advice.
- 5.4 The licensing authority conducts disclosures from the Criminal Records Bureau (CRB) for any applicant for a driver licence. The licensing authority follows the CRB'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 will be required to obtain a disclosure at their expense. The licensing authority abides by the CRB's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request. The Council will expect that all applicants/existing drivers consent to full disclosure of the contents of the report.
- 5.6 More information about the CRB can be found on their website at [www.direct.gov.uk](http://www.direct.gov.uk).
- 5.7 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 under the Home Office scheme for reporting offences committed by notifiable occupations.

- 5.8 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.
- 5.9 It should be noted that the determination of whether an applicant is “fit and proper” includes consideration of conduct falling short of a criminal conviction.

## **6 Offences involving violence, disorder and damage to property**

- 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 disorder or criminal damage. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 6.2 Any one with a conviction for an offence involving violence, disorder or damage to property will normally be expected to remain free of such convictions for a period of at least 3 years. However, given the range of the offences, consideration must be given to the nature of the conviction. A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence involving violence or disorder.
- 6.3 In the most serious cases, an application will be refused 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) or any offences which replace the above.
- 6.4 An application will normally be refused if the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date on which the application is determined by the authority:
- Arson.
  - Malicious wounding or grievous bodily harm.
  - Actual bodily harm.
  - Grievous bodily harm with intent.
  - Robbery.
  - Possession of firearm.
  - Riot.
  - Violent disorder.

- Any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

6.5 An application will normally be refused if the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date on which the application is determined by the authority:

- Common assault.
- Assault occasioning actual bodily harm.
- Affray.
- Aggravated criminal damage.
- Any racially aggravated offence.
- Resisting arrest.
- Assault police.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

6.6 An application will normally be refused if an applicant has a conviction for an offence or similar offences(s) which replace the offences below and the conviction is less than 3 years prior to the date on which the application is determined by the authority:

- 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) or any offences which replace the above..

6.7 A person bound over to keep the peace or be of good behaviour will not normally be granted a licence within the period of the recognizance e.g. where a person is bound over for 6 months, they will not normally be licensed within that 6 month period

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 A conviction for possession of a weapon or any other weapon related offence will raise serious concerns as to the fitness of the applicant 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 scrutinised. Those with convictions for the more serious sexual offences will normally 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.

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.
- Or any similar offences (including attempted or conspiracy to commit) which replace the above.

8.3 An application will normally be refused if the applicant has a conviction for an offence listed below and the applicant has not been free of such conviction for at least 10 years or, at least 3 years have passed since the completion of any sentence, whichever is longer.

- Sexual assault.
- Indecent assault.
- Possession of indecent photographs, child pornography etc.
- Exploitation of prostitution.
- Trafficking for sexual exploitation.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

8.4 An application will normally be refused if the applicant has a conviction for an offence listed below and the applicant has not been free of such conviction for at least 3 years, or at least 1 year has passed since the completion of any sentence, whichever is longer.

- Indecent exposure.
- Soliciting (kerb crawling).
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

8.5 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.

8.6 A licence will not normally be granted if an applicant has more than one conviction for a sex or 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. 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.

9.2 In general, a minimum period of 3 years free of conviction or at least 3 years from completion of a 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.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

## **10. Drugs**

10.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.

10.2 An application will normally be refused where the applicant has a conviction for an offence related to the **supply of drugs** and has not been free of such conviction for 10 years.



- 10.3 An application will normally be refused 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 application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.
- 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.

## 11 **Minor and Major Traffic Offences**

### Minor

- 11.1 Convictions for minor traffic offences e.g. obstruction, waiting in a restricted street, speeding etc. may prevent a person from being granted a hackney carriage or private hire drivers licence if they have received more than 2 motoring convictions within the last 2 years.
- 11.2 The accumulation of 9 or more penalty points will cast grave doubts on the suitability of the applicant and could lead to the refusal of the application.

### Major

- 11.3 A serious view will be taken of any conviction for a major traffic offence, this includes:
- Causing death by dangerous driving.
  - Dangerous driving.
  - Causing death by careless driving whilst under the influence of drink or Drugs.
  - Causing death by careless or inconsiderate driving.
  - Careless and inconsiderate driving.
  - Driving under the influence of drink or drugs etc.
  - Driving whilst disqualified.
  - Using a vehicle without insurance.
  - Offences contrary to the taxi licensing legislation.
  - Or any similar offences (including attempted or conspiracy to commit) or an offence which replaces the above.

These guidelines make specific provision for certain types of major traffic offences and to reflect the seriousness of those convictions

In the case of major traffic offences where no such specific provision is made and paragraph 14 (Disqualification) does not apply, an application will normally be refused unless a period of at least 3 years free from conviction of such offences has elapsed

## **12 Driving offences involving the loss of life**

12.1 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.

A licence will not normally be granted unless the applicant is free of conviction for 7 years or (or at least 3 years must have passed since the completion of sentence, whichever is longer) if he/she has a conviction for:

- Causing death by dangerous driving.
- Causing death by careless driving whilst under the influence of drink or drugs.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

12.2 Before a licence is granted, 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), if he/she has a conviction for:

- Causing death by careless driving.
- Causing death by driving: unlicensed, disqualified or uninsured drivers.
- Or any similar offences (including attempted or conspiracy to commit) or any offences which replace the above.

## **13 Drink driving/driving under the influence of drugs**

13.1 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.

13.2 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 and he must comply with the rehabilitation period below.

13.3 More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public.

13.4 At least 3 years free of conviction, after the restoration of the driving licence following a drink 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.

## **14 Disqualification**

14.1 Where an applicant has been disqualified from driving following a conviction for a major traffic offence and no specific provision is made above regarding the appropriate rehabilitation period, the application will generally be refused unless a period of between three and five years free from conviction has elapsed from the restoration of the DVLA licence.

14.2 Where convictions for a number of minor traffic offences have resulted in the applicant being disqualified from driving for a period of time this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 12 months free from conviction must have elapsed from the restoration of the DVLA licence.

14.3 In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver, the Council is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

14.4 Any period of disqualification will lead to the suspension/ revocation of a licence.

## **15 Insurance offences**

15.1 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 prevent a licence being granted provided he/she has been free of such conviction for 3 years; however a strict warning should be given as to future behaviour. More than one conviction for these offences would normally prevent a licence being granted or renewed.

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

## **16 Cautions**

- 16.1 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.
- 16.2 If an applicant has received a caution for a traffic offence, given the nature of the offence and the profession of a taxi driver, the applicant may be given a warning as to his/her future conduct.
- 16.3 Cautions for more serious offences could lead to refusal of an application or the suspension or revocation of a licence

## **17 Outstanding charges or summonses**

- 17.1 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. Where information is received through the Notifiable Occupations Scheme on existing licence holders, consideration will be made at committee.
- 17.2 If the outstanding charge or summons involves a serious offence, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.
- 17.3 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

## **18 Licensing offences**

- 18.1 Convictions for offences contrary to taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed unless the applicant has been free of such convictions for a period of at least 3 years.

## **19 Licences issued by other licensing authorities**

- 19.1 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will always be decided on its own merits.

## **20 Summary**

- 20.1 To summarise, a motoring/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.
- 20.2 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.
- 20.3 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