

Guidelines for applications with convictions or any other relevant information

1. Introduction

- 1.1 This policy provides guidance to the Licensing Committee and its Sub-Committee on criteria to be taken into account when determining whether or not an applicant is fit and proper to be licensed or continue to be licensed as a driver, vehicle proprietor or operator. Whilst criminal convictions will play a significant part in the Licensing Authority's determination on whether an individual is fit and proper (safe and suitable) or not, the Council will also take into account other factors such as demeanour, general character, non-criminal behaviour, driving ability and other relevant information supplied by the Police or other agency.
- 1.2 Whilst this policy primarily applies to the determination of driver licences for hackney carriages/private hire vehicles or both, the principles within it are equally applicable to the determination of private hire operator and vehicle/ hackney carriage licence applications. Consequently, where a conviction (as defined below) is considered relevant to the fitness and propriety/suitability of an individual to hold (or be granted) a private hire operator licence or a vehicle licence, then this policy must be referred to during the determination process.
- 1.3 It is the responsibility of the Council to issue hackney carriage, private hire, driver and operator licences under the Local Government (Miscellaneous Provisions) Act 1976. In exercising this duty, public safety is the primary consideration. Licences will not be issued unless the person is considered to be fit and proper (safe and suitable).
- 1.4 In seeking to safeguard the public the Council will ensure that all applicants and licence holders:
- are fit and proper person in accordance with Part II S51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976
 - do not pose a threat to the public
 - are honest
 - do not pose a threat to the safety of children, young persons and vulnerable adults
- 1.5 The term fit and proper (safe and suitable) for the purposes of taxi and private hire licensing is not legally defined. However, in determining whether a person is fit and proper to hold a licence, those tasked with determining licences/applications are effectively asking the following question of themselves:

'Would I be happy to allow my son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom I care, to get into a vehicle with this person alone?'

‘If all the information known about an applicant was written on the door of the vehicle or premises would I still be happy to use the services of the applicant or be happy with a loved one using their services?’

‘Am I happy for this person to know when my home is empty or for them to be alone with a vulnerable family member?’

If the answer to the above questions is an unqualified ‘yes’, then the person can be considered to be fit and proper (safe and suitable). If there are any doubts in the minds of those who make the decision, then the answer must be no and the licence should not be granted. The public place significant trust and responsibility on individuals they may have never met and know nothing about, based purely on the fact that the Council has granted them a Licence. For the public to maintain their confidence in the Licensing system the decision maker must only grant licences to those applicants that pass both these simple questions.

Granting a licence or allowing a person to continue to hold a licence where there is any doubt about them being fit and proper (safe and suitable) for the benefit of the applicant, for example, to give them a second chance or a fresh start is not in the public interest. The primary aim of this policy and those empowered to implement it is the protection of the public.

In order to assess the suitability of an applicant (and to inform decision makers), the Council will undertake whatever checks and apply whatever processes it considers necessary to ensure that licences are not issued to, or used by, unsuitable people. In assessing the suitability of an applicant or licence holder, the council will take into consideration the following factors:

- Criminality
- Period of holding a driver’s licence
- The driving history of an applicant (including any driving licence penalty points)
- Right to work,
- Medical fitness (DVLA Group 2 Medical Standards)
- Standard of driving/driving ability
- The conduct of the applicant in making the application (e.g. whether they have acted with integrity during the application process).
- The previous licensing history of existing/former licence holders.

In addition the Council will also consider further information sources such as the Police (including abduction notices), Children and Adult Safeguarding Boards, Officers of the Council other licensing authorities and statutory agencies.

1.6 This policy provides guidance to any person with an interest in hackney carriage and private hire licensing. In particular, but not exclusively:

- Applicants for a driver's licence
- Existing licensed drivers whose licences are being reviewed
- Licensing officers
- Members of the Licensing Committee/Sub-Committee
- Magistrates or other Court Officials dealing with appeals regarding Council decisions about fitness and propriety.

1.7 In considering this guidance the Council will be mindful that each case must be considered on its merits and, where the circumstances demand, the Committee may depart from this policy.

1.8 In this policy the word "Conviction" includes convictions, cautions, warnings, reprimands and other relevant information. In this policy 'from date sentence has ended' is taken to be the date which is reached once the whole of the period as sentenced by the court has elapsed and not necessarily the length of time served by the applicant. For example, if a sentence is five years imprisonment then the date that the sentence ends will be five years from the date of sentencing – regardless of the amount of time actually served. If the sentence is amended by a court at a later date then this new sentence becomes relevant for the purposes of this policy. The term 'since completion of sentence' is to be construed in a similar way.

1.9 In this policy the term applicant refers to either new applicants, existing licence holders who are seeking renewal and existing licence holders that are the subject of periodic auditing or are having their licence reviewed by the Council as part of the policy implementation process. It also includes existing licence holders who are being considered by the Council by virtue of offending activity having recently come to light.

The Council reserves the right to overturn a decision that has previously been made, or refuse a renewal of a licence, where clear errors are discovered.

2. General Policy

2.1 Whilst a committee may consider that a person with a conviction for a serious offence may not automatically be prevented from obtaining a licence, it is however to be expected that the applicant would be required to remain free of conviction for an

appropriate period (as detailed below); and show adequate evidence that they are a fit and proper (safe and suitable) person to hold a licence (the onus will be 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 (safe and suitable) person to hold a licence.

2.1 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.

2.2 The standards and criteria set out in paragraphs 6 to 16 below are those that would normally be applied to applications and licences. The Council may depart from these; however it must only do so in exceptional circumstances. The otherwise good character and driving record of the applicant or licence holder will not ordinarily be considered to be exceptional circumstances.

3. Powers

3.1 Under the provisions of S.61 of the Local Government (Miscellaneous Provisions) Act 1976 the Council has powers to suspend, revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle on any of the following grounds-

(a) that he has since the grant of the licence-

- been convicted of an offence involving dishonesty, indecency or violence, or
- been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or part II of the Local Government (Miscellaneous Provisions) Act 1976, or

(b) any other reasonable cause

3.2 A suspension or revocation of a driver's licence takes effect at the end of a period of 21 days beginning with the day on which notice is given. 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 to this effect and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. (S61(2B) of the Local Government (Miscellaneous Provisions) Act 1976

3.3 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, allows the Council to take into account all convictions recorded against an applicant or the holder of a private hire or hackney carriage driver's licence, whether spent or not. Therefore the Council will have regard to all relevant convictions, particularly where there is a history of offending or a pattern of repeat offending. Applicants need to be aware that, in accordance with this Act, all convictions, cautions, warnings and reprimands must be declared.

3.4 Under the provisions of Sections 51, 55 and 59, Local Government (Miscellaneous Provisions) Act 1976, the Council is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle driver's 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 council will take into account:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) are
- When the offence(s) were committed
- The date of the conviction, warning, caution etc.
- Circumstances of the individual concerned
- Any sentence imposed by the court
- The applicant's age at the time of offence/incident leading to the conviction, warning, caution etc.
- Whether they form part of a pattern of offending

Other factors that might be relevant include:

- Whether the applicant has intentionally misled the council or lied as part of the application process,
- Information provided by other agencies/Council departments.

3.5 Existing holders of driver's licences are required to notify the Council in writing within seven days of receiving an endorsement on their DVLA licence, fixed penalty notice, warning, reprimand, police caution, criminal conviction or other criminal proceedings (including their acquittal as part of a criminal case). In addition, licence holders must inform the council within 3 working days of their arrest for any matter (whether subsequently charged or not). To fail to do so, will raise serious questions for the Council about the honesty of the licence holder and will be taken into account as part of any subsequent application or any decision about the person's licence.

- 3.6 The Council requires all applicants for a driver's licence to supply an enhanced disclosure from the Disclosure and Barring Service (DBS) as part of the application process. Applicants applying for the grant or a renewal of a driver's licence will be required to obtain an enhanced disclosure at their expense; this includes all fees payable to the DBS.
- 3.7 The Council 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 Council or other licensing authorities, and information disclosed by the police under the Common Law Police Disclosure Scheme or other similar arrangements. Examples of such information sources that may be used include social care information and benefit payments etc.
- 3.8 It is an offence for any person to knowingly or recklessly make a false declaration or to omit any "material particular" in giving information required by the application for a licence (s57 Local Government (Miscellaneous Provisions) Act 1976). Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the application will normally be refused.
- 3.9 Any offences or behaviour not covered by this Policy will not prevent the Council from taking into account those offences or behaviours.

4. Appeals

- 4.1 Any person refused a driver's licence, or has their licence suspended or revoked on the grounds that the Council is not satisfied that they are a fit and proper (safe and suitable) person to hold such a licence has a right to appeal to the Magistrate's Court within 21 days of the notice of refusal (Local Government (Miscellaneous Provisions) Act 1976, s 77 (1)).

5 Options when determining an application/licence

- 5.1 When determining an application or reviewing an existing licence the Council have the following options:

- approve the application
- refuse the application/
- revoke the licence
- suspend the licence

- issue a warning which may include the use of the escalated warning system.
- Attach any conditions that are deemed to be appropriate
- take no action

6. Serious offences involving violence

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. An application will be refused if the applicant has a conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Any offences (including attempted or conspiracy to commit offences) that are similar to those above.

6.2 Consideration may only be given to the granting/issuing of a licence if at least 10 years have passed since the completion of any sentence and/or licence period following conviction for an offence shown below:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Possession of firearm or illegal weapon
- Riot
- Assault of a Police Officer
- Violent disorder
- Resisting arrest
- Any racially-aggravated offence against a person or property
- Any offence that may be categorised as domestic violence

- Any offences (including attempted or conspiracy to commit offences) that are similar to those above.

6.3 Consideration may only be given to the granting/issuing of a licence if at least 5 years have passed since the completion of any sentence and/or licence period following conviction for an offence shown below:

- Obstruction
- Criminal damage
- Common assault
- Affray
- Any Public Order Act offence (harassment, alarm or distress, intentional harassment or fear of provocation of violence)
- Any offences (including attempted or conspiracy to commit offences) that are similar to those above.

6.4 A licence will not be granted if an applicant has more than one conviction for an offence of a violent nature.

7. Possession of a weapon (excludes more serious weapons offences)

7.1 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 and proper.

7.2 Depending on the circumstances of the offence, at least five years must have passed since the completion of the sentence, before licencing an applicant can be considered.

8. Sexual and indecency offences

8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, the council will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. All sexual and indecency offences will be considered as serious. Applicants with convictions for sexual or indecency offences will be refused a licence. Such offences include:

- Rape

- Assault by penetration
- Offences involving children or vulnerable adults
- Trafficking, sexual abuse against children and / or vulnerable adults and preparatory offences (as defined within the Sexual Offences Act 2003).
- Making or distributing obscene material
- Possession of indecent photographs depicting child pornography.
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Soliciting (kerb crawling)
- Making obscene/indecent telephone calls
- Grooming
- Indecent exposure
- Any similar offences (including attempted or conspiracy to commit) offences which replace the above

8.2 In addition to the above the council will not grant a licence to any applicant who is currently on the Sex Offenders Register or any other similar register.

9. Dishonesty

9.1 A licensed hackney carriage or private hire vehicle driver is expected to be trustworthy. In the course of their working duties drivers will deal with cash transactions and valuable property may be left in their vehicles. Drivers will also come into contact with customers who are vulnerable or intoxicated and potentially easily confused. For these reasons, a serious view is taken of any conviction involving dishonesty.

9.2 In general, a minimum period of 10 years free of conviction or at least 10 years have passed since the completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

- burglary
- fraud
- obtaining money or property by deception

- money laundering

9.3 In general, a minimum period of 5 years free of conviction or at least 5 years have passed since the completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

- theft
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- other deception
- taking a vehicle without consent
- fare overcharging
- illegal money lending
- or any similar offences (including attempted or conspiracy to commit)

The above list is not exhaustive.

A licence will not normally be granted if an applicant has displayed a pattern of re-offending or has multiple convictions for similar offences.

9.4 Applicants or existing licence holders that are found to have intentionally misled the Council or lied as part of the application process, will not be issued with a licence.

9.5 Failure to declare/omit or misrepresent any of the facts or details requested by the Council, will cause the Council to question if the application can be regarded as fit and proper (safe and suitable). An applicant's failure to read and/or understand any questions or requests will not be accepted as mitigation.

10. Alcohol and Drugs

10.1 A serious view is taken of any drink/drug related offence. Driving under the influence of alcohol or drugs poses an obvious risk to public safety. Applicants with convictions for the supply of drugs will be taken seriously. The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered carefully.

- 10.2 At least five years, after the restoration of the driving licence following a drink/drug 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 considered.
- 10.3 More than one conviction for these offences raises significant doubts about the applicant's fitness to hold a licence.
- 10.4 Because of the nature of a driver's involvement with the public, a licence will not be granted where the applicant has a conviction for an offence related to the supply/cultivation/manufacture of illegal or controlled drugs.
- 10.6 A licence will not be granted where the applicant has a conviction for offences related to the possession of illegal/controlled drugs until at least 5 years have passed since the completion of any sentence, fine /caution for possession and/or licence period has passed, and only then after full consideration of the nature of the offence and the quantity/type of drugs involved.
- 10.7 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) and a satisfactory medical report may be required before the licence is granted. If the applicant was an addict then they would be required to show evidence of 5 years free from drug taking after detoxification treatment.

11. Driving offences involving the loss of life or life changing injuries.

- 11.1 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 or life changing injuries. A licence will not be granted if an applicant has a conviction for:
- Dangerous driving
 - Causing death by careless driving whilst under the influence of drink or drugs
 - Causing death by careless driving
 - Causing death by driving: unlicensed, disqualified or uninsured drivers
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above or result in the victim receiving life changing injuries

12. Other traffic offences

- 12.1 Any new applicant who at the time of application has nine or more points or has received a driving ban of any type within the last 36 months will not normally be granted a licence.
- 12.2 Traffic offences such as driving without due care and attention, speeding offences, or offences of a similar nature will give rise to serious doubts about the applicant's suitability to hold a driver's licence. An applicant with any such convictions will be required to show a period of at least two years free of such convictions. For applicants with more than one offence this should normally be increased to five years.
- 12.3 Existing drivers that have been disqualified or convicted of a serious motoring offence or amass six penalty points in any 12 month period or nine penalty points in any 24 month period will be the subject of a report to the next available General Licensing Sub-Committee. The Committee will consider the facts of the matter and may consider it appropriate to require the driver to pass a driving assessment and/or the Cheshire West and Chester Council Licensed Driver's Qualification at their own expenses. Each case will be judged on its merits and in certain circumstances it may be appropriate for the Committee to suspend the driver's licence until completion of the course(s) or revoke the licence and set out specific requirements to be met before an application for the grant of a new licence is considered.

13. Outstanding Charges or Summonses

- 13.1 If the individual is the subject of an outstanding charge or summons their application may be suspended until the matter is resolved, this decision will be made on a case by case basis.

14. Non-conviction information

- 14.1 The Council will also take into account situations and circumstances that have not led to a conviction. This will include acquittals and circumstances in which convictions were quashed due to misdirection to the jury, where the decision was taken not to prosecute, where the person has been arrested and bailed but not yet charged, and complaints from the public. In considering the most appropriate action to take in relation to non-conviction information (or a complaint), the credibility of both the witness/complainant and the licence holder will be taken into account.
- 14.2 If an applicant has 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 violence, drugs and sexual offences.

15. Licensing Offences

- 15.1 Certain offences under hackney carriage/private hire legislation such as plying for hire, overcharging and refusing to carry disabled persons or Assistance Dogs will prevent a licence being granted or renewed until a period of three years has passed.

16. Insurance Offences

- 16.1 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 stop a licence being granted provided the applicant/licence holder has been free of conviction for three years, however a strict warning should be given as to future behaviour. More than one