

Guidelines Relating to the Relevance of Convictions

Supplemental to the Home Office guidance on the Relevance of Convictions contained in the DoT Circular 2/92 and Home Office Circular 13/92 as amended.

Introduction

The purpose of this document is to formulate guidelines which detail the Council's current stance on the relevance of convictions and cautions in respect of applications for the grant of new licences, and the renewal of existing hackney carriage and private hire vehicle drivers', operators and proprietors' licences. This document should be read with the Home Office Guidance.

These guidelines have been produced to assist the Council's Licensing Sub-Committee in their decision-making and to maintain the consistency of the decisions made. They have also been formulated to provide clearer information to current and potential applicants, with a view to minimising cost and time spent by both Council and the applicant.

The aim of these guidelines is not to punish the applicant twice for a conviction or caution, but to ensure that public safety is not compromised.

The objective of the licensing regime is to ensure that, so far as possible, those licensed to drive taxis are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault customers.

These guidelines will be taken into account when dealing with new applications as well as renewal applications for an existing private hire/hackney carriage driver's licence, private hire/hackney carriage vehicle licence or private hire operator's licence. The guidelines will also be used when we are considering whether to suspend or revoke an existing licence.

EACH CASE IS TO BE DECIDED ON ITS OWN MERITS.

Any applicant refused a driver's licence on the grounds that the Sub-Committee is not satisfied he/she is a fit and proper person to hold such a licence, or who has had their licence suspended or had a condition attached with which they disagree has a right of appeal by way of written complaint, to the Magistrates' Court within 21 days of the notice of decision.

Legislation

The Local Government (Miscellaneous Provisions) Act 1976 Sections 51 and 59 deal with the issue of driver suitability:

"...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a **fit and proper person** to hold a driver's licence."

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:

1) That he has since the grant of the licence:

- i) Been convicted of an offence involving dishonesty Indecency or violence, or
- ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of Part of this Act, or of S.222 of the Local Government Act 1972, or

2) Any other reasonable cause.

Therefore the wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is fit and proper - the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.

Convictions

The Council's Licensing Sub-Committee is required to look at any past indicators (convictions, speeding offences, cautions etc...) that may affect a person's suitability to hold a hackney carriage/private hire drivers licence and consider the possible implications of granting such a licence.

As part of the licence conditions, the applicant is asked to disclose **all** convictions and cautions. Therefore **all** convictions must be disclosed, including spent convictions- the Rehabilitation of Offenders Act 1974 s 4, and Rehabilitation of Offenders Act (Exceptions) (Amendment) (England and Wales) Order 2003.

In addition, applicants must disclose any recent simple cautions they have received or any pending matters.

If a licence has been granted to a person on the basis of false or incomplete information supplied by them the Sub-Committee may revoke the Licence and require the applicant to submit a further application which will be considered in the light of the full information now available to the Sub-Committee.

The disclosure of any conviction will not necessarily prevent an applicant from being issued a licence. However, all convictions, spent or live, will be assessed.

Within seven days, all hackney carriage and private hire operators, proprietors and drivers must disclose details in writing to the Council of any conviction or caution imposed on him/her (during the period of licence).

Cautions are included under the definition of convictions and they will also be taken into consideration when reviewing an application. Although these are generally not as serious as convictions, they can give some indication as to an applicant's character and whether or not they are a fit and proper person to hold or be granted such a licence.

Patterns

A series of offences over a period of time is more likely to give cause for concern than an isolated conviction. A serious view will be taken when applicants show a pattern of offences. If a pattern is found for any offences, for example, the applicant has received more than one conviction for a violent action, then serious consideration should be made as to the suitability of that person to hold a licence.

The timescale within which any cautions have been issued could increase the severity of the offence, for example, for violent convictions within the space of a few years could portray the applicant as someone prone to violence.

Rehabilitation Periods

These guidelines have separated the various offences affecting such an application into nine categories, each detailing the period of rehabilitation that must elapse for a particular offence within that category, before an applicant can be considered a fit and proper person to hold licence. After consideration by the Sub-Committee, if a person does not satisfy these guidelines, then the application should be refused or the licence revoked or suspended until the applicant is able to satisfy them.

The Sub-Committee cannot hear evidence, or decide that an applicant did not, in actual fact, commit an offence of which a Court has convicted them. The applicant can, however, explain any mitigating factors, which led to them committing the offence and the Sub-Committee, can take these into account in deciding whether the applicant is a fit and proper person to hold a licence.

If the applicant or holder of a licence has notified the Council of a conviction but is appealing against it to a higher court the matter may be referred to the Sub-Committee for a decision as to whether the licence / application should be suspended until such appeal is heard.

What is a “Fit and Proper Person”?

There is no absolute definition as to what constitutes a “fit and proper person”, however, considering the range of passengers that a driver may carry (for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women and foreign visitors), the Council relies on a common sense approach. Some areas give rise to particular concern, including

- Honesty and trustworthiness - taxi drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars, for example, any passenger would expect to be charged the correct fare for a journey and then given the correct change, they would also expect a driver to hand in any article left by a passenger in a vehicle, and also to maintain confidentiality between driver and fare.
- Not abusive - taxi drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. A driver will not be expected to have any convictions or cautions for offences of a violent or threatening nature.
- A good and safe driver - those paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence.

- They should be expected to have a good knowledge of the area that they are working in.
- Good physical and mental health.
- An ability to read, speak and understand English.

“Protecting the Public” Question

The over-riding consideration of the members of the Sub-Committee is to protect the travelling public; having considered and applied the appropriate guidelines, the following question should be applied:

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If answer is yes, then a licence should normally be granted. If the Sub-Committee have any doubts, then an application must be refused until those doubts can be satisfied through further evidence being supplied. It is the applicant’s responsibility to provide sufficient evidence to this effect.

Compliance with Conditions and requirements of Licensing Authority

The Sub-Committee may take into account an applicant’s history while holding a licence, from this or any other authority. The Sub-Committee may take into account, in deciding whether a person is a fit and proper person to hold a licence such matters as their record of complaints, or positive comments from members of the public; their compliance with Licence conditions and their willingness to co-operate with Licensing Officers.

The Guidelines

Driving Offences

New applicants

Convictions for traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of an offence will be taken into account. In some cases it may be appropriate to issue a licence together with a strong warning as to future driving conduct. If a significant history of offences is disclosed, refusal of an application may result. All the possible traffic offences have been separated into two categories: minor and major offences, depending on the seriousness of the offence. Below are the guidelines as to the rehabilitation period for a specific number of penalty points awarded for offences within that specific category.

Any new applicant who has nine penalty points or more on his driving licence should expect their application to be heard at a hearing of the Council's Licensing Sub-Committee. The Sub-Committee then have the option of deciding the application on its merits, and may:

- Issue the licence with or without a written warning
- Issue the licence conditionally upon the applicant completing a Driver Correction Training Course at the driver's expense, within two months of their decision (if applicable).
- Refuse the application.

A licence may only be granted on the condition that the Sub-Committee is satisfied that the applicant is a fit and proper person.

For any minor offences totalling six or fewer points on an applicant's DVLA licence, a licence may be granted by the Licensing Officer with a formal warning with regards to future conduct.

A licence may be granted on the condition that the Sub-Committee is satisfied that the applicant is a fit and proper person.

If the applicant has been convicted of a major traffic offence within two years of the receipt of his application, then a licence should not be granted until the applicant has completed a subsequent period of two years free from conviction.

Existing licence holders

Private hire and hackney carriage drivers are professional drivers and must be aware of the safety of their passengers and the safety of their vehicles at **all** times. Any traffic offences show a lack of responsibility whilst driving.

Convictions for traffic offences should not prevent a person from proceeding with a renewal of their licence. However, the number, type and frequency of an offence will be taken into account. In some cases it may be appropriate to issue a licence together with a strong warning as to future driving requirements.

Any existing licence holder who has nine penalty points or more on his driving licence at renewal will be expected to go before a Licensing Sub-Committee hearing to explain their convictions. The Sub-Committee then has the option of deciding the application on its merits, and may

- Take no further action
- Give a written warning
- Require the driver to attend a Driver Correction Training Course at the driver's expense, within two months of their decision (if applicable).
- Suspend the Licence upon conditions or for a period of time
- Revoke the licence.

Medical Conditions

New Applicant

If the applicant's driving licence has been revoked or refused on medical grounds by the DVLA within the last five years, or the applicant has received a conviction for driving a vehicle after failing to notify a disability or made a false declaration about fitness and medical health, the application for a hackney carriage or private hire licence should be refused until medical proof of current fitness can be provided.

The onus is on the applicant to provide appropriate medical proof from their GP/consultant or authorised practitioner at their own expense, which is to be brought to the Sub-Committee hearing. The Sub-Committee should consider issuing a licence if they are satisfied that the report shows a clean bill of health, and that the applicant is a fit person to recommence driving and is thus deemed to be of no threat to the public.

If the Sub-Committee have any doubts over the applicant's fitness, then the application should be adjourned or refused until further evidence can be produced by the applicant to contest this.

Existing licence holders

If the licence holder's (DVLA) driving licence has been revoked or refused on medical grounds by the DVLA or the licence holder has been convicted of an offence of driving a vehicle after failing to notify a disability or a false declaration about fitness and medical health, the application for renewal hackney carriage or private hire licence should be refused until medical proof of current fitness has been provided.

The onus is on the licence holder to provide appropriate medical evidence from their GP, consultant or authorised medical practitioner at their own expense, which is to be brought to the Sub-Committee hearing. The Sub-Committee should consider issuing a licence if they are satisfied that the report shows that the applicant is a fit person to recommence driving and is deemed to be of no threat to the public.

If the Sub-Committee has any doubts over the applicant's fitness, then the application should be refused until further evidence can be produced by the applicant to contest this.

Cautions

New Applicant

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 the future conduct.

Existing licence holder

If a licence holder has received a caution for a traffic offence, given the nature of the offence and the profession of a hackney carriage or private hire vehicle driver, the applicant may be given a warning as to future conduct.

Insurance Offences

The Council takes a serious view of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past should not necessarily bar an applicant from being issued a licence.

More than one conviction for these offences should raise serious doubts as to a person's suitability to hold a hackney carriage or private hire licence. In this instance, at least three years should elapse (after restoration of the DVLA driving licence) before that person who has been disqualified from driving for insurance offences, might be considered as fit and proper for a hackney carriage or private hire licence.

Sexual Offences

As hackney carriage and private hire drivers often carry unaccompanied passengers, new applicants with convictions or cautions for soliciting, importuning, indecent exposure or any sexual offence should expect their application to be heard at a hearing of the Licensing Sub-Committee. New applicants will normally be refused a licence.

Any current licence holder declaring a charge, conviction or caution for any sexual offence will be expected to attend a hearing of the Licensing Sub-Committee. Depending on the nature of the conviction, the Sub-Committee may:-

- Take no further action
- Issue a written warning
- Suspend the Licence
- Revoke the licence

The following guidelines illustrate the Council's stance on rehabilitation periods after an applicant has been convicted of a sexual/indecency offence:

- **Rape** - Licence should be revoked / refused until a minimum period of 12 years on completion of sentence.
- **Indecent Assault** - Licence should be revoked/refused until a period of 10 years on completion of sentence.

- **Gross Indecency with a Female** - Licence should be revoked / refused until a period 8 years on completion of sentence.
- **Gross Indecency with a Male** - Licence should be revoked / refused until a period of 8 years on completion of sentence.
- **Indecent Assault on a Child** - Licence should be revoked / refused until a period of 12 years on completion of sentence.
- **Buggery** – Licence should be revoked until a period of 8 years on completion of sentence

Drunkness

This section has been divided into two separate sections; drink driving with a motor vehicle and drunkness without a motor vehicle. Both sections apply to new applicants as well as existing licence holders.

More than one conviction of drunkness or refusal to provide a specimen may indicate a medical problem and the applicant may be asked to submit to a medical examination by a medical practitioner nominated by the Council, before the application is entertained. If the results of the examination show the applicant to be an alcoholic, a period of five years should lapse after treatment is complete and the Sub-Committee must agree that that person is a fit and proper person to hold such a licence before a further application is considered.

Drunkness with a Motor Vehicle

The Council views driving or being in charge of a vehicle whilst under the influence of alcohol as a serious offence.

The offences that apply to this section include:

- Driving or attempting to drive with alcohol above the limit
- In charge of a vehicle, driving or attempting to drive when unfit through drink
- Refusal to provide a specimen of breath or blood for analysis

New Applicants:

Although an isolated incident will not necessarily debar an applicant, a single conviction for any drink driving offence will require a period of one year to elapse after the restoration of their DVLA licence, before being considered for a licence.

More than one incident should raise grave doubts as to future behaviour and the applicant's fitness to hold a licence. At least two years should elapse (after restoration of the DVLA licence) before an application is considered.

Existing Drivers:

A driver found guilty of driving passengers for hire and reward whilst under the influence of drink or of refusing to provide a specimen of breath or blood for analysis should expect to have his hackney carriage or private hire drivers licence revoked **IMMEDIATELY and a further application should not normally be considered until a period of five years has elapsed after restoration of the DVLA licence.**

If a driver's licence has been revoked by the DVLA for offences relating to drink driving, but not when driving for hire or reward then any application to renew a hackney carriage or private hire vehicle licence should not be considered until a period of two years has elapsed from when their DVLA licence is restored.

Drunkenness without a Motor Vehicle

An isolated conviction for drunkenness not associated with a motor vehicle will not necessarily result in an application being refused, however any new application or current licensee should expect to attend a hearing of the Licensing Sub-Committee.

- One or two convictions for drunkenness not confined to one year should result in a warning as to future conduct.
- Two convictions within a year a current licence should be suspended for a period of no more than two weeks, and a new application may be refused, or granted with a written warning.
- Three or more convictions - any current licence should be suspended for a period of no more than a month. Any new application should be refused until a period of twelve months has elapsed, free of convictions.

Drug Offences

A serious view is taken of any drug related offence. An applicant with a conviction for a drug related offence (including the supply or trafficking of drugs) should be required to show a period of at least three years free of convictions before an application is entertained.

If the applicant was required to undergo detoxification treatment, a period of five years free from conviction after the end of treatment is required. More than one conviction for a drugs related offence should debar an applicant for seven years (at least). In both instances, before a further application is entertained, a specialist medical examination will be required with negative urine screen for drugs or abuse.

Any new applicant who has served a custodial sentence for a period of five years or more for supplying controlled drugs, and has submitted their application within a period of five years from the date of release, should not be considered for a licence.

A hackney carriage or private hire driver found guilty of driving whilst under the influence of drugs, or convicted of any other drug-related offence should expect to have their licence revoked immediately. At least five years should elapse from conviction before a new application by that person will be considered.

Violence

As hackney carriage and private hire drivers maintain close contact with the public, any previous convictions for violence will be taken seriously.

- (a) An application will normally be refused for the offences listed below and an existing licence should be suspended or revoked - regardless of the period of time lapsed after the date of conviction:

- Murder
- Manslaughter
- Causing death by reckless driving, including:
 - Causing death by reckless driving when unfit through drugs:
 - Causing death by careless driving when unfit through drink
 - Causing death by careless driving with alcohol level above the limit
 - Causing death by careless driving then failing to supply a specimen for analysis
 - Manslaughter or culpable homicide while driving a vehicle
 - Causing death by dangerous driving

(b) An application will normally be refused and an existing licence should be suspended or revoked where a person has a conviction for one of the following offences and where the conviction is less than ten 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

(c) An application should be refused and an existing licence should be suspended or revoked where a person has a conviction for one of the following offences and where the conviction is less than eight years prior to the date of application:

- Grievous bodily harm with intent
- Grievous bodily harm
- Robbery
- Racially-aggravated criminal damage
- Racially-aggravated s.4 Public Order Act 1986 offence (fear or provocation of violence)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Racially-aggravated harassment
- Racially-aggravated fear of violence

(d) An application should be refused and an existing licence should be suspended or revoked where a person has a conviction for one of the following offences and where a conviction is less than five years prior to the date of application:

- | | |
|---|----------------------------------|
| • Common assault | • Obstruction |
| • Common assault which is racially-aggravated | • Possession of offensive weapon |
| • Assault occasioning actual bodily harm | • Possession of firearm |
| • Assault on the police | • Criminal damage |
| • Affray | • Violent disorder |
| • Riot | • Resisting arrest |

More than one offence

The above guidelines are applicable to applicants and licence holders who have been convicted of one offence.

If a licence holder is convicted of two or three violent offences, the licence should normally be revoked.

A history of violence (more than two convictions of any type of violence) should normally result in an existing licence being revoked and new application refused.

Possession of a Weapon

If an applicant or licence holder has been convicted for possession of a weapon or any other weapon-related offence, then serious consideration must be made as to whether this person is fit and proper to hold such a licence.

If the applicant or licence holder has been convicted of wielding or using a weapon at someone, then an application should normally be refused or their licence revoked.

Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public, for example, by demanding more than the legal fare or giving incorrect change. 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 them retaining any lost property left in their vehicle.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. For these reasons a serious view is taken at any convictions involving dishonesty.

An application will normally be refused where an applicant has a conviction for an offence of:

- Theft
- Fraud
- Handling or receiving stolen goods
- Conspiracy to defraud
- Other deception
- Burglary
- Benefit fraud
- Forgery
- Obtaining money or property by deception

Complaints against Drivers

Complaints are frequently made against hackney carriage and private hire drivers. Such complaints include refusal to assist a disabled passenger, use of abusive language or refusal to accept a fare. Such complaints should be considered first by the Licensing Officer for consideration as to the nature of the complaint being serious enough to be forwarded to the Sub-Committee.

The Sub-Committee should consider the history of all complaints made against the driver to assess any patterns. If a problem is inherent, then the Sub-Committee should consider whether the driver is fit and proper person to hold such a licence.

Glossary

Appeal	A means by which a Sub-Committee decision can be reviewed by the Magistrates Court or the Crown Court. The decision of the Sub-Committee may be upheld or overturned.
Committee	In this context, a panel of three Members of the Council's Licensing Committee forming a sub-committee with delegation power to decide the suitability of a person to hold a taxi related licence.

Conviction	Sentence of the Court.
Fit and Proper Person	A person who is of no threat to the general public, has a good character and is therefore deemed fit and able to hold a licence.
Hackney Carriage	A vehicle that can carry passengers for hire or reward, can be hailed by a prospective passenger and can park on a rank to await the approach of passengers; a car available for public hire.
Mitigating Circumstances	The conditions surrounding a conviction. These conditions may alter the seriousness of a crime.
Plying for Hire	To actively invite or respond to a hail for a taxi with the intent to charge a specific fare for the service.
Private Hire Vehicle	A car which must be pre-booked with a private hire operator. This type of vehicle cannot stand in a rank or ply for hire.
Proprietor	The person in possession of a vehicle which is the subject of a hiring agreement or hire purchase agreement.
Operator	“Operate” means in the course of business to make provision for the invitation or acceptance of bookings for a Private Hire Vehicle.
Rehabilitation	The period in which the standing authority feels a person has repented their crimes.
Revoke	To take back something for an indefinite period of time.
Suspend	To hold something away from its owner for a period of time.
Written Warning	A letter advising that, although a conviction was not serious enough to have warranted the suspension or revocation of the licence, the offence committed was unacceptable and has caused concern among the committee as to the suitability to hold such a licence. NB Where similar behaviour happens again, the consequences could be much more severe - possibly leading licence suspension.