

Middlesbrough  
Council



# **POLICY GUIDANCE TO APPLICANTS, LICENSED DRIVERS AND MEMBERS OF THE LICENSING COMMITTEE**

Relating to the relevance of convictions, cautions, complaints and driver conduct when considering applications under the provisions of the Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976.

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## **Policy on the Relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character**

### **Purpose**

The Council use this policy to make fair and, so far as possible, consistent decisions when considering convictions, cautions, reprimands, warnings, information or complaints received regarding an applicant for a private hire or hackney carriage vehicle driver's licence or an existing licensee.

This policy will be taken into account and in general will be followed when dealing with a new application, a renewal application and when considering whether to take action including a warning, suspension or revocation in relation to an existing licensee.

The policy applies to new applicants and existing licence holders and reference to "an applicant" is construed to include reference to an existing licence holder.

### **Overriding Duty**

The aim of the Council when carrying out its function of licensing hackney carriage and private hire drivers is the protection of the public including those who use or can be affected by hackney carriage and private hire services.

The Council's duty is to ensure, so far as possible, its licensed drivers are fit and proper people to hold such a position of trust. This involves a detailed assessment of an applicant or licensee's character.

The Council's licensed drivers should be 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 passengers.

A licensed driver should be courteous, avoid confrontation, not exhibit prejudice, not take the law into their own hands and demonstrate conduct befitting to the trust that is placed in them.

### **Information**

The Council may require an Applicant to submit information it reasonably considers necessary to enable it to determine whether a Licence should be granted or whether conditions should be imposed.

The Council uses the enhanced disclosure service from the Disclosure and Barring Service (DBS) and will use their vetting and barring scheme, when appropriate, to determine the suitability of applicants for hackney carriage and private hire driver's licences. Any information disclosed as being considered relevant by the Police on the DBS disclosure will be considered on its merits. However, any person on a DBS Barred List will be refused a licence.

The Council will comply fully with the DBS's Code of Practice and the requirements of the Data Protection Act 1998. Disclosure information will be used fairly, stored securely and only be handled by authorised persons. Please see guidance on the DBS

website for further information: <https://www.gov.uk/government/publications/dbs-code-of-practice>

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 itself or by other licensing authorities and information disclosed by the Police.

### **Spent Convictions**

Convictions become spent after a certain period of time depending upon the sentence imposed. These rehabilitation periods are defined by the Rehabilitation of Offenders Act 1974, however, hackney carriage and private hire vehicle drivers are exempt from this Act. This means the Council can take spent convictions into consideration if it considers the convictions have real relevance to the fitness of the applicant, taking into consideration their age, circumstances and seriousness (gauged by the penalty imposed).

On 29 May 2013, amendments were made to the Rehabilitation of Offenders Act (Exceptions) Order 1975 (the Order) so that certain old and minor cautions and spent convictions are 'protected' and are not subject to disclosure under the Exceptions Order, nor will they appear on a standard or enhanced disclosure certificate issued by the DBS. Applicants for driver licences are required to disclose all convictions cautions, final warnings and reprimands whether they are spent or not, unless they are protected under the Order.

### **Cautions and fixed penalties**

A person can be cautioned as an alternative to prosecution for various different offences. For a caution to be administered, the offender must agree to the caution, the evidence must be sufficient to have warranted a prosecution and **the offender must admit his guilt.**

Any action taken against an applicant who has received a caution will depend on the nature and circumstances of the offence, any previous history of criminality or complaints and the applicant's attitude towards the offence. Reference should also be made to other relevant parts of this guidance.

For the purpose of these guidelines, simple cautions, endorsable fixed penalties and public order fixed penalties shall be treated as though they were convictions and they shall be disclosed to the Council accordingly unless deemed to be protected under the above mentioned Order.

### **General**

Each application or review of a current licensee will be judged and determined on its own merits.

The Council will endeavour to make consistent decisions but is not bound by or obliged to follow previous decisions made by them in relation to applications or existing licence holders. Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted.

A person with a conviction, caution, reprimand or final warning issued by the Police, may not be permanently barred from obtaining a licence but should be expected to remain free from conviction or incident for an appropriate period, set out in this policy, before an application is entertained.

For a new application an applicant must produce adequate information that he is a fit and proper person to hold a licence. Simply remaining conviction free may not generally be regarded as adequate evidence that an applicant is a fit and person to hold a licence. Applicants should also demonstrate evidence of good character.

If offences have been committed the Council will consider the nature of the offence, the age of the conviction, the age of the applicant when convicted, the sentence imposed and any other relevant factors.

Any reference in this policy to a conviction or incident free period means a conviction or incident free period from the date of the most recent conviction or the completion of any sentence imposed for that conviction or restoration of a driving licence if disqualified, whichever is the later.

Multiple offences or incidents are likely to give greater cause for concern and may demonstrate an inappropriate pattern of behaviour which shows an applicant is unsuitable to be granted a licence. If taken separately the offences may meet the guidelines in this Policy, however, where there are multiple offences the Council will assess the offending on the whole rather than separately in order to assess the suitability of an applicant.

If a Licence is suspended or revoke and there is a risk to public safety the suspension or revocation may have immediate effect. This means that if a Licensee appeals the decision during the period prior to the appeal being determined the suspension or revocation remains in force.

The Council will generally follow this policy but may depart from it if there are good reasons to do so.

The following examples afford a general guide on the action to be taken where convictions, cautions, reprimands or final warnings are disclosed.

#### **(a) Minor Traffic Offences**

Any motoring offence shows a lack of responsibility whilst driving, either in terms of the maintenance and safety of their vehicle or in the manner of their driving.

The Council takes a serious view if a licensed driver commits a motoring offence as driving is his profession, he has a responsibility to ensure he drives his passengers safely and is not a risk to other road users.

A conviction, caution, reprimand or final warning issued by the Police, for a minor traffic offences may not normally prevent a person from being considered for a licence, depending on the circumstances.

If an applicant has up to six "valid" penalty points on their driving licence for such offences then the application may be granted subject to a written warning as to future

conduct. In this context 'valid' means valid for the purposes of the totting up procedure, which for most minor traffic offences means a period of 3 years from the date of the offence.

If an applicant has between 7 and 9 live points on their licence for such offences and/or a history of poor driving then the application will be referred to the Licensing Committee who may decide to refuse the application.

At the very least the applicant will be required to complete a driver improvement course identified by the Council, at his own expense, and a severe warning will be given that further offences may result in revocation of the licence.

Where an applicant has more than 9 valid penalty points for such convictions, they must show a period of 12 months free from conviction, caution, reprimand or final warning before their application is considered. Even then the application will be referred to the Licensing Committee and may be refused.

If an applicant has a significant history of offences, showing a disregard for safety or has been disqualified, for example through the totting up process, an application will not normally be considered until their DVLA licence has been restored and a conviction free period of at least 12 months to 3 years, depending on the severity of the risk, has lapsed since the date of conviction or reinstatement of the DVLA Licence, whichever is the latter.

If a Licensee has driven unsafely as a result of minor traffic offences or upheld complaints about his driving standards, putting the public at risk, depending on the severity of the risk, the Council may require the Licensee to attend a driver improvement course at his own expense and / or suspend the Licence or revoke the Licence. In view that unsafe driving is a risk to public safety a suspension or revocation may take immediate effect.

### **(b) Major Traffic Offences**

Major traffic offences include those on the attached list of offences given overleaf that have the associated codes. The Council appreciates there is a difference in the level of seriousness of these offences and will consider each on its merits.

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. Unless there are exceptional circumstances, a licence will be refused where the applicant has a conviction for an offence such as:-

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by driving whilst unlicensed, disqualified or uninsured

A serious view will also be taken regarding convictions for driving whilst using a mobile phone. There is evidence to show that drivers who use a mobile phone have slower reaction times than those who have consumed up to the legal alcohol limit. In light of this an equally serious view will be taken of a conviction for driving whilst using a mobile phone as for driving under the influence of alcohol or drugs.

If an applicant has an endorsement in respect of a major traffic offence then the application will normally be refused until at least four years after the most recent conviction, caution, reprimand, final warning or if the person was disqualified, after the restoration of their driving licence, whichever is the later.

Even if the Courts decide not to disqualify a driver under the totting up procedure, the Council may still consider that the driver is not a fit and proper person and may consider refusal or revocation of their private hire and/or hackney carriage driver's licence.

<b>DVLA CODE</b>	<b>DESCRIPTION OF OFFENCE</b>
<b>AC10</b>	Failing to stop after an accident
<b>AC20</b>	Failing to give particulars or to report an accident within 24 hours
<b>BA10</b>	Driving whilst disqualified by order of court
<b>BA30</b>	Attempting to drive while disqualified by order of court
<b>BA40</b>	Causing death by driving whilst disqualified
<b>BA60</b>	Causing serious injury by driving whilst disqualified
<b>CD40</b>	Causing death through careless driving when unfit through drink
<b>CD50</b>	Causing death by careless driving when unfit through drugs
<b>CD60</b>	Causing death by careless driving with alcohol level above the limit
<b>CD70</b>	Causing death by careless driving then failing to supply a specimen for analysis
<b>CD80</b>	Causing death by careless or inconsiderate driving
<b>CD90</b>	Causing death by driving unlicensed, disqualified or uninsured drivers
<b>CU80</b>	Breach of requirements as to control of vehicle, use of mobile telephone etc.
<b>DD10</b>	Causing serious injury by dangerous driving
<b>DD40</b>	Dangerous driving
<b>DD60</b>	Manslaughter or culpable homicide while driving a vehicle
<b>DD80</b>	Causing death by dangerous driving
<b>DD90</b>	Furious driving
<b>DG10</b>	Driving or attempting to drive with drug level above the specified limit

<b>DG40</b>	In charge of a vehicle while drug level above specified limit
<b>DG60</b>	Causing death by careless driving with drug level above the limit
<b>DR10</b>	Driving or attempting to drive with alcohol level above limit
<b>DR20</b>	Driving or attempting to drive while unfit through drink
<b>DR30</b>	Driving or attempting to drive then failing to supply a specimen for analysis
<b>DR31</b>	Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity
<b>DR61</b>	Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive.
<b>DR40</b>	In charge of a vehicle while alcohol level above limit
<b>DR50</b>	In charge of a vehicle while unfit through drink
<b>DR60</b>	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
<b>DR70</b>	Failing to provide specimen for breath test
<b>DR80</b>	Driving or attempting to drive when unfit through drugs
<b>DR90</b>	In charge of a vehicle when unfit through drugs
<b>IN10</b>	Using a vehicle uninsured against third party risks
<b>IN14</b>	Causing or permitting the use of a vehicle uninsured against third party risks
<b>UT50</b>	Aggravated taking of a vehicle
<b>TT99</b>	To signify a disqualification under totting-up procedure. If the total of penalty points reaches 12 or more within 3 years, the driver is liable to be disqualified

Other relevant parts of this guidance should be referred to if a major traffic offence involves the use of drugs or alcohol.

### **(c) Alcohol Related Offences**

A person who has been disqualified from driving as a result of an isolated drink driving offence must show at least four years free from conviction after the restoration of their driving licence before their application will be considered.

A licence will normally be refused if an applicant has more than one conviction for driving under the influence of alcohol.

A person with a conviction, caution, reprimand or final warning issued by the Police, for an alcohol related non-driving offence would be required to show a period of at least two years free from such conviction, caution, reprimand or final warning.

If there is evidence of a propensity for alcohol misuse or dependency a satisfactory specialist medical examination (in accordance with DVLA Group 2 medical standards) will be required before the licence is granted. If the applicant has been alcohol dependent then they would normally be required to show evidence of at least five years free from alcohol use after successfully completing an approved treatment programme.

#### **(d) Drug Related Offences**

An applicant with a conviction, caution, reprimand or final warning issued by the Police, for a drug-driving related offence should be required to show a period of four years free of such conviction, caution, reprimand or final warning before an application is considered.

An applicant with an isolated conviction, caution, reprimand or final warning issued by the Police, for a drug related non- driving offence should be required to show a period of at least three years free of conviction, caution, reprimand or final warning before an application is considered.

If the conviction, caution, reprimand or final warning relates to the supply of controlled drugs; possession with intention to supply controlled drugs; the production of controlled drugs (for commercial purposes) or importing drugs then the application will be refused.

In addition, a licence will normally be refused if an applicant has more than one conviction for drugs related offences.

If there is medical 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 has been an addict then they would normally be required to show evidence of five years free from drug taking after successfully completing detoxification treatment.

#### **(e) Exploitation, Sexual and Indecency Offences**

As licensed drivers often carry unaccompanied and vulnerable passengers, the Council will take a strong line in relation to applicants or Licensees involved in exploitation, illegal sexual activity or indecency.

If an Applicant or Licensee has been convicted of a crime involving, relating to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective whether the victims are adults or children, they will not be licensed. This includes but is not limited to slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse.

If an Applicant or Licensee has been convicted of an offence or has any connection with an offence involving or connected with illegal sexual activity or a form of indecency they will not be licensed.

Examples of such offences or illegal activities are as follows, (but this list is not exhaustive):

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Indecent exposure
- Unlawful sexual intercourse
- Exploitation of prostitution
- Trafficking, sexual abuse against children and / or vulnerable adults and preparatory offences (as defined within the Sexual Offences Act 2003).for sexual exploitation
- Making or distributing obscene material
- Possession of indecent photographs, child pornography etc.
- Or any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
- Prostitution
- Soliciting (kerb crawling)
- Making obscene/indecent telephone calls
- Or any similar offences (including attempted or conspiracy to commit).

The Council will refuse a licence to any applicant who is currently on the Sex Offenders Register, DBS barred lists or any other similar lists or registers.

There may be other situations where an Applicant's or Licensee's behaviour, although may not be illegal, nevertheless may result in a Licence not being granted. For example, an Applicant or Licensee having sexual relations, committing sexual acts or discussing matters of a sexual nature with a passenger should expect to have the licence refused or revoked.

#### **(f) Violence**

Licensed drivers have close regular contact with the public and are in an extreme position of trust.

A person who has a tendency to be violent, aggressive or who responds with violence when provoked will not be suitable to be granted a licence.

The Council deems incidents of domestic violence to be extremely serious because if an individual is prepared to assault an individual in a domestic or home environment,

then they would have concerns over the person's ability to maintain their temper when working in an environment dealing with members of the public.

A firm line is to be taken with those who have convictions for offences of violence or have been involved in violent acts

A Licence will not be granted where an applicant has a conviction for an offence that involved the loss of life.

A licence will not 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) offences which replace the above

A licence will normally be refused where the applicant has a conviction for an offence or similar offence(s) set out below until a period of at least ten years free of such conviction has elapsed:-

If an applicant is convicted of more than one of the offences or similar offences set out below a Licence will not be granted.

- Arson with intent to endanger life
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Possession of a weapon
- Riot
- Common assault which is racially aggravated
- Violent disorder
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will normally be refused where the applicant has a conviction for an offence or similar offence(s) set out below, until a period of at least five years free of such conviction has elapsed:-

If an applicant is convicted of more than one of the offences or similar offences set out below a Licence will normally be refused unless a period of ten years free from conviction or violent incident has elapsed.

- Racially-aggravated criminal damage
- Other racially-aggravated offences
- Affray

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

A licence will normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace the below offences, until a period of at least three years free of such conviction has elapsed:-

If an applicant is convicted of more than one of the offences or similar offences set out below a Licence will normally be refused unless a period of five to ten years, depending on the severity of the risk, free from conviction or violent incident has elapsed

- Common assault or battery
- Assault occasioning actual bodily harm
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Assault on Police
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

An applicant with a caution for violence may warrant a warning, depending upon the circumstances.

If an applicant has more than one caution and/or if a number of complaints have been received and upheld, the application may be refused or the licence revoked unless a period of at least 1 – 3 years, free from incident, has lapsed since the date of the last caution or complaint.

If an applicant or Licensee shows a propensity to be violent then the application may be refused or licence revoked irrespective of the period that has lapsed since the last violent incident.

### **(g) Dishonesty**

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. 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 and complaint involving dishonesty.

A licence will normally be refused if an applicant has been convicted of a serious offence involving dishonesty or has more than one conviction for a dishonesty offence, showing they are likely to be continually dishonest, regardless of the time elapsed since the conviction or completion of the sentence imposed.

In general, for an isolated conviction involving dishonesty, a minimum period of five years free from conviction is required before granting a licence. Offences involving dishonesty may 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
- Fare overcharging
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

An applicant with a caution for a dishonesty offence may warrant a warning depending on the circumstances.

If an applicant has more than one caution and/or if a number of complaints about dishonesty have been received and upheld, the application may be refused or the licence revoked until a minimum period of five years free from further incident can be demonstrated.

However, where such cautions and/or complaints show the applicant to be generally untrustworthy, an application may be refused or licence revoked regardless of the period lapsed since the last dishonest incident.

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 in the application process. Where an applicant has made a false statement or given a false declaration on their application, the licence will normally be refused.

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.

#### **(h) Licensing Offences or Any Breach of the Conditions or Byelaws Made Under the Relevant Legislation**

Any existing licence holder convicted of an offence relating to a hackney carriage or private hire vehicle of which they are the driver, proprietor or operator will normally be referred to the Licensing Committee as any such conviction will bring into question their continued fitness to hold a licence.

The Council will take into consideration the seriousness of the offence, the nature of the offence, any previous criminal history or complaints and the licence holder's attitude towards the offence. Other sections of this guidance will be taken into

consideration when deemed relevant, for example dishonesty offences when dealing with a conviction for overcharging a passenger, otherwise new applicants will be expected to demonstrate a period of at least three years free from conviction before a licence will be granted.

The following examples afford a general guide as to what action the Council may take in relation to existing licence holders:-

### **Proprietor Offences**

Any person convicted, cautioned, reprimanded or given a warning of an offence relating to a hackney carriage or private hire vehicle of which they are the proprietor may have their licence(s) suspended or revoked.

### **Driver Offences**

Any person convicted, cautioned, reprimanded or given a final warning of an offence whilst acting as the driver of a Hackney Carriage or Private Hire vehicle may have their driver licence suspended/suspended with immediate effect or revoked/revoked with immediate effect.

A serious view will be taken if a driver receives a conviction for breaching their duties under the Equality Act 2010 and there will be a presumption that a driver who wilfully fails to comply with section 165 will be unlikely to remain a "fit and proper person".

### **Operator Offences**

Any person convicted, cautioned, reprimanded or given a final warning for an offence relating to their operation of private hire vehicles or drivers may have their private hire operator's licence suspended or revoked.

Should the Council chose to take action short of revocation then more than one such conviction, caution, reprimand or final warning will normally lead to the driver or operator licence being revoked.

If a driver's or operator's licence is revoked as the result of breaches of licensing legislation, then that person would normally be expected to show a period of at least three years free from conviction, caution, reprimand or final warning before a new application is considered.

### **Outstanding Charges or Summons**

If the applicant is the subject of an outstanding charge or summons their application can continue to be processed, but the application will not be determined until the conclusion of the proceedings.

If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

## **Non-conviction information**

Criminal convictions are not the only criteria used when considering whether an individual is a fit and proper person to be licensed. Other factors, including the applicant's demeanour and appearance and conduct during the application process may be taken into account in determining fitness and propriety.

The Council can consider circumstances of concern even though a conviction has not been obtained or the conduct does not amount to a criminal offence.

The Council's focus is the impact of the applicant or licence holder upon members of the public. This does not require any consideration of the personal circumstances of the applicant or licensee, which are irrelevant, except perhaps in very rare cases to explain or excuse some conduct of the driver.

If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.

If a Licensee is arrested or charged with an offence, depending on the severity of the risk to the public, he should expect to have his Licence suspended or revoked. If there is a risk to public safety that suspension or revocation may have immediate effect.

In assessing the action to take, the safety of the travelling public must be the paramount concern.

## **Summary**

Whilst a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to have remained free from conviction for 3 to 10 years (the period of time depending on the conviction and circumstances, as detailed above), before an application is likely to be successful.

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.

However, whilst, the Council may exercise its discretion, the overriding consideration should be the protection of the public and someone who has committed an offence and has to wait before their application is positively considered is more likely to value their licence and act accordingly.