

Harlow Council Taxi and PHV Licensing Criminal Convictions Policy

1 Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria used 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 or private hire driver or operator licence (“a licence”) and whether to exercise its powers to refuse, revoke or suspend such a 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:
- a. That a person is a fit and proper person
 - b. That the person does not pose a threat to the public
 - c. That the public are safeguarded from dishonest persons
 - d. The safeguarding of children and young persons
- 1.3 This policy provides guidance to any person with an interest in hackney carriage and private hire licensing. In particular, but not exclusively:
- a. Applicants for drivers’ and private hire operator licences
 - b. Existing licensed drivers and private hire operators whose licence are being renewed
 - c. Licensing officers
 - d. Officers with delegated powers subject to the scheme of delegation
 - e. Members of the Licensing Committee and Licensing Sub Committee
 - f. Courts hearing appeals against local authority decisions.
- 1.4 Licensing officers shall utilise these guidelines when making a decision to grant a licence. All contentious licence applications shall be determined in accordance with the scheme of delegation.
- 1.5 Whilst officers and the Subcommittee shall have regard to the guidelines contained in the policy, **each case shall be considered on its individual merits and where the circumstances demand, the Subcommittee or officer may depart from this policy.**

2 General policy

- 2.1 There may be occasions where it is appropriate to depart from the guidelines in this Policy, 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 indicated in this Policy, 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. Where an applicant has been convicted of a criminal offence, the Council will not review the merits of the conviction (Nottingham City Council v. Mohammed Farooq (1998))

- 2.3 Where this policy requires an applicant to be free from conviction for any specified period, that period shall commence from either the date of sentence or the date of completion of a sentence, whichever date is the later. The same specified periods will apply to a suspended sentence of imprisonment, as apply to an immediate custodial sentence and community penalty orders.
- 2.4 Any reference in this policy to conviction for an offence also includes aiding and abetting, counselling or procuring that offence or an attempt or conspiracy to commit that offence and/or any offence which replaces that offence due to a change in law.
- 2.5 The following link to motoring offences and penalty points is a guide to the number of penalty points a court may impose, it does not reflect the fact that some offences may incur a disqualification. <https://www.gov.uk/penalty-points-endorsements>

3. Appeals

- 3.1 Any applicant refused a licence on the grounds that the Council is not satisfied that he or she is a fit and proper person to hold such a licence or an existing licence holder has had a licence suspended or revoked or had conditions attached to their licence, has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal or the decision attaching conditions.

4. Powers

- 4.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 ("the 1976 Act") allow the Council 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 and Police Clauses Act 1847 ("the 1847 Act"); failure to comply with the provisions of Part II of 1976 Act; or where there is any other reasonable cause.
- 4.2 The Rehabilitation of Offenders Act 1974 provides that after a defined period, convictions and cautions will not need to be disclosed for most purposes; these are termed "spent" convictions and cautions. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), however, provides for the Council to take into account **all** recorded convictions etc. in the case of an applicant for or holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Thus the Council 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.

5. Consideration of disclosed criminal history

- 5.1 Under the provisions of Sections 51, 55 and 59 of the 1976 Act, the Council 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 operator's licence is a 'fit and proper' person to hold such a licence.
- 5.2 If an applicant has been convicted of any offence, received warnings, cautions, reprimands, or has charges against them for an offence awaiting trial, is on bail before being charged or has been the subject of an anti-social behaviour order, the Council will consider :
- a. How relevant the offence(s) are to the licence being applied for
 - b. How serious the offence(s) are/were
 - c. When the offence(s) were committed
 - d. The date of conviction
 - e. Circumstances of the individual concerned
 - f. Sentence imposed by the court
 - g. The applicant's age at the time of the conviction(s)
 - h. Any other character check considered reasonable (e.g. personal references), and
 - i. Any other factors that might be relevant.
- 5.3 The Council is entitled to use other records and information which may be available to it when determining applications or when reviewing an existing licence. This may include information held by other licensing authorities and information held and disclosed by the police under the common law disclosure arrangements.
- 5.4 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.
- 5.5 The Council may also consider evidence of an applicant's conduct even though the applicant has not been convicted of any offences, received a caution or a warning or been dealt with under restorative justice procedures, etc. in relation to that conduct. Any decision regarding the conduct concerned will be based on the civil standard i.e. on the balance of probabilities.

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 normally be refused if an individual has a conviction for an offence that involves the loss of life.
- 6.2 A licence will not normally be granted where an individual has been convicted of an offence involving violence, unless free of conviction for 5 years, as determined in Section 2.3 above. However, given the range of the offences that involve violence, consideration must be given to the nature of the incident or conviction.

- 6.4 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for:
- a. Murder
 - b. Manslaughter
 - c. Manslaughter or culpable homicide while driving
 - d. Terrorism offences
 - e. Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
 - f. A licence will not normally be granted to a person subjected to civil restrictions under the Protection from Harassment Act 1997
- 6.5 A licence will not normally be granted where an individual has been convicted of an offence, unless free of conviction for 10 years, as determined in Section 2.3 above:
- a. Arson
 - b. wounding or grievous bodily harm, S18 or S20 Offences Against the Person Act 1861
 - c. Actual bodily harm which is racially or religiously aggravated
 - d. Robbery
 - e. Possession of firearm
 - f. Riot
 - g. Assault on Police
 - h. Common assault which is racially or religiously motivated
 - i. Resisting arrest
 - j. Breaching of a non-molestation order under section 42 Family Law Act 1996.
 - k. An offence under the Domestic Violence, Crime and Victims Act 2004
 - l. An offence under Section 76 of the Serious Crimes Act 2015
 - m. An offence under the Protection from Harassment Act 1997
 - n. Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
- 6.6 A licence will not normally be granted where an individual has been convicted of any other racially or religiously aggravated offence (see section above) unless free of conviction for 7 years, as determined in Section 2.3 above.
- 6.7 A licence will not normally be granted where an individual has been a convicted of an offence unless free of for 5 years, as determined in Section 2.3 above
- a. Common assault
 - b. Assault occasioning actual bodily harm
 - c. Affray
 - d. S5 Public Order Act 1986 offence (harassment, alarm or distress)
 - e. S4 Public Order act 1986 offence (fear of provocation of violence)
 - f. S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
 - g. Obstruction
 - h. Criminal damage
 - i. Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

6.8 Under section 6.7 above, a licence will not normally be granted if an individual has been convicted of more than one offence of a violent nature in the last 7 years, as determined in Section 2.3 above.

7. Possession of a weapon

7.1 A licence will not normally be granted if an individual has been convicted of an offence, unless free of conviction for 5 years, as determined in Section 2.3 above.

8. Sexual and indecency offences

8.1 Licensed drivers often carry unaccompanied and vulnerable passengers. An individual with convictions for the more serious sexual offences will generally be refused.

8.2 Any individual on the Sex Offenders Register will normally be refused a licence

8.3 A licence will not normally be granted where an individual has been convicted of more than one sexual or indecency offence.

8.4 Unless there are exceptional circumstances, an application will normally be refused where the applicant has been convicted of an offence such as:

- a. Rape
- b. Assault by penetration
- c. Offences involving children or vulnerable adults
- d. Sexual assault or Indecent assault
- e. Possession of indecent photographs, child pornography, revenge pornography etc.
- f. Exploitation of prostitution
- g. Trafficking for sexual exploitation

8.5. A licence will not normally be granted where an individual has been convicted of an offence below, unless free of conviction for 5 years, as determined in Section 2.3 above:

- a. Indecent exposure,
- b. Soliciting (e.g. kerb crawling), or
- c. any similar offences (including attempt or conspiracy to commit) or offences which replace the above.

9 Dishonesty

9.1 A licence will not normally be granted where an individual has been convicted of an offence **listed below**, unless free of conviction for 5 years, as determined in Section 2.3 above. Offences involving dishonesty include but are not limited to:

- a. Theft
- b. Burglary

- c. Fraud
- d. Benefit fraud
- e. Handling or receiving stolen goods
- f. Forgery
- g. Conspiracy to defraud
- h. Obtaining money or property by deception
- i. Other deception
- j. Taking a vehicle without consent
- k. Perverting the course of justice
- l. Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

10 Drugs

- 10.1 A licence will not normally be granted where the individual has been convicted for an offence related to the supply or possession of drugs unless the applicant has been free of conviction for 5 years as determined in Section 2.3 above..
- 10.2 A licence will not normally be granted where the individual has been convicted of more than one offence relating to the supply or possession of drugs and has not been free of conviction for 7 years, as determined in Section 2.3 above
- 10.3 If there is evidence of persistent drug use, misuse or dependency, a specialist medical examination (in accordance with DVLA Group 2 medical standards) will be required before consideration may be given to grant of a licence.

11. Driving offences involving loss of life

- 11.1 A very serious view is to be taken of an individual who has been convicted of a driving offence that resulted in loss of life. Unless there are exceptional circumstances, a licence will not normally be granted where an individual has been convicted of an offence listed below unless free of conviction for 10 years, as determined in Section 2.3 above;
- a. Causing death by dangerous driving
 - b. Causing death by careless driving whilst under the influence of drink or drugs
 - c. Causing death by careless driving, or
 - d. Causing death by driving: unlicensed, disqualified or uninsured drivers.

12 Drink driving/driving under the influences of drugs

- 12.1 A licence will not normally be granted where an individual has been convicted of an offence related to drink driving or driving under the influence of drugs unless free of conviction for 5 years, as determined in Section 2.3 above.
- 12.2 More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public. Where an applicant has been convicted of more than one such offence a licence will not normally be granted unless free of conviction for 7 years, as determined in Section 2.3 above.

12.3 Medical evidence will also be required in accordance with paragraph 11.4 above where there is evidence of misuse or dependency.

13. Use of mobile phone whilst driving

13.1 A licence will not normally be granted where an individual has been convicted of an offence related to use of mobile phone whilst driving unless free of conviction for 3 years, as determined in Section 2.3 above.

13.2 More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public. Where an applicant has been convicted of more than one such offence a licence will not normally be granted unless free of conviction for 5 years, as determined in Section 2.3 above.

14 Licensing offences, Breaches of Legislation, Conditions, Bye Laws and Complaints

14.1 The primary legislation for licensed drivers, vehicle owners and private hire operators is contained within the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847. Examples of these offences are contained in Appendix A.

14.2 A licence will not normally be granted where an individual has been convicted for offences under Hackney Carriage and Private Hire legislation unless free of conviction for 3 years, as determined in Section 2.3 above.

14.3 Licence holders are expected to comply with all relevant statutes, the Council's bye-laws, appropriate licence conditions and the Highway Code at all times. Individuals who persistently breach these will be liable to have their licence reviewed to consider whether they are still a fit and proper person to hold a licence.

14.4 Individuals who are the subject of persistent complaints will be liable to have their licence reviewed to consider whether they are still a fit and proper person to hold a licence.

15 Motor Vehicle Insurance offences

15.1 A licence will not normally be granted where an individual has been convicted for insurance offences unless free of conviction for 3 years, as determined in Section 2.3 above

15.2 Where an individual has been convicted of more than one such offence a licence will not normally be granted unless free of conviction for 5 years, as determined in Section 2.3 above.

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

16. Other driving offences

- 16.1 An isolated conviction for a motoring offence may not normally mean a refusal of a licence, subject to the offences already mentioned in the Policy. However, each case will be considered on its own merit.
- 16.2 A new applicant with points on their licence will normally be treated as follows:
- a) up to and including 6 points over a period of 3 years, applicant should be free of conviction for 12 months and the licence will normally be granted, with an advice letter.
 - b) 7-9 points, over a period of 3 years, applicant should be free of conviction for 24 months and the licence will normally be granted, with a warning letter, or
 - c) 10 points and above over a period of 3 years, application will normally be refused.
- 16.3 An existing Harlow Council licensed driver who accrues DVLA points during the term of their licence will normally be treated as follows:
- a) a total of 6 points on DVLA licence, advice letter to be issued,
 - b) 7-9 points on DVLA licence, warning letter to be issued, or
 - c) 10 points and above, matter referred to Licensing Sub Committee or Licensing Manager for review
- 16.4 In considering motoring convictions the type of offence for which the points were imposed will be considered in each case.

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 either at the conclusion of any legal proceedings or at the end of the licensing process, whichever is earlier. Where an applicant has completed all steps in the licensing process but remains subject to outstanding charges, the application shall be referred by the licensing team to the Licensing subcommittee for determination.
- 17.2 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 will likely not be granted until proceedings are concluded or the application may be refused.

18 Non-conviction information

- 18.1 If an individual has been arrested or charged, but not convicted, for a serious offence which suggests the individual could be a danger to the public, consideration shall be given by Harlow Council to refusing the application. The Council will consider all available evidence and determine whether a licence should be granted.

- 18.2 The Council may and shall be entitled to have regard to non-conviction information when deciding whether to grant or refuse a driver or operator licence. In assessing the action to take, the safety of the travelling public shall be of paramount concern.
- 18.3 Where information is received on existing licence holders, then the Council will take appropriate action depending upon the nature of the incident, the drivers past history and with consideration to Section 1.2 above. The Council may consider it appropriate to suspend or revoke a licence depending upon the circumstances.

19 Cautions

- 19.1 If an individual has received a caution a licence will not normally be granted until the applicant is free of conviction or caution, based on the time period for the category of offence referred to in this Policy and as determined by Section 2.3 above.
- 19.2 An existing driver who receives a caution may have their licence reviewed and the appropriate action taken by the Council.

20 Overseas residents

If a private hire operator applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries covering the period.

21 Licences issued by other licensing authorities

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

22. Other offences

- 22.1 The Council reserves the right to consider any other offences not specifically mentioned in this Policy in deciding whether an applicant or existing licence holder is a fit and proper person.**

23 Summary

- 23.1 While it is possible that an applicant may have been convicted of a number of offences that individually meet the Policy, the overall offending history shall be considered when assessing an applicant's suitability to be granted a license.
- 23.2 A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Some discretion may be afforded for isolated offences and where there are mitigating circumstances, but the overriding consideration is the protection of the public.

APPENDIX A

Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976 Hackney Carriage and Private Hire Offences & Penalties

Offences under the above legislation are set out below. Offences may also be committed under other legislation not listed below. Drivers and operators must comply with the legislation or they risk prosecution.

Town Police Clauses Act 1847

| Section | Offence |
|---------|--|
| 40 | Giving false information on application for hackney carriage licence |
| 44 | Failure to notify change of address of hackney carriage proprietor |
| 45 | Plying for hire without hackney carriage proprietor's licence |
| 47 | Driving a hackney carriage without hackney carriage driver's licence |
| 47 | Lending or parting with hackney carriage driver's licence |
| 47 | Hackney carriage proprietor employing unlicensed driver |
| 48 | Failure by hackney carriage proprietor to hold hackney carriage driver's licence. |
| 48 | Failure by hackney carriage proprietor to produce hackney carriage driver's licence. |
| 52 | Failure to display hackney carriage plate |
| 53 | Refusal to take a fare |
| 54 | Charging more than the agreed fare |
| 55 | Obtaining more than the legal fare |
| 56 | Travelling less than the lawful distance for an agreed fare |
| 57 | Failing to wait after a deposit to wait has been paid |
| 58 | Charging more than the legal fare |
| 59 | Carrying other person than the hirer without consent |
| 60 | Driving hackney carriage without proprietor's consent |
| 60 | Allowing another to drive hackney carriage without proprietor's consent |
| 61 | Drunken driving of hackney carriage |
| 61 | Wanton or furious driving leading to injury or danger |
| 62 | Driver leaving hackney carriage unattended |
| 64 | Hackney carriage driver obstructing other hackney carriages |

Local Government (Miscellaneous Provision) Act 1976

| Section | Offence |
|----------|--|
| 46(1)(a) | Using an unlicensed private hire vehicle |
| 46(1)(b) | Driving a private hire vehicle without a private hire driver's licence |
| 46(1)(c) | Proprietor of a private hire vehicle using an unlicensed driver |
| 46(1)(d) | Operating a private hire vehicle without a private hire operator's licence |
| 46(1)(e) | Operating a vehicle as a private hire vehicle when the vehicle is not licensed as a private hire vehicle. |
| 48(6) | Failure to display a private hire vehicle plate |
| 49 | Failure to notify transfer of a hackney carriage proprietors, or private hire vehicle, licence |
| 50(1) | Failure to present hackney carriage or private hire vehicle for inspection as Required |
| 50(2) | Failure to inform the Authority where the hackney carriage or private hire vehicle is stored, if requested |
| 50(3) | Failure to report an accident to the Authority |
| 50(4) | Failure to produce the hackney carriage proprietor's, or private hire vehicle, licence and insurance certificate |
| 53(3) | Failure to produce the hackney carriage or private hire driver's licence |
| 54(2) | Failure to wear a private hire driver's badge |
| 56(2) | Failure by a private hire operator to keep records of bookings |
| 56(3) | Failure by a private hire operator to keep records of private hire vehicles operated by him |
| 56(4) | Failure to produce a private hire operator's licence on request |
| 57 | Making a false statement or withholding information to obtain a hackney carriage, private hire driver or private hire operator licence |
| 58(2) | Failure to return a plate after notice given following expiry, revocation or suspension of a hackney carriage proprietor's, or private hire vehicle, licence |
| 61(2) | Failure to surrender a driver's licence after suspension, revocation or refusal to renew |
| 64 | Permitting any vehicle other than a hackney carriage to wait on a hackney carriage stand |
| 66 | Charging more than the meter fare for a journey ending outside the district, without prior agreement |
| 67 | Charging more than the meter fare when hackney carriage used as private hire vehicle |
| 69 | Unnecessarily prolonging a journey |
| 71 | Interfering with a taximeter |

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|----------|---|
| 73(1)(a) | Obstruction of an authorised Officer or Constable |
| 73(1)(b) | Failure to comply with a requirement of an authorised Officer or Constable |
| 73(1)(c) | Failure to give information or assistance to an authorised Officer or Constable |

Version 1, September 2006
Version 2, September 2007
Version 3, November 2008
Version 4 January 2009
Version 5, October 2014
Version 6 , September 2017