

Annex 1

STATEMENT OF POLICY AND GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This document aims to provide guidance to any person with an interest in public hire and private hire licensing. In particular, but not exclusively:

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Licensing Officers
- Members of the Licensing Committee/ Panel (or other relevant decision making body)
- Magistrates hearing appeals against local authority decisions

Thereby providing transparency and consistency in accordance with the principles of good enforcement and relevant Regulatory Compliance Codes.

Where Licensing Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Licensing Committee/ Panel (or other relevant decision-making body). Whilst Officers and the Committee/ Panel will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the Committee/Officer may depart from the guidelines.

Background

1. Licences for drivers of hackney carriages and private hire vehicles may only be granted where the Council is satisfied that the applicant is a fit and proper person to hold such a licence.
2. The document is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous convictions and cautions and/or arrests and pending prosecutions.
3. The Council must ensure:
 - That a person is a fit and proper person.
 - That a person does not pose a threat to the public.
 - That the public are safeguarded from dishonest persons.
 - The safeguarding of children, young and vulnerable persons.
4. The public do not normally attend Licensing hearings for hackney carriage or private hire applications. The Licensing Committee/ Panel are required to take account of current UK and European legislation in reaching their decisions.
5. When submitting an application for a licence to drive a hackney carriage or private hire vehicle, applicants are required to declare all previous convictions they may have. Applicants are also required to declare all formal cautions and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.
6. The information given will be treated in confidence and will only be taken into account in relation to the relevant application to assist the Council in determining whether the applicant is a fit and proper person to hold a driver's licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a licence).
7. Applicants should be aware that the Council is empowered by law to check with the Disclosure and Barring Service (previously the Criminal Records Bureau) for the existence and content of any criminal record and other intelligence held in their name. Information received from the Disclosure and Barring Service (DBS) will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the application is determined or any appeal against such determination is decided.
8. The disclosure of a criminal record or other information relating to criminal matters will not necessarily debar an applicant from obtaining a driver's licence. The Council will however consider all information on an enhanced DBS and takes a serious view of any special Police warnings contained therein. If information recorded on the DBS relates to a risk to children and young people a senior representative of the Sefton Council Safeguarding Unit will be consulted for their professional advice as to whether the applicant is a 'Fit and Proper' individual to be granted a licence. Whether or not an applicant will be granted a licence will depend upon whether or not they can satisfy the Council that they are a fit and proper person to hold such a licence.

9. The Council may not be satisfied that an applicant is a fit and proper person to hold a driver's licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a licence.
10. In considering evidence of an applicant's good character and fitness to hold a driver's licence, where previous convictions or other information relating to criminal matters is disclosed, the Council will consider the nature of the offence, the date of conviction, the applicant's age when the offence was committed, the penalty imposed and any other factors which might be relevant. Where an applicant has been convicted of a criminal offence, the Council cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].
11. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining applications for drivers' licences.
12. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an individual's application.

If an applicant has a conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 10 when deciding whether any action should be taken. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.

13. The guidelines are not an attempt to define what a "fit and proper person" is.
14. Any applicant refused a driver's licence on the ground that the Council is not satisfied he is a fit and proper person to hold such a licence has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.
15. The guidance will be used for the determination of new applications, the renewal of existing licences and the review of existing licences in relation to hackney carriage drivers, private hire drivers and operator licences.
16. It is common practice for Applicants to submit simultaneous applications for Hackney Carriage and Private Hire Driving Licence(s). Licensing Authorities may use the same application form that allows the applicant to specify if they are applying for both types of driver's licences or only one type. This provides an efficient service for the customer and saves needless duplication. For dual applications the Licensing Committee/Panel are asked to apply the fit and proper test to each individual application. Similarly were an existing driver who holds both Private Hire and Hackney Carriage Licences is referred to Committee/Panel the fit and proper test will be applied individually to each Licence.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS

General Policy

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers are fit and proper persons to hold licences. One aspect of that is the extent to which previous convictions, including but not limited to convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and would not take advantage of passengers or abuse or assault them.
3. A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
 - a) Remain free of conviction for an appropriate period; and
 - b) Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).
Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence. (see (4) below).
 - c) **For the purpose of clarity the disqualification period runs from the end of any sentence, for example custodial sentence or suspended sentence or community service.**
4. It should be noted that serious offences and multiple repeat offences will be considered despite being outside the general disqualification period. For example:
 - There may be situations where the offence is an isolated one with mitigating circumstances or where a conviction defaults outside of the policy between the application and determination date.
 - Multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.
 - In any case which involves certain specified sexual offences, murder or manslaughter a licence will normally be refused.
5. The following examples afford a general guide on the action, which might be taken where convictions are disclosed:
 - a) **Offence of Dishonesty**

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust.

Passengers may include especially vulnerable people. Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty. In general an applicant with convictions for dishonesty, which are less than 3-5 years old, is unlikely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for an offence or similar offences or offences which replace the offences below and the conviction is less than 3 years prior to the date of application:

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- Handling or receiving stolen goods
- Forgery (e.g. producing false insurance policy)
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception offences

b) Violence

1. Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years).

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons. Where the commission of an offence involved loss of life a licence will normally be refused. In other cases a period of 5 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will generally be required before an application is likely to be considered favourably.

2. Offences against Other Persons.

As hackney carriage and private hire vehicle drivers maintain close contact with the public, where the commission of an offence involved loss of life a licence will normally be refused. In other cases a period of 3 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will generally be required before an application is likely to be considered favourably.

In particular:

i) An application will normally be refused where the applicant has a conviction for an offence or similar offence(s), which replace the offences below:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism

ii) An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date of application:

- Arson
- Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
- Grievous bodily harm with intent (s.18 Offences Against the Person Act) 1861
- Grievous bodily harm without intent (s.20 Offences Against the Person Act) 1861
- Robbery
- Possession of firearm
- Riot
- Pervert the course of justice
- Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Violent disorder

iii) An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)

- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)

iv). An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace the below offences and the conviction is less than 3 - 5 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act) 1861
- Affray
- 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
- Possession of offensive weapon
- Criminal damage
- Battery
- Assault Police

c) Drugs

An application will normally be refused where the applicant has a conviction for an offence related to the supply of drugs or for the production or cultivation of drugs and the conviction is less than 5-10 years prior to the date of application.

After 5 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

An application will normally be refused where the applicant has more than one conviction for offences related to the possession of drugs and the convictions are less than 5 years prior to the date of the application.

An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3 to 5 years will require careful consideration of the facts.

If any applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

d) Sexual and Indecency Offences

Any applicant currently on the sex offenders' register would *not normally be granted a licence*.

- i) Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons. Where the commission of a sexual offence involves a child or young person or a driver has sexually exploited a young person an application for a licence will normally be refused.

- ii) Offences against persons other than children / young persons

As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, applicants with a conviction for rape, indecent assault, assault by penetration, grooming, trafficking, any sexual exploitation offences, making or distributing obscene materials, possession of indecent materials including child pornography or any similar offences under the Sexual Offences Act 2003, **will normally be refused a licence**. Applicants with a conviction relating to sexual offences such as soliciting, importuning, indecent exposure or other similar offences or similar offences under the Sexual Offences Act 2003, will normally be refused a licence until they can show a substantial period (*usually 10 years*) free from any such conviction.

After 10 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

- e) Drunkenness

- i) With a motor vehicle (No Disqualification)

A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An application will normally be refused where the applicant has a conviction, which does not result in the normal obligatory disqualification (exceptional circumstances only), for an offence within 1 year of the date of the application. More than one conviction for this type of offence, within the last 5 years of the date of conviction is likely to merit refusal.

- ii) With a motor vehicle (Disqualification)

Where a disqualification has occurred as a result of a drink driving offence, at least *2 years free* from conviction should normally elapse from the date of the restoration of the DVLA licence before an applicant is considered for a licence. In addition, applicants will normally be required to show a period of at least 3 years has elapsed after completion of detoxification treatment for alcoholism. More than one conviction for this type of offence, within the last 5 years of the date of conviction is likely to merit refusal.

iii. Not in a motor vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate. More than one conviction for drunkenness could indicate a medical problem necessitating critical examination and refusal of a licence. In addition, applicants will generally be required to show a period of at least 1 year has elapsed after completion of detoxification treatment for alcoholism.

a) General Motoring Convictions

- i. A driver's licence will only be granted if the Council is satisfied that the applicant is a fit and proper person – the Council will consider all information available including relevant motoring convictions and fixed penalties. Private hire and hackney carriage drivers are considered professional drivers and must be aware of the safety of their passengers, the safety of their vehicles and other road users at all times. As such, traffic offences may show a lack of responsibility whilst driving either due to the maintenance and safety of their vehicle or due to the manner of their driving.
- ii. When considering new applications and renewals of existing licences, the number, type and frequency of offences will be taken into account. In some cases it may be appropriate to issue a short licence together with a warning as to future conduct. If a significant history of offences is disclosed, an application may be refused.
- iii. If you have been disqualified from driving for 'totting up' points, the Council will want to be satisfied that, upon the return of your DVLA driving licence you will remain free of further incidents for a period of time. Therefore, the time period (or additional disqualification period) before you can apply for a Sefton licence will match the DVLA disqualification i.e. a 3 month DVLA ban will mean you will not be eligible to apply for a Sefton licence until 3 months after the return of your DVLA licence/entitlement (provided you have remained free of any further incidents).

b) Mitigation Panel

- i) When considering licence applications, the mitigation panel will consider all relevant motoring offences and may decide to refuse an application due to the serious nature or number of offences. Each decision will be made on an individual case-by-case basis and it is not possible to list all circumstances when an application may be refused here. With regard to applications which pose a risk to children and young people a senior representative of Sefton Council's Safeguarding Children Unit will sit on the Mitigation Panel.
- ii) The panel will give consideration to all offences but those of a more serious nature will give more cause for concern and the panel would expect to see a significant period of time free of convictions upon application.

iii) Any applicant who is refused a licence will be offered the chance to appeal the panel's decision in the Magistrates Court.

h) Plying For Hire

In the case of a private hire driver found guilty of an offence of plying for hire, Committee / Panel would normally order the licence to be revoked or suspended.

i) Breach of Conditions, Bye-laws and complaints

Any serious or repeated breach of conditions by a private hire driver or similar breach of bye-laws by a hackney carriage driver will be referred to the Committee/ Panel. A driver brought before the Committee / Panel without an associated conviction would be dealt with by formal written warning or period of suspension of up 3 months.

j) Reapplication

Applicants are advised that Council guidelines are that where an applicant has had an application refused or a licence revoked, the Committee/Panel would normally refuse any subsequent application made within 12 months of the date of the previous refusal or revocation unless there are substantial material changes in the applicant's circumstances.

k) Other Offences

i) Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws and Section 167 Criminal Justice and Public Order Act 1994.

ii) One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") and Hackney Carriage Byelaws, is to ensure the protection of the travelling public. For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire and/or touting) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence. In particular, an applicant will normally be refused a licence if he/she has been convicted of an offence under the Acts at any time during the 2 years preceding the application or has more than one conviction within the last 5 years preceding the date of the application.

