

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 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 Panel (or other relevant decision-making body). Whilst Officers and the 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 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 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 currently 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. Applicants will also be required to register for the DBS update service.
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 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 the Licensing 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
 - (1) Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

b) Offences involving Violence

- (1) Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least ten years have elapsed since the completion of any sentence imposed.
- (2) Possession of a weapon. Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.
- (3) Crimes resulting in death. Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.
- (4) An application will also normally be refused where the applicant has a conviction for an offence (or similar offence(s)) relating to Arson, Riot or Perverting the Course of Justice

c) Discrimination

- (1) Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

d) Criminal Damage

- (1) An application will also normally be refused where the applicant has a conviction for an offence of criminal damage (or similar offence(s)) conviction is less than three years prior to the date of application.

e) Drugs

- (1) Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply, connected with possession with intent to supply or cultivation of drugs, a licence will not be granted until at least ten years have elapsed since the completion of any sentence imposed.
- (2) Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

f) Drink driving/driving under the influence of drugs.

- (1) Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant

may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs. Any driver that fails a Police roadside or other test for drink or drugs will have their licence revoked.

g) Sexual and Indecency Offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted. In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

h) Exploitation.

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

i) General Motoring Convictions

- (1) Motoring Convictions. Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.
- (2) If you have been disqualified from driving including for excessive 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).
- (3) Using a hand-held device whilst driving. Where an applicant has a conviction *or penalty* for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.
- (4) The Council will review the licence of any driver that reaches twelve points on their DVLA licence. Although certain motoring offences will normally lead to revocation or refusal, the Council will consider mitigating circumstances against any decision made including the length of any applicable disqualification period (via panel) upon request.

(5) Where an existing driver is affected by any amendments made to the policy on previous convictions, the Council will consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from the policy, the Council may consider doing so and will record the reasons for any deviation from current policy.

j) Mitigation Panel

1) When considering licence applications, the mitigation panel will consider all relevant 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 may sit on the Mitigation Panel.

2) 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.

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

k) Plying For Hire & Driving with No Insurance

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

l) 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 Panel. A driver brought before the Panel without an associated conviction would be dealt with by formal written warning or period of suspension of up to 3 months.

m) Reapplication

Applicants are advised that Council guidelines are that where an applicant has had an application refused or a licence revoked, the 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.

n) Other Offences

1) 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.

2) 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.

o) National Database of Suspensions & Revocations

When assessing an application, the Council will have regard to any information contained in the NR3 national database and may decide to refuse on the basis of any adverse information held by another local authority.

