

## **EAST LINDSEY DISTRICT COUNCIL**

### **GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS – HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS AND PRIVATE HIRE VEHICLE OPERATORS**

#### **1. Introduction**

1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Council (the Licensing Authority) when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire vehicle driver's licence. The policy also relates to applicants for a private hire vehicle operator licence and holders of a current private hire vehicle operator licence.

1.2 In drafting and adopting these guidelines the Licensing Authority took into consideration the Statutory Taxi & Private Hire Vehicle Standards issued by the Department of Transport in July 2020.

1.3 The purpose of setting guidelines and standards is to protect children and vulnerable adults, and by extension the wider public, when using hackney carriages and private hire vehicles.

1.4 The overriding aim of the Licensing Authority is to protect the safety of the public. The Licensing Authority is concerned to ensure:

- That a person is a fit and proper person
- That the person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children, young persons and vulnerable adults

1.5 This policy provides guidance to any person with an interest in hackney carriage and private hire licensing. In particular, but not exclusively:

- Applicants for drivers and operator licences
- Existing licensed drivers and operators whose licences are being reviewed
- Licensing Officers
- Members of the Council's Licensing Committee
- Magistrates hearing appeals against Local Authority decisions

1.6 The Licensing Authority has a duty to ensure that any person to whom it grants a hackney carriage or private hire vehicle driver's licence is a 'fit and proper' person to be a licence holder. Where appropriate and when considering whether an applicant or licensee is fit and proper may decide to pose itself the following question:

Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

1.7 If, on the balance of probabilities, the answer to the above question is 'No', the individual will not be granted or hold a licence.

1.8 Licensing Authorities have to make difficult decisions but the safeguarding of the public is paramount. All decisions on the suitability of a licence applicant or licence holder will be made on the balance of probability. This means that an applicant or licence holder will not be 'given the benefit of doubt'. If the Licensing Authority is only "50/50" as to whether the applicant or licence holder is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

1.9 In considering an individual's criminal record, this Authority will consider each case on its merits, but it will take a particularly cautious view of any offences against individuals with special needs, children and other vulnerable groups, particularly those involving violence, those of a sexual nature and those linked to organised crime.

1.10 Where Licensing Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision whether or not to grant a licence. Should there be any doubt, in the Officer's opinion, as to whether the applicant is a 'fit and proper' person, then the application will not be granted under delegated powers. Such applications will be referred to the Council's Licensing Committee (consisting of Councillors) for determination. Whilst Officers and the Licensing Committee 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 or Officer may depart from the guidelines, as long as the reasons for doing so are recorded in the decision.

## **2. General Policy**

2.1 There may be occasions where it is appropriate to depart from the guidelines, for example, where the offence is a one-off occasion or there are mitigating circumstances. However, the overriding consideration should always be the protection of the public.

2.2 A person with a relevant conviction need not be automatically barred from obtaining a licence, but would be expected to 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.

2.3 A series of offences over a period of time is more likely to give cause for concern than an isolated, minor conviction. A serious view will be taken when an applicant shows a pattern of offending and unfitness.

2.4 Where an applicant has been convicted of a criminal offence, the Licensing Authority cannot review the merits of the conviction (*see Nottingham City Council v. Mohammed Farooq (1998)*) and, for instance, determine that the applicant should never have been convicted.

2.5 Persons with a conviction(s) for any sexual offence or connected with illegal sexual activity or any other very serious crime will not be issued with a licence.

2.6 The Council generally considers that, on some occasions, offence(s) committed by licensed hackney carriage and private hire drivers may need to be considered more seriously than offences committed by individuals when not licensed. This is because current licensees have previously been judged as fit and proper and are aware of the standards required of them and are expected to maintain those high standards of personal conduct.

2.7 **Cautions** - Adult cautions are not regarded as convictions, but being admissions of guilt, may be taken into consideration by the Licensing Authority.

2.8 **Private Hire Vehicle Operators** - In view of the significant responsibility held by private hire vehicle operators in terms of setting standards for their company, recruiting drivers, and dealing with members of the public, the Council believes that the operator must be a person of impeccable character and should be an example to all those whom he/she employs. Therefore, the view of the Licensing Authority is that applicants for a private hire operator's licence (and holders of a private hire operator's licence) must at least fulfil the same requirements as applicants for private hire driver's licences in terms of being free from serious convictions or a pattern of unlawful behaviour.

### 3. **Criminal Record Checks**

3.1 It is the policy of the Licensing Authority that every applicant for a licence to drive a hackney carriage and/or private hire vehicle must produce evidence of a current and up to date Enhanced Disclosure and Barring Service Check and evidence that they are not on a child and/or vulnerable adult barring list. Applicants for a private hire vehicle operator licence, who do not hold a hackney carriage or private hire vehicle driver's licence with this Authority, will be required to present the result of a current and up to date Basic Disclosure Check from CRB Scotland (at their own expense).

3.2 Overseas Convictions - If an applicant has spent six continuous months or more overseas the Licensing Authority will expect to see evidence of a criminal record check (or certificate of good conduct) from the country/countries covering the relevant period before a licence application can be made. It should however be noted that some countries will not provide a Certificate of Good Character unless the individual has been resident for six months or more.

3.3 Such criminal record checks or certificates of good conduct must be provided in accordance with the Home Office Document "*Application Processes for Foreign National Criminality Information*". Any criminal record check must be translated into English by a recognised translation service provider that has been approved by the Licensing Authority.

3.4 Licensee Self-Reporting - Licence holders are required by this Authority to notify the Licensing Team within 48 hours of an arrest and release, charge or conviction of any sexual offence, any offence involving dishonesty or violence and any motoring offence. An arrest for any of the offences within this scope (with the exception of one-off minor traffic offences) will result in a review by this Authority as to whether the licence holder is fit to continue to hold a licence. This will not however be seen as a direction that a licence should be withdrawn; it is for the Licensing Authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities.

#### 4. **Appeals**

4.1 Any applicant refused a driver's licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.

4.2 Any applicant refused an operator licence on the grounds that the Licensing Authority is not satisfied he/she is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.

4.3 Any licensee whose licence is suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice of suspension or revocation.

#### 5. **Powers – Suspension, Revocation or Refusal to Renew a Licence**

5.1 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 allows the Licensing Authority to suspend, revoke or refuse to renew a hackney carriage or private hire driver licence if the applicant/licence holder has been convicted of:

- an offence involving dishonesty, indecency or violence; or
  - failure to comply with the provisions of the Town Police Clauses Act 1847;
- or

- failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976;

The Licensing Authority may also suspend, revoke or refuse to renew on the grounds of any other reasonable cause.

5.2 Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 allows the Licensing Authority to suspend, revoke or refuse to renew a private hire vehicle operator licence if the applicant/licence holder has been convicted of failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976. The Licensing Authority may also act on any of the following grounds:

- conduct which appears to render him/her unfit to hold a licence;
- any material change in the circumstances of the operator;
- or any other reasonable cause.

5.3 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant or the holder of a hackney carriage or private hire vehicle driver's licence, whether spent or not. Therefore, the Licensing Authority may have regard to all relevant convictions (as defined in this policy); particularly where there is a long history of offending or a pattern of repeat offending. However, before having regard to such a spent conviction the Licensing Authority will firstly consider whether the conviction is relevant to the licence application at hand.

5.4 In this policy the term "disqualification" refers to the period served, to take account of the fact that a period of disqualification from driving may be reduced upon the successful completion of a relevant driver rehabilitation course. An applicant must provide the Licensing Authority with sufficient evidence to prove that the period of disqualification was so reduced.

## 6. **Consideration of Disclosed Criminal History**

6.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority 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 operators licence is a 'fit and proper' person to hold such a licence. The Authority must not grant a licence unless it is satisfied that the applicant is a fit and proper person to hold it.

6.2 All conviction(s), criminal findings of guilt (including fixed penalty ticket(s)), caution(s) and warning(s), whether for motoring or other offences and County Court Judgment(s)/Order(s) (*where the judgment or order relates to a debt or charge to another Hackney Carriage/Private Hire driver, owner or operator*) may potentially be taken into account when deciding to grant a licence

or on a review after the issue of a licence. During the currency of a licence the licence holder should, immediately after being told that/she is being reported for an offence, being arrested, convicted or has admitted guilt (including fixed penalty notice(s)), caution(s) and/or warning(s), advise the Licensing Authority of this information in writing.

6.3 The Licensing Authority will consider:

- How relevant the offence(s) are to the licence being applied for (or licence being reviewed)
- How serious the offence(s) were
- When the offence(s) were committed
- The date of conviction
- Sentence imposed by the court
- The applicant's age at the time of conviction.
- Whether they form part of a pattern of offending
- Any other character check considered reasonable (*e.g. personal references*)
- Any other relevant factors

6.4 Applicants, for the grant of a first time licence, can discuss further what effect a caution/conviction or other sanction may have on any licence application by contacting the Council's Licensing Officer in confidence for advice.

6.5 The Licensing Authority requires enhanced disclosures from the Disclosure and Barring Service (DBS) from any applicant for a driver licence. The Licensing Authority follows the DBS's Code of Practice on the fair use of disclosure information. A copy is available on request.

6.6 Applicants applying for the grant or a renewal of a drivers' licence will be required to obtain an Enhanced Disclosure at their expense. The Licensing Authority abides by the DBS's Policy on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request.

6.7 This Licensing Authority requires applicants and licence holders to register for the DBS's update service and to nominate the Licensing Authority to receive updates. All licensed drivers will be required to evidence continuous registration with the DBS update service to enable the Licensing Authority to routinely check for new information every six months. Drivers that do not subscribe up to the update service should will be subject to a DBS check every six months.

6.8 DBS certificates obtained for a hackney carriage or private hire driver licence cannot be used for the purpose of obtaining a Lincolnshire County Council School Transport Badge ("Green Badge") and vice versa. A separate check is required for each authorisation. However, applicants can register both checks with the DBS update service.

6.9 The Licensing Authority 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 Licensing Authority or other Licensing Authorities, and information disclosed by the Police.

6.10 It is an offence for any person knowingly or recklessly to make a false declaration (or to deliberately omit any relevant material) in submitting information required by the application for a licence. 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 may be refused or revoked.

6.11 In the interests of public safety this Authority will not issue a licence to any individual that appears on either of the regulated activity barred lists - 'Activity with Children' and 'Activity with Adults'

## **7 Offences Involving Violence or Resulting in Death**

7.1 Licensed drivers have close regular contact with the public. A firm line will be taken with those who have convictions for offences involving violence. 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.

7.2 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 10 years have elapsed since the completion of any sentence imposed.

7.3. Given the wide range of the offences that involve violence, consideration will be given to the nature and type of the conviction.

7.4 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
- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Or any offence of attempting, conspiring to commit, aiding and abetting or procuring any of the above offences or any offence which may replace the above or be considered as serious as the above.

7.5 A licence will not be granted where the applicant has a conviction for an offence below (or similar offence(s) which replace the below offences) or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence and the conviction (or completion of sentence - whichever is longer) is less than 10 years prior to the date of application:

- Actual bodily harm which is racially aggravated
- Robbery
- Possession of firearm
- Riot
- Assault of a Police Officer
- Common assault (racially aggravated)
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A hackney carriage or private hire driver found guilty of any of the offences (detailed in this paragraph 7.5 of the policy) should expect to have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 10 years since conviction (or completion of sentence - whichever is longer) has elapsed.

7.6 A licence will not normally be granted where the applicant has a conviction for an offence below (or similar offence(s) which replace the below offences) or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence and the conviction (or completion of sentence - whichever is longer) is less than 7 years prior to the date of application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A hackney carriage or private hire driver found guilty of any of the offences (detailed in this paragraph 7.6 of the policy) should expect to have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 10 years since conviction (or completion of sentence - whichever is longer) has elapsed.

7.7 A licence will not normally be granted where the applicant has a conviction for an offence below (or similar offence(s) which replace the below offences) or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence and the conviction is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm
- 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
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A hackney carriage or private hire driver found guilty of any of the offences (detailed in this paragraph 7.7 of the policy) should expect to have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 5 years has elapsed.

7.6 A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

7.7 In the event of a licence being granted, a strict warning both verbally and in writing will be administered.

7.8 **Fixed Penalty Notices (Public Order Offence)** - The Licensing Authority recognises that in some instances a Fixed Penalty Notice (FPN) may be issued for a Public Order Offence rather than the option of prosecution through the Courts or acceptance of a Caution. A serious view will be taken of the existence of a FPN for a public order offence. In certain instances, where a FPN has been issued it may be appropriate for the Council to issue a strong warning regarding future conduct rather than the refusal of a licence application or suspension / revocation of a licence. The existence of more than one FPN will raise serious concerns regarding an individual's suitability to act as a licensed driver.

## 8. **Possession of a Weapon**

8.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give rise to serious concern as to whether the person is fit to carry the public. 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.

8.2 A hackney carriage or private hire driver found guilty of any offence involving a weapon(s) should expect to have his/her licence revoked immediately and not be considered for the grant of a licence until a minimum period of 7 years since conviction (or completion of sentence - whichever is longer) has elapsed.

## 9. **Sexual and Indecency Offences and Exploitation**

9.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences will normally be refused.

9.2 In particular, an application will be refused where the applicant has a conviction for an offence or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence such as:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Any offence involving child sexual exploitation and/or sexual exploitation of vulnerable adults
- 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 private hire vehicle driver
- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences or any offence of attempting, conspiring to commit, aiding and abetting or procuring such offence.

9.3 A driver found guilty of a sexual or indecency offence during the period of a licence can expect to have his/her hackney carriage or private hire vehicle driver's licence revoked immediately. He / she can expect not to be licensed again.

9.4 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.

9.5 **Exploitation** - Where an applicant or licence holder 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.

## 10. **Discrimination**

10.1 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.

10.2 A licence holder found guilty of a discrimination offence can expect to have his/her hackney carriage or private hire vehicle driver's licence revoked immediately. It is unlikely that anyone in this situation will ever be licensed again until a period of at least seven years have elapsed since the completion of any sentence imposed.

## 11. Dishonesty

11.1 Licensed drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property, taking children to school and families on holiday, is indicative of the trust that people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by any lost property being kept by an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty.

11.2 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.

11.3 A licensed driver found guilty of a dishonesty offence should expect to have his/her licence revoked immediately and be banned from holding such a licence with the Council for a minimum period of 7 years after conviction (or completion of sentence - whichever is longer).

11.4 Offences involving dishonesty 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
- and any similar offences
- Or any similar offences (including attempting, conspiring to commit, aiding and abetting or procuring such offence) or any offences which replace the above

10.4 A licence will not normally be granted if an applicant has more than one conviction for a dishonesty offence.

## 11. **Drugs**

11.1 A very serious view is taken of any drug related offence.

11.2 Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

11.3 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 5 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.

11.4 If there is 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 was an addict, then they would normally be required to show evidence of at least 5 years free from drug taking after detoxification treatment.

11.5 A licence will not normally be granted if an applicant has more than one conviction for a drugs related offence.

11.6 A hackney carriage or private hire vehicle driver found guilty of any drug-related offence should expect to have his/her drivers licence revoked immediately and be banned from holding such a licence with the Council for 10 years since conviction (or completion of sentence - whichever is longer)

## 12 **Driving Offences Involving the Loss of Life**

12.1 Where an applicant or licensee has been convicted of a driving offence which resulted in the death of another person they will not be licensed.

## 13 **Drink Driving or Driving Under the Influence of Drugs**

13.1 **Motor Vehicle** - A serious view will be taken of convictions for driving or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident may not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence.

13.2 At least 7 years should elapse (after the restoration of the DVLA driving licence) before an applicant is considered for a licence. If there is any suggestion that the application is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic, a period of 7 years should elapse after treatment is complete before a further licence application is considered.

13.3 A hackney carriage or private hire vehicle driver found guilty of a drink-driving offence (or driving under the influence of drugs) should expect to have his/her drivers licence revoked immediately and be banned from holding a hackney carriage or private hire vehicle drivers licence with the Council for at least 7 years after the restoration of the DVLA driving licence.

13.4 **With a Licensed Vehicle** - A driver found guilty of driving passengers for hire and reward whilst under the influence of drink should expect to have his/her driver's licence with the Council revoked immediately and be banned from holding a driver's licence with the Council for a minimum period of 7 years after the restoration of the DVLA driving licence.

#### 14. **Major Traffic Offences (Not Involving the Loss of Life)**

14.1 An isolated conviction for reckless driving or driving without due care and attention, etc., should normally merit a strict written warning as to future driving and advice on the standard expected of hackney carriage and private hire drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 3 years free from convictions has elapsed.

14.2 Similarly, a first conviction during the period of a hackney carriage or private hire vehicle driver's licence will indicate that the driver may have ceased to be a fit and proper person and will lead to a licence suspension or a strict written warning as to future conduct, and may lead to revocation of that licence for subsequent convictions.

14.3. **Applicants who have been disqualified from driving due to Major Traffic Offences (Not Involving the Loss of Life)**- At least 3 years should elapse (after the restoration of the DVLA licence) before the individual is considered for a hackney carriage or private hire vehicle driver's licence.

#### 15 **Insurance Offences (With a Motor Vehicle)**

15.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for at least 3 years; however, a strict warning should be given as to future behaviour.

15.2 A licence will not normally be granted if an applicant has more than one conviction for an insurance related offence.

15.3 A driver found guilty of driving passengers for hire and reward whilst without insurance should expect to have his/her hackney carriage or private hire vehicle drivers licence revoked immediately and not be considered for another licence for a minimum period of 5 years.

15.4 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 5 years.

## 16 **Using a Mobile Phone or Hand-Held Device Whilst Driving**

16.1 Applicants (and licence holders) should be aware of the serious risk posed by driving whilst using a mobile phone. There is a substantial body of research which shows that drivers who use a mobile phone or hand-held device suffer physical and cognitive distraction which means they:

- are much less aware of what's happening on the road around them
- fail to see road signs
- fail to maintain proper lane position and steady speed
- are more likely to 'tailgate' the vehicle in front
- react more slowly, take longer to brake and longer to stop
- are more likely to enter unsafe gaps in traffic
- feel more stressed and frustrated.

16.2 There is evidence to show that drivers who use a mobile phone or hand-held device have slower reaction times than those who have consumed up to the legal alcohol limit. In light of this, an equally serious view should be taken of convictions for driving whilst using a mobile phone or hand-held device as for driving under the influence of drink or drugs.

16.3 Where an applicant has a conviction 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.

16.4 A licence will not normally be granted if an applicant has more than one conviction for an offence of driving whilst using a mobile phone and a licensed driver who is convicted can expect the suspension or revocation of their licence.

## 17. **Other Traffic Offences**

17.1 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.

17.2 Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

17.3 **New Applicants** – Any conviction for other traffic offences, (e.g. obstruction, waiting in a restricted street, speeding, etc.) should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account. In certain instances, it may be appropriate to issue a licence together with a strong warning as to future driving requirements. If a history of multiple offences is disclosed, refusal of an application may result.

17.4 New applicants who have received 9 or more penalty points (in respect of minor traffic offences) on their driving licence during the 12 months prior to the date of application may be refused.

17.5 Applicants who have been disqualified from driving under the “totting-up” procedure will not normally be granted a licence unless they have held a licence for at least 2 years following the expiry of the period of disqualification and can show a significant improvement in a history of traffic offences received during that period.

17.6 **Existing Licence Holders** - A hackney carriage or private hire vehicle driver receiving 6 or more penalty points during any three year period can expect to have the status of their licence reviewed and at the very least expect to be issued with a strict written warning as to future conduct.

17.7 Any current driver disqualified from holding a DVLA licence under the “totting-up” procedure should expect to have his/her hackney carriage or private hire vehicle driver licence revoked. At least 3 years should then elapse (after the restoration of the DVLA licence) before he/she is considered for a licence and then a licence should only be granted if he/she can show a significant improvement in a history of traffic offences received during that period.

17.8 In the case of an existing hackney carriage or private hire vehicle driver where the “totting-up” disqualification of a DVLA licence is considered by the Court, even if the Court does not disqualify, the Council is likely to revoke the hackney carriage or private hire vehicle driver’s licence. At least 3 years should elapse (after the restoration of the DVLA licence) before the individual is then considered for a licence.

17.9 In the case of an existing hackney carriage or private hire vehicle driver, who shows a pattern of driving endorsements, the Licensing Authority reserves the right to require such a driver to successfully undergo the DSA Taxi and Private Hire Driver Driving Assessment or the Taxi and Private Hire Driving Assessment provided by the Lincolnshire Road Safety Partnership (or other similar body approved by the Licensing Authority).

## **18 Drunkenness (Not in a Motor Vehicle)**

18.1 An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination. In some cases, a strict warning may be sufficient.

18.2 In cases of severe alcohol abuse, a period of 5 years after the last conviction must elapse before an application is considered and then only after examination by a consultant with a special interest in such cases with confirmation being provided of satisfactory liver enzyme tests and mean cell volume (MCV).

## **19 Licensing Offences**

19.1 One of the main purposes of the licensing regime is to ensure the protection of the public. For this reason, a serious view is taken of convictions for offences (or possible pattern of unlawful behaviour) under the hackney carriage and private hire licensing legislation.

19.2 Certain offences under hackney carriage and private hire legislation such as plying for hire without a hackney licence, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed until a period of 3 years has passed since the date of conviction.

19.2 A licence will not normally be granted if an applicant has more than one conviction for a licensing related offence.

## **20 Smokefree - Taxis and Private Hire Vehicles**

20.1 Any hackney carriage or private hire vehicle driver who receives a first fixed penalty notice or fine for smoking in a licensed vehicle will be issued with a warning as regards future conduct.

20.2 Any hackney carriage or private hire vehicle driver receiving two or more fixed penalty notices or fines during any two-year period for smoking in a licensed vehicle will be reported to the Licensing Committee who may consider suspension or revocation of his / her driver's licence(s).



## **21 Perverting or Attempting to Pervert or Conspiring to Pervert the Course of Justice**

21.1 At least 3 years should elapse since conviction or release if an immediate custodial sentence is imposed (whichever is longer) before an applicant is considered for a licence.

21.2 A licence holder found guilty of such an offence should expect to have his/her licence revoked immediately and not be re-considered for a licence until a minimum period of 5 years has elapsed since conviction or release if an immediate custodial sentence is imposed (whichever is longer).

## **22 Outstanding Charges or Summonses**

22.1 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 at the conclusion of proceedings.

22.2 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 may be put on hold until proceedings are concluded or the licence may be refused.

## **23 Non-Conviction Information**

23.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he/she could be a danger to the public, consideration will be given to refusing the application.

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

## **24 Once a Licence Has Been Granted**

24.1 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.

24.2 All of the preceding contents of this policy document apply equally to current hackney carriage and private hire vehicle drivers as they do to licence applicants (unless otherwise stated).

## **25 Licences Issued by Other Licensing Authorities**

25.1 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.

25.2 Licensees who are licensed by multiple Licensing Authorities are expected to inform each of them that they hold licences elsewhere and which Authorities have granted licences to them. When applying for a licence or during the currency of a licence they should inform this Council if another Authority has refused, revoked or suspended a licence and advise each Authority of any changes in their circumstances; such licence holders should expect those Authorities to share information regarding their conduct and to take it into account as appropriate. Any personal data collected in this way is shared with other Authorities for the purposes of the protection of the public and all licensees consent to their data being used for that purpose.

## **26 Conclusion**

26.1 To conclude, 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 will be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered.

26.2 While it is possible that an applicant may have a number of convictions that, individually, would not prevent him/her being licensed, the overall offending history will 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 may be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public. This consideration is vital because taxi and private hire licence holders have unprecedented access to the public and are in a position to exercise control over an individual (including children and vulnerable adults).

26.3 A man or woman who has committed an offence and has to wait a period of time before being accepted as a hackney carriage or private hire vehicle driver (or operator) is more likely to value his/her licence and act accordingly.

## **27 Review of Policy**

27.1 This Policy Statement will remain in existence until superseded and will be subject to review and further consultation before the end of 2025. However, following consultation, the Council may make revisions to it as deemed necessary before the 2025 date.

***UPDATED POLICY ADOPTED 07 SEPTEMBER 2020***