

Agenda



HYNDBURN

The place to be
an excellent council

Judicial Committee (Private Hire and Hackney Carriage Licensing)

Monday, 27 June 2016 at 1.30 pm,
Scaitcliffe House, Ormerod Street, Accrington

Membership

Chair: Councillor Joyce Plummer
Vice-Chair: Councillor Melissa Fisher

Councillors Stewart Eaves, Eamonn Higgins, Julie Livesey and Paddy Short

A G E N D A

1. Apologies for Absence, Substitutions, Declarations of Interest and Dispensations

2. Minutes of Last Meeting (*Pages 3 - 6*)

To submit the Minutes of the meeting of the Judicial Committee (Private Hire and Hackney Carriage Licensing) held on 18th April 2016 for approval as a correct record.

Recommended - **That the Minutes be received and approved as a correct record.**

3. Court Report - Aiser Iqbal Fazal (*Pages 7 - 8*)

To advise the Committee of the outcome of court proceedings relating to appeals to Hyndburn Magistrates Court and Burnley Crown Court by Mr. Aiser Iqbal Fazal following the revocation of his Private Hire Vehicle Driver's Licence.



Recommended - That the report be noted.

4. Licensing Procedure - Complaints (Pages 9 - 10)

To advise the Committee of the Complaints Licensing Procedure to be used in relation to Hackney Carriage and Private Hire Driver's Licences. A copy of the Procedure has been sent to the driver and the complainant.

Recommended - That the Procedure be noted.

5. Licensing Guidelines (Pages 11 - 30)

To advise the Committee of the Licensing Guidelines to be used in relation to Hackney Carriage and Private Hire Driver's Licences.

Recommended - That the Guidelines be noted.

6. Exclusion of the Public

Recommended - That, in accordance with Section 100A(4) Local Government Act 1972, the public be excluded from the meeting during the following item, when it is likely, in view of the nature of the proceedings that there will otherwise be disclosure of exempt information within the Paragraph at Schedule 12A of the Act specified at the item.

7. Report Relating to a Licensed Private Hire Driver (ZI) (Pages 31 - 64)

(The report will contain exempt information under the Local Government Act 1972, Schedule 12A, Paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information))

To advise the Committee of a complaint lodged by a Member of the Public against a licensed private hire vehicle driver (ZI).

Recommended

- (1) That the Committee determine whether the facts related in the complaint are substantially true;**
- (2) That having made a finding of the facts, the Committee decide whether those facts reveal the Driver (ZI) to have acted either unlawfully or in breach of any legislation, regulation or licence condition governing the conduct of licensed private hire vehicle drivers; and,**
- (3) That the Committee determine what action, if any, should be taken against the Driver (ZI).**

JUDICIAL COMMITTEE (PRIVATE HIRE AND HACKNEY CARRIAGE LICENSING)

Monday, 18th April, 2016

Present: Councillor Chris Fisher (in the Chair), Councillors Melissa Fisher, Terry Hurn and Joyce Plummer

Apologies Councillors Eamonn Higgins and Marlene Haworth

504 Apologies for Absence

Apologies for absence were submitted from Councillors Marlene Haworth and Eamonn Higgins.

505 Declarations of Interest and Dispensations

There were no declarations of interest or dispensations.

506 Minutes of Meetings

The Minutes of the meetings of the Judicial Committee (Private Hire and Hackney Carriage Licensing) held on 29th March and 4th April 2016 were submitted for approval as correct records

Resolved - That the Minutes be received and approved as correct records.

507 Licensing Procedure - Complaints

The Licensing Procedure to be followed at the meeting in relation to complaints lodged against licensed Hackney Carriage and Private Hire Drivers was submitted. A copy of the Procedure had been sent to the drivers and the complainants.

Resolved - That the Procedure be noted.

508 Licensing Guidelines

The Licensing Guidelines (Appendix G of the Hyndburn Borough Council Hackney Carriage and Private Hire Licensing Policy 2013 - 2016) were submitted. A copy of the Guidelines had been sent to the drivers and the complainants.

Resolved - That the Guidelines be noted.

509 Exclusion of the Public

Resolved

- That, in accordance with Section 100A(4) Local Government Act 1972, the public be excluded from the meeting during the following items, when it was likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that there would otherwise be disclosure of exempt information within the Paragraphs at Schedule 12A of the Act specified at the items.

510 Report Relating to a Licensed Private Hire Driver (HA)

Exempt information under the Local Government Act 1972, Schedule 12A, Paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information))

The Licensing Manager, on behalf of the Executive Director (Legal and Democratic Services) submitted a report informing the Committee of relevant issues relating to a licensed private hire vehicle driver (HA). A complaint had been lodged by a member of the public against the driver and was set out in the report. A copy of the complainant's Witness Statement to the Police was attached as Appendix A to the report.

Attention was drawn to Appendix G (Policy on the Relevance of Convictions and Cautions) of the Hyndburn Borough Council Hackney Carriage and Private Hire Licensing Policy 2013-2016. Legal advice on the relevance of the complaint and the issue and payment of a S5 fixed penalty notice was sought by and provided to the Committee at the meeting.

In accordance with licensing procedure, the driver (HA) and his representative had been invited to attend the meeting and in that respect, the driver and his representative were in attendance. The complainant (CJ) and her representative had also been invited to the meeting and in that respect, the complainant and her witness / mother (LJ) were in attendance.

At the request of the Chair, the Licensing Manager circulated a copy of the S5 fixed penalty notice.

The Committee was requested to:-

- (a) Determine whether the facts related in the complaint were substantially true;
- (b) Having made a finding of the facts, decide whether those facts revealed if the driver had acted either unlawfully or in breach of any legislations, regulation or licence condition governing the conduct of licensed private hire vehicle drivers; and,
- (c) Determine what action, if any, should be taken against the driver.

Decision of the Committee:-

Resolved

- (1) That the complaint lodged against the Private Hire Driver (HA) be upheld. On the evidence provided, the Committee found in favour of the complaint as it believed that the version of the events related by the Complainant was on the balance of probability more accurate; and,

- (2) That, as the driver (HA) was not considered to be a 'fit and proper person', in that his conduct had been inappropriate and not that expected of a licensed private hire vehicle driver, his private hire driver's licence be revoked pursuant to Sections 61(1)(a)(ii) and 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 in the interests of public safety; the revocation to be with immediate effect pursuant to Section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976 (as amended by the Road Safety Act 2006 and for the reasons outlined at the meeting and set out in the decision notice.

511 Report Relating to a Licensed Private Hire Driver (MA)

(Exempt information under the Local Government Act 1972, Schedule 12A, Paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information))

The Licensing Manager, on behalf of the Executive Director (Legal and Democratic Services), submitted a report informing the Committee of relevant issues relating to a licensed private hire vehicle driver (MA). A complaint had been lodged by Manchester City Council regarding the driver's behaviour towards one of its licensing officers. The following information was appended to the report:-

Appendix 1 - Witness Statement submitted by Manchester City Council Licensing Officer
Appendix 2 - Offence Notification Letter submitted by the Driver

Attention was also drawn to Appendix G (Policy on the Relevance of Convictions and Cautions) of the Hyndburn Borough Council Hackney Carriage and Private Hire Licensing Policy 2013 - 2016.

In accordance with licensing procedure, the driver (MA) and his representative had been invited to attend the meeting and in that respect, the driver and his representative / Solicitor were in attendance. The Licensing Officer from Manchester City Council (MB) attended the meeting as witness for his local authority and to support his witness statement (Appendix 1).

At the request of the Chair, the Licensing Manager circulated a copy of the notes of an interview conducted by the Council with the driver on 4th March 2016.

Legal advice on the relevance of the complaint, a previous complaint and breaches of licensing conditions was sought by and provided to the Committee at the meeting. The Committee was requested to consider whether the applicant was still a 'fit and proper person' to continue to be licensed as a private hire vehicle driver.

Decision of the Committee:-

Resolved

- (1) That the complaint lodged against the Private Hire Driver (MA) be upheld. On the evidence provided, the Committee found in favour of the complaint as it believed that the version of the events related by the Complainant's representative / witness was on the balance of probability more accurate; and,

- (2) That, as the driver (MA) was not considered to be a 'fit and proper person', in that his conduct had been inappropriate and not that expected of a licensed private hire vehicle driver, his private hire driver's licence be revoked pursuant to Sections 61(1)(a)(ii) and 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 in the interests of public safety for the reasons outlined at the meeting and set out in the decision notice.

Signed:.....

Date:

Chair of the meeting
At which the minutes were confirmed

Agenda Item 3.

REPORT TO:		Judicial Committee (Private Hire & Hackney Carriage Licensing)	
DATE:		27 June 2016	
PORTFOLIO:		Cllr Gareth Molineux - Resources	
REPORT AUTHOR:		Gordon McMillan Solicitor	
TITLE OF REPORT:		Court Report	
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable	
KEY DECISION:	No	If yes, date of publication:	

1. Purpose of Report

1.1 To advise members of the outcome of court proceedings.

2. Recommendations

2.1 That the report be noted.

3. Reasons for Recommendations and Background

3.1 On the 26th August 2015 the committee revoked the Private Hire Vehicle Driver's Licence previously issued to Mr Aiser Iqbal Fazal (d.o.b 22/09/85) 7 Owen Street Accrington after considering a complaint about his behaviour towards a passenger, a previous complaint and his convictions.

3.2 Mr Fazal appealed against this decision to Hyndburn Magistrates Court which dismissed his appeal on the 19th November 2015. A further appeal to Burnley Crown Court was also dismissed on the 14th April 2016. In addition Mr Fazal was ordered to pay the Council £750 in respect of its legal costs.

4. Alternative Options considered and Reasons for Rejection

4.1 Not applicable

5. Consultations

5.1 Not applicable

6. Implications

Financial implications (including any future financial commitments for the Council)	The Council has been awarded £750 costs.
Legal and human rights implications	N/A
Assessment of risk	N/A
Equality and diversity implications <i>A Customer First Analysis should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	N/A

**7. Local Government (Access to Information) Act 1985:
List of Background Papers**

7.1 Legal File 8908 (subject to legal privilege)

8. Freedom of Information

8.1 The report does not contain exempt information under the Local Government Act 1972, Schedule 12A and all information can be disclosed under the Freedom of Information Act 2000.

JUDICIAL COMMITTEE (HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING)

LICENSING PROCEDURE - COMPLAINTS LODGED AGAINST HACKNEY CARRIAGE / PRIVATE HIRE VEHICLE DRIVERS

NOTICE

1. The complainant will be notified of the date, time and venue for the consideration of his/her complaint and will be invited to attend, along with anyone who he/she has asked to speak on his/her behalf.
2. The licensed driver will be notified of the date, time and venue for the consideration of the complaint lodged against him/her and will be invited to attend, along with anyone who he/she has asked to speak on his/her behalf.
3. The complainant and the licensed driver (and, where appropriate, his/her representative) will be provided with copies of the agenda for the meeting and any documents which will be produced at the hearing.
4. Any witnesses that either the complainant or the licensed driver want to call may be asked to remain outside the Committee Room until called and may then be asked to leave for the remainder of the proceedings.

HEARING

1. The complainant will make oral representations either in person or through a representative. Anyone wishing to speak in support of his/her representations will also be heard.
2. The licensed driver will make oral representations either in person or through a representative. Anyone wishing to speak in support of his/her representations will also be heard.
3. The representative from the Council's Licensing Section will be invited to provide his/her observations on the representations and if he/she wishes, question the complainant and licensed driver or any person speaking on their behalf.
4. The complainant (or his/her representative) will be asked to comment on the representations made by the licensed driver (or his/her representative) and on the officer's observations and may, if he/she wishes, question the licensed driver (or his/her representative) and the officer.
5. The licensed driver (or his/her representative) will be asked to comment on the representations made by the complainant (or his/her representative) and on the officer's observations and may, if he/she wishes, question the complainant (or his/her representative) and the officer.
6. Members, and, at the invitation of the Chairman, the Council's Solicitor, will be given the opportunity to question anyone appearing before them in connection with the complaint.
7. The complainant (or his/her representative) will, if he/she so wishes, make a closing statement.

8. The licensed driver (or his/her representative) will, if he/she so wishes, make a closing statement.
9. Everyone appearing before the Committee will be asked to leave the room whilst the Members consider the application and make a determination.

(If necessary, for clarification or to resolve an outstanding query, further questions may be put to either the complainant or licensed driver (or their representatives) in the presence of both sides).

10. The Judicial Committee's decision will be announced by the Chairman and subsequently confirmed in writing by the Licensing Officer.

N.B. The Judicial Committee may at any time resolve to adjourn the hearing.

HYNDBURN BOROUGH COUNCIL

POLICY ON THE RELEVANCE OF CONVICTIONS AND CAUTIONS

APPROVED 31ST JULY 2013

INTRODUCTION

Hyndburn Council is responsible for the licensing of private hire and hackney carriage vehicle drivers.

Such licences are issued pursuant to the provisions of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847.

An applicant will be granted a licence to drive a private hire vehicle or a hackney carriage (or both) subject to them meeting certain criteria, however, for both type of licence, the law *prohibits* the Council from granting a licence;

“unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence; or

To any person who has not for at least twelve months been authorised to drive a motor car, or is not at the date of the application for a driver’s licence so authorised”

(Local Government (Miscellaneous Provisions) Act 1976 sections 51 & 59)

The 1976 Act gives the Council powers to require applicants to submit information about themselves with their application and section 57 specifically refers to details of any conviction which is recorded against the applicant.

The statutes create an ongoing responsibility for the Council and section 61 of the 1976 Act gives the Council powers to suspend, revoke or to refuse to renew a private hire or hackney carriage driver licence where the holder has, since the grant of the licence:

- (i) been convicted of an offence involving dishonesty, indecency or violence; or
- (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of part 2 of the 1976 Act; or
- (iii) any other reasonable cause

A person’s history of criminal activity or behaviour is of particular importance when judging their suitability to hold a private hire vehicle or hackney carriage driver licence.

Drivers are in a position of trust, often in one to one contact with children or vulnerable adults or with the custody of property belonging to others or with knowledge which might facilitate crime – e.g. that a house is known to be empty because the owners are on holiday.

STATEMENT OF POLICY

This statement of policy and the guidelines which follow have been prepared with reference to, and are considered to be compatible with, the rights, freedoms and obligations contained in the Human Rights Act 1998 and the European Convention on Human Rights.

This document provides information to anyone with an interest in private hire and hackney carriage licensing, in particular, but not exclusively:

- Applicants for drivers' licences
- Existing licence holders whose licences are being reviewed
- Licensing Officers
- Members of the Council's Judicial Committee (or other decision makers, such as officers acting under delegated powers)
- Magistrates hearing appeals against local authority decisions

Officers in the Council's Licensing Unit have delegated authority to grant applications for private hire driver and operator licences and hackney carriage driver licences where the applicant meets ALL the criteria of the application process in force at the time that the application is made.

Where Officers have delegated powers to grant licences, they will utilise these guidelines when determining whether or not an applicant meets the criteria with respect to convictions etc.

Where an applicant meets all the criteria EXCEPT those relating to convictions etc set out in this policy and guidance, the application will be referred to the Executive Director (Legal & Democratic services) or her nominees.

That Officer will determine whether or not the application will be granted, refused or referred to the Judicial Committee.

An Officer may grant an application:

- i) where the rehabilitation periods detailed in this policy are due to expire* (and may in fact expire before the driver testing process would be completed), or;
- ii) where there are two convictions recorded against the applicant for minor traffic offences and where they were both disposed of by issuing fixed penalty tickets, or;
- iii) where there are a number of offences of any type all of which are at least twelve months old and where all have been disposed of by means of a Simple or Conditional Caution (for Conditional Cautions the applicant must be able to prove that the condition has been discharged).

Subject to the above, an Officer **will normally** refuse an application where the rehabilitation periods detailed in this policy have not expired.

Where the application is granted or refused the Officer will make a written record of the reasons for the decision and this will be regarded as the decision of the Council for the purposes of the statutory requirements.

Where the Officer considers that the circumstances in a particular application are not adequately covered by these guidelines, or where the arguments in favour and against granting a licence are finely balanced, the application will be referred to the Judicial Committee.

Where the application is refused, the statutes give the applicant a right of appeal against the decision of the Council, to the Magistrates' Court. Challenges to such decisions must proceed through the statutory appeals process and will not be handled as complaints against the Council.

Officers and the Judicial Committee must have regard to this policy and guidelines when determining an application. Where, because of the individual merits or particular circumstances of an application, the Officer or the Committee depart from the policy and guidelines there must be good reasons which must be recorded.

The duty of the Officer or the Committee charged with the determination of an application is solely to ensure that the applicant is a fit and proper person and only evidence which relates to this aspect of the application should be considered. The personal circumstances of the applicant, or any hardship created by refusal, will not be considered.

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. This policy is not an attempt to define what a fit and proper person is. It 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.
3. In making this judgement the Council seeks to ensure that:
 - a. The applicant does not put the public at risk or pose a threat
 - b. The public are not exposed to persons with a history of dishonesty, indecency or violence
 - c. Vulnerable members of the community are protected
 - d. Children and young persons are not put at risk

The factors which are taken into consideration for each offence (including motoring offences) include:

- a. The nature of the offence (its seriousness), and the penalty
 - b. Whether or not it is part of a pattern of criminal behaviour
 - c. The 'intent'
 - d. The harm which was, or could have been, caused (to the victim)
 - e. The length of time which has elapsed since the last offence
 - f. The offender's age at the time of the offence
 - g. Any exceptional circumstances which can be supported by evidence
4. The public are not permitted to attend Judicial Committee hearings for private hire or hackney carriage driver applications, however, in determining whether to grant a licence the Committee or Officers will take into account the human rights of the wider public and balance these against the human rights of the applicant. Where there is any doubt about where this balance lies, the decision will be found in favour of the public i.e. to refuse the application.
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. This includes spent convictions although spent convictions will only be taken into account if considered to be relevant by the Council in the light of the issue the Council has to decide, the offence involved, its age and apparent seriousness (*Adamson v. Waveney District Council (1997)*). 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 Criminal Records Bureau for the existence and content of any criminal record and other intelligence held in their name. Information received from the Criminal Records Bureau 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. 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 fail to 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, when it was committed, the date of conviction, the applicant's age when the offence was committed 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 what 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 have been drawn up by the Council in accordance with government advice contained in Department of Transport Circular 2/92 and Home Office Circular 13/92.
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 licenses in relation to hackney carriage drivers, private hire drivers, joint drivers and operator licenses.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS

General Policy

1. Each case will be decided on its own merits
2. The overriding consideration is the safety of the public.
3. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit and honest.
4. One aspect of that is the extent to which previous convictions, including but not limited to convictions for offences against children, young and vulnerable 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.
5. 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.

6. Amongst situations where it may be appropriate to depart from the general policy, for example, 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. Similarly, 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.
7. The following examples afford a general guide on the action which might be taken where convictions, cautions, and endorsable fixed penalties are disclosed.

A Offence of dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially children, young and vulnerable people.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

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 below offences and the conviction is less than 3 years prior to the date of application

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

B Violence

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

Drivers of hackney carriage and private hire vehicles 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.

The period free of conviction required will be determined in accordance with the following criteria:

In particular:-

- i. An application will normally be refused whenever it occurred where the applicant has a conviction for an offence or similar offence(s), which replace the below offences:
 - Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - 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)
 - Battery
- ii. An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:
 - Grievous bodily harm with intent (s.18 Offences Against the Person Act)
 - Grievous bodily harm with intent (s.20 Offences Against the Person Act)
 - Robbery
 - Possession of firearm
 - Riot
 - Assault Police

- Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
 - Violent disorder
 - Resisting arrest
- iii. An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences 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) or similar offence(s) which replace the below offences and the conviction is less than 3 years prior to the date of application:
- Common assault
 - Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
 - 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

C Drugs

An application will normally be refused where the applicant has a conviction for an offence related to the **supply** 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 Indecency offences

Applications from persons with convictions from the below mentioned list will normally be refused.

In respect of other offences, as hackney carriage and private hire drivers often carry unaccompanied passengers, applicants with convictions for soliciting, importuning, or any other sexual offence will normally be refused a licence until they can show a period of between 10 and 15 years free from any such conviction.

In particular:-

(a) An application will normally be refused where the applicant has a conviction or caution for an offence of:-

- Gross indecency with a female
- Rape
- Sexual offences against a minor
- Indecent assault
- Indecent exposure
- Gross indecency with a male
- Buggery

(b) An application will normally be refused where the applicant has a conviction for any other sexual offences not mentioned previously and the date the offence was committed is less than 10 years prior to the date of the application

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 disqualification, for an offence within 2 years 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 5 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 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

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. However more than one conviction in the last two years will merit a refusal.

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 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

MOTURING CONVICTIONS

SERIOUS TRAFFIC OFFENCES

An application will normally be refused where an applicant has a conviction for a Serious Traffic Offence where the conviction is less than 2 years prior to the date of the application.

An application from an applicant with more than one Serious Traffic Offence, within the last 5 years, or more than one conviction for aiding, abetting, procuring, causing, enabling or permitting a Serious Traffic Offence in the last five years will normally be refused.

If any conviction for a Serious Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled “disqualification”.

For the purposes of these guidelines the following motoring offences are classed as ‘Serious Traffic Offences’:

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of Court
BA30	Attempting to drive while disqualified by order of Court
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for alcohol analysis
CD71	Causing death through careless driving the failing to supply a specimen for drug analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive when unfit through drugs
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving / attempting to drive
DR61	Failure to provide specimen for drug analysis in circumstances other than driving / attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence

LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

INTERMEDIATE TRAFFIC OFFENCES

Any Intermediate Traffic Offence, which has attracted 4 or more penalty points will be treated as though it were a Serious Traffic Offence.

One Conviction

Where an applicant has a single intermediate Traffic Offence within the 12 months immediately preceding the date of application, they will normally be expected to show a period of at least 6 months free from conviction before an application is considered.

Two or more Convictions

Where an applicant has 2 or more intermediate Traffic Offences in the 12 months immediately preceding the date of application, the applicant will normally be expected to show a period of at least 12 months free from conviction before an application is considered.

If any conviction for an Intermediate Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled “disqualification”.

An application from an applicant with more than one Serious Traffic Offence, within the last 5 years, or more than one conviction for aiding, abetting, procuring, causing, enabling or permitting a Serious Traffic Offence in the last five years will normally be refused.

For the purposes of these guidelines the following motoring offences are classed as ‘Intermediate Traffic Offences’:

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyres

CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
CU80	Breach of requirements as to control of the vehicle mobile phones etc
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Exceeding speed limit offence

MINOR TRAFFIC OFFENCES

Any Minor Traffic Offence which has attracted 4 or more penalty points will be treated as though it were an Intermediate Traffic Offence
Single conviction

Where an applicant has a single Minor Traffic Offence in the 12 months immediately preceding the date of application, the application will normally be granted with a letter of warning being placed on the file.

Two or more Convictions

Where an applicant has two or more Minor Traffic Offences in the 12 months immediately preceding the date of application an applicant will normally be expected to show a period of at least six months free from conviction before an application is considered.

For the purposes of these guidelines the following motoring offences are classed as 'Minor Traffic Offences':

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test

MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

Plying for Hire

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

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 either be prosecuted or referred to the Judicial Committee, to consider revocation of the licence.

Aiding, Abetting, Counseling or Procuring

An application from an applicant with more than one Serious Traffic Offence, within the last 5 years, or more than one conviction for aiding, abetting, procuring, causing, enabling or permitting a Serious Traffic Offence in the last five years will normally be refused

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.

DISQUALIFICATION

Disqualification – Serious Traffic Offence

An application will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

Disqualification – Intermediate Traffic Offence

An application will generally be refused unless the applicant can show a period free from conviction has elapsed from the restoration of the DVLA licence which is twice the period of disqualification imposed by the court. .e. 3 month disqualification = 6 month period free from conviction.

Disqualification – Minor Traffic Offence

An application will generally be refused unless the applicant can show a period free from conviction has elapsed from the restoration of the DVLA licence which is equal to the period of disqualification imposed by the court i.e. 3 month disqualification = 3 month period free from conviction.

Totting up/disqualification

Totting up (Code TT99) – if the total of penalty points reaches 12 or more within 3 years the driver is liable to disqualification by the Court.

Totting up With Disqualification

An application will generally be refused unless the applicant can show a period free from conviction has elapsed from the restoration of the DVLA licence, which is equal to the period of disqualification imposed by the court.

Where any of the offences which contribute to a totting up disqualification are a Major Traffic Offence the Council will consider the application under “Disqualification - major traffic offence”

Totting up without Disqualification

An application from any person who has accrued sufficient points under the ‘totting up’ procedure to be disqualified but, where the court has accepted a plea of ‘exceptional hardship’ and has not imposed a disqualification will be considered by the Council as though a disqualification for the most serious of the offences which contributed to the ‘totting up’, had been imposed.

For the purposes of determining when a licence application should be considered e.g. where the offences contributing to the totting up are SP30, SP80 and IN10 the Council would deal with the offence as an IN10 (using a vehicle uninsured against third party risks) under ‘Disqualification – Serious Traffic Offence’ above.

SPENT CONVICTIONS

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act.

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

CAUTIONS AND ENDORSABLE FIXED PENALTIES

For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

MULTIPLE CONVICTIONS FROM SINGLE INCIDENT

Where an applicant has multiple convictions arising from a single incident, the convictions will generally be treated as one conviction for the purposes of these guidelines.

In these circumstances the period for which the applicant would normally be expected to show free from conviction will be the longest applicable period calculated by reference to each offence.

OTHER OFFENCES

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.

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 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 (s) he 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.

LA contact details: Licensing Dept, Scaitcliffe House
Ormerod Street, Accrington
Lancashire BB5 0PF

GUIDELINES FOR OFFICERS WHEN DETERMINING WHETHER APPLICATIONS FOR APPLICANTS FOR PRIVATE HIRE AND HACKNEY CARRIAGE DRIVER'S LICENCES AND PRIVATE HIRE OPERATOR'S LICENCES SHOULD BE REFERRED TO JUDICIAL COMMITTEE

INTRODUCTION

The following are intended to be a guide to officers determining whether applications for licenses should be referred to the Judicial Committee for consideration by that Committee.

Each case will be dealt with on its own merits, however the overriding consideration must be the protection of the public.

A person with a conviction for serious crime need not be permanently barred from obtaining a licence. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances.

APPLICANTS WITH A SMALL NUMBER OF CONVICTIONS FOR MINOR OFFENCES

Applicants who have been convicted of minor convictions for minor offences may be granted a licence by the Executive Director (Legal and Democratic Services). The applicant will also be issued with a written warning as to their future conduct.

APPLICANTS WITH CONVICTIONS FOR VARIOUS/ SERIOUS OFFENCES

In accordance with the Council's procedure for processing applications such applicants will be required to attend an interview to explain the circumstances of their offence. The interview will usually be conducted by the Licensing Manager and one other officer. In most cases the other officer will be the Licensing Officer or the Enforcement Officer. In the event of these two officers being unavailable the Executive Director (Legal and Democratic Services) will appoint another officer. The applicant will be entitled to be accompanied at the interview.

This requirement applies to applicants with the following types of convictions.

- (i) Offence of dishonesty
- (ii) Offence of violence
- (iii) A drug related offence
- (iv) A sexual offence or any offence involving indecency
- (v) Offences of drunkenness
- (vi) Major traffic offences
- (vii) Intermediate traffic offences

- (viii) A sufficient number of motoring offences leading to disqualification under section 35 Road Traffic Act 1988 (totting up procedure).

The report of the interview held with the applicant will be taken into consideration by the Executive Director (Legal and Democratic Services) who will determine whether

the application can be granted with a warning as to future conduct, refused or referred to the Judicial Committee.

In deciding whether or not an application should be referred to the Judicial Committee the Executive Director (Legal and Democratic Services) will take the following into account –

“The Statement of Policy: Criteria for determining applications and relevance of convictions for the grant/renewal of a private hire driver, hackney carriage driver and joint vehicle driver”

Reviewing, suspension and revocation of a hackney carriage driver, private hire driver, joint driver and private hire operator’s licences

1. The above procedures for new applicants will also apply for those licensed drivers and/or operators who receive convictions, commit offences, etc, during the course of their licence.
2. Once granted licenses may only be suspended or revoked under the circumstances specified in –
 - (i) The governing legislation
 - (ii) **The Statement of Policy Criteria for determining applications and relevance of convictions for the grant/renewal of a private hire driver, hackney carriage driver and joint vehicle driver**
3. The suspension or revocation of a licence could have the effect of depriving the licence holder of their livelihood so this option should only be used in the most serious cases.
4. A licence will only be suspended or revoked by the Executive Director (Legal and Democratic Services) after consultation with the chair of Judicial Committee.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank