

POLICY STATEMENT ON CONVICTIONS

Licensing of Hackney Carriage and Private Hire Vehicle Drivers

**Approved and adopted by
Stevenage Borough Council
On 4th October 2006**

This document can be revised at any time to reflect Acts of Parliament, new legislation, associated revisions to existing legislation and/or policy changes.

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POLICY STATEMENT ON CONVICTIONS

NOTE: This statement is compliant with the rights and freedoms under the European Convention on Human Rights, the Human Rights Act 1998, the Town Police Clauses Act 1847, Part II of the Local Government (Miscellaneous Provisions) Act 1976 and local licensing conditions.

- 1.1 Legally we are required to ensure that licences for drivers of hackney carriage and private hire vehicles are only granted where the Council is satisfied that the applicant is a fit and proper person to hold such a licence.
- 1.2 This policy statement gives some indication as to how we would consider various factors in order to establish if a person is fit and proper to hold a license.
- 1.3 To establish whether an applicant is a fit and proper person, we would consider in particular:-
 - a) The honesty of the applicant;
 - b) Driving offences that would pose additional risks to the passengers or other road users;
 - c) Other convictions or formal cautions that would expose the passengers to additional risks;
 - d) Any other substantive issue, such as criminal proceedings that are in progress for example; that are considered to expose the passengers to additional risks;
 - e) Whether there has been a full and frank disclosure of all the particulars required in the application or required by virtue of a condition of an existing license:
- 1.4 The public do not normally attend Licensing hearings for hackney carriage or private hire vehicle applications. The Council however need to take account of the public's human rights in reaching their decisions.
- 1.5 When submitting an application for a licence to drive a hackney carriage or private hire vehicle, applicants are required to declare all previous convictions they may have. Applicants are also required to declare all formal cautions and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.
- 1.6 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.
- 1.7 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 held in the name of the applicant.
- 1.8 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 the Council can be satisfied that the applicant is a fit and proper person to hold such a licence.

- 1.9. The Council may be satisfied that an applicant is not a fit and proper person to hold a driver's licence for any good reason. The burden of proof falls upon the Council.
- 1.10. 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)*].
- 1.11. The Council has adopted the criteria detailed on the following pages in order to determine the relevance of convictions held by applicants for drivers' licences.
- 1.12. These criteria do not deal with every type of offence, however, the offences described and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with this policy.
- 1.13. This policy is not an attempt to define what is a "fit and proper person".
- 1.14. 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.
- 1.15. This policy statement will also be taken into account by the Council when dealing with applications for the renewal of existing driver's licences and when considering whether to suspend or revoke an existing driver's licence.

2.0 THE RELEVANCE OF PREVIOUS CONVICTIONS

- 2.1. Each case will be decided on its own merits.
 - 2.2. The Council has a duty to ensure so far as possible that the public using these services are safe and free from any risks of any criminal act. Part of this assessment is to determine whether drivers are fit and proper persons to hold licences. One aspect of that is the extent to which previous convictions, including but not limited to convictions for 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.
 - 2.3. A person with a conviction for a serious crime 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. Simply remaining free of conviction will not generally be regarded as sufficient evidence that a person is a fit and proper person to hold a licence.
 - 2.4. Amongst situations where it may be appropriate to depart from the general policy, for example, there may be situations where the offence is isolated and there are mitigating circumstances. 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 a sexual offence, murder or manslaughter a licence will normally be refused.
- 3 The following examples afford a general guide on the action, which might be taken where convictions are disclosed.
- 3a. 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. Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. Passengers may include especially vulnerable people. For these reasons a serious view is taken of any convictions involving dishonesty. In general an application made within 3-5 years of conviction is unlikely to be considered favourably. In particular, an application will normally be refused where the applicant has a conviction for an offence of:-

- Theft
- Burglary
- Fraud
- Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- Handling or receiving stolen goods
- Forgery (e.g. producing false insurance policy documents or driving license)
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Or similar offences or offences which replace the above offences and the conviction is less than 3 years prior to the date of the application.

After 3 years, regard will be had to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

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

i. An application will normally be refused where the applicant has a conviction for an offence of:-

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Or similar offences or offences which replace the above offences

ii. An application will also normally be refused where the applicant has a conviction for an offence of:-

- Arson.
- Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998).
- Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998).
- Grievous bodily harm with intent (s.18 Offences Against the Person Act).
- Grievous bodily harm with intent (s.20 Offences Against the Person Act).
- Robbery.
- 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.2 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998).
- Assault of a Police Officer.
- Or similar offences or offences which replace the above offences and the conviction is less than 10 years prior to the date of application.

iii. An application will also normally be refused where the applicant has a conviction for an offence of:-

- Common assault
- Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Affray

- Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- Riot
- Obstruction
- Possession of offensive weapon
- Possession of firearm
- Criminal damage
- Violent disorder
- Resisting arrest
- Or similar offences or offences which replace the above offences and the conviction is less than 3 years prior to the date of application.

3c. 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, regard will be had 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 conviction is 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.

3d. Sexual and Indecency Offences: As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, applicants with a conviction for rape, indecent assault, or other similar offences or offences under the Sexual Offences Act 2003, will normally be refused a licence. Applicants with a conviction relating to sexual offences such as soliciting, importuning, indecent exposure or other similar offences or offences under the Sexual Offences Act 2003, will normally be refused a licence until they can show a substantial period (usually between 5 and 10 years) free from any such conviction. After 5 years and in respect of the latter offences only, regard will be had to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence. Amongst the circumstances, which the Council may wish to consider, are circumstances, which if they occurred at the time of the consideration of the application would not be a criminal offence.

3e. Motoring Convictions

i. **Disqualification** Where an applicant has been disqualified from driving because of a major traffic offence, the 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 drunk driving. Where several minor traffic offences have resulted in the applicant being disqualified from driving for a period of time, this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 3 years free from conviction must have elapsed from the restoration of the DVLA licence. In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify a driver (e.g. because of exceptional circumstances) the Council is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 12

months free from conviction from the date the Court made its finding of exceptional circumstances justifying the disqualification.

ii. **Major Traffic Offences** An application will normally be refused where the applicant has a conviction 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 is likely to result in refusal of the application. A list of offences to which this paragraph applies is attached at **Appendix I**.

iii. **Minor Traffic Offences** Isolated convictions for minor traffic offences should not prevent a person from obtaining a licence. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature, the applicant will normally be expected to show a period free of conviction of at least 6 months. A list of offences to which this paragraph applies is attached at **Appendix II**.

iv. **Hybrid Traffic Offences** Offences of this type will be treated as major traffic offences if the Court awarded 4 or more penalty points for the offence and as minor traffic offences if the Court awarded 3 or less penalty points for the offence. A list of offences to which this paragraph applies is attached at **Appendix III**

3f. Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws: One of the main purposes of the licensing regime set out in the Town Police Clauses Act 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) 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 above provisions 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.

3g. Drunkenness:

i. **With a motor vehicle** 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 for an offence within 2 years of the date of the application. More than one conviction for this type of offence within the last five years is likely to merit refusal. Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should elapse after 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 (s)he was an alcoholic.

ii. **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, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination and refusal of 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 (s)he was an alcoholic.

4 DISCLOSURE REQUIREMENTS

APPLICANTS SHOULD NOTE THAT TO MAKE A FALSE STATUTORY DECLARATION IS A SERIOUS CRIMINAL OFFENCE, PUNISHABLE UPON CONVICTION BY IMPRISONMENT FOR A TERM NOT EXCEEDING TWO YEARS OR TO A FINE OR BOTH. THIS STATUTORY DECLARATION MAY IN CERTAIN CIRCUMSTANCES BE FORWARDED TO THE POLICE FOR EXAMINATION.

- 4a. Applicants:** Applicants for driver licences are required to declare any convictions or cautions **including those regarded as "spent"** under the Rehabilitation of Offenders Act 1974. The information you give will be treated in confidence and will only be taken into account in relation to your application. You should be aware that the licensing authority is empowered in law to check with the Criminal Records Bureau for the existence and content of any criminal record held in the name of an applicant. Information received from the Criminal Records Bureau will be kept in strict confidence while the licensing process takes its course and will be retained for no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 after the application is determined or any appeal against such determination is decided. The disclosure of a criminal record or other information does not debar applicants from obtaining a licence unless the Council considers that the applicant is not a fit and proper person. In making this decision the Council will consider the nature of the offence(s), the period since conviction(s), at what age the offences were committed and any other relevant factors. Any applicant refused a driver's licence on the grounds that he/she is not a fit and proper person to hold such a licence has a right of appeal to the Magistrates' Court. If you would like to discuss the implication of any conviction, please do not hesitate to telephone the Licensing Officer.
- 4b. Further information:** Information advice and publications, including further copies of this document are available from our website at www.stevenage.gov.uk
- 4c. Cautions and Endorsable Fixed Penalties:** For the purpose of this policy, formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

5 RIGHT OF APPEAL

Nothing in these criteria will remove an applicants right to appeal to a Magistrates Court against the Council's refusal to grant or renew a licence or decision to suspend or revoke a licence or against any conditions, which may have been placed on any such licence by the Local Authority. Such appeal to be made within 21 days of the decision.

Appendix I

MAJOR TRAFFIC OFFENCES

[Paragraph (3e)(i) and (ii) refers]

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

BA20 Attempting to drive while disqualified by order of Court

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

DD40 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

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 a specimen for analysis in circumstances other than driving or 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

UT50 Aggravated taking of a vehicle

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Or similar offences or offences which replace the above offences.

Appendix II

MINOR TRAFFIC OFFENCES

[Paragraph (3e)(i) and (iii) refers]

MS10 Leaving a vehicle in a dangerous position

MS20 Unlawful pillion riding

MS30 Play street offences

MS40 Driving with uncorrected defective eyesight or refusing to submit to a test

MS70 Driving with uncorrected defective eyesight

MS80 Refusing to submit to an eyesight test

MS90 Failure to give information as to identity of driver, etc.

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

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Or similar offences or offences which replace the above offences

Appendix III

HYBRID TRAFFIC OFFENCES

[Paragraph (3e)(iv) refers]

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

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

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

Or similar offences or offences which replace the above offences