

APPENDIX B

THE RELEVANCE OF CAUTIONS AND CONVICTIONS

General Principles

The over-riding consideration for the Council in its determination of applications is the promotion of the licensing objectives detailed within section 1.2 of this Policy, public safety.

Although regard will be taken of this Policy, each application will be determined on its own merits.

Where it is necessary for the Council to depart substantially from this policy, clear and compelling reasons will be given for doing so. The purpose of this Appendix is to formulate guidelines, consistent with national guidance, which detail the Council's current stance on the relevance of convictions and cautions in respect of applications for the grant of new licenses, and the renewal of existing licenses, for hackney carriage and private hire vehicle, driver and operator licenses.

If a court has found an applicant guilty of an offence, that person cannot subsequently claim to the Council that they did not commit the offence. If they seek to do so, their representation will not be considered as this is entirely a matter for the courts. The applicant can, however, offer any mitigating circumstances relating to the offence that they wish the Council to consider.

For the purpose of this Policy, the acceptance of a Fixed Penalty Notice will be treated as a conviction. A caution may be treated as a conviction depending on the individual merits and mitigating circumstances of each case.

Period free from conviction

Any reference to a period free from conviction relates to the period commencing from either:

- a) where a custodial sentence has been imposed, from the end of the custodial period; or
- b) in any other case, from the date of conviction.

History

The Council may take into account an applicant's history as a licence holder with this, or any other, Council. In considering whether a person is 'fit and proper' the Council may consider such matters as the applicant's complaint history, their compliance with this Policy, their co-operation with licensing officers' requests, and any other reasonable matters.

DVLA Penalty Points

Hackney carriage and private hire drivers should provide a professional service to the public and must always be aware of the safety of passengers and other road users. Any traffic offence shows a lack of responsibility whilst driving either in terms of vehicle maintenance or the level of driving standards.

Convictions or cautions for traffic offences will not automatically preclude an applicant from obtaining a licence, however, the number, nature and frequency of such offences will be considered. In some circumstances it may be appropriate to issue a licence together with a written warning as to future driving standards detailing the likely effect of further offences. Where there is a significant history of driving offences, an application is likely to be refused.

Six unspent penalty points or less on a current DVLA driving licence

In cases of six (6) unspent penalty points or less on an applicant's DVLA driving licence, an application will usually be granted. A licence granted under these circumstances is likely to be issued together with a verbal warning as to future driving standards detailing the likely effect of further offences.

Seven unspent penalty points on a current DVLA driving licence

In cases of seven (7) unspent penalty points on an applicant's DVLA driving licence, an application may be granted depending on the nature of the offences and the frequency. Although all applications received both new and renewal showing seven (7) or more points on the DVLA licence will be referred to the Licensing Sub-Committee for them to determine the application.

Major Traffic Offences

For the purposes of this section, major traffic offences include, but is not limited to:

- a) driving whilst disqualified,
- b) failure to stop after an accident,
- c) driving without valid insurance,
- d) careless driving, and
- e) driving a vehicle with mechanical defectives (such as brakes, steering, tyres, etc.)
- f) dangerous driving.

If the applicant has been convicted of one major traffic offence, then a licence application will be referred to the Licensing Sub-committee for them to determine.

"Totting Up" under section 35 of the Road Traffic Offenders Act 1988

Where an applicant/licence holder has been disqualified from driving by

the courts under the “totting up” procedure, the Council will normally refuse an application until there has been a period of twelve (12) months free of relevant convictions. If the applicant has demonstrated to the court “exceptional hardship” and avoided a driving disqualification, applications will still normally be refused until there has been a period of twelve (12) months free of relevant convictions. The Council believe that the risk to the public is sufficient to maintain this consistent stance.

Failure to Declare Motoring Offences

Where an applicant/licence holder fails to disclose motoring offences on their application form, even if they have been declared on previous applications or are spent, the Council will normally deal with this by way of the issuing of penalty points. If, however, the Council determines that there was a premeditated intention to deceive, the matter will be considered as an offence of dishonesty and dealt with in accordance with that section of this policy.

Major Traffic Offences resulting in Death

The driving offences of causing death by:

- a) dangerous driving,
 - b) careless driving,
 - c) driving under the influence of alcohol or drugs, or
 - d) driving unlicensed, disqualified or uninsured,
- due to their nature, will be considered by the Council to be an unacceptable risk to public safety and an application will normally be refused.

Drunkenness

Separate consideration will be given to convictions for drunkenness whilst in charge of a vehicle as opposed to drunkenness whilst not in charge of a vehicle due to the differing risk to the public.

In Charge of a Motor Vehicle

The Council considers driving or being in charge of a vehicle whilst under the influence of alcohol as a serious offence causing a high element of risk to the public; however, an isolated incident will not automatically preclude an application from being granted.

- a) A single conviction for any alcohol-related driving offence will normally preclude an application from being granted for a period of five (5) years from the restoration of the DVLA driving licence.
- b) More than one conviction for any alcohol-related driving offence represents an unacceptable risk to the public and an application will be refused.

Not in Charge of a Motor Vehicle

An isolated conviction for drunkenness not associated with driving or being in charge of a motor vehicle will not automatically preclude an application.

- a) Where there is an isolated conviction for disorder and/or drunkenness, a licence will normally be granted together with a verbal warning as to future driving standards detailing the likely effect of further offences.
- b) More than two (2) convictions for disorder and/or drunkenness will normally lead to refusal of an application until such time as a period of three (3) years free of convictions has elapsed.

Drug Offences

The Council considers all offences related to controlled substances as a serious risk to the public.

An applicant with one conviction for any Class A drug related offence, including supplying or trafficking, will be required to show a period of ten (10) years free of convictions before an application is considered.

An applicant with more than one conviction for any Class A drug related offence, including supplying or trafficking, will be considered an unacceptable risk to public safety and an application will be refused.

An applicant with a conviction for any Class B drug related offence, including supplying or trafficking, will be required to show a minimum period of five (5) years free of convictions before an application is considered. The length of period over and above the minimum five (5) years will be dependent on factors such as the nature and severity of the offence, and the length of any custodial sentence.

An applicant with a conviction for any Class C drug related offence will be required to show a period of at least three (3) years free of convictions before an application will be considered.

In all cases, where an applicant has been medically classed as an addict, an application will be precluded until such time as a period of five (5) years has elapsed since the completion of a recognised detoxification programme.

Sexual or Indecency Offences

As hackney carriage and private hire drivers often carry unaccompanied and/or vulnerable people, any applicant with a conviction or caution for any sexual or indecency offence (other than a major offence) will normally be refused a licence until such time as they have been free of convictions for a period of seven (7) to twelve (12) years. The length of period over and above the minimum seven (7) years will be dependent on factors such as the nature and severity of the offence, and the length of any custodial sentence.

Major Sexual or Indecency Offences

For the purpose of this Policy, the following offences will be considered as major sexual or indecency offences with the highest element of risk to the public:

- a) rape.
- b) indecent or sexual assault.
- c) assault by penetration.
- d) making, distributing or possession of child pornography.
- e) trafficking and/or preparatory offences (defined by the Sexual Offences Act 2003); or
- f) sexual offences involving children or vulnerable adults

Any applicant with a conviction for a major sexual or indecency offence will be considered an unacceptable risk to the public and any application will be refused.

Violent Offences

The Council considers all violence related offences as a serious risk to the public; offence of public order will be treated as a violent offence for the purposes of this Policy.

An application will be refused where the applicant has been convicted of:

- a) murder or attempted murder,
- b) manslaughter,
- c) any offence involving the possession of a firearm,
- d) any terrorism-related offence, or
- e) racially aggravated grievous bodily harm or malicious wounding.

An application will be refused where the applicant has been convicted of:

- f) arson,
- a) possession of a weapon (other than a firearm),
- b) any racially aggravated offence,
- c) any offence that may be categorised as domestic violence,
- d) violent disorder or riot.

unless there has been a period of ten (10) years free of conviction.

An application will normally be refused where the applicant has a conviction for a violent offence, other than those listed above, unless there has been a period of five (5) to ten (10) years free of convictions. The length of period over and above the minimum five (5) years will be dependent on factors such as the nature and severity of the offence, and the length of any custodial sentence.

Multiple Offences

Whilst an isolated conviction for a violent offence, other than those listed above, will not normally permanently exclude an application, the Council will have grave concern for public safety if an applicant has committed multiple violent offences.

An application will be refused in cases where an applicant has three (3) or

more separate convictions for violent offences.

Dishonesty

Hackney carriage and private hire drivers are expected to be persons of trust; it is comparatively easy for dishonest drivers to defraud the public, for example, by demanding more than the legal fare or giving incorrect change. Overseas visitors can be confused by the difference in currency and become vulnerable to an unscrupulous driver. Equally, any customer can be defrauded by a driver taking them by any other than the shortest route or by them retaining lost property left in the vehicle. As members of the public entrust themselves to the care of licensed drivers, the Council considers offences involving dishonesty as a serious risk to public safety.

An applicant that has been convicted of an offence related to dishonesty will normally be refused a licence until such time as they have been free of convictions for a period of five (5) to ten (10) years. The length of period over and above the minimum five years will be dependent on factors such as the nature and severity of the offence, and the length of any custodial sentence.

Other Offences and Special Circumstances

If the applicant has declared any other offences not specifically covered by this policy on the relevance of convictions, or the specific circumstances of the application justify it, the application may be referred to the Licensing Sub-Committee for determination in line with the principles of this policy.

In particular, if an applicant/licence holder is not precluded by any one section of this policy but has a series of convictions that in their totality cause concern as to their ability to meet the 'fit and proper' test, the application may be referred to the Licensing Sub-Committee for determination in line with the principles of this policy.

Summary

Except in the most serious of circumstances, an applicant having a previous or current conviction will not normally be permanently excluded from obtaining a hackney carriage or private hire driver's licence.

The Council believe that a person convicted of an offence, who is required to wait for the expiry of a rehabilitation period prior to their application being considered, is more likely to value their licence and ensure that future convictions are avoided.

The Council's over-riding policy objective is to safeguard the safety of the general public by ensuring that all licensed drivers are safe, competent, and are able to maintain their vehicles to an acceptable standard.

By producing clear and transparent guidelines on the relevance of convictions, the Council is seeking to maintain the high standard of hackney carriage and private hire drivers, proprietors and operators within Fenland.

Existing Licence Holders

Any existing licence holder convicted of an offence during the period of their current licence will be subject to the above policy relating to the relevance of convictions as though they were a new applicant

Existing licence holders should be aware that if the Council receives notification from the police that a driver is being investigated for an offence that would preclude the grant of a licence or is likely to result in the revocation of an existing licence, their licence will normally be revoked with immediate effect pending the outcome of the investigation.

- a) In the event that no charges are laid against the licence holder, the licence will ordinarily be reinstated for its original duration.
- b) In the event that the licence holder is found not guilty, the licence will ordinarily be reinstated for its original duration, save for any previous or ongoing concerns relating to the licence holder's ability to meet the 'fit and proper' test.

In this situation the licence holder would be suspended and referred to the Licensing Sub-committee for them to make a decision based on the principles of this policy.

Principles of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”)

Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely. The possibility of rehabilitation, and the length of time before rehabilitation occurs, depends on the sentence imposed and not the offence committed. Where a person is sentenced to imprisonment for a period exceeding thirty months, the conviction can never be spent.

Despite the above general principles, the Act does not apply to applicants for hackney carriage and private hire drivers' licenses. This is because the driving of these vehicles is listed as a “regulated occupation” in relation to which questions may be asked as to the suitability of individuals to be granted a licence.

Although the 1974 Act does not prevent any judicial authority, including the Council acting as the licensing authority, from taking spent convictions into account, such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a 'fit and proper person' to hold a licence. The determination as to whether certain

convictions are spent, therefore, may be a relevant exercise.

Mitigation and/or Exceptional Circumstances

Where the Licensing Sub-Committee are considering whether an applicant meets the 'fit and proper' person test, the applicant will be entitled to provide them with any written mitigating circumstances.

The applicant will be invited to attend a Licensing Hearing. Prior to attending the hearing, the applicant will be provided with a committee report containing all the information necessary for the Licensing Sub-Committee to review at the hearing. The report will be provided to the applicant at least five (5) days prior to the hearing.