

**Statement of Policy and Guidelines**  
**for the Licensing of Hackney**  
**Carriage Drivers, Private Hire**  
**Drivers and Private Hire Operators**

*NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.*

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## **DELEGATIONS AND REFERRAL TO COMMITTEE**

For the purpose of this Policy, simple and conditional cautions, reprimands, warnings and fixed penalties shall be treated as though they were convictions.

1. This Policy is to be applied when making all decisions for the granting or suspension or refusal of a licence for a combined Hackney Carriage/Private Hire Driver's Licence and/or a Private Hire Operator's Licence ('a Licence').
2. Under the Council's Constitution the Environment and Licensing Committee have responsibility for exercising the Council's powers relating to Hackney Carriages and Private Hire Licensing.
3. The following paragraphs set out the delegations and procedures for the grant/suspension/revocation of a Licence. Where there is a delegation to the Corporate Director ('Director'), this is for the grant of a licence only; the Director can only refuse to grant such a licence, or to revoke an existing licence, where:
  - i) The driver is disqualified from driving and no longer holds a licence under Part III of the Road Traffic Act 1998 authorising him to drive a motor vehicle; or
  - ii) The driver's full DVLA licence has been revoked under the provisions of the Road Traffic (New Drivers) Act 1995.
4. **No previous convictions** - delegated authority to the Director.
5. **Minor Traffic Convictions where total number of points is 9 or fewer** – delegated authority to the Director, except where a DVLA licence has been revoked within the 2 year probationary period, under the Road Traffic (New Drivers) Act 1995, and a then a new DVLA licence obtained; even if the points are fewer than 9, the Director shall have no authority to grant the licence.
6. **Convictions within 5 years of application/change in circumstances of existing licence holder** – there is no delegation other than for minor traffic convictions as above; all other applications disclosing any Convictions within the last 5 years must be referred to the Committee.
7. **Convictions more than 5 years but less than 10 years prior to the application** – delegated authority to the Director after consultation with the Chair or Vice Chair and two members of the Committee to grant a Licence,  
  
except:
  - i) Where the applicant has a conviction for Violence as detailed in paragraphs (b)(i)

and (b)(ii) on pages 11 and 12 following, when the application must be referred to the Committee if the offence is less than 10 years prior to the application (but see below);

- ii) Where the applicant has a conviction for an Indecency Offence as detailed in paragraph (e)(i) on page 14 following, the application must be referred to Committee if the conviction is less than 10 years prior to the application.

8. **All Convictions more than 10 years prior to the application** – delegated authority to the Director after consultation with the Chair or Vice Chair, except in the following circumstances where the application must be referred to the Committee:

- i) Where the applicant has a conviction for an indictable only offence; and/or
- ii) Where the applicant has a conviction for a serious sexual offence; or
- iii) Where the convictions are all more than 10 years old and fall outside of the above but it is felt by the Chair/Vice Chair that the circumstances justify refusal.

9. **Medical Examinations:** All applicants are required to pass a medical examination (see page 10 following). The presumption will be that any applicant who fails their medical examination will be refused a licence; any applicant wishing to pursue their application and who has failed their medical examination will be referred to Committee.

10. **Knowledge test:** All new applicants are required to pass a knowledge test as part of the application process. This tests the applicant's knowledge of routes and landmarks within the Gedling and Nottingham areas, as well as their knowledge of the Highway Code and licence conditions, and the ability of the applicant to do basic mental arithmetic (to ensure they can give correct change).

The application of any driver who takes and fails the test 3 times in succession will be deemed to be incomplete and will not be processed. Such applicant will not be eligible to sit the test during the following 3 month period, during which time it is expected that he will revise the material necessary to pass the test.

There is no 'expiry date' to the test, and no requirement to re take the knowledge test at renewal; however, any driver who has previously held a licence with Gedling Borough Council and who re applies more than two years after the previous licence expired will be required to take the knowledge test again. This is to ensure the he is familiar with the Gedling/Nottingham area and the terms and conditions of the Gedling licence, for the safety of the public.

11. **Practical Driving Test:** All new applicants are required to pass a driving test as part of their application. The application of any driver who takes the test and fails 3 times in succession will be deemed to be incomplete and will not be processed. Any such applicant will not be able to re take the test during the following 3 month period.

12. **Safeguarding:** all new applicants are required to attend Safeguarding Training and pass

a short test as part of the application process, and every third year thereafter as part of the renewal application. All existing drivers are required to undertake the training and pass the test at first renewal after 1 April 2016, and every 3<sup>rd</sup> year as part of their renewal application.

**13. Duration of licences:**

Where the Director under his delegated authority grants a licence, he shall also have authority to determine the term of such licence. Where a licence is granted (whether by Director or Committee), the decision maker shall then consider the term of such licence as follows:

- i) **Driver's Licences:** the standard licence duration is 3 years. Applicants may apply for a 1 year licence, should they so wish. Where an application for a 3 year licence is submitted, and the applicant is deemed to be a fit and proper person to hold a licence, the Director/Committee may decide it appropriate in the circumstances of that particular applicant, that the licence be restricted to a lesser period (1 year). Where the applicant has been granted leave to enter or remain in the United Kingdom for a limited period of time ("the leave period") and that leave has not been extended by virtue of s.3C of the Immigration Act 1971, the Director/Committee may decide to grant the licence for a specified period which is less than 3 years or 1 year, the period of the licence must end before the leave period ends. Where the applicants leave has been extended by virtue of s.3C of the Immigration Act 1971, the Director/Committee can only grant a licence for a period of up to 6 months. Please refer to the Policy at page 20.
  
- ii) **Operator's Licences:** the standard licence duration will be 5 years. Applicants may apply for a 1 year licence, should they so wish. Where an application for a 5 year licence is submitted, and the applicant is deemed fit and proper to hold a licence, the Director/Committee may decide it appropriate in the circumstances of that particular applicant, that the licence be restricted to a lesser period (1 year). Where the applicant has been granted leave to enter or remain in the United Kingdom for a limited period of time ("the leave period") and that leave has not been extended by virtue of s.3C of the Immigration Act 1971, the Director/Committee may decide to grant the licence for a specified period which is less than 5 years or 1 year, the period of the licence must end before the leave period ends. Where the applicant's leave has been extended by virtue of s.3C of the Immigration Act 1971, the Director/Committee can only grant a licence for a period of up to 6 months. Please refer to the Policy at page 20.

## **GENERAL GUIDANCE AND POLICY**

Must be fit and proper 1 A licence shall not be granted to an applicant unless the Committee is satisfied that the applicant is a fit and proper person to hold such a licence.

Failure to notify the Council of convictions 2 Applicants for a new or renewed licence must declare on the application form and convictions, cautions, reprimands, warnings and fixed or endorseable penalty notices. It is a condition of all licences that pending and actual convictions/cautions/reprimands/ warnings and fixed penalty notices during the term of the licence must be notified to the Council. Licencees holding a licence for more than one year or less than five years must make a similar declaration at the end of each 12 month period.

A very serious view will be taken if an applicant or licence-holder fails to declare convictions, or cautions, or reprimands, or warnings, or fixed penalty offences but signs the declaration confirming that the information they have given is correct, or fails to notify the Licensing Section of convictions during the period of the licence in accordance with the licensing conditions.

This may be regarded as a deliberate attempt to mislead the Council with a view to obtaining a Licence or continuing to hold a Licence. The Director/Committee is entitled to take the failure to declare into account when determining what action to take as well as the actual conviction itself. This may result in a more serious sanction being imposed by the Committee.

Persons refused in the past 3 Applicants who have been refused licences in the past, on the grounds that they are not fit and proper, are not debarred from being granted licences. However, the Committee must be able to justify why that person is now considered by them as a fit and proper person to hold such a licence. To do this it will be necessary to look at the reasons why the applicant was initially refused and then consider what has occurred since to indicate that the applicant is now fit to hold a licence.

The lapse in time that has occurred, changes in domestic or business circumstances, added responsibilities are examples that may be relevant. The Committee may also consider that if the applicant is deemed to be fit and proper, it may be appropriate in his specific circumstances to only grant a one year licence.

Persons granted in the past	4	Similarly, those applicants who have been granted licences in the past have been considered to be fit and proper persons to hold such licences. To refuse a renewal of such a licence or to grant for a lesser period than 3 years, there must be a change in circumstances or new evidence presented to the Committee before a change can be justified.
Meaning of fit and proper	5	The term 'fit and proper person' refers only to whether that person is fit and proper to drive a hackney carriage or private hire vehicle, or to act as an operator of a private hire vehicle.
	6	There is no definition of the term 'fit and proper'; this is for the Committee to determine, however, regard should be had to the applicant's driving standards and experience, his character, any relevant previous convictions, and his knowledge and understanding of the trade. Regard will also be had to whether or not the applicant is physically and mentally fit to drive a hackney carriage or private hire vehicle.
		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.
		Applicants are encouraged to provide evidence of good character, especially if they have a criminal record. If such record 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, or to grant for only 1 year.
Treat each application on its merits	7	Each application for a licence will be considered on its own merits, both in relation to the grant of the licence and the duration for which it is granted.
Main concern public safety	8	The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers.
Personal circumstances	9	When considering whether to grant, suspend, or revoke a licence, the Council is focusing on the impact of the licence holder's vehicle and character on members of the public and in particular on potential users of those vehicles. This does <u>not</u> require any consideration of their personal circumstances, which are irrelevant, except in very rare cases, to explain the conduct of the driver.

Driving experience	10	As required by law, no application shall be granted where the applicant has held a full driving licence for less than one year, or where they currently hold a provisional licence. In addition, applications should not be granted unless the applicant also has adequate driving experience. Driving experience may be taken into account when considering whether it is appropriate to grant the applicant a 3 year licence.
Immigration Status	11	As required by law, no application shall be granted where an applicant for an Operator's or Private hire/hackney carriage driver's licence has been disqualified by reason of their immigration status from operating private hire vehicles or driving private hire vehicles/hackney carriages. A person is disqualified by reason of their immigration status if the person is subject to immigration control and has not been granted leave to enter or remain in the United Kingdom, or the leave is invalid, has ceased to have effect or is subject to a condition preventing the person from carrying on the licensable activity (operating private hire vehicles or driving private hire/hackney carriages).
Conduct of driver	12	Conduct of licence holders is relevant in considering revocation or suspension of their licence.
Drivers already licensed	13	Where a licence holder has been convicted of an offence involving dishonesty, indecency or violence, an immigration offence or been required to pay an immigration penalty, a licence may be suspended, revoked or an application to renew a licence refused. Where a licence holder is found to no longer be a fit and proper person, their licence must be revoked. If, however, it is considered that a person is still a fit and proper person to hold such a licence, but that their conduct falls below the standard required by the Licensing Authority, the Committee may decide to suspend their licence for such a period of time it considers fit or to issue him with a warning.
Use of suspension	14	The aim of the suspension of a licence is to bring a driver, who is falling below the standards required, back into line and not to penalise him. If it is felt that a warning should be sufficient to do this then a warning should be preferred to a suspension.
Complaints of	15	Where evidence of complaints about a driver's standards, conduct or

drivers' standards, conduct of behaviour		behaviour or other allegations which reflect upon the conduct or behaviour of a driver are brought before the Committee and the driver disputes those allegations, the Committee should consider whether those complaints or allegations can be substantiated.
Licence-holder charged with criminal offence	16	<p>Where an applicant or licence-holder has been charged with a criminal offence, but the matter has not yet been considered by the Court, the Committee may decide to adjourn consideration of the matter pending the outcome of the criminal proceedings. Alternatively, the Committee may proceed to consider the charge and determine what action to take. Where a licence-holder has been charged with an offence:</p> <ul style="list-style-type: none"> <li>• It is not necessary for the Committee to wait for a guilty verdict in criminal proceedings where a serious criminal offence is alleged to have been committed in the course of their employment before it can be decided to suspend or revoke a licence.</li> <li>• It is not necessary to hear live evidence from witnesses to such an offence before it can be decided to suspend or revoke a licence.</li> <li>• It is not necessary to decide there is a reasonable chance of the person being convicted of that offence before their licence can be properly suspended or revoked. It is for the Committee to decide whether the person is fit and proper to hold a licence on a balance of probabilities.</li> <li>• It is not necessary to look at the impact on that person's livelihood or consider compensation if that person is ultimately acquitted of the criminal charge.</li> </ul>
Reliance on evidence	17	In hearing evidence the Committee is not subject to the strict rules of evidence. Care should be taken in determining the relevance and admissibility of any evidence.
	18	Where evidence has been presented which is later deemed to be not relevant or admissible, the members should take care to exclude such from their minds when making their decision.
	19	The Committee should be careful to attach the correct weight to evidence before them. An independent witness with nothing to gain is more likely to give an unbiased account than someone who has a personal interest in the case. Corroborative evidence will add weight. If evidence is presented without calling the witness to that evidence, great care should be taken in relying upon such.
Standard and burden of proof	20	The civil standard of proof applies to proceedings of the Committee i.e. the Committee must be satisfied on a balance of probabilities.

- 21 The burden of proof rests with the applicant/licence-holder to show that they are a fit and proper person to hold a licence.
- 22 Where a licence-holder has continued to hold a licence following an undeclared conviction/caution/reprimand/warning or fixed penalty notice, this will be taken into account when that conviction is ultimately considered. If the Licence is revoked, the length of time the licence-holder continued to hold a licence following an undisclosed conviction may be taken into account when considering future applications.
23. Non-disclosure by an existing licence holder will be considered on renewal and whether it is appropriate, in the particular circumstances, to allow a 3 (or 5) year licence.
- Human Rights Act considerations 24. A licence-holder can be deprived of his/her licence if it is in the public interest and in accordance with the law. When determining appropriate action the Committee will balance the rights of the licence-holder with the rights of the public at large.

### **GUIDELINES RELATING TO MEDICAL CONDITIONS**

- Medical checks 1 The Council requires applicants to pass a medical examination on initial application and when aged 45 years, 50 years, 55 years, 60 years, 65 years and annually thereafter. Applicants who fail the test will be referred to Committee.
- Consideration of medical report 2 In determining whether the applicant is physically and mentally fit to drive a hackney carriage or private hire vehicle, the Committee will consider the report of the Occupational Health Physician appointed by the Council to assess the fitness of applicants. The Committee will also consider any relevant medical evidence of a qualified medical practitioner submitted by the applicant and may take such evidence into account when determining the application.
- Standard to be applied 3 The Council applies the Group 2 medical standards applied by the Driver and Vehicle Licensing Authority to taxi drivers. If an applicant fails to meet the Group 2 medical standard, the application will normally be refused. Where an existing licence holder develops a medical condition which means (s)he will not meet the Group 2 medical standard, the licence will normally be revoked or not renewed.

## GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

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| Convictions   | 1 | In this Policy, simple and conditional cautions, reprimands, warnings and fixed penalties (endorseable or not) shall be treated as though they were convictions.   |
| Consideration of previous convictions   | 2 | In considering evidence of an applicant's previous convictions the Council will take into account the nature of the offence, when it was committed, date of conviction, applicant's age when the offence was committed and any other factors which are relevant.   |
| Convictions previously considered where no change of circumstances                                    | 3 | Applications for the renewal of hackney carriage driver's licences, private hire vehicle driver's licences and private hire operators licences shall not be refused on the grounds of previous convictions, where the applicant has been previously granted a licence and no further convictions have occurred.  |
| Correctness of conviction not to be questioned  | 4 | Where evidence of previous convictions are presented, the Committee must accept that the applicant was correctly convicted. Subject to this, the Committee may look at the circumstances of the offence to determine its seriousness. The sentence imposed by the Court may be relevant to determine its seriousness. <b>Appendix I</b> lists a range of sentencing powers available to the Magistrates' Court, which may assist the Committee in assessing the seriousness of the offence committed. However, it is important to note that in imposing a fine the Court will take account of the offender's family and financial circumstances. |
| Consideration of spent convictions  | 5 | The Committee can consider convictions which are usually regarded as spent convictions for the purpose of The Rehabilitation of Offenders Act 1974. Such convictions can be considered by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended.   |
|   | 6 | When considering spent convictions the Committee will take into account the offence involved, its relevance, its age and apparent seriousness.   |
| Licences not normally granted where there are convictions for serious crime within the last 3-5 years | 7 | A person with a current conviction for a serious crime need not be permanently barred from obtaining a licence but should be expected to (a) remain free of conviction for an appropriate period and (b) show adequate evidence of good character from the time of the conviction. This may be, for instance, references from an employer. Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.  |

Number of convictions            8    Some discretion may be appropriate if the conviction is isolated and there are mitigating circumstances. Similarly, multiple convictions or a series of convictions 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.

The following examples afford a general guide on the action which might be taken where convictions are disclosed; note that this list is not exhaustive and all convictions should be considered when deciding if an applicant is fit and proper, even if it does not appear below.

Where there is more than one conviction, it is expected that the penalty for the most serious will apply.

**(a) Convictions involving Dishonesty (including attempts or conspiracy to commit such offences)**

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, for example, 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 comprise especially vulnerable people). For these reasons a serious view is taken of any convictions involving dishonesty. In general, a period of 3 to 5 years free of conviction will be required before an application is likely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for any of the following offences which occurred fewer than 3 years prior to the date the application is considered: -

- Theft/Burglary and offences under the Theft Act 1968 (other than robbery/offences including violence which are dealt with below)
- Fraud/misrepresentation and offences under the Fraud Act 2006
- Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- TWOC – Taking a motor vehicle without the owner’s consent
- Handling or receiving stolen goods
- Forgery

Where the conviction is more than 3 years but less than 5 years prior to the date the application is considered, more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

***Where an existing licence-holder is convicted of an offence involving dishonesty, the licence should normally be revoked and in general, and a period of 3 to 5 years free of conviction will be required before a new application is likely to be considered favourably.***

**(b) Convictions involving Violence (including attempts or conspiracy to commit such offences)**

As hackney carriage and private hire drivers maintain close contact with the public, in general a period of 3 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will 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 any of the following offences and the conviction is less than 10 years prior to the date the application is considered: -
- Murder
  - Manslaughter
  - Arson
  - Malicious wounding or grievous bodily harm (s18 and 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)

Where the conviction is more than 10 years but less than 12 years prior to the date the application is considered, more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

- (ii) An application will normally be refused where the applicant has a conviction for any of the following offences and the conviction is less than 8 years prior to the date the application is considered: -
- Grievous bodily harm with intent (s.18 Offences Against the Person Act)
  - Grievous bodily harm (s.20 Offences Against the Person Act)
  - Robbery (Theft Act 1968)
  - Riot (s.1 Public Order Act 1986)
  - Violent Disorder (s.2 Public Order Act 1986)
  - Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
  - All racially aggravated offences against Public Order
  - All racially-aggravated offences of Harassment

Where the conviction is more than 8 years but less than 10 years prior to the date the

application is considered, more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(iii) An application will normally be refused where the applicant has a conviction for any of the following offences and the conviction is less than 3 years prior to the date the application is considered:-

- Common assault and/or battery
- Common assault and/or battery which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Assault on a police officer
- Affray (s.3 Public Order Act 1986)
- Offences against Public Order (non racially aggravated)
- Offences of Harassment (non-racially aggravated)
- Obstruction
- Possession of offensive weapon
- Possession of firearm
- Criminal damage
- Resisting arrest

Where the conviction is more than 3 years but less than 5 years prior to the date the application is considered, more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction

***Where an existing licence-holder is convicted of an offence of violence, the licence should normally be revoked and in general, a period of 3 to 12 years free of conviction (depending on the nature and seriousness of the offence) will be required before a new application is likely to be considered favourably.***

**(c) Convictions involving Drugs (including attempts or conspiracy to commit such offences)**

A serious view is taken of any drug related conviction. The nature and quantity of the drugs, and whether intended for personal use or supply, are issues which should be taken into consideration.

A licence will normally be refused where the applicant has more than one conviction for drug-related offences and has not been free from conviction for 5 years from the date of the most recent conviction.

A licence may be refused where the applicant has an isolated drug related conviction within 3-5 years prior to the date the application is considered, consideration will be given to the nature and quantity of drugs involved and whether intended for personal use or supply.

If there is evidence of persistent drug use, misuse or dependency, a specialist examination (in accordance with DVLA group 2 medical standards) may be required before the licence is granted. If an applicant was an addict then he would normally be required to show evidence of a minimum of 5 years free from drug taking after detoxification treatment.

***Where an existing licence-holder is convicted of a drugs-related offence, the licence should normally be revoked. The above provisions should be applied when/if they make a new application for a licence.***

**(d) Convictions involving Alcohol (including attempts or conspiracy to commit such offences)**

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate. A number of convictions for drunkenness, including being drunk and disorderly or drunk and incapable, could indicate a medical problem necessitating critical examination and refusal of a licence.

Applicants will normally be required to show that a period of at least 5 years has elapsed after completion of detoxification treatment if (s)he was an alcoholic.

**(e) Convictions involving Indecency (including attempts or conspiracy to commit such offences)**

As hackney carriage and private hire drivers often carry unaccompanied passengers, applicants with convictions for soliciting, importuning, indecent exposure and/or any sexual offence will normally be refused a licence until they can show a substantial period (usually between 3 and 10 years) free from any such conviction.

(i) In particular, an application will normally be refused where the applicant has a current conviction for any of the following offences and the conviction is less than 10 years prior to the date the application is considered: -

- Rape
- Indecent/Sexual assault
- Gross indecency with a female
- Gross indecency with a male
- Sexual offences against a child under 16 including sexual grooming
- Sexual offences against persons with a mental disorder impeding choice
- Buggery
- Exposure
- Offences involving indecent images of children
- Voyeurism

Where the conviction is more than 10 years but less than 12 years prior to the date the application is considered, more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

(ii) In particular, an application will normally be refused where the applicant has a current conviction for either of the following offences which is less than 3 years prior to the date the application is considered: -

- Kerb-crawling
- Persistent soliciting

Where the conviction is more than 3 years but less than 5 years prior to date the application is considered, more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

***Where an existing licence-holder is convicted of an offence of indecency, the licence should normally be revoked and in general, a period of 3 to 10 years free of conviction, depending on the nature and seriousness of the offence, will be required before a new application is likely to be considered favourably.***

#### **(f) Motoring Convictions**

##### *i) Driving offences involving the loss of life*

A very serious view is taken of any applicant who has been convicted of a motoring offence that has resulted in loss of life.

A licence will normally be refused unless the applicant has been free of conviction for 7 years from the date of the most recent conviction, or 3 years from the completion of the sentence for the offence, whichever is the longer.

##### *ii) Motoring Offences involving alcohol or drugs*

A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink or drugs. Where a disqualification has occurred as a result of a drug or drink-driving offence, at least 5 years free from conviction should elapse after the restoration of the DVLA licence, before an application for a driver's licence will be considered favourably.

An isolated conviction for drunkenness, without disqualification, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. More than one conviction for this type of offence or one such conviction within the last 5 years is likely to merit refusal.

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 or drug addict.

***Where an existing licence-holder is disqualified from driving as a result of a drink or drug related driving conviction, the licence will be revoked by the Corporate Director under delegated powers.***

***Where an existing licence-holder is convicted of driving or being in charge of vehicle while under the influence of drink or drugs, but the licence-holder is not disqualified from driving, the licence should normally be revoked. Any subsequent application for a new licence will be determined in accordance with the guidance in paragraph (f)(ii) above.***

(iii) Major Traffic Offences

An isolated conviction for a major traffic offence such as dangerous driving which involves a disqualification from driving for any period will require careful consideration of the facts, particularly where the offence has resulted in injury or accident. At least 3 years free from conviction after the restoration of the DVLA licence should elapse before an applicant is granted a licence.

Where an applicant has been convicted of a major traffic offence which has not resulted in disqualification, careful consideration should be given to the circumstances surrounding the offence. An application for a licence will normally be refused where the conviction is less than 2 years prior to the date the application is considered.

***Where an existing licence-holder is disqualified from driving as a result of a conviction for a major traffic offence, the licence will be revoked by the Corporate Director under delegated powers.***

***Where an existing licence-holder is convicted of a major traffic offence, but the licence-holder is not disqualified from driving, the licence should normally be revoked and any subsequent application for a new licence will be determined in accordance with the guidance above.***

A list of convictions to which this paragraph applies is attached as **Appendix II**.

(iv) a) Minor Traffic Offences after the 2 year probationary

Isolated convictions for minor traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of conviction will be taken into account. If there are several convictions for minor traffic offences the applicant will normally be expected to show a period free of conviction of at least 6 months from the date of the last conviction.

An application will normally be refused where the applicant has 12 or more penalty points on

their DVLA licence for minor traffic convictions even if (s)he has not been disqualified from driving.

Where a minor traffic conviction has 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 6 months free from conviction must have elapsed from the restoration of the DVLA licence.

***Where an existing licence-holder has more than 9 penalty points on their DVLA licence, their licence will normally be suspended for a period of time.***

***Where an existing licence holder is disqualified from driving the licence will be revoked by the Corporate Director under delegated powers.***

*b) Minor Traffic Offences within the 2 year probationary period.*

Under the Road Traffic (New Drivers) Act 1995 every new driver has to undergo a probationary period of 2 years from the date that their full driving licence is issued. If (s)he is convicted of minor traffic offences within that period which result in a total of 6 or more points, the full driving licence is revoked by DVLA.

If an existing licence holder has the DVLA licence revoked under these provisions, the taxi driver's Licence will be revoked by the Corporate Director (see page 2 paragraph 3). The driver may then apply for a provisional licence and to re-take and pass their driving test (both theory and practical) before they are granted a full licence by DVLA. Once this has happened they may apply again for a taxi driver's Licence.

Where minor traffic offences have resulted in the applicant's full licence being revoked within the probationary period, this will be viewed as reflecting seriously on the applicant's standard of driving. Generally the applicant will be expected to have been driving, conviction and accident free, on their new full licence for at least 6 months before an application for a taxi driver's Licence will be viewed favourably.

A list of convictions to which these paragraphs apply is attached as **Appendix III**.

*(v) Totting –up Disqualifications*

Where a number of traffic offences has resulted in a driver receiving 12 penalty points or more on his/her licence the driver will be disqualified from driving unless the Court is satisfied that exceptional hardship would be suffered by an individual if disqualified. This is known as a "totting-up" disqualification. Where an applicant has a totting-up disqualification an application will normally be refused until a period of between 12 months and 2 years has elapsed from the restoration of the DVLA licence depending on the seriousness of the convictions which led to the totting up.

**Where an existing licence-holder is disqualified from driving as a result of a totting up, the licence will be revoked by the Corporate Director under delegated powers.**

(vi) Hybrid Traffic Offences

Offences of the type listed in **Appendix IV** 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 fewer penalty points for the offence.

**(g) Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976**

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 Act") is to ensure the protection of the public. For this reason a serious view is taken of convictions for offences under the Act (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 where (s)he has been convicted of an offence under the Acts at any time during the 6 months preceding the date the application is considered or has more than one conviction within the 2 years preceding the date the application is considered.

(i) "Plying for hire" Offences

Suspension of a driver's licence may be appropriate where an existing licence-holder has been convicted of an offence of plying for hire. The following table serves as guidance on the appropriate length of suspension, but the suspension period may be varied depending on the individual circumstances surrounding each case.

<b>Circumstances</b>	<b>Period of Suspension</b>
Where a driver is convicted of Plying for Hire on a first occasion and the Borough Council is notified by the driver of the offence.	28 days
Where a driver is convicted of Plying for Hire on a first occasion and the Borough Council is <u>not</u> notified by the driver of the offence	56 days
Where a driver is convicted of Plying for Hire on more than one occasion within 2 years	112 days

In addition, the Committee takes a serious view where it is alleged that an applicant has

committed an offence of plying for hire without a licence at any time during the 6 months immediately prior to the date the application is considered. In such circumstances, the applicant will normally be refused a licence if the Committee is satisfied on balance that the applicant picked up a passenger without a prior booking.

Where an existing licence holder is convicted of an offence of plying for hire and as a result of that offence is also convicted of driving without insurance, it is expected that the application will be decided in accordance with paragraph (f)(iii) Major Traffic Offences above.

#### **(h) Breaches of Orders of the Court**

Drivers of hackney carriage and private hire vehicles are expected to be persons who respect the authority of all enforcement agencies, including the Police, Court and local authorities. For these reasons a serious view is taken of any convictions involving failure to comply with an Order of the Court or direction of any enforcement authority. In general, a period of 1 to 3 years free of conviction will be required before an application is likely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for any of the following offences and the conviction is less than 1 year prior to the date the application is considered: -

- Breach of an Anti-Social Behaviour Order:
- Breach of a Community Order.
- Failure to surrender to bail.
- Breach of a Non-Molestation Order.
- Breach of a Protective Order.
- Breach of a Restraining Order.

***Where an existing licence-holder is convicted of a breach of an Order of the Court, the Licence will normally be revoked and in general, a period of 1 year free of conviction will be required before a new application is likely to be considered favourably.***

#### **(i) Smoking offences**

It is an offence to smoke in a licensed vehicle by virtue of the Health Act 2006. The Committee may decide to suspend the Licence for a period of time or issue a warning to any driver who comes before it for such offences.

#### **(j) Complaints about a Driver's standards or conduct**

The Council sometimes receives complaints from members of the public or other drivers about the behaviour of a licensed driver/operator. This may be about their standard of driving and/or

their conduct whilst representing the Council as a driver/operator. All written complaints are investigated by the Licensing Officers and, if upheld, are recorded on the driver's file. Usually the issue is resolved after an isolated incident; however, where there is one isolated complaint which involves a serious allegation, or a series of allegations, the driver is brought before the committee.

It is difficult to provide general guidance because complaints are diverse in nature – however the Committee will need to decide whether the complaint(s) can be substantiated and, where they can (on balance of probability), the Committee must decide whether the driver remains fit and proper. The decisions open to committee are:

1. that the driver is not fit and proper – in this case their licence must be revoked; or
2. that the driver is fit and proper, but that they have fallen below the required standard; in this case the Committee may decide to suspend the licence for a period, such period would depend on the number, nature and frequency of the complaints, but would generally be between 7 and 28 days; alternatively the committee may decide that a warning is sufficient (such warning to be recorded on the Driver's records).
3. Any complaints (number and seriousness) will also be considered when deciding whether it is appropriate to grant a 3 year licence.

## **POLICY - DURATION OF LICENCES**

### **Driver (PH and Hackney Carriage) Licences**

1. All licences will be issued for 3 years unless:
  - i) The application is for a 1 year licence; or
  - ii) The Council decides it appropriate in the circumstances of the case that the licence should be for a lesser period (1 year);or
  - iii) The Council cannot grant a licence for 3 or 1 years due to the applicant's immigration status and must grant for a different period (less than 3 years)
2. When looking at an application for a 3 year licence, the decision maker (Director or Committee) will consider first whether the applicant is fit and proper to hold a licence. If he is not then the application will be refused. If he is fit and proper, the decision maker will then consider whether it is appropriate, in the circumstances of that particular applicant, that the licence should be granted for a lesser (1 year) period.
3. When considering whether an applicant should be granted a 3 year licence, the decision maker (Director or Committee) will look at the specific circumstances appertaining to that particular applicant, including (but not limited to) the following:

- driving history, for example, convictions, cautions, reprimands, warnings, fixed penalty notices (seriousness, date, patterns of offending, current points on the licence)
- applicant's age and length of time he has been driving including whether he/she has had previous experience of driving taxi/public service vehicles
- history of the applicant, for example, breach of licence conditions, complaints (if already holding a taxi licence), anti social behaviour orders, parking fines.
- medical history
- whether the applicant has failed to declare any convictions, cautions, reprimands, warnings and/or fixed penalty notices either on his application form or in accordance with any existing or previous licence
- whether references of good character have been provided
- Any other relevant information

When considering whether to grant a licence for a 3 year or 1 year period, the decision maker must also consider the immigration status of the applicant, as a licence can only be granted for a period during which the applicant has leave to enter or remain in the United Kingdom. If the applicant's leave period has been extended by virtue of s 3C of the Immigration Act 1971, a licence can only be granted for a period of up to 6 months. The applicant may have factors (listed above) in addition to immigration status which mean that it would only be appropriate to grant a licence for 1 year, however where the only consideration is immigration status the licence can be granted for a lesser period than 3 or 1 years dependant on the applicant's leave period.

### **Operators' Licences**

4. All Operator Licences will be issued for 5 years unless:
  - i) The application is for a 1 year licence; or
  - ii) The Council decides it appropriate in the circumstances of the case that the licence should be for a lesser period
  - iii) The Council cannot grant a licence for 5 or 1 years due to the applicant's immigration status and must grant for a different period (less than 5 years)
  
5. When considering an application for a 5 year licence, the decision maker (Director or Committee) will consider first whether the applicant is fit and proper to hold a licence. If he is not then the application will be refused. If he is fit and proper, the decision maker will then consider whether it is appropriate, in the circumstances of that particular applicant that the licence should be granted for a lesser (1 year) period.

6. When considering whether an applicant should be granted a 5 year licence, the decision maker (Director or Committee) will look at the specific circumstances appertaining to that particular applicant, including (but not limited to) the following:
  - History of convictions, cautions, reprimands, warnings, fixed penalty notices;
  - Record keeping and compliance with licence conditions
  - Complaints
  - Employment history (for example, whether he has employed unlicensed drivers and/or drivers not entitled to work in the UK)
  - Any other relevant information.

When considering whether to grant a licence for a 5 year or 1 year period, the decision maker must also consider the immigration status of the applicant, as a licence can only be granted for a period during which the applicant has leave to enter or remain in the United Kingdom. If the applicant's leave period has been extended by virtue of s 3C of the Immigration Act 1971, a licence can only be granted for a period of up to 6 months. The applicant may have factors (listed above) in addition to immigration status which mean that it would only be appropriate to grant a licence for 1 year, however where the only consideration is immigration status the licence can be granted for a lesser period than 5 or 1 years dependant on the applicant's leave period.

7. **Conditions for licences**

All licences granted for a period of five years or less will have attached to them all the conditions which apply to a one year licence. In addition there is a requirement that, after each 12 month period, the driver/operator completes a declaration form for the Council detailing all convictions, cautions, reprimands, warnings and fixed penalty notices. Drivers will also be required to undergo a DVLA check at the end of each 12 months.

8. **Any other relevant information**

The over-riding concern of the Council in applying this policy is the safety of the public. In deciding whether a licence should be for 3 years (drivers) or 5 years (operators) or such lesser period as is appropriate in the particular circumstances of the applicant, the Council will consider at all times the potential risk that driver/operator presents to public safety.

## **POLICY - IMMEDIATE REVOCATION/SUSPENSION OF DRIVER'S LICENCE**

1. If the Committee decides to revoke or suspend a driver's licence, it will then have to consider whether that revocation/suspension should take immediate

effect.

2. The Committee only has the power to resolve that the revocation/suspension will take immediate effect **if it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect.**
3. Each decision to resolve that the revocation/suspension will take immediate effect should be considered on its own merits.
4. “In the interests of public safety” is not defined and is for the Committee to determine. However, regard should be had to any risks to public safety arising from concerns about the licence-holder’s driving standards, their character, including (for example) dishonesty, violent behaviour, involvement in drink or drugs, inappropriate sexual conduct, any relevant previous convictions and any other matters the Committee may deem relevant.
5. Before reaching a decision, the Committee shall give the licence-holder the opportunity to make representations as to whether or not the revocation/suspension should take immediate effect.
6. The over-riding consideration shall always be the safety and protection of passengers and the general public.
7. Matters such as unemployment and home circumstances may be taken into account when determining whether the revocation or suspension should take place immediately but shall not outweigh the public safety factor.
8. Where the Committee has decided that a licence-holder is no longer “fit and proper” to hold a licence, the presumption should be that the interests of public safety require the revocation of the licence to have immediate effect. However, the Committee may consider that the particular circumstances of a case are exceptional and compelling to justify allowing the licence to continue to have effect until 21 days after the date of the decision to revoke or, if an appeal is lodged, until that appeal is determined. For example, a licence-holder may be able to demonstrate that the risk to public safety is so diminished that it is right to allow the licence to continue.
9. However, if it is considered that a person is still a fit and proper person to hold such a licence but that their conduct falls below the standard required by the Licensing Authority, and the Committee has therefore decide to suspend them, the presumption should be that the interests of public safety will not require the suspension of the licence to have immediate effect. However, the Committee may consider that the particular circumstances of a case are exceptional and compelling and do not justify allowing the licence to continue to have effect

until 21 days after the date of the decision to revoke or, if an appeal is lodged, until that appeal is determined.

10. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, the Committee will give notice to the driver, which includes a statement to that effect and an explanation why the suspension or revocation takes effect when the notice is given to the driver.

## SENTENCES AVAILABLE TO THE MAGISTRATES' COURT FOR OFFENDERS AGED 18 AND OVER

*[in ascending order]*

1. **Absolute and Conditional Discharge** - either discharge completely or subject to the offender committing no further offences for a certain period.
2. **Bind Over** - bind over to keep the peace.
3. **Compensation** [up to £5,000] – payment to compensate the victim of the crime for loss, injury or suffering.
4. **Fine** [up to £5,000 more if specified for certain offences] – financial penalty.
5. **Community Order** – a court may pass on an offender a community order of a low, medium or high level. The order must have one or more of the following requirements:
  - an unpaid work requirement
  - an activity requirement
  - a programme requirement
  - a prohibited activity requirement
  - a curfew requirement
  - an exclusion requirement
  - a residence requirement
  - a mental health treatment requirement
  - a drug rehabilitation requirement
  - an alcohol treatment requirement
  - a supervision requirement
  - an attendance centre requirement – if the offender is under 25

NB offences committed before 4 April 2005 are dealt with by way of old style community orders:

- i. Community Rehabilitation Order
- ii. Community Service Order
- iii. Combination Order
- iv. Attendance Centre – under 21s only

6. **Short Detention** – usually for a day or a few hours defendant must be detained in the court house or local police station
7. **Suspended sentence Order** – a period of imprisonment/detention is imposed but suspended for a period up to two years. The order must include one or more of the requirements listed above. For pre 4<sup>th</sup> April 2005 offences an old style suspended sentence can be given.
8. **Detention in Young Offenders Institution** - under 21 only
9. **Imprisonment** - over 21 only
10. **Ancillary Orders** may be imposed in relation to certain convictions in addition to a usual penalty for example Anti-Social behaviour Orders, Football Banning Orders, Drink banning Orders, Disqualification from driving.

**Major Traffic Convictions**

<b>Code</b>	<b>Conviction</b>	<b>Penalty Points</b>
AC10	Failing to stop after an accident	5 to 10
AC20	Failing to give particulars or to report an accident within 24 hours	5 to 10
AC30	Undefined accident offences	4 to 9
A10	Driving while disqualified by order of the court	6
BA20	Attempting to drive while disqualified by order of court	6
CD10	Driving without due care and attention	3 to 9
CD20	Driving without reasonable consideration for other road users	3 to 9
CD30	Driving without due care and attention or without reasonable consideration for other road	3 to 9
CD40	Causing death through careless driving when unfit through drink	3 to 11
CD50	Causing death by careless driving when unfit through drugs	3 to 11
CD60	Causing death by careless driving with alcohol level above limit	3 to 11
CD70	Causing death by careless driving then failing to supply a specimen for alcohol analysis	3 to 11
CD80	Causing death by careless, or inconsiderate, driving	3 to 11
CD90	Causing death by driving: unlicensed, disqualified or uninsured drivers	3 to 11
DD10	Causing serious injury by dangerous driving	3 to 11
DD40	Dangerous driving	3 to 11
DD60	Manslaughter or culpable homicide while driving a vehicle	3 to 11
DD80	Causing death by dangerous driving	3 to 11
DD90	Furious driving	3 to 9

DR10	Driving or attempting to driver with alcohol level above limit	3 to 11
DR20	Driving or attempting to drive while unfit through drink	3 to 11
DR30	Driving or attempting to drive then failing to supply a specimen for analysis	3 to 11
DR31	Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity	3 to 11
DR40	In charge of a vehicle while alcohol level above limit	10
DR50	In charge of a vehicle while unfit through drink	10
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive	10
DR61	Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive	10
DR70	Failing to provide specimen for breath test	4
DR80	Driving or attempting to drive when unfit through drugs	
DR90	In charge of a vehicle when unfit through drugs	10
IN10	Using a vehicle uninsured against third party risks	6 to 8
LC20	Driving otherwise than in accordance with a licence	3 to 6
LC30	Driving after making a false declaration about fitness when applying for a licence	3 to 6
LC40	Driving a vehicle having failed to notify a disability	3 to 6
LC50	Driving after a licence has been revoked or refused on medical ground	3 to 6
MS50	Motor racing on the highway	3 to 11

MS60	Offences not covered by other codes (including offences relating to breach of requirements as to control of vehicle)	3
UT50	Aggravated taking of a vehicle	3 to 11
TT99	Disqualification under totting-up – if the total penalty points reaches 12 or more within 3 years, the driver can be disqualified	

**Aiding, abetting, counselling or procuring convictions**

For these convictions the number 0 on the code is changed to 2

**Causing or permitting convictions**

For these convictions the number 0 on the code is changed to 4

**Inciting convictions**

For these convictions the number 0 on the code is changed to 6

**Minor Traffic Convictions**

<b>Code</b>	<b>Conviction</b>	<b>Penalty Points</b>
CU80	Breach of a requirement as to control of a vehicle, using a mobile etc	3
MS10	Leaving a vehicle in a dangerous position	3
MS20	Unlawful pillion riding	3
MS30	Play Street Offences	2
MS70	Driving with uncorrected defective eyesight	3
MS80	Refusing to submit to an eyesight test	3
MS90	Failure to give information as to identity of driver etc	6
MW10	Contravention of special roads regulations (excluding speed limits)	3
PC10	Undefined contravention of pedestrian crossing regulations	3
PC20	Contravention of pedestrian crossing regulations with moving vehicle	3
PC30	Contravention of pedestrian crossing regulations with a stationary vehicle	3
TS10	Failing to comply with traffic light signal	3
TS20	Failing to comply with double white lines	3
TS30	Failing to comply with 'Stop' sign	3
TS40	Failing to comply with direction of a constable/warden	3
TS50	Failing to comply with traffic sign (excluding 'Stop' signs, traffic lights or double white lines)	3
TS60	Failing to comply with school crossing patrol sign	3

TS70	Undefined failure to comply with a traffic direction sign	3

**Aiding, abetting, counselling or procuring convictions**

For these convictions the number 0 on the code is changed to 2

**Causing or permitting convictions**

For these convictions the number 0 on the code is changed to 4

**Inciting convictions**

For these convictions the number 0 on the code is changed to 6

**Hybrid Convictions**

<b>Code</b>	<b>Conviction</b>	<b>Penalty Points</b>
CU10	Using a vehicle with defective brakes	3
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	3
CU30	Using a vehicle with defective tyre(s)	3
CU40	Using a vehicle with defective tyres	3
CU50	Causing or likely to cause danger by reason of load or passengers	3
SP10	Exceeding goods vehicle speed limits	3 to 6
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)	3 to 6
SP30	Exceeding statutory speed limit on a public road	3 to 6
SP40	Exceeding passenger vehicle speed limit	3 to 6
SP50	Exceeding speed limit on a motorway	3 to 6

**Aiding, abetting, counselling or procuring convictions**

For these convictions the number 0 on the code is changed to 2

**Causing or permitting convictions**

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For these convictions the number 0 on the code is changed to 6