

## **Guidelines Relating to the Relevance of Convictions / Cautions In Relation to Taxi Licensing**

### **Introduction**

The City Council as the Taxi Licensing Authority, has the responsibility to ensure all drivers of taxis that are available for hire to the public, are 'fit and proper' persons to hold the relevant drivers' licences. The taxi Licensing Authority will take such measures as appropriate in order to protect members of the public, other road users and the drivers themselves.

There is no definition or general test that determines whether or not a driver is deemed 'fit and proper' to hold a licence. It is a matter of judgment for the Licensing Authority in order to assess any risks or concerns, taking into consideration such matters as the applicant's integrity, honesty and previous character. Previous convictions and cautions are taken into account as well as other information.

Convictions and cautions do not necessarily mean that an application will be refused, or a licence will be revoked. Also, where an applicant does not have any convictions or cautions, the applicant must still be deemed 'fit and proper' by the Licensing authority. Each case is treated on its own merits.

The assessment is ongoing and drivers have a duty to disclose any convictions or cautions which might affect their suitability to hold a private hire or hackney carriage driver's licence.

These guidelines were adopted on \*\*\*\*\*2014 and will be referred to by officers exercising their powers of delegation, under the Council's Scheme of Delegations in determining whether or not a person is 'fit and proper' to hold a driver's licence.

### **1. General**

#### **1.1 Scope**

This Policy applies to the grant, revocation, suspension or renewal of Operators Licences ("Operator's Licences") and Licences to drive hackney carriages and/or private hire vehicles ("Driver's Licences") issued by Peterborough City Council ("the Council").

#### **1.2 Purpose**

The purpose of this Policy is to facilitate the Council's duties and responsibilities in determining the impact of convictions and cautions on the grant or renewal of Driver's and Operator's Licences in accordance with the legislative considerations set out below.

### **2. Legislative Background**

#### **2.1 Licensing Legislation**

The Council licences drivers and operators under the Town and Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 ("the Relevant Legislation").

## 2.2 Grant and Renewal of Licences

Sections 51, 55 and 59 of the Relevant Legislation prescribe that the Council shall not grant a Driver's or Operator's Licence unless satisfied that the applicant is fit and proper for that purpose.

Whilst the relevant legislation is not specific as to what will constitute a fit and proper person for the purpose of determining whether to issue a Licence, it is commonly accepted that any history of offending will be a relevant consideration. The overriding aim of the licensing authority is to protect the public.

## 2.3 Suspension or Revocation of Licence

Section 61 of the Relevant Legislation prescribes that the Council may suspend, revoke or refuse to renew a Driver's Licence in the following circumstances:

- (a) there been a conviction/caution for an offence involving dishonesty, indecency or violence;
- (b) there has been a conviction or caution for an offence under or a failure to comply with the Relevant Legislation; or
- (c) any other reasonable cause

Similarly, Section 62 of the Relevant Legislation prescribes that the Council may suspend, revoke or refuse to renew an Operator's Licence in the following circumstances:

- (a) there has been an offence under or non-compliance with the Relevant Legislation;
- (b) any conduct on the part of the Operator which renders him unfit to hold a licence;
- (c) any material change since the Licence was granted in any of the circumstances of the operator on the basis of which the licence was granted; or
- (d) any other reasonable cause.

## 2.4 The Council will also have due regard to:

- (a) s.17 of the Crime and Disorder Act 1998 which states 'without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area.
- (b) The Department for Transport's Taxi and Private Hire Vehicles: Best Practice Guidance which recognises the need for criminal record checks as an important safety measure and contemplates that a particularly cautious view will be taken in relation to offences of a violent or sexual nature.

## 3. Disclosure of Convictions/Cautions

- 3.1 All persons (“Applicants”) seeking to obtain an Operator’s and/or Driver’s Licence or will be required to disclose the existence and detail of all relevant convictions and/or cautions they may have.
- 3.2 For the purpose of meeting their disclosure obligations Applicants will be required to obtain an Enhanced Disclosure from the Disclosure and Barring Service (“DBS”).
- 3.3 The Council will decide what level of disclosure is required and in doing so will have regard to the Rehabilitation of Offender’s Act 1974 and the Rehabilitation of Offender’s Act 1974 (Exceptions) Order 2002 (“the Order”). In particular, the following is of note:
4. **Drivers**
- 4.1 Hackney and private hire drivers working with children and/or vulnerable adults are included within the scope of the Order. This means that all convictions, irrespective of age or sentence imposed can be considered if relevant to the application and will not become spent for this purpose.
- 4.2 In view of the application of the Order, the Council will request an Enhanced Disclosure from the Disclosure and Barring Service (DBS) the response to which will contain information of any current or spent convictions, cautions, reprimands or warnings as well as for example other relevant information held by the Police. More information about the DBS and the checks that they perform is available on their website.
5. **Operators**
- 5.1 Private Hire Operators do not fall within the Exemption of the Order, however it is acknowledged that whilst that individual may not be directly responsible for transporting members of the public, they will have access to personal information about passengers and afforded access to them if they walked into the Operator’s office to hire a private hire vehicle.
- 5.2 In view of the above and requirement of the Relevant Legislation, that Operators are fit and proper persons, the Council will also request a DBS check.
- 5.3 Information obtained from the DBS will be shared only with those authorised to receive it in the course of their duties.
6. **Assessment of Applications**
- 6.1 The Council will not preclude applications from persons who have previous criminal convictions/cautions subject to the application of this Policy. In particular, having a criminal record will not necessarily be a bar from obtaining a Licence. Each case will be decided on its own merits.
- 6.2 The fact that no convictions/cautions are revealed does not mean that applications will automatically be granted. In some cases, the Applicant’s history may be such that they can never be deemed a fit and proper person. The Council retains absolute discretion as to whether or not a Licence will be granted, having regard to the legislation outlined at paragraph 2 above, all

information obtained and observations made during the relevant application process.

- 6.3 Careful consideration of the evidence provided should be given if an applicant has on more than one occasion been arrested, charged, but not convicted of a serious offence, which suggests on the balance of probabilities that they could pose a danger to the public.
- 6.4 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material, particularly in giving information required on the application form. Where an applicant has made a false statement, false declaration or omitted to include information on their application for the grant or renewal of a licence, the licence will normally be refused.
- 6.5 The Council is also entitled to use other records and available information when determining applications. This may include information held by the council or other Licensing Authorities and information disclosed by the Police under the Home Office scheme for reporting offences committed by notifiable occupations. Anyone on the Disclosure and Barring Service (DBS) Barred List will normally be refused a licence. Any licence holder who is subsequently included on the DBS Barred List will normally have their licence revoked.

## 7. **Impact of Cautions/Convictions**

- 7.1 Each application will be carefully assessed and in each case the information provided will be considered in relation to the particular circumstances and shall take into account one or more of the following (non-exhaustive) factors:
- 7.2 **Level of Responsibility.** The Council will consider the level of independence afforded to the Applicant. An Applicant who works alone with minimal supervision will be considered a greater risk than one who works in a group and/or is closely supervised.
- 7.3 **Date of Offence(s).** The Council recognises that historic offences may have less relevance than recent offences. As a general rule, a pattern of unrelated or similar offences over a period of time will be considered more serious than an isolated minor conviction.
- 7.4 **Attitude of the Applicant.** The Council will look for evidence that the Applicant has been rehabilitated and has demonstrated a determination not to re-offend.
- 7.5 **Mitigating Circumstances.** The Council may ask Applicants about offence(s)/convictions so that the context can be considered. Due consideration will also be given to any references provided.
- 7.6 **Sentence Imposed.** The Council will consider any sentence imposed as an indication of the Court's view of the seriousness of the offence.

## 8. **Rehabilitation**

- 8.1 The policy prescribes the minimum periods of rehabilitation which will ordinarily need to have elapsed before an Application can be approved. These minimum periods will be considered in conjunction with the general

considerations outlined above, as well as with reference to any additional information provided or observations made during the disclosure procedure.

- 8.2 Representatives of the Council tasked with deciding whether or not to approve an Application have absolute discretion as to the application of the minimum periods of rehabilitation. This will apply both in favour of granting an Application prior to the expiry of a rehabilitation period (for example where exceptional circumstances exist) or in declining an Application before or after the expiry of a rehabilitation period (for example where there is evidence of any recent, persistent or habitual offending history).

## 9. **Right of Appeal**

- 9.1 Applicants have a right to appeal against decisions made in pursuance of this Policy in the following circumstances:

### 9.2 **Licences**

A right of appeal arises against the following decisions:

- Refusal to grant or renew an Operator's or Driver's Licence;
- Suspension or revocation of an Operator's or Driver's Licence; and
- The imposition of conditions which may have been placed on the grant of an Operator's or Driver's Licence.

**Any such appeal must be made in writing to the Magistrates Court within 21 days of the date of the decision letter having been served.**

The appeal will be processed and determined by the Magistrates Court.

## 10. **Updating and Repeat Checks**

- 10.1 Successful applicants are required to notify the Council within 7 days of any convictions or cautions they may receive after the grant of their Licence/Approval.
- 10.2 Persons wishing to renew their Licence must obtain and provide updated Disclosure Documents annually.

## 11. **Breaches of this policy**

- 11.1 Applicants are prohibited from driving a private or hackney carriage vehicle, or performing the duties of an operator without first having obtained a relevant Licence for this purpose.
- 11.2 Persons who have previously been granted a Driver's or Operator's Licence which has been suspended or revoked are prohibited from continuing to drive or perform the duties of an operator unless they have submitted an appeal in accordance with paragraph 9 of this Policy.

## 12. **Guidelines**

The following paragraphs offer a general guide on the decision, which might be taken where cautions or convictions are disclosed.

### **Offences Involving Violence**

#### **Offences against Children under 14 years and Young Persons 14 to 17 years**

- 12.1 Drivers of hackney carriages and private hire vehicles are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons. The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken when offences of violence involve children or young persons.
- 12.2 Where the commission of an offence involved loss of life a licence will normally be refused. In other cases anyone of a violent disposition will normally be refused to be licensed until they have at least 3 to 10 years free of such conviction or the end of a term of imprisonment if applicable must have passed before an application is likely to be considered favourably. However given the range of the offences that involve violence, consideration must be given to the seriousness and nature of the conviction and the term of rehabilitation could be reduced or increased.

#### **Offences against Other Persons**

- 12.3 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 at least 3 to 10 years free of such conviction or the end of a term of imprisonment if applicable must have passed before an application is likely to be considered favourably. However given the range of the offences that involve violence, consideration must be given to the seriousness and nature of the conviction and the term of rehabilitation could be reduced or increased.
- 12.4 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
  - Manslaughter
  - Manslaughter or culpable homicide whilst driving
  - Terrorism offences
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
- 12.5 A licence will not normally be granted where the applicant has a conviction for an offence such as:
- Malicious wounding or grievous bodily harm which is racially aggravated
  - Arson
  - Actual bodily harm which is racially aggravated
  - Grievous bodily harm with intent
  - Robbery

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

and the conviction is less than 10 years prior to the date of application.

12.6 An application will normally be refused where the applicant has a conviction for an offence such as:

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

and the conviction is less than 5 years prior to the date of application.

12.7 An application will normally be refused where the applicant has a conviction for an offence such as:

- Common assault
- Assault occasioning actual bodily harm
- Affray
- Harassment, alarm or distress (S5 Public Order Act 1986)
- Fear of provocation of violence(S4 Public Order Act 1986)
- Intentional harassment, alarm or distress (S4A Public OrderAct1986)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

and the conviction is less than 3 to 5 years prior to the date of application.

### 13. **Weapon Offences**

13.1 If an applicant has been convicted of possession of a weapon or a weapon related offence, this will give serious cause for concern as to whether the person is a fit and proper person to carry members of the public. Depending on the circumstances of the offence, an applicant should be free of conviction for 3 to 5 years prior to the date of application.

### 14. **Sex and Indecency Offences**

14.1 Any applicant currently on the Sex Offenders Register will not normally be granted a licence.

### **Offences against Children under 14 years and Young Persons 14 to17 years**

- 14.2 Drivers of hackney carriage and private hire vehicles are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons. Where the commission of a sexual offence involves a child or young person an application for a licence will normally be refused.

### **Offences against Other Persons**

- 14.3 As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, an application will normally be refused where an applicant has a conviction for an offence of:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

- 14.4 An application will normally be refused where the applicant has a conviction for an offence relating to:

- Sexual or indecent assault
- Possession of indecent photographs, child pornography etc
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

- 14.5 An application will normally be refused where the applicant has a conviction for an offence relating to:

- Indecent exposure
- Soliciting (including kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

- 14.6 A licence will not normally be granted if an applicant has a conviction for any sex or indecency offence.

### **15. Dishonesty Offences**

- 15.1 Drivers of hackney carriages 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. It should also be noted that a private hire driver is not bound by a set fare structure and therefore is open to potential abuse by dishonest drivers. Customers often use the trade for journeys to airports and drivers are privy to the knowledge that premises will be empty for a period of time. In addition overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. 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.



15.2 For these reasons a serious view is taken of any convictions involving dishonesty. In general a minimum period of 3 to 5 years free of conviction should be required before an application can be considered favourably. Offences of dishonesty include:

- Theft
- Burglary
- Fraud
- Benefit Fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

## 16. Drug Offences

16.1 A serious view will be taken with regard to any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered. A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and has not been free of such conviction for a period of at least 3 to 5 years.

16.2 An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.

16.3 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.

16.4 If there is evidence of persistent drugs use, misuse or dependency, a medical examination (in accordance with the DVLA Group 2 Medical Standards) will be required before an application will be considered. If the applicant was an addict then they will be required to show evidence that they have been free from drug taking for a period of at least 5 years after detoxification treatment.

## 17. Driving Offences

17.1 Private hire and hackney carriage drivers are professional drivers and must be aware of the safety of their passengers and vehicles at all times. Any traffic offence could demonstrate that a driver is not a fit and proper person to hold a Licence. The following is of note:

- **Major offences / High risk offences** (see Annex A for examples of major/high risk offences). An Application received which details one of the major / high risk traffic offences in Annex A, on the DVLA licence, will normally be refused or a current licence suspended or revoked. An application will not normally be approved until the endorsement period has expired (4-11 years) and it is shown that no further motoring convictions have been endorsed on the licence in that period.

- **Minor offences** (see Annex B for examples of minor offences). Where a period of disqualification has been imposed due to the accrual of DVLA penalty points or for a single infringement, an application should not be considered until the driving licence has been restored for a period of 12 months. Should the DVLA licence show a further conviction after the disqualification period then a 12 month period free of conviction should elapse from the date of the latest conviction. If an applicant has had their licence revoked, following six or more penalty points during the first two years since passing their driving test, then a period of 12 months free of further conviction, after passing a further test should have elapsed before granting a licence.

## 18. **Drunkenness**

### 18.1 **With a motor vehicle**

A serious view shall be taken of convictions for driving or being in charge of a vehicle whilst under the influence of alcohol or other substances. Where a disqualification has occurred as a result of a drink driving offence, a period free of conviction of 3 to 5 years should elapse from the restoration of the DVLA licence, before an application will be considered.

- 18.2 If there is any indication that the applicant is an alcoholic, a medical examination (in accordance with the DVLA Group 2 Medical Standards) shall be arranged by the applicant, at their expense, before an application is considered. If the applicant was an alcoholic, then they will be required to show evidence that they have undergone rehabilitation and have been free from any issues for a period of at least 3 to 5 years.
- 18.3 An isolated conviction for drunkenness shall not debar an applicant from obtaining a licence. However, a number of related convictions could indicate a problem necessitating a medical, as laid down in 18.2.

## 19. **Discrimination Offences**

- 19.1 The council will treat any discrimination offence seriously when establishing if an Applicant is fit & proper. A period of 3 to 5 years free of conviction must have elapsed before an application should be considered. If the conviction relates to a racial incident then refer to paragraph 12.6.

## 20. **Licensing Offences**

- 20.1 Licensing legislation is designed to ensure the public are protected and as such a serious view will be taken of convictions for offences under the Acts when deciding whether an applicant is fit & proper. In general a period of 3 to 5 years free of conviction must have elapsed before an application should be considered.
- 20.2 If an applicant has had a licence suspended, revoked or refused by another authority, then checks will be made with that authority to aid the decision making process.

## 21. **Outstanding Charges and Summonses**

- 21.1 If an applicant is the subject of any outstanding charge, summons, or is currently on bail awaiting a charging decision, no decision will be made, or licence granted until these outstanding matters are resolved.

## Annex A

**MAJOR TRAFFIC OFFENCES**

- AC10 Failing to stop after an accident  
 AC20 Failing to give particulars or to report an accident within 24 hours  
 AC30 Undefined accident offences
- BA10 Driving while disqualified by order of court  
 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  
 CD40 Causing death through careless driving when unfit through drink  
 CD50 Causing death by careless driving when unfit through drugs  
 CD60 Causing death by careless driving with alcohol level above the limit  
 CD70 Causing death by careless driving then failing to supply a specimen for analysis  
 CD80 Causing death by careless, or inconsiderate driving  
 CD90 Causing death by driving: unlicensed, disqualified or uninsured drivers
- DD40 Dangerous driving  
 DD60 Manslaughter or culpable homicide while driving a vehicle  
 DD80 Causing death by dangerous driving  
 DD90 Furious 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

#### Annex B

### MINOR TRAFFIC OFFENCES

MS10 Leaving a vehicle in a dangerous position

MS20 Unlawful pillion riding

MS30 Play street offences

MS70 Driving with uncorrected defective eyesight

MS80 Refusing to submit to an eyesight test

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

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 tyre(s)

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 or 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

#### **Aiding, Abetting, counselling or procuring**

Offences as coded above, but with 0 change to 2 (for example CU10 becomes CU12)

#### **Causing or permitting**

Offences as coded above, but with 0 change to 4 (for example CU10 becomes CU14)

**Inciting**

Offences as coded above, but with 0 changed to 6 (for example CU10 becomes CU16)

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