

North Tyneside Council
Hackney Carriage and Private Hire Licensing Policy

**Guidance as to the Relevance of Convictions, Cautions, Fixed Penalties
and Community Resolutions**

General Policy

The overriding consideration of the licensing regime is the safety of the public. The Authority has a duty to ensure that, as far as possible, those licensed to drive the public in hackney carriage or private hire vehicles are suitable persons to do so, that they are safe drivers with a good driving record, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their position to abuse or assault customers.

The aim of the Authority in publishing this guidance is not to punish the applicant/licensee following a conviction or other form of disposal but to ensure that public safety is not compromised and to protect the public from those who have demonstrated a propensity towards wrongdoing.

This guidance is intended to assist Licensing Officers and the Regulation and Review Committee (the Committee) in decision making and to ensure that a consistent approach to decision making is maintained. However, each case has to be decided upon its own merits and officers and the Committee will not stick rigidly to this guidance if there are clear and compelling reasons to depart from it. Simply remaining free of conviction will not generally be regarded as sufficient evidence that a person is a fit and proper person to hold a licence.

It may be appropriate to depart from the general policy in this guidance in some cases, if there are compelling reasons to do so, for example, in situations where an offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern or trend of repeated offending or inappropriate behaviour which will be taken into account. Where there has been a conviction for a sexual offence or a crime which resulted in the death of another person an application for a licence will be refused. Where an applicant has served a custodial sentence, the Authority will consider the number of years since their release and the period for which they have been free of conviction when determining their fitness to be licensed.

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation of another individual irrespective of whether the victims are adults or children they will not be, or continue to be, licensed. "Exploitation" is taken to include slavery, child sexual abuse including grooming, psychological abuse, emotional abuse and financial abuse.

This guidance is also intended to assist applicants, licensees and those representing them, by clearly setting out the expectations that the Authority has in relation to applicants/licenses who have received convictions. This should also minimise the time spent and associated costs incurred by both the Authority and applicants/licensees in the licensing process.

This guidance will be taken into account and will be followed when dealing with a new application, a renewal application and when considering whether to issue a warning, suspend or revoke an existing licence.

In considering evidence of an applicant's character and fitness to hold a drivers licence, where previous convictions or other information relating to criminal matters is disclosed, the Authority will consider the nature of the offence or allegation made, when it was committed, the date of conviction, the applicants age when the offence was committed and any other factors which might be relevant. However, where an applicant has been convicted of a criminal offence, the Authority cannot review the merits of the conviction [Nottingham City Council v Mohammed Farooq (1998)] but it may look at the circumstances surrounding the conviction.

This guidance is not an attempt to define who is a fit and proper person.

This guidance does not deal with every type of offence. However, offences described in this guidance and similar offences, though differently described or worded in any statutory provision, modification or re-enactment, will be taken into account in accordance with this guidance. In all cases the safety of the public will be the primary concern of the Authority.

Formal Cautions, Fixed Penalties and Community Resolutions and Other Matters

For the avoidance of doubt, for the purposes of this guidance, cautions, fixed penalties and community resolutions shall be treated as though they were convictions and in this Policy/guidance any reference to "conviction" includes formal cautions, fixed penalties, community resolutions and matters that amount to criminal behaviour but which have not resulted in a conviction.

Cautions

The Authority requires applicants and licensees to reveal promptly any cautions they may have received because a caution can only be imposed following an admission of guilt which is equivalent to a guilty plea on prosecution. Before a caution can be administered the police or prosecuting authority must have considered that there was sufficient evidence to proceed with a prosecution had the offer of a caution been refused.

Fixed Penalties

Fixed penalties are not limited to motoring offences and may be given for a range of offences including shop theft, minor public order offences and offences such as littering, dog fouling etc. Fixed penalties must be declared to the Authority promptly in the same way as convictions are declared and may be taken into account by the Authority. This is because payment of a fixed penalty indicates acceptance of guilt.

Community Resolutions

A community resolution imposed for crime or anti-social behaviour must be promptly disclosed to the Authority. This is because a community resolution can only be imposed where the offender admits guilt.

Other Matters

It should be recognised that matters that have not resulted in a criminal conviction (whether as the result of an acquittal, a conviction being quashed, a decision not to prosecute or an investigation which is continuing where the applicant/licensee has been bailed or released under investigation) can and will be taken into consideration by the Authority.

In addition, complaints that do not have police or other investigating authority involvement will be considered by the Authority when assessing the fitness of a person to hold a licence.

Barred Lists

Part of the role of the DBS is to help prevent unsuitable people from working with vulnerable groups including children, barring them from doing so where necessary. As part of the enhanced DBS check the Authority is provided with information about whether an applicant is barred from working with children or adults and is included on either Barred List. In the interests of public safety, unless there are exceptional circumstances, an application for a licence will normally be refused where the applicant appears on either barred list.

Outstanding charges or summonses/Non-conviction information

Where an applicant/licensee is the subject of an outstanding charge or summons their application will not usually be determined until the conclusion of proceedings or the charge(s) has/have been withdrawn.

If an applicant/licensee has been arrested or charged, but not convicted, for a serious offence which suggests they could be a danger to the public, consideration will be given to refusing the application or if currently licensed to further action being taken having regard to this Policy and guidance.

Offences

This guidance does not deal with every type of offence.

However, offences described in this guidance and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.

Offences of Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the appropriate fare and in other ways. Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. Passengers may include especially vulnerable people. For these reasons a serious view is taken of any convictions involving dishonesty.

Applicants/Licensees with a conviction for an offence involving dishonesty will not be granted a licence until at least 7 years have elapsed since the completion of any sentence.

Crimes Resulting in Death

Applicants/Licensees convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person will not be licensed.

Offences of Violence

Applicants/Licensees with a conviction, for an offence of violence, or connected with any offence of violence, will not be granted a licence until between 10 years have elapsed since the completion of any sentence imposed.

Discrimination

Where an applicant/licensee has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Possession of a Weapon

Where an applicant/licensee has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Drugs Offences

Supply of Drugs/Cultivation of Drugs

Applicants/Licensees with a conviction for an offence of supplying or possession of drugs with intent to supply or connected with possession with intent to supply, will be refused a licence until at least 10 years have elapsed since the completion of any sentence imposed.

Possession of Drugs

Applicants/Licensees with a conviction for an offence of possession of drugs or related to the possession of drugs will be refused a licence until at least 5 years have elapsed since the completion of the sentence imposed. In these circumstances the applicant/licensee will have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Sexual and Indecency Offences

As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers. Therefore, applicants/licensees with a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

In addition, the Authority will not grant a licence to a person who is on the Sex offenders Register or on any barred list.

Exploitation

Applicants/licensees convicted for an offence involving, related to or has a connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse.

Motoring Offences

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying members of the public. Any motoring conviction demonstrates a lack of professionalism and will be considered in that light. The single occurrence of a minor traffic offence will not generally prohibit the grant of a licence or action being taken against a licensee. However, any subsequent motoring convictions may be evidence of the fact that the applicant/licensee does not take their responsibilities as a professional driver seriously and is therefore not, or no longer remains, a fit a proper person to hold a licence.

Minor Traffic Offences

Where an applicant/licensee has between 3-5 penalty points either at the time of application or during the licence period this will be considered as a "Minor Traffic offence". Convictions for minor traffic offences should not prevent a person from obtaining a licence. In the majority of cases the applicant/licensee will receive a warning or advice regarding future conduct.

Bearing in mind the number of miles they drive; it is expected that licensed drivers are more likely than the average motorist to get convictions for minor traffic offences. Where an applicant/licensee has accrued 6 or more penalty points for two or more minor traffic offences in the majority of cases a formal written warning will be issued.

Major Traffic Offences

Road Traffic Offences which carry mandatory disqualification from driving will always be considered as “Major Traffic offences”. Where an applicant / licensee has 6 or more penalty points for a single offence or where the court has disqualified the driver for a single offence this will be considered as a Major Traffic offence. In the majority of cases an applicant will be refused until a period of 2 years has lapsed since the date of the last conviction or the restoration of the DVLA licence. Existing drivers will generally be referred to the Regulation and Review Committee.

Where an applicant/licensee has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until between 7 years have elapsed since the completion of any sentence or driving ban imposed. Following a conviction for driving under the influence of drugs, an applicant will have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Where an applicant/licensee has a conviction for using a hand-held mobile telephone or other hand-held interactive communication device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

Disqualification

In totting-up cases where disqualification is considered by the Court, even if the court does not disqualify a driver (e.g. because of exceptional circumstances), the Authority is likely to refuse a hackney carriage or private hire drivers licence and an applicant will normally be expected to show a period of 12 - 18 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-qualification. Existing drivers will generally be referred to the Regulation and Review Committee. This is because repeat motoring convictions would suggest that the driver does not take his/her professional responsibilities as a licensed driver seriously and may as a result no longer be considered a fit and proper person to hold a licence.

In totting-up cases where disqualification is imposed by the court, the Authority is likely to refuse a hackney carriage or private hire driver's licence until a period of 12 – 18 months has lapsed since the restoration of the DVLA licence. Existing drivers will be referred to the Regulation and Review Committee.

Vehicle Use Offences

Where an applicant/licensee has a conviction for any offence which involved the use of a vehicle (including both hackney carriage and private hire vehicles) a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

Licensing Offences

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 (the Acts) and hackney carriage Byelaws is to ensure the protection of the public. The main private hire and hackney carriage offences are available from the Licensing Office or on the Authority's website www.northtyneside.gov.uk.

A serious view is taken of convictions for offences under the Acts and Byelaws when deciding whether an applicant/licensee is considered to be, or remain, a fit and proper person to hold a licence.

Where an applicant/licensee has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 3 years have elapsed since the completion of any sentence imposed.

Where an applicant/licensee has a conviction for any offence which involves the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Section B – Conduct

Criminal convictions are not the only criteria used when considering whether an individual is a fit and proper person to be licensed. Other factors, including the applicant or licensee's demeanour, appearance and behaviour may be taken into account in determining fitness and propriety as well as any complaints received about a current licensee.

The Authority may require an applicant to submit information it reasonably considers necessary to enable it to determine whether a licence should be granted or whether conditions should be attached to a licence (section 57 LG(MP) Act 1976).

The courts have found that the main purpose of the licensing regime is to prevent licences being given to, or used by, those who are not suitable to hold a licence, taking into account their driving record, driving experience, sobriety, mental and physical fitness, honesty and ensuring that they would not take advantage of their employment to abuse or assault passengers (Leeds City Council v Hussain [2002]).

When determining the fitness and propriety of drivers Officers and Members will consider whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom they care, to get into a vehicle with the applicant/licensee alone.

If the answer to this question is an unqualified “yes”, then the test is probably satisfied. If the Officers or members have doubts then further consideration will be given as to whether the individual is a fit and proper person.

Matters that have not resulted in a criminal conviction as explained in Section A of this guidance can and will be taken into account by the Authority when determining the fitness of a person to hold, or to continue to hold, a licence.
