

# **Policy & Guidelines relating to the Application of the “Fit & Proper Test” to Licensed Drivers & Operators**

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## **STATEMENT OF POLICY – APPLICATION OF THE “FIT & PROPER” TEST**

This document aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Applicants for operators licences
- Existing licensed operators whose licences are being reviewed
- Licensing Officers
- Members of the Speaker's Panel (Licensing) or other relevant decision making body
- Magistrates hearing appeals in respect of local authority decisions
- Police

Thereby providing transparency and consistency across the Greater Manchester region, in accordance with the principles of good enforcement and relevant Regulatory Compliance Codes.

Where Licensing Officers have delegated powers to grant licences, these guidelines will be utilised when making a decision to grant a licence. In all other cases applications for licences will be referred to the Speaker's Panel (Licensing) or other relevant decision making body. Whilst Officers and the Speaker's Panel (Licensing) will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the Panel/Officer may depart from the guidelines.

## Background

1. In this policy the word “individual” includes an existing licence holder, an applicant for a new licence, and an applicant for the renewal of an existing licence.

2. Licences for drivers of hackney carriages, private hire vehicles or private hire operator may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence. *Local Government (Miscellaneous Provisions) Act 1976 S51 (1)(a) and S59 (1)(a)*

3. In this policy the word “issue” is used. This includes complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal conviction, caution or other disposal).

4. Licences for operators of private hire vehicles may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence. *Local Government (Miscellaneous Provisions) Act 1976 S55 (1)*

5. The policy is intended to give guidance on deciding whether a person is or is not a fit and proper person. The policy cannot cover every eventuality, but does give guidance in relation to individuals with previous convictions and cautions, other offences, such as motoring offences, and on the application of the “fit and proper test” to individuals when other information or intelligence may call into question their suitability to hold the relevant licences.

6. The Council is concerned to ensure:

(a) That an individual is a fit and proper person.

(b) That the public are not exposed to persons with a history of dishonesty, indecency, violence or other serious criminal matters.

(c) The safeguarding of children, young persons and vulnerable adults.

7. The public are not normally permitted to attend Committee hearings for private hire, hackney carriage driver applications or private hire operator applications or reviews, however, in determining whether to grant a licence the committee or officers will take into account the human rights of the wider public and balance these against the human rights of the applicant.

8. When submitting an application for a licence to drive a hackney carriage or private hire vehicle, or for an operators licence, individuals are required to declare all their previous convictions. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice, all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of investigation or prosecution.

9. The information given will be treated in confidence and will only be taken into account in relation to the relevant application, to assist the Council in determining whether the applicant is a fit and proper person to hold a licence for the purposes of sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 and 62 of the Act (suspension, revocation or refusal to renew a licence).

10. Applicants for a licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure & Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the licensing section will, where appropriate, contact other agencies for any further information which they may hold e.g. Housing Service, Children's Services and Greater Manchester Police. Information received from the Disclosure & Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the application is determined or any appeal against such determination is decided.

11. The disclosure of criminal convictions, fines, cautions or other relevant information relating to an individual's conduct will not necessarily disqualify an individual from being granted, renewing or retaining a licence. The primary consideration is whether or not the individual can satisfy the Council that they are a fit and proper person to hold such a licence.

12. The Council may fail to be satisfied that an individual is a fit and proper person to hold a driver's licence or an operator's licence for any good reason. If adequate evidence that a person is a fit and proper person 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.

13. In considering evidence of an individual's character and fitness to hold a drivers licence or operators licence, where previous convictions, cautions or other information relating to an individual's character are disclosed, the Council will consider the nature of the issue and any penalty imposed on the individual. The Council will also consider when the incident(s) took place, the date of any conviction and the length of time which has elapsed since the incident or conviction.

14. Other matters which the Council may take into account include the individual's age when the incident or offence took place, whether or not it demonstrates a pattern of criminal behaviour, the intent, the harm which was, or could have been caused and any other factors which might be relevant. Where an individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*].

15. These guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct which may be relevant to an individual. If an individual has a conviction for an offence not covered by the guidelines reference will be made to the factors at paragraph 14 when deciding whether any action should be taken.

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

16. These guidelines are not an attempt to define a “fit and proper person”.

17. Any individual who is refused a driver’s licence or has such a licence suspended or revoked on the grounds that the Council is not satisfied he/she is a fit and proper person to hold such a licence has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.

18. Any individual who is refused an operators licence has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.

19. This guidance will be used for the determination of new applications, the renewal of existing licences and the review of existing licences in relation to hackney carriage drivers, private hire drivers and private hire operator licences.

20. It is common practice for individuals to submit simultaneous applications for Hackney Carriage and Private Hire Driving Licence(s). Licensing Authorities may use the same application form which allows the individual to specify if they are applying for both types of driver’s licences or only one type. This provides an efficient service for the customer and saves needless duplication. For dual applications the Speaker’s Panel (Licensing) will be asked to apply the fit and proper test to each individual application. Similarly where an existing driver who holds both Private Hire and Hackney Carriage Licences is referred to Committee/Panel the fit and proper test will be applied individually to each Licence.

# **GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS and OTHER INFORMATION**

## **General Policy**

1. Each case will be decided on its own merits.
2. In every case, it is the responsibility of the applicant or licence holder to prove that they are a fit and proper person.
3. The Council has a duty to ensure so far as possible that drivers and operators are fit and proper persons to hold licences. One aspect of that is the extent to which previous convictions, including but not limited to convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate whether a person is or is not a fit and proper person, and whether or not they would be likely to take advantage of passengers or abuse or assault them.
4. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
5. A person with a conviction for a serious offence or a number of separate offences need not be automatically barred from obtaining a licence, but would normally be expected to:
  - a. Remain free of conviction for an appropriate period, which will depend on the nature of the offence(s); and
  - b. Show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to provide such evidence).

Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

6. In certain situations it may be appropriate to depart from the general policy. For example, where the offence is an isolated one with mitigating circumstances or where a conviction defaults outside of the policy between the application and determination date. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. In any case which involves murder, manslaughter or sexual offences, a licence will normally be refused.

7. Where the Council has received any information which suggests that a person is not (or is no longer) a fit and proper person, or that an individual has breached one or more conditions attached to their licence (and such breach/breaches call into question whether the licence holder remains a fit and proper person), the Speaker's

Panel (Licensing) will meet to consider the information. After hearing the available evidence, the Panel may refuse to grant, refuse to renew, revoke or suspend a licence for any specified period.

- a. Hearing with notice – Where the Speaker’s Panel (Licensing) is to meet to consider whether or not an individual is a “fit and proper” person, notice of the time and date when the Panel meeting is to be convened will then be given ahead of the date listed with sufficient time to allow the person to seek independent legal advice and to attend and be represented at the hearing.
- b. Ex-parte hearing – Where a meeting of the Speaker’s Panel (Licensing) is convened as a result of sensitive information being received by the Council, an assessment will be undertaken in balancing a person’s right to a fair hearing against whether or not it is in the public interest to hold the hearing ex-parte.
- c. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.

8. The following examples afford a general guide on the action which might be taken where convictions are disclosed:

#### **A. Offences of Dishonesty**

Drivers of hackney carriages and private hire vehicles are in a position of trust. It could be comparatively easy for a dishonest driver to defraud the public by, for example, demanding more than the legal fare, or by other criminal means.

Passengers of hackney carriages and private hire vehicles may include especially vulnerable people and children.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust which businesses put into drivers.

For these reasons a serious view is taken of any offences involving dishonesty. An applicant with conviction(s) for dishonesty, which are less than 5 years old is unlikely to be considered favourably and should be referred to Panel for determination.

In particular, an application will normally be refused or an existing licence revoked where the individual has a conviction for an offence or similar offences listed below, if the date of conviction or the date on which any custodial sentence is completed\* is less than 5 years prior to the date of application:

- i. Theft

- ii. Burglary
- iii. Fraud
  - iv. Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- v. Handling or receiving stolen goods
- vi. Forgery (e.g. producing false insurance policy)
- vii. Conspiracy to defraud
- viii. Obtaining money or property by deception
- ix. Other deception
- x. Blackmail
- xi. Unauthorised taking of a motor vehicle
- xii. Abstracting electricity
- xiii. Perjury
- xiv. Attempting to or perverting the course of justice

\*Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

## **B. Violence**

Members of the public entrust their personal safety to private hire and hackney carriage drivers whenever they take a journey.

Passengers often travel alone and are vulnerable to physical attack etc.

Users of private hire and hackney carriage vehicles have a right to expect that drivers are not individuals with a history of violent behaviour of any description..

### **1. Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)**

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It could be 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 where offences of violence involve children or young persons.

Where the commission of an offence involved loss of life, a licence will normally be refused or revoked, irrespective of the date of offence or conviction.

Any other conviction will generally result in an application being refused or an existing licence revoked where the individual has a conviction for an offence or similar offences listed below, if the date of conviction or the date on which any custodial sentence is completed\* is less than 10 years prior to the date of application.



\*Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

## **2. Offences against Other Persons**

An application will normally be refused or an existing licence revoked where the individual has a conviction for the below offences:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving

An application will normally be refused or an existing licence revoked where the individual has a conviction for an offence or similar offences listed below, if the date of conviction or the date on which any custodial sentence is completed\* is less than 10 years prior to the date of application.

- Arson
- Inflicting grievous bodily harm or wounding with intent (s.18 Offences Against the Person Act)
- Inflicting grievous bodily harm or wounding (s.20 Offences Against the Person Act)
- Inflicting grievous bodily harm or wounding with intent (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- Inflicting grievous bodily harm or wounding (s.18 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
- Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Robbery
- Aggravated burglary
- Illegal possession of a firearm
- Riot
- Violent disorder
- Resisting arrest
- Assault Police
- Threats to kill

\*Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

An application will also normally be refused or an existing licence revoked where the individual has a conviction for an offence or similar offences listed below, if the date of conviction or the date on which any custodial sentence is completed\* is less than 5 years prior to the date of application.

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)

\*Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

An application will also normally be refused or an existing licence revoked where the individual has a conviction for an offence or similar offences listed below, if the date of conviction or the date on which any custodial sentence is completed\* is less than 3 years prior to the date of application:

- Common assault
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Harassment- breach of restraining order- on conviction Protection from Harassment Act 1997 s5(5) / s. 5(6)
- Obstruction
- Possession of offensive weapon
- Criminal damage

\*Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

No favourable distinction will be made in relation to offences relating to domestic violence or abuse. The Council takes the view that domestic abuse and violence is completely unacceptable and the above guidelines will apply to any offence, including those relating to domestic violence or abuse.

### **C. Drugs**

An application will normally be refused or an existing licence will normally be revoked where the individual has a conviction for an offence related to the supply of drugs if the date of conviction or the date on which any custodial sentence is completed\* is less than 10 years prior to the date of application.

An application will normally be refused or an existing licence will normally be revoked where the individual has more than one conviction for offences related to the possession of drugs if the date of conviction or the date on which any custodial sentence is completed\* is less than 5 years prior to the date of application.

\*Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

If any applicant was previously an addict then they will normally be required to show medical evidence that they have been drug free for at least 5 years before consideration will be given to granting a licence.

### **D. Sexual and Indecency Offences**

Any individual currently on the sex offenders' register will not normally be granted a licence.

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

Where the commission of a sexual offence involves a child or young person an application will normally be refused or an existing licence will normally be revoked, irrespective of the date of offence, conviction or end of sentence.

#### ***Intelligence and other information which has not resulted in a criminal conviction***

The Council will sometimes be made aware of other intelligence or lower level information about an individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding.

Any additional information gathered through this process may then be taken into account at any subsequent meeting of the Speaker's Panel (Licensing).

### **Offences against persons other than children / young persons**

Individuals with a conviction for rape, indecent assault, or other similar offences contrary to the Sexual Offences Act 2003, will normally be refused a licence, or existing licence holders will have their licence(s) revoked, irrespective of the date of offence, conviction or end of sentence.

Applications from Individuals with a conviction relating to sexual offences such as soliciting, importuning, indecent exposure or other similar offences contrary to the Sexual Offences Act 2003, will normally be refused or an existing licence will normally be revoked if the date of conviction or the date on which any custodial sentence is completed\* is less than 10 years prior to the date of application.

\*Including any suspended sentence or any period where the individual is subject to licence on release (i.e. the custodial sentence will only be considered complete at the end of any licence period).

### **E. Drunkenness**

Driving whilst under the influence of alcohol or drugs is unacceptable under any circumstances and puts not only the driver, but passengers and other road users at risk. Such irresponsible behaviour is not compatible with the responsibilities of a private hire or hackney carriage driver.

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

Where an individual has been convicted of an offence of driving, attempting to drive or being in charge of a vehicle while under the influence of alcohol or drugs, an application will normally be refused or an existing licence will normally be revoked. At least 5 years free from conviction should normally elapse from the date of the restoration of the DVLA licence before an applicant is considered for a licence.

In addition, an individual will normally be required to show medical evidence that a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic or drug addict.

#### **Not in a motor vehicle**

An isolated conviction for drunkenness need not debar an individual from obtaining or holding a licence. In some cases, a warning may be appropriate.

More than one conviction for drunkenness could indicate a medical problem necessitating clinical examination and refusal of a licence.

In addition, in line with DVSA's group 2 medical standards, an individual will generally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic or drug addict.

## **F. MOTORING CONVICTIONS**

### **Major traffic offences**

New applicants and existing licensed drivers with a conviction for a Major Traffic Offence as defined below, which is less than 5 years prior to the date of the application (or the present date in relation to existing licensed drivers) will be referred to the Panel for determination. A conviction less than 3 years prior to the date of the application will generally be refused.

Any conviction which followed the death of an individual through negligent driving (listed as offence codes CD40 to CD71 and DD60 to DD80) will normally result in an application being refused or an existing licence being revoked, irrespective of the date of conviction.

Where the conviction resulted in a period of disqualification, an application will normally be refused unless a period of 3 years free from conviction has lapsed from the restoration of the DVLA licence and 5 years where the disqualification relates to driving with excess alcohol or whilst unfit through drink or drugs.

In addition, applicants will generally be required to show medical evidence that a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic or drug addict.

**For the purposes of these guidelines the following offences are classed as '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
BA30	Attempting to drive while disqualified by order of Court
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for alcohol analysis

CD71	Causing death through careless driving the failing to supply a specimen for drug analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive when unfit through drugs
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 specimen for analysis in circumstances other than driving / attempting to drive
DR61	Failure to provide specimen for drug analysis in circumstances other than driving / 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
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

### **Aiding, Abetting, Counselling or Procuring**

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

### **Causing or Permitting**

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

## **Inciting**

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

Or similar offences or offences which replace the above offences.

## **Intermediate Traffic Offences**

**Any Intermediate Traffic Offence, which has attracted 4 or more penalty points will be treated as though it were a Major Traffic Offence.**

### **One Conviction**

Where an individual has a single Intermediate Traffic Offence within the 2 years immediately preceding the date of application, they will normally be expected to show a period of at least 12 months free from conviction before an application is considered.

Existing licence holders who have been convicted of an intermediate traffic offence may be referred to the Speaker's Panel (Licensing).

### **Two or more Convictions**

Where an individual has 2 or more Intermediate Traffic Offences in the 12 months immediately preceding the date of application, the individual will normally be expected to show a period of at least 2 years free from conviction before an application is considered.

If any conviction for an Intermediate Traffic Offence results in a disqualification, reference should be made to the section of these guidelines entitled "Disqualification".

**For the purposes of these guidelines the following motoring offences are classed as 'Intermediate Traffic Offences':**

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyres
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
CU80	Breach of requirements as to control of the vehicle mobile phones etc
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 of other road users
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road – summons (not fixed penalty)
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Exceeding speed limit offence

### **Aiding, Abetting, Counselling or Procuring**

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

### **Causing or Permitting**

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

### **Inciting**

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

Or similar offences or offences which replace the above offences.

## **MINOR TRAFFIC OFFENCES**

Any Minor Traffic Offence which has attracted 4 or more penalty points will be treated as though it were an Intermediate Traffic Offence

### **Single conviction**

Where an individual has a single Minor Traffic Offence in the 12 months immediately preceding the date of application, the application will normally be granted with a letter of warning being placed on the file.

### **Two or more Convictions**

Where an individual has two or more Minor Traffic Offences in the 2 months immediately preceding the date of application an individual will normally be expected to show a period of at least 12 months free from conviction before an application is considered.



**For the purposes of these guidelines the following motoring offences are classed as ‘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
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
SP30	Exceeding statutory speed limit on a public road resulting in a fixed penalty
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a “Stop” sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding “Stop” sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

**Aiding, abetting, counselling or procuring**

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

**Causing or permitting**

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

**Inciting**

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

Or similar offences or offences which replace the above offences.

**Plying for Hire**

In the case of a private hire driver found guilty of an offence of plying for hire, the Speaker’s Panel (Licensing) would normally order the licence to be revoked or suspended.

Breach of Conditions, Bye-laws and complaints

Any breach of conditions, breach of bye-laws or complaint relating to a licence holder's conduct may be referred to the Panel. A licence holder brought before the Panel will be dealt with by way of either taking no further action, a formal warning, a period of suspension or revocation.

### Guidance

Licence holders will be brought before Panel in situations where it is clear that the holder's behaviour is not influenced by verbal or written warnings administered by Licensing Officers. Any licence holder who receives a third warning (verbal or written) in respect of a breach or complaint occurring within a 3 year period (calculated by reference to the date of the breach/complaint) may be brought before the Panel.

All complaints will be investigated. Some investigations and breaches will result in prosecution and in those cases the prosecution outcome will be the deciding factor in the decision to refer to Panel as will other prosecutions and cautions administered by other enforcing agencies.

Where the authority administers a caution to a licence holder this does not preclude a referral to panel for the matter for which the licence holder has been cautioned.

In other cases an investigation may result in a warning, such warnings will be relevant to the rolling 3 year period.

In certain situations the breach or complaint may be deemed so serious that an immediate referral to Panel is warranted. In those cases the reasoning for the decision for the immediate referral will be recorded within the formal report to Panel.

### **Reapplication**

Where an individual has had an application refused or a licence revoked, the Committee/ Panel would normally refuse any subsequent application made within 5 years of the date of the previous refusal or revocation unless there are substantial material changes in the individual's circumstances. In addition, the individual must provide evidence that they are a fit and proper person before a licence will be granted.

### **DISQUALIFICATION**

#### **Disqualification – Major Traffic Offence**

An application will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

## **Disqualification – Intermediate and Minor Traffic Offences & Disqualification due to Totting Up of Penalty Points**

An application will generally be refused unless the individual can show a period of 12 months has elapsed from the restoration of the DVLA licence.

### **Totting up without Disqualification**

An individual who has accrued sufficient points for disqualification, under totting up, to be considered by the Court, may argue exceptional hardship and not receive a disqualification.

In these circumstances the Council will consider the application as a disqualification for the most serious of the offences which contributed to the totting up (e.g. where the offences contributing to the totting up are SP30, SP80 and IN10 the Council would consider IN10 under 'Disqualification – Major Traffic Offence').

There may be occasions where an applicant has accrued sufficient points under totting up for the court to consider disqualification, but successfully argues that exceptional hardship should apply and the court has not, therefore, imposed a disqualification. In these circumstances the Council expects the individual to supply full details of each of the matters that led to the totting up. The Council will take those matters into account in accordance with this policy when deciding whether to grant or refuse an application or whether to take action against an existing licence. Should the individual not supply full details of each of these matters then the Council will take the failure to supply such information into account when deciding whether to take any such action.

### ***SPENT CONVICTIONS***

**By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.**

The Council will only consider spent convictions if it appears to be relevant for deciding whether the individual is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction. The council will, in its consideration of the nature of the offence(s), take into account the history or pattern of offending, the lapse of time and whether all the convictions have previously been considered.

### **FORMAL/ SIMPLE CAUTIONS AND ENDORSABLE FIXED PENALTIES**

For the purpose of these guidelines formal/simple/conditional cautions and endorsable fixed penalties shall be treated as though they were convictions.

## **MULTIPLE CONVICTIONS FROM SINGLE INCIDENT**

Where an individual has multiple convictions arising from a single incident, the convictions will generally be treated as one conviction for the purposes of these guidelines.

In these circumstances the period for which the individual would normally be expected to show free from conviction will be the longest applicable period calculated by reference to each offence.

## **OTHER OFFENCES**

Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws and Section 167 Criminal Justice and Public Order Act 1994.

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.

For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire and/or touting) when deciding whether an individual is to be considered as a fit and proper person to hold a licence.

In particular, an individual will normally be refused a licence if (s)he has been convicted of an offence under these Acts at any time during the 2 years preceding the application or has more than one conviction within the last 5 years preceding the date of the application.

## **OTHER INFORMATION, INTELLIGENCE ETC.**

The Local authority can take into account any information when determining whether an individual is or is not a fit & proper person to hold private hire or hackney carriage drivers licences.

These guidelines to convictions supersede all others and take effect from: