



GUIDELINES FOR THE ISSUE OF HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS LICENCES (REVISED JULY 2013)

1. Introduction

- 1.1 When submitting an application for a Licence to drive a Hackney Carriage or Private Hire Vehicle you are requested to declare any cautions or convictions you may have. The information you give will be treated in the strictest confidence and will only be taken into account in relation to your application. Failing to disclose relevant information may prejudice an application or the right to hold a licence, and may be a criminal offence.
- 1.2 You should be aware that the Council will obtain an enhanced disclosure from the **Disclosure and Barring Service**. Checks will also be made with the Driver and Vehicle Licensing Agency. Information received from the **DBS** and DVLA will be kept in the strictest confidence while the licensing process takes its course, and will be retained on manual and computer records for no longer than is deemed necessary. The **DBS** disclosure will be securely disposed of once a licensing decision has been made. A DVLA disclosure will be retained until either a decision has been made to refuse a licence (and any subsequent appeal) or until your licence is surrendered.
- 1.3 The existence of a criminal record or disclosure of other information will not necessarily preclude you from gaining a licence unless the Council considers the conviction renders you not to be a 'fit and proper person'. In making this decision the Council will consider the nature of the offence, how long ago and what age you were when it was committed, and any other factors it or you feel are relevant.
- 1.4 Any applicant refused a licence on the grounds that they are not a fit and proper person to hold a licence has a statutory right of appeal to a magistrates' court.
- 1.5 Existing holders of drivers licences are required to notify the Council in writing on the Council's official forms within twenty-eight days of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions).
- 1.6 If you would like to discuss further what effect a caution/conviction might have on any application, you may telephone the Licensing Officer on (01923) 278503 (or e-mail licensing@watford.gov.uk) in confidence for advice.
- 1.7 The Council conducts enhanced disclosures from the Disclosure and Barring Service of any applicant for a driver licence. The Council follows the **DBS's** Code of Practice on the fair use of disclosure information, and a copy is available on request.

Applicants applying for the grant or a renewal of a drivers' licence will be required to obtain an enhanced disclosure at their expense.

The Council also abides by the **DBS's** Policy on the secure storage, handling, use, retention

and disposal of disclosure information, which is available on request.

More information about the **DBS** can be found on www.gov.uk.

- 1.8 The Council is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Council or other Councils, and information disclosed by the Police under the Home Office scheme for reporting offences committed by notifiable occupations.

2. General Policy

- 2.1 Each case will be decided on its own merits.
- 2.2 A person with a conviction for crime need not necessarily be permanently barred from obtaining a licence, but should be expected to remain free from conviction for three to five years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. ~~although~~ **Persons with spent convictions for offences of a violent, sexual, child-related nature, a racially aggravated offence or other very serious crime will not normally be issued with a licence for five years once the sentence is spent unless they can show the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence. Persons whose sentences for violent, sexual, child-related nature, a racially aggravated offence or other very serious crime are never spent will not be granted a licence unless they can show the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence.** The overriding consideration should always be the protection of the public.

However, remaining free of convictions for a specified period may not be sufficient to show that a person is a fit and proper person, and additional evidence may be required.

- 2.3 A person who has received a Penalty Notice for Disorder for offences listed in this policy will be expected to remain conviction-free for at least twelve months from the date that the notice was paid for or discharged.
- 2.4 In this policy, the time periods mentioned in each case refer to the time that has elapsed since the date of conviction.
- 2.5 The Council reserves its right to act as a judicial authority in the case of relevant spent convictions under the Rehabilitation of Offenders Act 1974 (as amended).
- 2.6 Applicants who have prior convictions or driving endorsements will be invited to attend an interview with a Licensing officer. They may be accompanied by a representative should they wish, and bring supporting evidence with them. The interviewing officer will record any mitigating circumstances. The fact that existing licensed drivers rely on their licence for their livelihood will not be seen as a mitigating factor.
- 2.7 The Council will take a strict view of anyone convicted of any offence listed in this policy where alcohol or illegal drugs was a factor, which it will take as an aggravating and not a mitigating factor unless evidence is presented to the contrary.
- 2.8 A review will then be arranged within three working days (wherever possible) with the Environmental Health and Licensing Section Head or the Head of Community Services and Housing, which the applicant may attend. The senior Officer will review the application and the result of the first interview (but not accept any new evidence) before making an immediate determination.
- 2.9 Where a person has been convicted of an offence by the Council itself, the decision on whether the licence should be revoked or refused will be taken by a Licensing sub-Committee of Councillors. The sub-Committee shall be convened within three weeks of being notified of the conviction, and will be heard in private. Applicants will be entitled to address the sub-Committee, to answer questions, and will be given written reasons for any decision.

- 2.10 There may be occasions where it is appropriate to depart from the guidelines, eg where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
- 2.11 In accordance with current case law, the Council will not seek to go behind the convictions by reinvestigating the circumstances of the case or questioning the decision of the relevant judicial authority. It will be for applicants to persuade the Council that the conviction is no longer serious, relevant or is so old that it should not affect their ability to hold a licence.
- 2.12 'A decision to revoke a licence following a conviction is not a case of penalising the individual twice. The objective of a conviction is for an offender to be punished by a court or other judicial process; a licensing decision is made to assess whether a person is a fit and proper person to hold a licence; to protect public safety; and to promote public confidence in the licensing system.
- 2.13 The following examples afford a general guide on the action to be taken where convictions are declared. It is based on Department of Transport Circular 2/9/Home Office Circular 13/92.
- 2.14 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence, punishable by a maximum fine of level 3 (£2500) upon summary conviction.

3. Driver Licences

3.1 Minor traffic offences

Convictions or a fixed penalty notice for minor traffic offences, e.g., obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicants DVLA driving licence then a hackney carriage or private hire vehicle licence may be granted after its restoration but a warning should be issued as to future conduct. Holders of a Hackney Carriage or Private Hire Driver Licence convicted of such offence(s) may be warned as to future conduct, and any disqualification from driving will lead to revocation of any licence issued by the Council (and see section 6 below).

3.1.1 Under the “totting up” procedure a court may find that despite having 12 or more points endorsed on their DVLA licence there are special reasons not to disqualify the person from driving. In those circumstances the Council may still bar an individual for three years from the date of the last conviction on the DVLA licence unless they can show that the convictions are no longer serious, relevant or so old they do not affect their applicability to hold a licence.

3.2 Major traffic offences

A major traffic offence is one for which a person may be sentenced to a term of imprisonment or which is not otherwise specified as a minor traffic offence. A conviction for a major traffic offence such as causing death by dangerous driving, careless driving, racing, driving without due care and consideration, taking vehicles without consent, aggravated vehicle taking, interfering with a motor vehicle etc (which is not specified as a minor traffic offence), within the last five years will normally disbar an applicant from being given a licence. A conviction for a major traffic offence during the period of a Council-issued licence may lead to the licence being revoked.

3.3 Drunkenness

A serious view will be taken of convictions of driving or being in charge of a vehicle under the influence of drink. An isolated incident in the past should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to an applicant's fitness to hold a Hackney Carriage or Private Hire Driver's licence. At least five years should elapse after the restoration of the DVLA driving licence before an applicant is considered for a Hackney Carriage or Private Hire Drivers licence.

- 3.4 If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of five years should elapse after treatment is complete before a further licence application is considered. A driver found guilty of driving whilst under the influence of alcohol will have their Hackney Carriage or Private Hire Drivers Licence revoked immediately and be banned from holding a licence from the Council for a minimum period of five years.

3.5 Drugs

An applicant with a conviction for a drug-related offence, the supply or trafficking of drugs should be required to show a period of at least five years free of convictions before an application is entertained, or five years after detoxification treatment if they were an addict. A driver found guilty of driving whilst under the influence of drugs, or found guilty of any drug-related offence, will have their Hackney Carriage or Private Hire Drivers Licence revoked immediately and be banned from holding a such a licence with the Council for a minimum period of five years.

3.6 Indecency and sexual offences

Hackney carriage and Private Hire Vehicle drivers often carry unaccompanied and/or vulnerable passengers. **Applicants with convictions for indecency or sexual offences that are never spent will not be granted a licence unless they can demonstrate that the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence.** Applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused a licence until they can show a substantial period (at five years) free of such offences. More than one conviction of this kind should preclude consideration for at least five years. In either case if a licence is granted a strict warning as to future conduct should be issued. A driver found guilty of indecency offences during the period of a Licence will have their Hackney Carriage or Private Hire Drivers licence revoked and be banned from holding a licence from the Council for a minimum period of five years.

3.7 Violence

Applicants with convictions for violent offences that are never spent will not be granted a licence unless they can demonstrate that the convictions are no longer serious, relevant or so old that they do not affect their ability to hold a licence. As hackney carriage and Private Hire Vehicle drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. . At least five years free of such convictions should be shown before an application is entertained and even then a strict warning will be administered. A driver found guilty of violence-related offences will have their Hackney Carriage or Private Hire Drivers Licence revoked immediately and be banned from holding such a licence from the Council for a minimum period of five years.

3.8 Dishonesty

Hackney carriage and private hire vehicle drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property, taking children to school and families on holiday is indicative of the trust that people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by any lost property being kept by unscrupulous drivers. For these reasons a serious view should be taken of any convictions involving dishonesty. In general, a period of at least five years free of conviction should be required before entertaining an application. Any existing driver convicted of offences of dishonesty can expect any licence held to be revoked and a possible ban on holding a licence from the Council for a minimum five year period.

3.9 Insurance offences

A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily debar an applicant provided he has been free of conviction for three years, but strict warning should be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to an applicant's fitness to hold a Hackney Carriage or Private Hire Driver Licence unless there are exceptional circumstances. A period of at two years must elapse if a licensed private hire vehicle was being driven, or three years if any other vehicle was being driven. Any applicant with three insurance offences or more will not be considered 'fit and proper' to hold a Hackney Carriage or Private Hire Drivers Licence with the Council.

3.10 Plying for hire

This is regarded as a serious offence likely to undermine the rationale for the system of licensing hackney carriages and private hire vehicles. More than one conviction for these offences will raise grave doubts as to an applicant's fitness to hold a licence unless there are exceptional circumstances. A period of at least one year must elapse if a licensed private hire vehicle was being driven, or three years if any other vehicle was being driven. Any applicant with three or more convictions will not be considered 'fit and proper' to hold a Hackney Carriage and Private Hire Vehicle with the Council.

3.11 Use of hackney carriages or private hire vehicles

Anyone convicted of any offence relating to the use (not driving, covered above) of **any licensed hackney carriage or private hire vehicle** ~~vehicle during the period of their Hackney Carriage or Private Hire Driver Licence~~ will be banned from holding any such licence for a minimum three year period.

4. **Vehicle Licences**

- 4.1 If you apply for a vehicle licence but do not have a drivers' or operators' licence from the Council, you must also produce with your application a basic disclosure form from **Disclosure Scotland**.
- 4.2 Licences will not generally be granted to applicants who have been convicted within the last three years of an offence relating to the use or ownership of motor vehicles, or offences involving dishonesty.

5. **Private hire vehicle operator licences**

- 5.1 If you apply for a private hire vehicle operators' licence but do not have a drivers' licence from the Council, you must also produce with your application a basic disclosure form from **Disclosure Scotland**.

5.2 Violence

At least three years free of such convictions should be shown before an application is entertained and even then a strict warning will be administered. An existing operator convicted of an offence relating to violence could be expected to have their licence revoked for a period of three years.

5.3 Dishonesty

Private hire vehicle operators are often privy to confidential information about their customers, and are required to maintain records in relation to their business. In general, a period of at least three years free of conviction should be required before entertaining an application. Any existing operator convicted of offences of dishonesty can expect any licence held to be revoked and a ban on holding a licence from the Council for a minimum three year period.

5.4 Insurance offences

A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily debar an applicant provided he has been free of conviction for three years, but strict warning should be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to an applicant's fitness to hold a licence unless there are exceptional circumstances.

- 5.5 At least three years should elapse (after the restoration of the DVLA driving licence), before an applicant is considered for a hackney carriage or private hire drivers licence. An operator found guilty of aiding and abetting the driving passengers for hire and reward whilst without insurance will have his operators' licence revoked immediately and be banned from holding a licence for a three years. Any applicant with three insurance offences or more will not be considered 'fit and proper' to hold a operators' licence with the Council.

5.6 Use of hackney carriages or private hire vehicles

Anyone convicted of any offence relating to the use (not driving, covered above) of a licensed vehicle during the period of their operator's licence will be banned from holding any such licence for a minimum three year period.

5.7 Other regulatory offences

An operator who has been convicted of other regulatory offences (eg tax evasion, or under the Health and Safety at Work etc Act 1974) will generally be debarred from holding a licence for a further two years from the date of conviction.

6. Additional policy for licensed drivers in certain circumstances

- 6.1 The Driving Standards Agency's driving test for hackney carriage/private hire vehicle drivers must be taken again by:
- (i) licensed drivers who accumulate six or more points on their DVLA licence;
 - (ii) following any period of disqualification;
 - (iii) following a written report of bad driving from a police traffic officer;
 - (iv) following an absence from the trade for more than 6 years (that is, the length of two consecutive driver's licences);
 - (v) drivers who have more than three reported accidents in licensed vehicles within any twelve month period where they were at fault.
- 6.2 The test will be taken at your own expense. Drivers would not be granted licences (or, if already licensed, have the licences restored) until they have passed the test.