

**East Herts Council**

**Taxi Licensing**

**Convictions Policy**

## 1. Introduction

1.1 This policy provides guidance to all parties on the criteria that will be taken into account when determining whether or not an Applicant or an existing licence holder is a fit and proper person to hold a Hackney Carriage and/or Private Hire Driver or Operator Licence. Whilst criminal convictions play a significant part in the Licensing Authority's determination on whether an individual is fit and proper or not, the Council will also take into account other factors such as demeanour, general character, non-criminal behaviour, driving abilities, and police information etc.

1.2 It is the responsibility of East Herts Council (referred to as the Council) to issue Hackney Carriage and Private Hire licences under the Local Government (Miscellaneous Provisions) Act 1976. In exercising this duty the Council will consider its duty to ensure the safety of the public as its primary consideration. Licences will not be issued unless the person is considered to be 'fit and proper'.

1.3 In seeking to safeguard the safety of the public. The Council will be concerned to ensure:

- That a person is a fit and proper person in accordance with Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II)
- That the person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safety of children, young persons and vulnerable adults

1.4 The term "Fit and Proper" for the purposes of taxi and private hire licensing is not legally defined but it has also been described as "safe and suitable" in a number of court cases.

1.5 In determining whether a person is fit and proper to hold a **driver's** licence, those tasked with determining licences / applications are effectively asking the following question of themselves:

**"Would you allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?"**

1.6 In determining whether a person is fit and proper to hold an **operator's** licence, those tasked with determining licences / applications are effectively asking the following question of themselves:

**"Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?"**

1.7 If the answer to the question is an unqualified 'yes', then the person can be considered to be fit and proper. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether a licence should be granted to that person.

1.8 In order to assess the suitability of an Applicant (and to inform decision makers when answering the question above), the Council will undertake whatever checks and apply whatever processes it considers necessary to ensure that licences are not issued to, or used by, unsuitable people. In assessing the suitability of an Applicant or licence holder, the Council will take into consideration the following factors:

- Criminality
- Period of holding a driver's licence
- Number of endorsed driving licence penalty points
- Right to work in the UK
- Medical fitness
- Standard of driving / driving ability
- The conduct of the Applicant in making the application (e.g. whether they have acted with integrity during the application process, made a misleading statement or omission)
- The previous licensing history of existing / former licence holders

In addition the Council will also consider further information sources such as the Police (including abduction notices), Children and Adult Safeguarding Boards, other licensing authorities and statutory agencies where appropriate.

1.9 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:

- Applicants for a driver's licence
- Existing licensed drivers whose licences are being reviewed
- Licensing officers
- Members of the licensing committee/sub-committee
- Magistrates and Judges hearing appeals against local authority decisions

1.10 In considering this guidance the Council will be mindful that each case must be considered on its individual merits and, where the circumstances demand, the decision makers may depart from the guidelines.

1.11 In this policy the word "Conviction" is to be defined as including **convictions, formal or informal cautions or warnings, reprimands and other relevant information**. In this policy 'from date sentence has ended' is taken to be the date which is reached once the whole of the period as sentenced by the court has elapsed and not necessarily the length of time served by the Applicant. For example, if a sentence is five years imprisonment then the date that the sentence ends will be five years from the date of sentencing – regardless of the amount of time actually served by the Applicant. If the sentence is amended by a court at a later date then this new sentence becomes relevant for the purposes of this policy. The term 'since completion of sentence' is to be construed in a similar way.

1.12 In this policy the word "Applicant" refers to **either new Applicants, existing licence holders who are seeking renewal and existing licence holders** that are the subject of periodic auditing or having their licence reviewed by the Council. It also includes existing licence holders who are being considered by the Council by virtue of offending activity having recently come to light.

The Council reserves the right to overturn a decision that has previously been made, or refuse a renewal of a licence, where clear errors are discovered or new information has come to light.

1.13 In drafting this policy and considering responses to the consultation consideration has been given to the Human Rights Act 1998, particularly in relation to:

- Article 6 (right to a fair trial);
- Article 8 (the right to respect for private and family life); and
- Protocol 1, Article 1 (protection of property)

1.14 All decisions taken under this policy will be taken in accordance with the Human Rights Act.

1.15 Similarly the impact of this policy on the local community of East Herts, both positive and negative, has been considered.

## **2. General Policy**

2.1 Whilst the Council may consider that a person with a conviction for a serious offence may not need to be automatically barred from obtaining a licence, it is however to be normally expected that the Applicant would be required to:

- a) Remain free of conviction for an appropriate period as detailed below; and
- b) Show adequate evidence that they are a fit and proper person to hold a licence (the onus will be on the Applicant to produce such evidence).

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

2.2 The standards and criteria set out in paragraphs 6 to 16 below are those that would normally be applied to applications and licences. The Council may depart from these criteria; however it must only do so in wholly exceptional circumstances<sup>1</sup>. The otherwise good character and driving record of the Applicant or licence holder will not ordinarily be considered as exceptional circumstances.

## **3. Appeals**

3.1 Any Applicant refused a driver's licence, or who has their licence suspended or revoked on the grounds that the Council is not satisfied they are a fit and proper person to hold such a licence has a right to appeal to the Magistrate's Court within 21 days of the notice of refusal [Local Government (Miscellaneous Provisions) Act 1976, s 77 (1)].

3.2 Any applicant who is granted a driver's licence and who feels aggrieved by any of the conditions attached to that licence can similarly appeal to magistrates' court

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<sup>1</sup> Wholly exceptional circumstances will be decided by discussion between the officer dealing with the matter, the Head of Service and the Chair of the Licensing Committee.

## 4. Powers

4.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the Council to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or **any other reasonable cause**.

4.2 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, allows the Council to take into account all convictions recorded against an Applicant or the holder of a Private Hire Vehicle or Hackney Carriage driver's licence, whether spent or not. Therefore the Council will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending. Applicants need to be aware that, in accordance with this Act, all convictions, cautions, warnings and reprimands must be declared.

4.3 Under the provisions of Sections 51, 55 and 59, Local Government (Miscellaneous Provisions) Act 1976, the Council is required to ensure that an Applicant for the grant or renewal of a Hackney Carriage and/or a Private Hire Vehicle driver's licence and/or Private Hire Vehicle Operator's licence is a "fit and proper" person to hold such a licence. However, if an Applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look into:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) were
- When the offence(s) were committed
- The date of the conviction, warning, caution etc.
- The number of offences i.e. lots of minor offences
- Circumstances of the individual concerned
- Any sentence imposed by the court
- Any comments made by the court or other information laid before the court
- The Applicant's age at the time of offence / incident leading to the conviction, warning, caution etc.
- Whether they form part of a pattern of offending
- Any other character check considered reasonable (e.g. personal references)
- Any other factors that might be relevant, for example:
  - The previous conduct of an existing or former licence holder,
  - Whether the Applicant has intentionally misled the Council or lied as part of the application process,
  - Information provided by other agencies / Council departments.

4.4 Existing holders of driver's licences are required to notify the Council in writing within five working days of receiving a driving licence endorsement, fixed penalty notice, warning, reprimand, police caution, criminal conviction or other criminal proceedings (including their acquittal as part of a criminal case). In addition, licence holders must inform the Council in writing, or by email within 3 working days of their arrest for any matter (whether subsequently charged or not). To fail to do so, will raise serious questions for the Council as to the honesty of the licence holder and will be taken into account as part of any subsequent renewal applications.

4.5 Applicants can discuss further what effect a caution / conviction may have on any application by contacting the Licensing Section for advice. It is in the Applicant's best interest to bring any relevant detail to the attention of the authority at an early stage. The costs involved in applying for a licence may be wasted if details come to light later which mean the application should be refused.

4.6 The Council conducts enhanced disclosures from the Disclosure and Barring Service (DBS) of any Applicant for a driver's licence. Applicants applying for the grant or a renewal of a driver's licence will be required to obtain an enhanced disclosure at their expense.

4.7 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 licensing authorities, and information disclosed by the police. Examples of such information sources that may be used include social care information, benefits payments etc.

4.8 It is an offence for any person knowingly or recklessly to make a false statement or to omit any material particular in giving information required by the application for a licence. Where an Applicant has made a false statement or a false declaration or omission on their application for the grant or renewal of a licence, the licence will normally be refused. Further applications for licences will be refused for a period of five years from the date that the lie or omission came to light.

4.9 The lists of offences within this Policy are not exhaustive. The Council can consider any offences not detailed in this Policy when examining the fitness and propriety of an Applicant.

## **5. Options when determining an application/licence**

5.1 When determining an application or considering an existing licence the Council have the following options:

- approve the application or take no further action
- approve the application with a shorter expiry date
- refuse the application/revoke the licence/suspend the licence
- issue a warning which may include the use of Licensing Record Points

For existing drivers who have accumulated 9 or more points on their DVLA driving licence, their driver licence will normally be suspended until the driver has successfully undertaken a driving test to DVSA standards. Such a test will be at the licence holder's expense.

5.2 The Authority recognises the different roles of drivers and operators and its responsibility to ensure that they are 'fit and proper' to hold such licences. For Applicants for driver's licences all of the following sections apply but sections 11 and 12 do not apply to Applicants for private hire operators licences.

## 6. Serious offences involving violence

6.1 Licensed drivers, and potentially private hire operators, have close regular contact with the public. A firm line is to be taken with those who have any convictions for offences involving violence. An application will be refused if the Applicant has a conviction for an offence that involved the loss of life.

6.2 A licence will not be granted where the Applicant has a conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Grievous bodily harm
- Violent disorder
- Riot
- Malicious wounding or grievous bodily harm which is racially aggravated
- Aggravated burglary
- Terrorism offences
- Any related offences (including attempted or conspiracy to commit offences) that are similar in gravity to those above.

6.3 Consideration may only be given to the granting / issuing of a licence if at least 10 years have passed since (the longest period will apply):

- Conviction; or
- The end of any prison sentence; and/or
- period released 'on licence'<sup>2</sup>

For an offence shown below:

- Arson
- Actual bodily harm
- Robbery
- Possession of firearm
- Assault Police
- Resisting arrest
- Any racially-aggravated offence against a person or property
- Affray
- Any offence that may be categorised as domestic violence
- Any other Public Order Act offence (harassment, alarm or distress, intentional harassment or fear of provocation of violence)
- Any related offences (including aiding abetting, attempting or conspiring to commit offences) that are similar in gravity to those above.

6.4 Consideration may only be given to the granting / issuing of a licence if at least 5 years have passed since (the longest period will apply):

- Conviction; or

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<sup>2</sup> Most prison sentences are for a fixed period and prisoners will generally be released at the half way point of the sentence and will spend the remaining period of their sentence 'on licence'. Time spent 'on licence' in the community is supervised by probation.

- The end of any prison sentence; and/or
- period released 'on licence'

For an offence shown below:

- Obstruction
- Criminal damage
- Common assault
- Any related offences (including attempted or conspiracy to commit offences) that are similar in gravity to those above.

6.5 A licence will not be granted if an Applicant has two or more (separate) convictions for an offence of a violent nature.

## **7. Possession of a weapon**

7.1 If an Applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public.

7.2 Depending on the circumstances of the offence, at least 3 years must have passed since conviction, if the disposal is not custodial, or the completion of the sentence, before a licence is granted.

7.3 A licence will not be granted if an Applicant has two or more separate convictions for weapon related offences.

## **8. Sexual and indecency offences**

8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, the Council will take a strong line in relation to Applicants or existing licence holders with convictions for sexual offences. Similarly licensed private hire operators will have access to information regarding the location and movements of these groups of people. All sexual and indecency offences should be considered as serious. Applicants with convictions for sexual or indecency offences that involve a third party will be refused a licence. Such offences include:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Trafficking, sexual abuse against children and / or vulnerable adults and preparatory offences (as defined within the Sexual Offences Act 2003).
- Making or distributing obscene material
- Possession of indecent photographs depicting child pornography.
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Soliciting (kerb crawling)
- Making obscene / indecent telephone calls
- Indecent exposure



- Any similar in gravity or related offences (including aiding abetting, attempting or conspiring to commit) offences which replace the above

8.2 In addition to the above the Council will not grant a licence to any Applicant who is currently on the Sex Offenders Register or any other similar register.

## **9. Dishonesty**

9.1 A licensed driver is expected to be trustworthy. In the course of their working duties drivers will deal with cash transactions and valuable property may be left in their vehicles. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused. Both drivers and operators may be privy to information regarding empty homes as taxis are often used as transport to airports etc. For these reasons, a serious view is taken of any conviction involving dishonesty.

9.2 A minimum period of 5 years free of conviction will be required before an application for the grant / issue of a licence will be considered. Offences involving 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
- fare overcharging
- any similar in gravity or related offences (including aiding abetting attempting or conspiring to commit) offences which replace the above

9.3 Applicants or existing licence holders that are found to have intentionally misled the Council, by way of omission or lie as part of the application process, will not be issued with a licence or will be revoked if the matter comes to light after the grant of a licence.

## **10. Alcohol and Drugs**

10.1 A serious view is taken of any drug related offence. Taking drugs and driving poses an obvious risk to public safety, whilst Applicants who have convictions for the supply of drugs should also be treated with considerable concern. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered carefully.

10.2 It is recognised nationally that taxis can travel to any location at any time without raising suspicion so they are the ideal mode of transport for moving illegal

items. An Applicant for an operator's licence with any conviction relating to the supply of illegal substances will be refused.

10.3 As licence holders are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while exceeding the legal limit or under the influence of drink or drugs. More than one conviction for these offences raises significant doubts as to the Applicant's fitness to drive the public. At least 3 years, after the restoration of the driving licence, following a drink drive conviction, should elapse before an application will be considered. If there is any suggestion that the Applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed. Such a report will be at the Applicant's expense.

10.4 Because of the nature of a driver's involvement with the public, a licence will not be granted where the Applicant has a conviction for an offence related to the supply of drugs regardless of the disposal.

10.5 A licence will not be granted where the Applicant has a conviction for an offence or offences related to the possession of illegal / controlled drugs until at least 10 years have passed since conviction if the disposal is non-custodial or the completion of any sentence and / or licence period, and only then after full consideration of the nature of the offence/s and the quantity / type of drugs involved.

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

## **11. Driving offences involving the loss of life**

11.1 A very serious view is to be taken of any Applicant for a driver's licence who has been convicted of a driving offence that resulted in the loss of life. A licence will not be granted if an Applicant has a conviction for:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by careless driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers
- Or any similar in gravity offences (including aiding abetting, attempting or conspiring to commit) offences which replace the above

## **12. Other traffic offences**

12.1 Minor traffic offences come under the following categories: Construction and use offences, Miscellaneous offences, Motorway offences, Pedestrian crossings, Speed limits and Traffic direction and signs. These offences may not ordinarily merit refusal. However, they will be subject to consideration as part of the Licensing Records Points Scheme. For existing drivers who have accumulated 9 or more points on their DVLA driving licence, they are required to pass a driving test to DVSA standards. If this is not done within 6 calendar weeks then their drivers licence will

normally be suspended until the driver has successfully undertaken the test. Such a test will be at the licence holder's expense.

12.2 Major traffic offences such, which are all offences not covered under the headings in the paragraph above, will give rise to serious doubts about the Applicant's suitability to be a driving professional. An Applicant with any such convictions will be required to show a period of at least one year free of such convictions. For Applicants with more than one offence this should normally be increased to two years.

12.3 In cases where the courts have imposed a disqualification in respect of the ordinary driving licence, the periods stated above should normally commence from the date of the restoration of the licence.

12.4 No driver will be allowed to hold a Hackney Carriage and / or Private Hire Driver Licence if they have 12 or more current points on their DVLA licence.

12.5 New Applicants with 7 or more points on their DVLA drivers licence will be refused until endorsement(s) expire and the number of penalty points drops below this threshold.

### **13. Outstanding Charges or Summonses**

13.1 If the individual is the subject of an outstanding charge or summons their application should be suspended until the matter is resolved.

### **14. Non-conviction information**

14.1 The Council will also take into account situations and circumstances that have not led to a conviction. This will include acquittals, circumstances in which convictions were quashed due to misdirection to the jury, circumstances where the decision was taken not to prosecute, situations where the person has been arrested and bailed but not yet charged, and complaints from the public. In considering the most appropriate action to take in relation to non-conviction information (or a complaint), the credibility of the witness / complainant and the licence holder will be taken into account.

14.2 If an Applicant has been arrested for, or is on bail for or is charged with, but not convicted, with a serious offence in circumstances which suggest they could be a danger to the public, consideration should be given to refusing the application. Such offences would include violent and / or sexual offences.

14.3 Hertfordshire Constabulary will be consulted on all new and renewal Driver Licence applications. Applicants should be aware that any information that the Police provide regarding their fitness and propriety to hold a licence will be properly considered.

14.4 In assessing the action to take, the safety of the travelling public must be the paramount concern.

## **15. Licensing Offences**

15.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons will prevent a licence being granted or renewed until a period of 3 years has passed since conviction.

## **16. Insurance Offences**

16.1 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 stop a licence being granted provided he/she has been free of conviction for 3 years. However, strict warning should be given as to future behaviour. More than one conviction for these offences will prevent a licence being granted or renewed.

16.2 At least three years should elapse (after the restoration of the DVLA driving licence following disqualification), before a licence would be granted for a Hackney Carriage or Private Hire drivers licence.

16.3 An operator found guilty of aiding and abetting, or otherwise assisting the driving of passengers whilst without insurance will have his Operator's Licence revoked immediately and will not be permitted to hold a licence for a period of at least three years.

## **17. Applicants with periods of residency outside the UK**

17.1 If at any time an Applicant has spent six continuous months or more overseas the Council will expect to see evidence of a criminal record check from the country/countries visited covering the whole period spent overseas.

17.2 Because of the potential lifetime relevance for some of the most serious offences mentioned in this policy, the Council will need to ensure that sufficient background checks are conducted for those Applicants who have lived overseas. For EU nationals suitable checks should be available, for those countries for which checks are not available, one option is to require a certificate of good conduct authenticated by the relevant embassy. Where an applicant cannot demonstrate that they were conviction free during periods abroad they will be unable to meet the 'fit and proper' criteria. The onus is on the applicant to provide proof of their fitness and propriety and where they cannot the application will be refused.

## **18. Conditional discharge**

18.1 Applicants are required to notify the Council of any conditional discharge or absolute discharge and these will be considered on a case by case basis. As the court can use these options in a variety of cases it is not possible to give any guidelines regarding the likely outcome of their consideration by the Council.

18.2 If an offence is committed during the period of a conditional discharge the courts may re-sentence an offender for the offence for which the conditional discharge was given. At this point the Council may consider that offence under this policy.

## **19. Summary**

19.1 Whilst a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an Applicant permanently from becoming licensed, in most cases, an Applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. If there is doubt about the suitability of an individual to be licensed, the Licensing Sub-Committee needs to be mindful of the need to protect the public and caution should be exercised.

19.2 While it is possible that an Applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an Applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction.

19.3 Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

19.4 A suspension or revocation of the licence of a driver normally takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that this is so and an explanation of why, the suspension or revocation takes effect when the notice is given to the driver. [s61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.]