



WARRINGTON

Borough Council

Convictions and Behaviour Policy

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Appendix 1

Warrington Borough Council

Convictions and Behaviour policy

Introduction

- 1.1 The aim of this Policy is to enable the Council to protect the public, whilst not preventing the vast majority of decent, law-abiding applicants and licensees from obtaining and retaining hackney carriage and private hire licences. The 'public' is not restricted to passengers. It encompasses everyone: passengers, other road users and, of course, drivers.
- 1.2 There is no evidence which can provide precise periods of time which must elapse after a crime before a person can no longer be considered to be at risk of reoffending, but the risk may reduce over time. In light of that, the timescales in this policy are intended to reduce the risk to the public to an acceptable level.
- 1.3 Many members of our society use, and even rely on, Hackney Carriages and Private Hire Vehicles to provide transportation services. This is especially true of disabled and vulnerable people. This can be on a regular basis, or only occasionally, but in all cases passengers, other road users and society as a whole must have confidence in the safety and suitability of the driver, the vehicle itself and anyone involved with the booking process.
- 1.4 Ideally, all those involved in the Hackney Carriage and Private Hire trades (Hackney Carriage and Private Hire Drivers, Hackney Carriage and Private Hire Vehicle owners and Private Hire Operators) would be persons of the highest integrity. In many cases that is true, and the vast majority of those involved in these trades are decent, upstanding, honest and hard-working individuals. Unfortunately, as in any occupation or trade, there are those who fail to conform to those standards.
- 1.5 In relation to each of these licences (Dual Driver Licence, Restricted Private Hire Driver Licence, Hackney Carriage Vehicle Licence, Private Hire Vehicle Licence, Private Hire Operators Licence), the Council has discretion as to whether or not to grant the licence.
- 1.6 Drivers and operators cannot be granted a licence unless the Council is satisfied that they are a "fit and proper person" to hold that licence (see Local Government

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(Miscellaneous Provisions) Act 1976 ss 51 and 59 in respect of drivers; s55 in respect of operators).

- 1.7 There are no statutory criteria for vehicle licences, therefore the Council has an absolute discretion over whether to grant either a Hackney Carriage or Private Hire Proprietor's Licence.
- 1.8 "Fit and proper" means that the individual (or in the case of a Private Hire Operator's Licence, the limited company together with its directors and secretary, or all members of a conventional partnership or a limited liability partnership¹) is "safe and suitable" to hold the licence.
- 1.9 In determining safety and suitability, the Council can and will take into account all matters concerning that applicant or licensee. The Council is not simply concerned with that person's behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual's attitude and temperament. The categories of behaviours described below are introduced as "offences" which may or may not lead to convictions. Any such behaviours will be taken into account, whether or not it resulted in convictions or other sanctions.
- 1.10 Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction.² Fixed penalties and community resolutions will also be considered in the same way as a conviction.³
- 1.11 It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute, Police decide on no further action (NFA), bailed, released under investigation or where an investigation is continuing) can and will be taken into account by the Council.⁴ In addition, complaints and or investigations where there was no police involvement will also be considered. Within this policy, any reference

¹ Section 57(2)(c) of the Local Government (Miscellaneous Provisions) Act 1976 allows a local authority to consider the character of a company director or secretary, or any partner.

² This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

³ This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

⁴ See *R v Maidstone Crown Court, ex p Olson* [1992] COD 496, QBD; *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, QBD; and *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin), [2003] RTR 199 Admin Ct.

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to “conviction” will also include matters that amount to criminal behaviour, but which have not resulted in a conviction.

- 1.12 In the case of any new applicant who is under investigation or has been charged with any offence and is awaiting trial, the determination may be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, the Council will decide what action to take in the light of this Policy.
- 1.13 In all cases, the Council will consider the conviction or behaviour in question and what weight should be attached to it, and each and every case will be determined on its own merits, and in the light of this Policy.
- 1.14 Any offences committed, or unacceptable behaviour reported whilst driving a Hackney Carriage or Private Hire vehicle, concerning the use of a Hackney Carriage or Private Hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 1.15 As the Council will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods are relevant and weighty considerations, but they are not the only determining factor.
- 1.16 In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable or criminal behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for such behaviour or offending.
- 1.17 Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that human beings do make mistakes and lapse in their conduct for a variety of reasons, and it is further accepted that many learn from experience and do not go on to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, may not prevent the grant or renewal of a licence.
- 1.18 It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The Council has powers to take action against the holder of all types of licence (drivers, vehicles and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented

them being granted a licence on initial application will lead to that licence being revoked.

- 1.19 Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- 1.20 Although the direct impact on the public varies depending upon the type of licence applied for or held, to maintain public confidence in the integrity of the hackney carriage and private hire licensing regimes, the Council will apply the same standards to all licences, but will not apply in this policy to motoring convictions in relation to a private hire operator.
- 1.21 This Policy suggests minimum periods of time that should elapse between the date of conviction or completion of the sentence (whichever is later) and the grant of a licence. Those periods are for single convictions. Where a person has more than one conviction, and can be seen as a persistent offender, this will raise serious questions about their safety and suitability. Convictions do become less important over time (hence the time periods) but multiple convictions or continued offending over any period of time will always be of significant concern to the Council. The Council is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.
- 1.22 Where an applicant/licensee is convicted of an offence, or has evidence of unsuitable behaviour, which is not detailed in this Policy, the Council will take that conviction and/or behaviour into account and use this Policy as an indication of the approach that should be taken.
- 1.23 This Policy does not replace the duty of the Council to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person. Where a situation is not covered by this Policy, the Council will consider the matter from first principles and determine the fitness and propriety of the individual.
- 1.24 The Council will always recognise that this is a Policy, and the timescales are not fixed periods, and if there are "truly exceptional circumstances"⁵ the time periods can be reduced in individual cases. Such instances should only be for "truly exceptional circumstances" and not frequent occurrences. The Council will consider each case on its own merits, taking into account all factors, including the need to protect the public,

⁵ DfT Statutory Standards Guidance para 5.55

the circumstances and effect of the offence, and any mitigation that has been offered. However, the conviction itself cannot be reconsidered.⁶

Drivers

- 1.25 As the criteria for determining whether an individual should be granted or retain a hackney carriage driver's licence are identical to the criteria for a private hire driver's licence, the two are considered together.
- 1.26 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.
- 1.27 As stated above, where an applicant persistently offends, which shows a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person.
- 1.28 In relation to single convictions, the time periods detailed in the following paragraphs should elapse following completion of the sentence (or the date of conviction if a fine was imposed) before a licence will be granted. For motoring offences see the paragraphs headed 'Motoring Offences' below.
- 1.29 As stated above, the categories of behaviours described below are introduced as "offences" which may or may not lead to convictions. Any such behaviours will be taken into account, whether or not it resulted in convictions or other sanctions.

Barred lists

- 1.30 A licence will not be granted to a person who is on any barred list.

Offences resulting in death

- 1.31 Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

⁶ *Nottingham City Council v Farooq (Mohammed) Times, October 28, 1998 QBD*

Offences involving exploitation and criminal harassment

- 1.32 Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment or criminal harassment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, stalking without violence, but this is not an exhaustive list.

Offences involving violence against persons, property, animals or the State

- 1.33 Violence includes situations where the victim is put in fear, alarm or distress without any physical contact. It is accepted that the concept of “violence” is wide, but any such behaviour will be of concern. This Policy does not differentiate between different levels of violence. The Council will determine whether there is any justification for departing from this time period, dependant of the facts of a particular case.
- 1.34 Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed. Where the offence of violence was committed against a child or vulnerable adult a licence will never be granted.

Offences involving Public Order

- 1.35 Where an applicant has a conviction for a public order offence or similar that is not in itself an act of violence, a licence will not be granted for a period of 5 years.

Offences involving Possession of a weapon

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

Offences involving Sex, indecency or obscene materials

- 1.37 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted. This includes any sexual harassment.
- 1.38 In addition to the above, the Council will not grant a licence to any applicant who is currently on the Sex Offenders Register.

Offences involving Dishonesty

- 1.39 Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Offences involving Alcohol abuse, Misuse or Dependency

- 1.40 Where an applicant has any conviction for, or related to drunkenness not in a motor vehicle, a licence will not be granted until at least 5 years have elapsed since the completion of the sentence imposed. If the applicant has a number of convictions for drunkenness and or there are indications of a medical problem associated with possible abuse, misuse of, or dependence on alcohol, the applicant will also be subject to additional medical testing/assessment before the application is considered. If the applicant was found to be dependent on alcohol, a licence will not be granted unless at least 5 years have elapsed since the dependency ceased.

Offences involving Drugs abuse Misuse or Dependency

- 1.41 Where an applicant has any conviction for, or related to, the production, import, trade in or supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 1.42 Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.
- 1.43 If there are indications that an applicant or licensee has, or has had a history of, a medical problem associated with possible abuse, misuse or dependence of drugs, the applicant will also be subject to additional medical testing/assessment before the application is considered. If the applicant was found to be dependent on drugs, a licence will not be granted unless at least 5 years have elapsed since the dependency ceased.

Offences involving Discrimination

- 1.44 Where an applicant has a conviction involving or connected with discrimination in any form, including non-compliance with the Equality Act 2010, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence

imposed. This includes e.g. refusals to carry assistance dogs or to provide mobility assistance.

Offences involving Regulatory non-compliance

- 1.45 Regulatory crimes include local authority offences, licensing matters, and other offences prosecuted by other authorities. It also includes matters relating to the administration of justice such as failing to surrender to bail, and any other matter where regulations or requirements have been ignored or broken. These offences demonstrate a lack of compliance with legal requirements which would clearly be a worry in relation to hackney carriage and private hire licensees. The Council will give serious consideration to whether they are a safe and suitable person to hold a licence.

Motoring Offences

- 1.46 Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction can demonstrate a lack of professionalism and will be considered seriously. A single occurrence of a 'minor' traffic offence may not prohibit the grant of a licence or result in action against an existing licence. Subsequent convictions suggest the fact that the licensee may not take their professional responsibilities seriously and may therefore not be a safe and suitable person to be granted or retain a licence.
- 1.47 Where an applicant has a conviction for drink driving or driving under the influence of drugs or failing to provide a specimen in relation to a driving matter, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. With drug or alcohol offences, any applicant may also have to undergo periodic drugs/alcohol testing at their own expense to demonstrate that they are not using controlled drugs with no notice given for a minimum period of time.
- 1.48 Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any disqualification imposed, whichever is the later.⁷

⁷ Research shows driving while using a handheld device is potentially more dangerous than driving under the influence of alcohol: <https://www.trl.co.uk/news/transport-select-committee-road-safety-enquiry-on-the-use-of-mobile-phones> Using an electronic device which is 'hands free' or 'factory fitted' does not constitute an offence on its own but drivers need to maintain proper control of the vehicle at all times. Any behaviour or activity other than driving may be considered an offence where control of the vehicle is compromised.

- 1.49 Penalty points applied to a DVLA driving licence remain active for either 3 or 10 years, which may be from the date of the offence or the date of conviction depending upon the offence as detailed in “Penalty points (endorsements)”.⁸ They may be removed from the licence after 4 or 11 years. That action does not negate the offence that led to the points being imposed. Penalty points (and the underlying offence) will be relevant and taken into consideration for 4 or 11 years from the date of the conviction, or the date of the offence depending on the type of offence (see “Penalty points (endorsements)”).⁹
- 1.50 By attaining 6 or more penalty points on their DVLA licence, a driver is demonstrating they may not be fit and proper and a new or existing driver will be referred to the Taxi Sub-Committee to assess their suitability. A driver may be required to undertake and pass a driver assessment,. Failure to do so will strongly suggest the driver is not fit and proper and not be licensed until a period of 12 months has passed with no further convictions and has passed a driver assessment since the last conviction.
- 1.51 Any offence which resulted in injury will result in a licence not being granted to any person or damage to any property (including vehicles), or any insurance offence then a licence will not be granted until at least 7 years have elapsed since the completion of any sentence.
- 1.52 Any driver who has accumulated 12 or more points on their DVLA licence and has not been disqualified under the totting up procedure by a court as a result of making exceptional hardship arguments shall not be able to advance such arguments before the Council as they are not a relevant consideration in determining what action the Council should take. Any such driver will not be licensed for a period of 5 years from the date of the accumulation of 12 or more points.
- 1.53 Any driver who has been disqualified as a result of “totting-up,” which erases the points when the licence is restored, will not be licensed for a period of 5 years from the date of the disqualification. Other disqualifications will need to be investigated, the reasons ascertained, and a decision will be based on the results of that investigation.
- 1.54 Drivers who commit parking, obstruction and other such motoring offences that do not attract penalty points are not displaying a professional approach to their work. In

⁸Available at : <https://www.gov.uk/penalty-points-endorsements/how-long-endorsements-stay-on-your-driving-licence>

⁹ Available at : <https://www.gov.uk/penalty-points-endorsements/how-long-endorsements-stay-on-your-driving-licence>

relation to persistent offenders, the Council may consider a period of suspension depending on the severity and frequency of the incidents reported.

Behaviours

- 1.55 Driver behaviours that fall short of criminal behaviour but are indicators of more sinister behaviour need to be addressed to maintain confidence in the hackney carriage and private hire trades and to stop unwanted behaviours before they evolve into criminal acts. This includes behaviours such as:-
- Asking a passenger for their contact or social media details
 - Asking personal or intimate questions
 - Inappropriate physical contact with passengers or invasion of their personal space
 - Inappropriate conversations, questions or behaviour.
- 1.56 This is more important if the passenger is a lone vulnerable individual.
- 1.57 Except in the most serious of cases after the conclusion of an investigation into any alleged incident or complaint, the outcome will be considered in accordance with the Enforcement Policy for Public Protection and Prevention using a sliding scale determined by the nature of the incident, previous history of the parties involved and accounts provided.
- 1.58 Where an applicant or licensee has a conviction for an offence contrary to any legislation relating to hackney carriage or private hire activity not covered elsewhere, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Private Hire Operators

- 1.59 A private hire operator (“an operator”) does not have direct responsibility for the safety of passengers, other road users or direct contact with passengers who are in the private hire vehicle (except where they are also licensed as a private hire driver). However, in performing their duties they obtain and hold considerable amounts of personal and private information about their passengers which must be treated in confidence and not revealed to others or used by the operator or their staff for criminal or other unacceptable purposes.
- 1.60 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person.

- 1.61 Operators must ensure that any staff that are used within the business (whether employees or independent contractors) and are able to access any information as described above are subject to the same standards as the operator themselves. This can be affected by means of the individual staff member being required by the operator to obtain a basic DBS certificate. If an operator is found not to be applying the required standards and using staff that do not meet the licensing authority's overall criteria, that will lead to the operator's licence being revoked.
- 1.62 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to operators as those applied to drivers, except motoring offences to recognise the operator is not connected with the use of a vehicle, which are outlined above.

Vehicle proprietors

- 1.63 Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities.
- 1.64 Firstly, they must ensure that the vehicle is maintained to an acceptable standard at all times.
- 1.65 Secondly, they must ensure that the vehicle is not used for illegal or illicit purposes.
- 1.66 As stated above, where an applicant has more than one conviction, serious consideration will need to be given as to whether they are a safe and suitable person to be granted or retain a vehicle licence.
- 1.67 As public trust and confidence in the overall safety and integrity of the private hire system is vital, the same standards will be applied to proprietors as those applied to drivers, which are outlined above.