



Ashfield

DISTRICT COUNCIL

HACKNEY CARRIAGE AND PRIVATE HIRE

WARNINGS, OFFENCES, CAUTIONS & CONVICTIONS POLICY

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WARNINGS, OFFENCES, CAUTIONS & CONVICTIONS POLICY

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1. Introduction

- 1.1 This policy provides guidance to the Licensing Authority (and its Committee/ Sub-Committee and/or authorised officers) on considerations when determining whether an applicant or an existing licence holder is a fit and proper person to hold a Hackney Carriage & Private Hire (Dual) Driver Licence or Private Hire Operator Licence. Any decision made by the Licensing Authority/Committee(s) will be on the balance of probabilities and will not be required to meet the 'beyond all reasonable doubt' standard of proof.
- 1.2 It is the responsibility of the Licensing Authority, Ashfield District Council (referred to as the Council hereafter) to issue Hackney Carriage and Private Hire licences under the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847. In exercising this duty the Council will consider the safety of the public as its primary consideration.
- 1.3 Public Safety is paramount and prior to granting a licence, the Licensing Authority should ensure:
- That a person is a 'fit and proper' person in accordance with Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II);
 - That the person does not pose a threat to the safety of the public;
 - That the public are safeguarded from dishonest persons;
 - That the person does not pose a threat to the safety of children, young persons and vulnerable adults
- 1.4 The term "fit and proper person" for the purposes of licensing is not legally defined. In assessing whether an individual is 'fit and proper' the Licensing Authority should, but is not limited to, consider the following, and take any other relevant information into account:
- Criminality – including convictions and cautions
 - Warnings, reprimands and fixed penalty notices
 - Human Rights
 - Driving History including period of holding a driver's licence, number of endorsed driving licence penalty points and any other relevant information;
 - Right to work
 - Testing – Medical fitness, driving ability and any other relevant testing;
 - The fitness and propriety of Private Hire Operators, ensuring the business is run in a safe and professional manner, having regard to management controls, compliance with the law and that drivers are properly monitored to ensure that they behave in an appropriate manner and comply with their duties and responsibilities, including the monitoring of drivers hours
 - The conduct of the applicant in making the application (e.g. whether they have acted with openness and integrity during the application process).
 - Licensing history of existing/former licence holders;
 - Complaints made against them to a Licensing Authority

The Licensing Authority may (where appropriate) seek information from other agencies including, but not limited to, the Police, other Authorities including Children and Adult Safeguarding Boards and other statutory bodies.

- 1.5 This policy will be applicable to any person with an interest in taxi and private hire licensing. In particular, but not exclusively, to:
- Applicants for a Hackney Carriage & Private Hire (Dual) Driver licence
 - Existing licensed drivers whose licences are being reviewed
 - The holders of Private Hire Operator licences
 - Licensing officers
 - Members of the Licensing Committee / Sub-Committee
 - Magistrates hearing appeals against local authority decisions
- 1.6 The Licensing Authority will ensure that each case is considered on its individual merits. The Policy may be departed from but this should be proportionate and justifiable in the circumstances. If an applicant has been convicted of a criminal offence(s), the Licensing Authority is not permitted to review the merits of the conviction [Nottingham City v Mohammed Farooq (1998)]
- 1.7 In this policy the word “conviction” includes convictions and cautions.
- 1.8 In this policy “date sentence has ended” is taken to be the date at which 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 but the applicant only served 3 years, the date that the sentence ends will be five years from the date of sentencing. 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 to “date sentence has ended”.
- 1.8 In this policy the word “applicant” refers to new applicants and existing licence holders.

2 General Policy

- 2.1 Whilst the Licensing Authority may consider that a person with a conviction for a serious offence may not need to be automatically barred from obtaining a licence, the applicant would normally be required to:
- a. Remain free of conviction for an appropriate period as detailed below; and
 - b. Evidence that they are a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).
- 2.2 The Licensing Authority may depart from the guidelines provided in this policy where it is proportionate and justifiable in the circumstances. 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.

2.3 Outstanding Charges or Summonses

If the Licensing Authority is notified of an outstanding charge or summons which could pose a risk to public safety the Licensing Authority may suspend, revoke or adjourn the application until proceedings have been concluded or information is provided which satisfies them that the risk no longer exists.

Each case will be determined on its own merits;

2.4 Non-conviction information

Should the Licensing Authority receive information which suggests an applicant / existing licence holder could pose risk to the public safety, consideration should be given to refusing/revoking the application.

- 2.5 In making a determination, public safety of the public must be a paramount consideration for the Licensing Authority.
- 2.6 Where an applicant has had a Hackney Carriage and / or Private Hire Driver licence revoked by another Licensing Authority, this Licensing Authority will not normally grant a licence until at least twelve months has elapsed since the revocation.

3. Powers & Requirements

- 3.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow a Licensing Authority to suspend, revoke or refuse to renew a licence if:
- 3.1.1 the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence;
 - 3.1.2 failure to comply with the provisions of the Town Police Clauses Act 1847;
 - 3.1.3 failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976;
 - 3.1.4 or any other reasonable cause.
- 3.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, permits a Licensing Authority to take into account all convictions recorded against an applicant or the holder of a Hackney Carriage & Private Hire (Dual) Driver Licence, whether spent or not. The Licensing Authority will consider all relevant convictions, particularly where there is a history of offending or a pattern of repeat offending. In accordance with this Act, all convictions, cautions, warnings and reprimands must be declared by the Applicant.
- 3.3 Under the provisions of Sections 51, 55 and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to be satisfied that an applicant licence is a “fit and proper” person to hold such a licence. If, however, an applicant has any convictions, warnings, cautions or charges awaiting trial, the Licensing Authority will consider:
- 1. How relevant the offence(s) are to the licence being applied for
 - 2. How serious the offence(s) were
 - 3. When the offence(s) were committed
 - 4. The date of conviction
 - 5. Circumstances of the individual concerned
 - 6. Sentence imposed by the court and the Judges reasons (obiter dicta) for coming to that decision
 - 7. The applicant’s age at the time of conviction
 - 8. Whether they form part of a pattern of offending
 - 9. Any other character check considered reasonable (e.g. personal references)
 - 10. Any other factors that might be relevant, for example:
 - (a) The previous conduct of an existing or former licence holder,
 - (b) Whether the applicant has intentionally misled the council or lied as part of the application process,
 - (c) Information provided by other agencies / council departments.
- 3.4 Existing holders of a Hackney Carriage & Private Hire (Dual) Driver licence are required to notify the Licensing Authority in writing within seven days of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions). Failure to do so will raise concerns as to the honesty of the licence holder and may be taken into account as part of any subsequent renewal applications or reviews.
- 3.5 Applicants can discuss further the implications of a caution/conviction may have on any application or existing licence with the Licensing Service.

- 3.6 The Licensing Authority requires an Enhanced Disclosure from the Disclosure and Barring Service (DBS) for any applicant for a driver licence. Applicants applying for the grant or a renewal of a driver's licence will also be required to provide an enhanced DBS at their own expense on application and at any other time as determined by the Licensing Authority. Alternatively, a subscription to the Update Service is available.
- 3.7 The Licensing Authority will use all information available to it when determining applications or an entitlement to continue holding a licence. The Licensing Authority may (where appropriate) seek information from other agencies including, but not limited to, the Police, other Authorities including Children and Adult Safeguarding Boards and other statutory bodies.
- 3.8 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. Section 57(3) Local Government (Miscellaneous Provisions) Act 1976 stipulates where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.
- 3.9 For renewal applications and current licence holders this policy will be applied retrospectively.
- 3.10 If an offence / information is not covered by this Policy it will not preclude the Licensing Authority from taking it into account.

4 Immediate Revocation / Suspension of Hackney Carriage & Private Hire (Dual) Driver Licence

- 4.1 If the Licensing Authority makes a decision to revoke or suspend a Hackney Carriage & Private Hire (Dual) Driver licence, it will be required to consider whether that revocation/suspension should take immediate effect under Section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.
- 4.2 The Licensing Authority can only suspend/revoke with immediate effect if it is in the interests of public safety to do so.
- 4.3 Before making determination, where it is practicable to do so, the Licensing Authority should provide the licence holder an opportunity to make representations. It may not be practicable to do so in circumstances where public safety is at risk.
- 4.4 The overriding consideration is the safety and protection of passengers and the general public.
- 4.5 Matters such as employment status and personal circumstances should not be taken into account when determining whether an applicant is fit and proper to hold a licence and would not in any event outweigh the public safety factor.
- 4.6 Where the Licensing Authority has decided that a licence holder is no longer “fit and proper” to hold a licence, for public safety reasons, the presumption will be that the revocation of the licence shall have immediate effect.
- 4.7 If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, the Council will give notice to the driver, which includes a statement to that effect and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

4.8 Appeals

A right of appeal exists where a decision has been made to refuse, revoke or suspend a licence because the fit and proper test has not been satisfied.

All appeals should be lodged at the Magistrate’s Court within 21 days of the notice of refusal/decision being received. [Local Government (Miscellaneous Provisions) Act 1976, s77(1)].

Where a decision is made to suspend and/or revoke with immediate effect, the driver cannot carry on its business during any appeal process. [Local Government (Miscellaneous Provisions) Act 1976, s77(3)]

5. Offence considerations

This section deals with offences and applies to **new, renewal and review** applications for Driver, Vehicle and Operator Licences.

Unless there are exceptional circumstances (and each case will be considered on its individual merits), the Council will adhere to the statements listed in this Section of the Warnings, Offences, Cautions and Convictions Policy.

5.1 Offences Resulting in Death

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, a licence will normally be refused or revoked. Such offences include but are not limited to:

1. Murder
2. Manslaughter
3. Manslaughter or culpable homicide while driving
4. Terrorism offences
5. Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

5.2 Exploitation

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, a licence will normally be refused or revoked. Such offences include, but are not limited to:

1. Slavery
2. Trafficking
3. Child sexual abuse
4. Exploitation
5. Grooming
6. Psychological, emotional or financial abuse
7. Kidnapping or abduction
8. Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

5.3 Offences involving Violence Against the Person

Licensed drivers have close regular contact with the public. A serious view will be taken with those who have convictions for offences involving violence. Where an applicant has a conviction for an offence of violence against the person, 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. Such offences include, but are not limited to:

1. Arson
2. Malicious wounding or grievous bodily harm which is racially aggravated
3. Actual bodily harm which is racially aggravated

