

HACKNEY CARRIAGE & PRIVATE HIRE LICENSING

STATEMENT OF POLICY AND GUIDELINES ON RELEVANT CONVICTIONS



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

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

- Applicants for drivers' Licences
- Existing licensed drivers whose Licences are being reviewed
- Applicants for operators Licences
- Existing licensed operators whose Licences are being reviewed
- Licensing Officers
- Members of the Licensing Sub-Committee
- Magistrates hearing appeals against local authority decisions
- Lancashire Constabulary

Where Officers have delegated powers to grant or refuse Licences, they will utilise these guidelines when making a decision to grant a Licence. In other cases Applications for Licences will be referred to the Licensing Sub-Committee.

Whilst Officers and the Licensing Sub-Committee will have regard to the guidelines contained in the policy, each case will be considered on its Individual merits and, where the circumstances demand, the Sub-Committee/Officer may depart from the guidelines.

Background

1. In this Policy the following words have the following meanings:
 - a. "Applicant" means a person applying for a Licence, an existing Licence Holder applying for renewal of a Licence, or an existing Licence Holder whose Licence is subject to a decision by the Council to revoke, suspend or take no further action
 - b. "Application" means an Application for a Licence, an Application for renewal of a Licence, or a decision by the Council to revoke, suspend or take no further action in respect of an existing Licence

- c. "Conviction" means a conviction, caution or formal warning and endorsable fixed penalty
 - d. "Council" means Ribble Valley Borough Council
 - e. "Driver" means a person applying for a Licence or a Licence Holder
 - f. "Individual" includes an existing Licence Holder, an applicant for a new Licence, and an Applicant for the renewal of an existing Licence
 - g. "Issue" includes any complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal). E.g. incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities)
 - h. "Licence" means a Licence to drive a hackney carriage and/or a private hire vehicle or operate a private hire business
 - i. "Licence Holder" means the holder of a current valid Licence granted by the Council
2. Where this Policy refers to a period free of Conviction, that period is to be calculated as:
- Commencing on the later of:
- a) the date of the Conviction;
 - b) in the case of a Licence Holder, the date the Conviction was reported to the Council;
 - c) the date any custodial sentence was completed; or
 - d) the end date of any period of disqualification from driving and ending on the date of determination of the Application.
3. Licences may only be granted where the Council is satisfied that the Individual is a fit and proper person to hold such a Licence.
4. The document is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous Convictions.
5. The Council is concerned to ensure:
- a. That a person is a fit and proper person.
 - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
 - c. The safeguarding of children and young persons and vulnerable adults.
6. The public are not normally permitted to attend Committee hearings for licence Applications or reviews, however, in determining whether to grant a Licence the committee or officers will take into account the human rights of the wider public and balance these against the human rights of the Applicant.

7. When submitting an Application, Individuals are required to declare all previous Convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all fixed penalties and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.
8. The information given will be treated in confidence and will only be taken into account in relation to the relevant Application to assist the Council in determining whether the Applicant is a fit and proper person to hold a Licence for the purposes of sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 or 62 of the Act (i.e. suspension, revocation or refusal to renew a Licence).
9. Applicants for a Licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the licensing section will where appropriate contact other agencies for any other information which they may hold for instance, Lancashire County Council Children's Services and Lancashire Constabulary. Information received from the Disclosure Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the Application is determined or any appeal against such determination is decided.
10. The disclosure of a Conviction or other relevant information relating to an Individual's conduct will not necessarily debar an Individual from being granted, retaining or renewing a Licence. It will depend on whether or not the Individual can satisfy the Council that they are a fit and proper person to hold such a Licence.
11. The Council may fail to be satisfied that an Individual is a fit and proper person to hold a Licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a Licence.
12. In considering evidence of an Individual's good character and fitness to hold a Licence, where previous Convictions or other information relating to criminal matters/character is disclosed, the Council will consider:
 - the nature of the offence/Issue and penalty;
 - when it was committed/took place;
 - the date of Conviction/Issue and the length of time which has elapsed;
 - the Individual's age when the offence was committed/Issue took place;
 - whether or not it is part of a pattern of criminal behaviour;
 - the intent, the harm which was, or could have been caused; and
 - any other factors which might be relevant.

Where an Individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*]

13. The Council has adopted the following guidelines relating to the relevance of Convictions to which it refers in determining Applications for Licences and when considering whether to take any action against any existing Licence Holder.
14. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an Individual. If an Individual has a Conviction for an offence not covered by the guidelines regard will be given to the factors at paragraph 12 when deciding whether any action should be taken.
15. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.
16. The guidelines are not an attempt to define what a "fit and proper person" is.
17. Any Individual who is refused a Licence or has such a Licence suspended or revoked has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS and OTHER INFORMATION

General Policy

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers and operators are fit and proper persons to hold Licences. One aspect of that is the extent to which previous Convictions, including but not limited to Convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and would not take advantage of passengers or abuse or assault them.
3. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
4. An Individual with a Conviction for a serious offence need not be automatically barred from obtaining a Licence, but would normally be expected to:
 - a. Remain free of Conviction for an appropriate period; and
 - b. Show adequate evidence that he or she is a fit and proper person to hold a Licence (the onus is on the Applicant to produce such evidence). A person with a Conviction for a single serious offence or a number of separate offences is not barred from applying for a private hire or hackney carriage driver Licence, but would normally be expected to remain free from Conviction for an appropriate period (which will depend on the nature of the offence.)
 - c. Simply remaining free of Conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a Licence.
5. Some discretion may be appropriate if the offence is an isolated one with mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. (In any case which involves certain specified sexual offences, murder or manslaughter a Licence will normally be refused.)
6. In relation to the period that a driver is expected to remain free of Conviction as detailed in paragraphs A-D and F, if an Applicant has more than 1 Conviction for any of the offences listed, the period free of Conviction will increase by 1 year per additional offence.
7. Where the Licensing Committee convene to consider an Application they may do so by Hearing with notice – Notice of the time and date when a committee will be convened will be given to the Applicant ahead of the date listed in order to allow the person to seek independent legal advice and to attend and be represented at the hearing. The procedure to be followed will be provided to the Applicant with the notice.

8. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.
9. The following examples afford a general guide on the action, which might be taken where Convictions are disclosed.

A. OFFENCE OF DISHONESTY

Applicants are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people and children.

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

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

For these reasons a serious view is taken of any Convictions involving dishonesty.

In particular, an Application will normally be refused where the Individual has a Conviction for an offence or similar offences or offences which replace the offences below and the Conviction is less than 7 years prior to the date of Application

- i. Theft
- ii. Burglary
- iii. Fraud
- iv. Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- v. Handling or receiving stolen goods
- vi. Forgery (e.g. producing false insurance policy)
- vii. Conspiracy to defraud
- viii. Obtaining money or property by deception
- ix. Other deception

B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)

Members of the public and in particular, the elderly, infirm and children or vulnerable adults entrust their personal safety to private hire and hackney carriage drivers whenever they take a journey.

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

Users of private hire and hackney carriage vehicles have a right to expect that drivers are not individuals with a predisposition towards or a propensity for violent behaviour at any level.

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

Applicants are often entrusted with the care of children and young persons.

It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.

Where the commission of an offence involves loss of life a Licence will normally be refused. Where an Applicant has a conviction and less than 10 years have elapsed since the completion of any sentence imposed the licence will not be granted. For any other offences where more than 10 years have elapsed the matter will be referred to licensing subcommittee for determination.

Offences against Other Persons

Applicants maintain close contact with the public. Where the commission of an offence involved loss of life a Licence will normally be refused. Where an Applicant has a conviction and less than 10 years have elapsed since the completion of any sentence imposed the licence will not be granted. For any other offences where more than 10 years have elapsed the matter will be referred to licensing subcommittee for determination

In particular:

- i. An Application will normally be refused where the Individual has a Conviction for an offence or similar offence(s), or similar offence(s) which replace the below offences:
 - Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving

C. DRUGS

A serious view is taken of any drug related offence. The use of drugs has a tendency to make people unpredictable, unreliable and sometimes violent. Driving whilst under the influence of drugs is illegal and dangerous to not only to the person driving, but also to passengers and other road users.

In addition, Applicants are in a position where they could be involved in the transportation of drugs by the very nature of the activity. This would clearly be undesirable. Member of the public have a right to expect that those persons who are granted licences to transport them are not drug users or involved in the supply of drugs.

An Application from an Individual who has a Conviction related to the supply, intent to supply or production of drugs and the Conviction is less than 10 years prior to the date of Application will generally be refused

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class A drugs or permitting premises to be used for drug activity within the last 10 years will generally be refused. Any conviction where a period greater than 10 years have elapsed will be referred to licensing subcommittee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class B drugs within the last 5 years will generally be refused. A Conviction less than 7 years old will be referred to the Licensing Sub-Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class C drugs within the last 3 years will generally be refused. A Conviction less than 5 years old will be referred to the Licensing Sub-Committee for determination. .

An Application will normally be refused where the Individual has more than one Conviction for offences related to the possession of drugs and the most recent Conviction is less than 7 years prior to the date of the Application.

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment as required by the Council.

D. SEXUAL AND INDECENCY OFFENCES

Applicants are in a position of trust and frequently transport children, young people, vulnerable adults or lone female passengers. They are often alone with the passengers and are in complete control of the vehicle and the journey and any risk that the driver may sexually assault, attack or interfere with a passenger must be eliminated by refusing a licence.

Where an Applicant has a conviction for an offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

Any Individual currently on the sex offenders' register or any 'barred list' would not be granted a Licence.

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

The Council will sometimes be made aware of other intelligence or low level information about an Individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Any additional information gathered through this process may then be taken into account.

E. 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, they will not be licensed. This includes, but is not limited to, slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse.

F. MOTORING CONVICTIONS

The safety of passengers is paramount, and members of the public should expect to be driven by a competent and safe driver.

I. Major Traffic Offences

- a. Applications where there is more than one Conviction for this type of offence within the last 7 years will normally be refused.
- b. A list of offences to which this paragraph applies is attached as **Appendix I**.

II. Minor Traffic Offences

- a. Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed
- b. A list of offences to which this paragraph applies is attached as **Appendix II**.

III. Hybrid Traffic Offences

- a. Offences of the type listed in **Appendix III** will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

**G. OFFENCES UNDER THE TOWN POLICE CLAUSES ACTS AND
PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT
1976**

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") is to ensure the protection of the public. For this reason a serious view is taken of Convictions for offences under the Acts (including illegally plying for hire) when deciding whether an Applicant is to be treated as a fit and proper person to hold a Licence

Where an Applicant has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Where an Applicant has a conviction for any offence which involved the use of a vehicle (including hackney carriage and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

I. USING A HAND HELD TELEPHONE OR HAND HELD DEVICE WHILST DRIVING

Where an Applicant has a conviction for using a hand-held mobile telephone or a hand – held device whilst driving, a licence will not normally be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed whichever is the later.

J. DRUNKENNESS/DRIVING WHILST UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

Driving whilst under the influence of drink is unacceptable under any circumstances and puts not only the driver, but the passengers and other road users at risk. Such irresponsible behaviour is not conducive with the responsibilities of an Applicant. Other criminal behaviour involving drunkenness such as being drunk and disorderly tends to suggest that an Applicant doesn't have the appropriate temperament for the role.

Where an Applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since completion of any sentence or driving ban imposed. In these circumstances, any Applicant will also have to undergo drug testing at their own expense to demonstrate that they are not using controlled drugs.

Not in a motor vehicle

An isolated Conviction for drunkenness need not debar an Applicant from being granted a Licence. In some cases, a warning may be appropriate. However, more than 1 Conviction in the last 2 years will merit a refusal.

In addition the Applicant will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

K. SPENT CONVICTIONS

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

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

MAJOR TRAFFIC OFFENCES
(Paragraph (E,I) refers)

- AC10 Failing to stop after an accident
- AC20 Failing to give particulars or to report an accident within 24 hours
- AC30 Undefined accident offences

- BA10 Driving while disqualified by order of court
- BA30 Attempting to drive while disqualified by order of court

- CD71 Causing death by careless driving then failing to provide a specimen for analysis
- CD90 Causing death by driving; unlicensed, disqualified or uninsured drivers

- DD10 Causing serious injury by dangerous driving
- DD40 Dangerous driving
- DD60 Manslaughter or culpable homicide while driving a vehicle
- DD80 Causing death by dangerous driving

- DR60 Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
- DR61 Failure to provide a specimen for drug analysis in circumstances other than driving or attempting to drive
- DR70 Failing to provide specimen for breath test

- IN10 Using a vehicle uninsured against third party risks

- LC30 Driving after making a false declaration about fitness when applying for a licence
- LC40 Driving a vehicle having failed to notify a disability

LC50 Driving after a licence has been revoked or refused on medical grounds

MS50 Motor racing on the highway

MS60 Offences not covered by other codes

MS90 Failure to give information as to identity of driver etc.

UT50 Aggravated taking of a vehicle

Aiding, abetting, counselling or procuring

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

Causing or permitting

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

Inciting

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

MINOR TRAFFIC OFFENCES
(Paragraph (E,II) refers)

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

Aiding, abetting, counselling or procuring

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

Causing or permitting

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

Inciting

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

HYBRID TRAFFIC OFFENCES
(Paragraph (E,III) refers)

- CD10 Driving without due care and attention
- CD20 Driving without reasonable consideration for other road users
- CD30 Driving without due care and attention or without reasonable consideration for other road users

- CU10 Using vehicle with defective brakes
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
- CU30 Using a vehicle with defective tyre(s)
- CU40 Using a vehicle with defective steering
- CU50 Causing or likely to cause danger by reason of load or passengers

- CU80 Using a mobile phone whilst driving a motor vehicle

- LC20 Driving otherwise than in accordance with a Licence

- SP10 Exceeding goods vehicle speed limit
- SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
- SP30 Exceeding statutory speed limit on a public road
- SP40 Exceeding passenger vehicle speed limit
- SP50 Exceeding speed limit on a motorway
- SP60 Undefined speed limit offence

Aiding, abetting, counselling or procuring

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

Causing or permitting

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

Inciting

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

