

## APPENDIX B



### **Proposed Policy on Professional Standards**

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

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Licensing Officers
- Members of the Regulatory Committee / Regulatory Sub-Committee
- Magistrates hearing appeals against Halton Borough Council decisions

Thereby providing transparency and consistency in accordance with the principles of good enforcement and relevant regulatory compliance codes.

Where Licensing Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the Regulatory Committee / Regulatory Sub-Committee. Whilst Officers and the Committee/Panel 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 Committee/Officer may depart from the guidelines.

#### **Background**

1. In this policy the word applicant refers to either new applicants, or those existing licence holders who are seeking renewal. It also includes existing licence holders who are being considered by the Council by virtue of activity that questions their ability to continue to be considered a fit and proper person.
2. Licences for drivers of hackney carriages and private hire vehicles may only be granted where the Council is satisfied that the applicant is a 'fit and proper person' to hold such a licence.
3. The policy 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, formal/simple cautions, has been the subject of restorative justice and/or other matters.

4. The Council is concerned to ensure:
  - a. That a person is a 'fit and proper' person
  - b. That a person does not pose a threat to the public
  - c. That the public are safeguarded from dishonest persons
  - d. The safeguarding of children, young persons as well as vulnerable adults
5. The public do not normally attend licensing hearings for hackney carriage or private hire applications. The Regulatory Committee / Regulatory Sub-Committee however are required to take account of the public's human rights in reaching their decisions.
6. When submitting an application for a licence to drive a hackney carriage or private hire vehicle, applicants are required to declare all previous allegations and/or convictions they may have. This includes all formal cautions as well as providing details of all criminal matters of which they are currently being investigated or prosecuted for. This also extends to their driving record.
7. 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 driver's licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a licence).
8. Applicants should be aware that the Council is empowered by law to check with the Disclosure & Barring Service (formerly the Criminal Records Bureau) for the existence and content of any criminal record and other intelligence held in their name. Information received from the DBS 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 current data protection legislation after the application is determined or any appeal against such determination is decided.
9. The disclosure of a criminal record or other information relating to criminal matters will not necessarily debar an applicant from obtaining a driver's licence. Whether or not an applicant will be granted a licence will depend upon whether or not they can satisfy the Council that they are a fit and proper person to hold such a licence.
10. The Council may fail to be satisfied that an applicant is a fit and proper person to hold a driver's 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. It is the requirement of the applicant to prove that they are a fit and proper person except when reviewing a licence then the burden of proof reverts to the Council.
11. In considering evidence of an applicant's good character and fitness to hold a driver's licence, where previous allegations and/or convictions or other information relating to criminal matters is disclosed, the Council will consider the nature of the offence, when it was committed, the date of conviction, the applicant's age when the offence was committed and any other factors which might be relevant. Where an applicant has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*ref. Nottingham City Council v. Mohammed Farooq (1998)*].

12. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining applications for drivers' licences.
13. The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or an existing licence holder, 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.
14. In this policy the word "Conviction" is to be defined as including convictions, cautions, fixed penalties, warnings, reprimands and other relevant information. Where a complaint is considered by the Council and is upheld this will also be treated as a conviction for the purpose of this guidance.
15. These guidelines do not deal with every type of allegation / offence, but 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's application. If an applicant has a conviction for an offence not covered by the guidelines, regard will be taken to the factors at paragraph 11 when deciding what action (if any) should be taken.
16. 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.
17. A complaint relating to the conduct of a licensed driver will be investigated and where evidence is found that their behaviour falls below the standard that is expected, appropriate action will be taken by the relevant licensing officer or where applicable/necessary the matter will be referred to the Regulatory Committee / Regulatory Sub-Committee.
18. In some circumstances, matters originating from a complaint or enforcement action may result in prosecution proceedings as well as being referred to the Regulatory Committee / Regulatory Sub-Committee for a decision.
19. This policy is not an attempt to define what a 'fit and proper person' is.
20. When determining an application or reviewing an existing licence the Council have the following options:
  - Approve the application
  - Refuse the application
  - Revoke the licence
  - Suspend the licence
  - Issue a warning
  - For existing drivers where their driving record continues to fall below any reasonable standard expected of a professional driver they will be required to successfully undertake the current approved taxi driving test, at their own expense
  - Take any further action as deemed reasonable
  - Take no further action

21. The purpose of suspending a licence will only be considered by Members of the Regulatory Committee / Regulatory Sub-Committee as a means of positive action for a transgression which is deemed to have fallen below the threshold for revoking the individual's licence.
22. By implementing a period of suspension the licence-holder will likely suffer a financial loss until their licence is re-instated. The relevance of an individual's financial circumstances cannot be considered when making a decision to suspend or revoke a licence. With this in mind, any suspension period considered by Halton Borough Council will be limited to a maximum of 14 days. Where Members of the Regulatory Committee / Regulatory Sub-Committee consider any period longer than 14 days, then it is likely the individual cannot be deemed a fit and proper person and revocation of the licence will be the relevant outcome.
23. Any applicant or existing licence-holder who is not satisfied with the Council's decision to grant, refuse, revoke or suspend a licence has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.
24. Any person applying for a new licence who has previously had a licence revoked by Halton Borough Council (or any other Authority responsible for the licensing of drivers under the Local Government (Miscellaneous Provisions) Act and the Town Police Clauses Act 1847) will have their application referred to the Regulatory Committee / Regulatory Sub-Committee. The decision to revoke a licence is not taken lightly therefore any applicant wishing to regain a licence must provide evidence that their circumstances have changed and that they can now be considered a "fit & proper person".

## **Guidance on Types of Offences**

Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most cases. Passenger safety must be treated as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

### **Crimes resulting in death**

Where an applicant or license-holder 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. This also applies to motoring offences.

### **Terrorism**

Terrorism means the use or threat of action where designed to influence the Government or an international governmental organisation or to intimidate the public or a section of the public, for the purpose of advancing a political, religious or ideological cause.

'Action' includes serious violence against a person, serious damage to property, endangering a person's life, other than that of the person committing the action, creating a serious risk to the health or safety of the public or a section of the public, or an act designed to seriously interfere with or seriously to disrupt an electronic system, or the use of firearms or explosives.

This also includes any offence, act or omission linked to a terrorism offence. Applications with any offence(s)/conviction(s) or cautions relating to terrorism should be refused and any existing licence should be revoked.

### **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 slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

### **Offences involving violence against the person**

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. This also extends to any conviction for offences of (or relating to) the harassment and/or stalking of an individual.

## **Possession of a weapon**

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 seven years have elapsed since the completion of any sentence imposed.

## **Sexual offences**

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

In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

## **Dishonesty**

Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed. This also applies to motoring offences.

Any dishonesty by an 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.

## **Drugs**

Where an applicant has any conviction for, or related to, the 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.

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 five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs. This also applies to motoring offences.

## **Discrimination**

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

## **Motoring convictions**

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

## MAJOR TRAFFIC OFFENCES

### Drink driving/driving under the influence of drugs

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 seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

A conviction for failing to provide a test for either alcohol or drug related driving will be treated as if the individual had been convicted of the offence of driving under the influence.

For the purposes of these guidelines the following motoring offences are classed as 'Major Traffic Offences and therefore a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

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
DD40	Dangerous driving
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving / attempting to drive
DR61	Failure to provide specimen for drug analysis in circumstances other than driving / attempting to drive
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with 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
MS80	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

## INTERMEDIATE TRAFFIC OFFENCES

Any Intermediate Traffic Offence, which has attracted 4 or more penalty points will be treated as though it were a Major Traffic Offence. This is because the Court issuing the points, deemed the actual offence to be more severe than just merely reaching the legal threshold for the minimum amount of penalty points.

Where an applicant has a single Intermediate Traffic Offence within the 12 months immediately preceding the date of application, they will normally be expected to show a period of at least 6 months free from conviction before an application is considered.

For existing licence-holders where they hold no other driving convictions within a 2 year period prior to receiving an intermediate traffic offence **and** do not have a history of frequent motoring convictions then a written warning may be issued.

### Two or more Convictions

Where an applicant has 2 or more Intermediate Traffic Offences in the 12 months immediately preceding the date of application, the applicant will normally be expected to show a period of at least 12 months free from conviction before an application is considered.

If any conviction for an Intermediate Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled “disqualification”.

**For the purposes of these guidelines the following motoring offences are classed as ‘Intermediate Traffic Offences’:**

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 tyres
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
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 of other road users
MS70	Driving with uncorrected defective eyesight

## MINOR TRAFFIC OFFENCES

Any Minor Traffic Offence which has attracted 4 or more penalty points will be treated as though it were an Intermediate Traffic Offence. This is because the Court issuing the points, deemed the actual offence to be more severe than just merely reaching the legal threshold for the minimum amount of penalty points.

Where an applicant has a single Minor Traffic Offence in the 12 months immediately preceding the date of application, the application will normally be granted with a letter of warning being placed on the file.

For existing licence-holders where they hold no other driving convictions within a 2 year period prior to receiving a minor traffic offence **and** do not have a history of frequent motoring convictions then a written warning may be issued.

### ***Two or more Convictions***

Where an applicant has two or more Minor Traffic Offences in the 12 months immediately preceding the date of application an applicant will normally be expected to show a period of at least six months free from conviction before an application is considered.

***For the purposes of these guidelines the following motoring offences are classed as ‘Minor Traffic Offences’:***

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
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
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	Exceeding speed limit offence

### Information Regarding Offence Codes

Motoring conviction codes can change slightly if any of the offences were committed as follows:

- *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).

### DISQUALIFICATION

#### Totting Up

TT99 offence code - Totting up. If the total of penalty points reaches 12 or more within 3 years the driver is liable to disqualification by the Court.

#### ***Totting up with Disqualification***

An application will generally be refused unless the applicant can show a period of 5 years free from conviction has elapsed from the restoration of the DVLA licence.

Any licence-holder who gets disqualified under the totting up procedure will have their licence revoked as a primary requirement of holding a hackney/private hire driver's licence is to hold a DVLA issued licence.

#### ***Totting up without Disqualification***

An applicant who has accrued sufficient points for disqualification, under totting up, to be considered by the Court, may argue exceptional hardship and not receive a disqualification from them. Under these circumstances the Court does not consider if a driver is a "fit and proper person" as per the Local Government (Miscellaneous Provisions) Act 1976 but merely considers the drivers ability to hold a driving licence as issued by the DVLA.

In these circumstances the Council will treat the application as if a disqualification had been applied. This is because exceptional hardship cannot be taken into consideration by Local Authorities when considering hackney/private hire driver licence applications. The applicant has demonstrated that the standard of their driving is not of that what is expected by the general public to be deemed a professional driver.

Any licence-holder who holds 12 penalty points or more on their DVLA licence will be referred to the Regulatory Committee/Sub-Committee due to the fact that they still hold a DVLA licence.

## **PLYING FOR HIRE**

In the case of a licensed driver being found guilty by a court or by a Regulatory Committee/Sub-Committee (by way of a complaint) of an offence of plying for hire, a decision will normally be taken to revoke the licence.

## **BREACH OF LICENSING CONDITIONS / BY-LAWS**

Any serious or repeated breach of licensing conditions and/or by-laws by a licensed driver will be referred to the Regulatory Committee / Regulatory Sub-Committee.

## **RE-APPLICATION**

Applicants are advised that Council guidelines are that where an applicant has had an application refused or a licence revoked, the Regulatory Committee / Regulatory Sub-Committee would normally refuse any subsequent application made within 12 months of the date of the previous refusal or revocation unless there are substantial material changes in the applicant's circumstances.

Any person who has previously had a licence refused or revoked within the past 5 years must have any new application heard by the Regulatory Committee / Regulatory Sub-Committee in order to provide evidence that they are now a "fit and proper person" to hold such a licence.

## **OTHER OFFENCES**

Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws and Section 167 Criminal Justice and Public Order Act 1994.

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") and Hackney Carriage Byelaws, 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 and/or touting) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence. In particular, an applicant will normally be refused a licence if he/she has been convicted of an offence under the Acts at any time during the 2 years preceding the application or has more than one conviction within the last 5 years preceding the date of the application.