

Guidelines On The Relevance Of Convictions, Cautions, Reprimands, Warnings, Complaints And Character

Stockton-on-Tees Borough Council use the following guidelines to make fair and consistent decisions when considering criminal convictions, cautions, reprimands, warnings, information or complaints received which result in disciplinary action against licensed private hire or hackney carriage proprietors, drivers and operators, or which are disclosed at the time of new applications, renewal applications or on notification of conviction during the period of licence.

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.

These guidelines also apply to existing licence holders. It should be noted that the Council will consider it extremely serious when existing licence holders receive criminal convictions, cautions, reprimands, or warnings or receive complaints which result in disciplinary action.

The issuing and holding of a licence is a privilege not a right and persons who hold a licence are expected to conduct themselves in a manner that does not bring their profession or the Council into disrepute.

Existing licence holders who commit criminal offences or receive complaints about their behaviour which result in disciplinary action may expect the Council to consider revoking their licence or refusing their renewal application.

These guidelines will be taken into account and in general will be followed, when dealing with a new application, a renewal application and when considering whether to issue a warning, suspend or revoke an existing licence.

The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers.

The Council uses the enhanced disclosure service from the Disclosure and Barring Service (DBS) and will use their vetting and barring scheme, when appropriate, to determine the suitability of applicants for hackney carriage and private hire driver's licences. Any information disclosed as being considered relevant by the Police on the DBS disclosure will be considered on its merits. However, any person on the DBS Barred List will normally be refused a licence.

The Council will comply fully with the DBS's Code of Practice and the requirements of the Data Protection Act 1998. Disclosure information will be used fairly, stored securely and only be handled by authorised persons. Please see guidance on the DBS website for further information:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/143669/handling-dbs-cert.pdf

The Council is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Council itself or by other licensing authorities and information disclosed by the Police.

It is an offence for any person to knowingly or recklessly make a false declaration or to omit any material particular in giving information required in the application process. Where an applicant has made a false statement or given a false declaration on their application, the licence will normally be refused.

For the purpose of these guidelines, simple cautions, endorsable fixed penalties and public order fixed penalties shall be treated as though they were convictions and they shall be disclosed to the Council accordingly.

GENERAL

Each case will be decided on its merits. The Council will endeavour to make consistent decisions but is not bound by or obliged to follow previous decisions made by them in relation to applications or existing licence holders.

It may be appropriate to depart from the general guidelines in some cases, for example, situations where the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time, which when taken individually may meet these guidelines, are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.

In considering evidence of an applicant's good character and fitness to hold a licence, where previous convictions or other information relating to criminal matters is disclosed, the Council will consider the nature of the offence, when it was committed, the applicant's age when the offence was committed and any other factors which might be relevant. However where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [Nottingham City Council v Mohammed Farooq (1998)].

Where an applicant has served a custodial sentence, the Council will consider the number of years since their release and the period for which they have been free of conviction when determining their fitness to be licensed. Time spent in custody will generally be discounted from the conviction free period.

A person with a current conviction, caution, reprimand or final warning need not be permanently barred from obtaining a licence but should be expected to remain free from conviction for an appropriate period, according to the circumstances, before an application is entertained. The onus is on the applicant to produce adequate evidence that he or she is a fit and proper person to hold a licence and simply remaining conviction free may not generally be regarded as adequate evidence that an applicant is a fit and person to hold a licence. Applicants should also demonstrate evidence of good character.

However, whilst, the Council may exercise its discretion, the overriding consideration should be the protection of the public and someone who has committed an offence and has to wait before being accepted as a driver is more likely to value their licence and act accordingly.

The guidelines are not an attempt to define what is a fit and proper person.

The guidelines do not deal with every type of offence. However, offences described in the guidelines and similar offences, though perhaps differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.

The following examples afford a general guide on the action to be taken where convictions, cautions, reprimands or final warnings are disclosed.

(a) Minor Traffic Offences

Convictions, cautions, reprimands or final warnings for minor traffic offences will not normally prevent a person from being considered for a licence. If an applicant has up to six "live" penalty points on their driving licence for such offences then the application may be granted subject to a written warning. If an applicant has between 7 and 9 live points on their licence for such offences then the application will be referred to the Licensing Committee who may decide to refuse the application. At the very least a severe warning will be given that further offences will result in revocation of the licence. Where an applicant has more than 9 live penalty points for such convictions, they must normally show a period of 12 months free from conviction, caution, reprimand or final warning before their application is considered. Even then the application will be referred to the Licensing Committee and may be refused. In this context 'live' means live for the purposes of the totting up procedure, which for most minor traffic offences means a period of 3 years from the date of the offence.

(b) Major Traffic Offences

Major traffic offences include those on the attached list of offences given overleaf that have the associated codes. Please note that the Council appreciates there is a difference in the level of seriousness of these offences and will consider each on its merits.

A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life. Unless there are exceptional circumstances, a licence will normally be refused where the applicant has a conviction for an offence such as:-

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by driving whilst unlicensed, disqualified or uninsured

Otherwise if an applicant has an endorsement in respect of a major traffic offence then the application will normally be refused until at least four years after the most recent conviction, caution, reprimand, final warning or if the person was disqualified, after the restoration of their driving licence, whichever is the later.

Even if the Courts decide not to disqualify a driver under the totting up procedure, the Council may still consider that the driver is not a fit and proper person and may consider revocation of their private hire and/or hackney carriage driver's licence.

<u>DVLA CODE</u>	DESCRIPTION OF OFFENCE
<u>AC10</u>	Failing to stop after an accident
<u>AC20</u>	Failing to give particulars or to report an accident within 24 hours
<u>BA10</u>	Driving whilst disqualified by order of court
<u>BA30</u>	Attempting to drive while disqualified by order of court
<u>CD40</u>	Causing death through careless driving when unfit through drink
<u>CD50</u>	Causing death by careless driving when unfit through drugs
<u>CD60</u>	Causing death by careless driving with alcohol level above the limit
<u>CD70</u>	Causing death by careless driving then failing to supply a specimen for analysis
<u>DD40</u>	Dangerous driving
<u>DD60</u>	Manslaughter or culpable homicide while driving a vehicle
<u>DD80</u>	Causing death by dangerous driving
<u>DR10</u>	Driving or attempting to drive with alcohol level above limit
<u>DR20</u>	Driving or attempting to drive while unfit through drink
<u>DR30</u>	Driving or attempting to drive then failing to supply a specimen for analysis
<u>DR40</u>	In charge of a vehicle while alcohol level above limit
<u>DR50</u>	In charge of a vehicle while unfit through drink
<u>DR60</u>	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
<u>DR70</u>	Failing to provide specimen for breath test
<u>DR80</u>	Driving or attempting to drive when unfit through drugs
<u>DR90</u>	In charge of a vehicle when unfit through drugs
<u>IN10</u>	Using a vehicle uninsured against third party risks
<u>IN14</u>	Causing or permitting the use of a vehicle uninsured against third party risks
<u>UT50</u>	Aggravated taking of a vehicle
TT99	To signify a disqualification under totting-up procedure. If the total of penalty points reaches 12 or more within 3 years, the driver is liable to be disqualified

(c) Alcohol Related Offences

A person who has been disqualified from driving as a result of a drink driving offence must show at least four years free from conviction after the restoration of their driving licence before their application will be considered.

A licence will normally be refused if an applicant has more than one conviction for driving under the influence of alcohol.

A person with a conviction, caution, reprimand or final warning for an alcohol related non-driving offence would be required to show a period of at least three years free from such conviction, caution, reprimand or final warning or three years from completion of any custodial sentence imposed.

If there is evidence of persistent alcohol misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant has been alcohol dependent then they would normally be required to show evidence of at least five years free from alcohol use after successfully completing an approved treatment programme.

(d) Drug Related Offences

An applicant with a conviction, caution, reprimand or final warning for a drug-driving related offence should be required to show a period of five years free of such conviction, caution, reprimand or final warning before an application is considered or, if the person was disqualified from driving, five years after the restoration of their driving licence, whichever is the later.

An applicant with a conviction, caution, reprimand or final warning for a drug related non- driving offence should be required to show a period of at least five years free of conviction, caution, reprimand or final warning before an application is considered or five years from completion of any custodial sentence imposed, whichever is the later.

If the conviction, caution, reprimand or final warning relates to the supply of prohibited drugs then it is unlikely that even after this period the application will be granted.

In addition, a licence will normally be refused if an applicant has more than one conviction for drugs related offences.

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

(e) Sexual And Indecency Offences

As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely scrutinised. Those with convictions for the more serious sexual offences will generally be refused. For other offences, applicants will be expected to show a substantial period (normally at least ten years) free of conviction for such offences before a licence will be granted and even then the application may be referred to the Licensing Committee for Members to look at the individual circumstances of the case.

Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:-

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Possession of indecent photographs, child pornography etc.

- Or **any** sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

Before an application is allowed, an applicant should be free of conviction for at least ten years since the completion of the sentence, if he/she has a conviction for an offence such as:

- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit).

However a licence will normally be refused if an applicant has more than one conviction for such sexual or indecency offences as mentioned in the paragraph above.

In addition to the above the Council will normally refuse a licence to any applicant who is currently on the Sex Offenders Register.

(f) Violence

Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.

In other cases anyone of a violent disposition will normally be refused to be licensed until at least three years free of such conviction. However, given the range of the offences that involve violence, consideration must be given to the nature of the conviction.

Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:-

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace the below offences, until a period of at least ten years free of such conviction has elapsed:-

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Possession of a weapon
- Riot
- Assault on Police
- Common assault which is racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace the below offences, until a period of at least five years free of such conviction has elapsed:-

- Racially-aggravated criminal damage
- Other racially-aggravated offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace the below offences, until a period of at least three years free of such conviction has elapsed:-

- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)

- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will normally be refused if an applicant has more than one conviction in the last ten years for an offence of a violent nature.

Please note that the Council deems incidents of domestic violence to be extremely serious because if an individual is prepared to assault an individual in a domestic or home environment, then they would have concerns over the person's ability to maintain their temper when working in an environment dealing with members of the public.

(g) Dishonesty

A licensed PHV or taxi driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

In general, for offences involving dishonesty, a minimum period of three years free from conviction is required before granting a licence. Offences involving dishonesty include:-

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- and any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will normally be refused if an applicant has more than one conviction for a dishonesty offence in the last ten years.

(h) Licensing Offences Or Any Breach Of The Conditions Or Byelaws Made Under The Relevant Legislation

The following examples afford a general guide as to what action the Council may take in relation to existing licence holders:-

Proprietor Offences

Any person convicted, cautioned, reprimanded or given a final warning of an offence relating to a hackney carriage or private hire vehicle of which they are the proprietor may have their licence(s) suspended or revoked.

Driver Offences

Any person convicted, cautioned, reprimanded or given a final warning of an offence whilst acting as the driver of a Hackney Carriage or Private Hire vehicle may have their driver licence suspended/suspended with immediate effect or revoked.

Operator Offences

Any person convicted, cautioned, reprimanded or given a final warning for an offence relating to their operation of private hire vehicles or drivers may have their private hire operator's licence suspended or revoked.

Should the Council chose to take action short of revocation then more than one such conviction, caution, reprimand or final warning will normally lead to the licence being revoked.

If a driver's or operator's licence is revoked as the result of breaches of licensing legislation, then that person would normally be expected to show a period of at least three years free from conviction, caution, reprimand or final warning before a new application is considered.

OUTSTANDING CHARGES OR SUMMONSES

If the applicant is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.

If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

NON-CONVICTION INFORMATION

Criminal convictions are not the only criteria used when considering whether an individual is a fit and proper person to be licensed. Other factors, including the applicant's demeanour and appearance (dress) may be taken into account in determining fitness and propriety.

The Council may require an applicant to submit additional information it reasonably considers necessary to enable it to determine whether a licence should be granted or whether conditions should be attached [S.57 LG(MP)Act 1976 refers].

The Courts have found that one purpose of licensing powers is to prevent licences being given to, or used by, those who are not suitable, taking into account their driving records, driving experience, sobriety, mental and physical fitness, honesty and ensuring that they would not take advantage of their employment to abuse or assault passengers [Leeds City Council v Hussain (2002) refers].

The Council can consider circumstances of concern even though a conviction has not been obtained or the conduct does not amount to a criminal offence.

The Council's focus is the impact of the applicant or licence holder upon members of the public. This does not require any consideration of the personal circumstances of the applicant or licensee, which are irrelevant, except perhaps in very rare cases to explain or excuse some conduct of the driver.

If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application.

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

ONCE A LICENCE HAS BEEN GRANTED

If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.

A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

A suspension or revocation of the licence of an operator takes effect at the end of the period of 21 days beginning with the day on which notice is given to the operator.