



GUIDELINES RELATING TO THE APPLICATION OF THE 'FIT AND PROPER PERSON' TEST AND OTHER CONSIDERATION OF CHARACTER.

TOWN POLICE CLAUSES ACT 1847

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

This policy is intended to provide guidance and clarity on the approach that officers acting under delegated authority and the Licensing Committee or the relevant Sub-Committee shall adopt when considering the suitability and character of drivers of hackney carriage vehicles and private hire vehicles as well as proprietors and operators respectively, in accordance with the above legislation.

Each case will be decided upon its own merits. The fundamental guiding principle is the promotion of public safety. Personal circumstances shall not be taken into consideration save for rare exceptions where they might explain the offending / behaviour considered.

Whilst the term 'conviction' is used throughout this document it is important to stress that a conviction is not required for action to be taken. Where there are serious doubts about the character of a licence holder or applicant arising from a prosecution that isn't proceeded with, or even not commenced at all, the facts of the allegation / complaint may be taken into account.

Character will normally be assessed on the basis of information supplied by the Police, Disclosure and Barring Service (DBS) and DVLA checks. In addition any history of complaints or other relevant information will be considered. This may include hearsay evidence or other evidence provided by third parties. Clearly, where hearsay evidence is taken into account due weight must be attached accordingly.

The relevance of the information and weight attached thereto will also be based on the time that has passed since the incident / offending / alleged offending occurred. A minor incident over 3 years ago is unlikely to have any relevance whereas one within the last 12 months will have significant relevance.

In a similar fashion the seriousness of the offence will also determine the relevance or weight attached. A person with a conviction of Rape, for example, is unlikely to ever be licensed except under exceptional circumstances.

Spent Convictions

Because of the risk associated with the roles being considered spent convictions and intelligence will also be taken into consideration provided these are relevant. If spent convictions are to be considered an opportunity shall be given for representations to be made about why they might be felt not to be relevant or otherwise why they should not be taken into consideration.

Cautions

Cautions are not convictions but can be taken into account when making decisions under this policy. In considering a caution the nature of the offence, when it occurred and the history of the applicant will be taken into consideration.

The process – New Applicants

New applicants with a history of convictions will receive advice from officers working in the licensing team in line with this policy. Applicants whose fitness is questioned that decide to continue with their application will have their application considered by either officers using delegated powers or the licensing sub-committee.

The process – current licence holders

The licensing team will investigate complaints / charges / allegations and the circumstances of convictions. Where either suspension or revocation is considered the matter, once all the evidence has been gathered, will be passed to the Licensing Manager, who has delegated powers, to determine the course of action. If suspension or revocation is being considered the licence holder will usually be notified and given a period of time, e.g. 7 days, to respond to the allegations, a copy of the evidence to be considered will be provided. At the end of this period there will either be a hearing before the Licensing (General) Sub-Committee or with an officer with appropriate delegated powers, after which the determination will be made. In cases where very serious offences are alleged it may be that licences are revoked immediately in order to protect public safety. It is important to note that licences cannot be suspended pending the outcome of investigation. (*See Singh v Cardiff City Council*)

In most cases the licensing manager will make the decision. The appropriate senior manager shall liaise with the Chair of the Licensing Committee and may determine that specific cases are brought before the Licensing (General) Sub-Committee.

Guidelines on Convictions

The following table provides a guide to the action Southampton City Council is likely to follow when presented with applications from applicants with the convictions shown. Cautions for the same offences will ordinarily be treated in a similar manner.

In cases where more than one conviction is listed in a history then the most recent case will normally be used, however the aggregated effect of offending shall be considered.

The table details suggested minimum action for new applicants and current licence holders. It has to be re-iterated that each case will be determined on its own merits and all the relevant facts shall be considered to reach a determination. In cases where the suggested action is not taken the decision maker will be required to provide specific additional justification for this.

OFFENCES	NEW APPLICANT	CURRENT LICENCE HOLDER
<p>Murder, Manslaughter, Terrorism, Rape, Sexual offences involving children or the vulnerable, Sexual assault, Possession of indecent images of young or vulnerable, Exploitation of a prostitute, Any sexual offence committed in the course of employment as a taxi driver. Human trafficking for exploitation. Drug production/importation, Or any similar offences</p>	<p>Regardless of date of conviction the application is likely to be refused.</p>	<p>Revocation and unlikely to be granted again.</p>
<p>Aggravated Burglary, Arson, GBH, Kidnapping, Racially/religiously aggravated assault, Robbery, Riot, Violent Disorder, Affray, Threats to kill, Firearm offences other than licence breaches, Indecent assault, Indecent exposure, Soliciting (Kerb Crawling) Assisting unlawful immigration, Drug Supply, Death by dangerous driving or whilst under influence of drink or drugs, Or any similar offences.</p>	<p>Should be free of conviction for at least 7 years and at least 3 years must have passed since the completion of the sentence, including any time on parole.</p>	<p>Revocation and unlikely to be granted until at least 7 years have passed and at least 3 years must have passed since the completion of the sentence, including any time on parole.</p>

ABH, Assault police, Assault with intent to resist arrest, Common assault, Criminal Damage, Harassment (contrary to the Protection of Harassment Act), Threatening/disorderly behaviour, Possession of a weapon, Dishonesty offences, Drug Possession, Causing death by careless driving, Causing death by driving whilst uninsured Drink/Drug Driving, Or any similar offences	Should be free of conviction for at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on parole	Revocation and unlikely to be granted until at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on parole.
Totting up disqualification or obtaining 12 points on a licence	To be free of conviction for 3 years	Licence suspension for one year or period of disqualification plus 3 months if disqualification is longer than 9 months.
Driving without due care or attention, No insurance, Obtaining 9 points on their licence	To be free of conviction for at least 2 years	Written warning
Illegally plying for hire/touting	To be free of conviction for at least 12 months	2 week suspension and prosecution including no insurance if applicable.

This table does not provide an exhaustive list but provides a guide

Mitigating factors and how much they sway the decision.

When determining if a driver is fit and proper the personal circumstances of the individual such as family, income, debt and commitments will not be taken into account.

The only way in which these issues may be considered is where it can be shown these circumstances contributed significantly to or explain the offending (*See Leeds v Hussain*).

Mitigating factors may be used to either increase or decrease the sanction. The following are examples that might be an appropriate approach. A person with a long driving history but no previous incidents may be treated more leniently than an individual with only a short history.

An individual that has a history of complaints is likely to receive a more severe sanction. In addition a conviction for ABH attracting a custodial sentence may indicate a more serious outcome is required.

Where a suggested course of action in the table above includes suspension or revocation then only in extreme circumstances will these sanctions not be used. Periods of time required to have elapsed or the length of any suspension should be swayed by no more than 25% of the suggested amount by mitigation. Only in extreme circumstances will this guide be ignored.

Non conviction information

Where the Licensing Authority obtains information that a licence holder or applicant may be a danger to the public their licence will be revoked or application halted. This may occur when a person is arrested for an offence but is bailed pending an investigation.

The Licensing Team will work closely with the source of the information, e.g. Hampshire Police and continually review the matter. Should additional evidence arise demonstrating the risk is sufficiently reduced then arrangements will be made to issue a new licence or continue the application. However, if it is appropriate, a warning may be issued at the same time.

Appeals

The legislation provides an appeal process for any suspension, revocation or refusal. Notice of such will provide the details of how to appeal and the time limits that apply. Presently the time limit is within 21 days of notification of the decision.

There is no appeal against a warning.

Transitional arrangements

Some individuals already licenced may meet the criteria for action against their licence in the above policy. As there has already been a determination on their suitability, in the absence of new evidence to show they are not a fit and proper person, they will continue to be licensed. However, in consideration of fresh matters since the adoption of this policy it must be stressed that the previous history of any applicant, including complaints, allegations or convictions and their aggregate effect shall ordinarily be considered where relevant.

Suspension or revocation 'with immediate effect'

Ordinarily, under the terms of the legislation, a driver may continue to drive and use their licence until the expiry of the 21 day period for appeal or once a valid appeal has been lodged at the Magistrates' Court (and the appropriate fee paid) until the determination of the appeal. This is not the case however, if the decision is made with 'immediate effect'. The Road Safety Act 2006 has introduced provision for a decision to immediately suspend the use of the licence. When deciding whether to impose this additional restriction the decision-maker will have regard to the interests of public safety.