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## Environment Directorate | Licensing

# Hackney Carriage and Private Hire Drivers' Licence Applications - Guidance on the Treatment of Convictions, Cautions, Criminal Charges or other recorded sanctions

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### 1. Introduction

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the Licensing Authority when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage / private hire driver's licence.
- 1.2 The aim of the policy is to protect the safety of the public. It has regard to the nature of the Council's locality and, in particular, the type of journey that may be undertaken by a vulnerable passenger.

### 2. General

- 2.1 In the policy set out below, the Licensing Authority is Flintshire County Council. References to the Committee are to the Licensing Committee of Flintshire County Council, or such other Committee as may be appointed from time to time to discharge the Council's functions relating to the licensing of hackney carriage and private hire vehicle drivers.
- 2.2 Under the provisions of Sections 51 and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority is required to ensure that an applicant for the grant or renewal of a hackney carriage / private hire driver's licence is a fit and proper person to hold such a licence. When processing a licence application the Licensing Authority will make a check on an applicant's criminal record. A criminal record does not necessarily mean that a licence will not be issued. However, any convictions, warnings, cautions or charges awaiting trial, will be considered on the basis of:
- How relevant the offences are to the licence being applied for
  - How serious the offences were, and
  - How recent they were
- 2.3 Section 61 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle if convicted of an offence involving dishonesty, indecency, violence, failure to comply with the provisions of the Town Police Clauses Act 1847, or any other reasonable cause.

- 2.4 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the Council to take into account all convictions recorded against an applicant, or the holder of a private hire or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.
- 2.5 It is a condition of the grant of a hackney carriage / private hire driver's licence that the holder reports any convictions, pending charges or simple or conditional cautions issued by the police, to the Licensing Authority without delay.

### **3. Delegation Arrangements**

- 3.1 The grant or renewal of an application for a hackney carriage / private hire driver's licence will normally be delegated to an authorised officer of the Licensing Authority.
- 3.2 Where an applicant for a new licence has been convicted of a relevant offence (for example one involving dishonesty, anti-social behaviour, violence, a serious driving offence or a breach of a licence condition) within a period of five years prior to the date of application, the application will be referred to the Licensing Committee for determination. A relevant offence resulting in a simple or conditional caution or a fixed penalty notice may not be referred to the Committee. However, applicants who have been convicted of, or cautioned simply or conditionally by the police for dishonesty, indecency or violence, or have a history of repeat offending prior to that period will be referred to the Committee.
- 3.3 A driver holding a valid hackney carriage / private hire driver's licence issued by Flintshire County Council, who is convicted of an offence of dishonesty, indecency, violence, failure to comply with the statutory provisions, or any other reasonable cause falling during the period of the licence, shall be requested to appear before the Committee. "Reasonable cause" will include offences under licensing legislation and may include a breach of byelaws, or private hire driver conditions, or vehicle licence conditions. The Committee may then exercise its powers to suspend, revoke or refuse to renew the licence.
- 3.4 In the case of a renewal application, where the Licensing Committee has already considered a conviction on a previous occasion and decided to grant a licence, the conviction will not be brought to the attention of the Committee again without reasonable cause.
- 3.5 The Operational Manager (Licensing) may decide not to refer an application to the Licensing Committee if an applicant has been convicted of, or cautioned for, a relatively minor criminal offence and has demonstrated a period of rehabilitation in excess of 3 years prior to the date of application.
- 3.6 Where the holder of a hackney carriage / private hire drivers' licence is charged with an offence which may lead to the licence being revoked, the case will be referred to the earliest available meeting of the Licensing Committee in order to determine whether or not the licence should be suspended. The discretion to reinstate a suspended licence lies with the Committee.

#### **4. Convictions, Breaches of Condition and Alleged Offences**

4.1 The information set out below is not exhaustive, nor is it in any order of priority. It is intended as a guide to applicants on how the Committee may determine the degree of weight to give to a conviction, prior to reaching a conclusion about the case before them. As a general principle:

- i) each case will be determined on its own merit, and;
- ii) the overriding consideration will be the protection of the public, and;
- iii) where there is evidence causing significant doubt about the fitness or appropriateness of an applicant or licence holder, the Licensing Committee will exercise the precautionary principle and refuse the application, or revoke the licence.

##### *Minor Driving Offences*

4.2 A conviction for a minor driving offence, for example one incurring no more than 3 penalty points, will not usually result in refusal or revocation and will not be referred to the Committee. A driver may be referred to the Committee where there is a pattern of repeat offending over a longer period of time.

##### *Major Driving Offences*

4.3 A conviction for a major driving offence, for example one incurring between 4 and 11 penalty points, will normally result in a written warning as to future driving conduct. Drivers will be advised on the required standards. In the case where an applicant or licence holder has more than one conviction for this type of offence within a period of five years ending with the date of conviction of the second offence, the matter will be referred to the Licensing Committee. The Committee will have regard to any previous convictions and may determine to refuse an application or revoke a current licence. In the case of an offence involving vehicle insurance an applicant will be required to demonstrate the ability to obtain insurance covering hire and reward

##### *Breach of Licence Condition*

4.4 The holder of a hackney carriage driver's / private hire driver's licence found by an authorised officer of the Licensing Authority, or a police officer, to be in breach of licensing legislation or licence conditions will be warned in writing as to future conduct, provided that the breach did not put the safety of passengers or the public at risk.

4.5 The Licensing Committee may revoke a hackney carriage / private hire driver's licence where the holder has been convicted of a serious breach of licence law.

##### *Disqualification from Driving (excluding Drink/Drive Offences)*

4.6 In paragraphs 4.7 to 4.10 below, the Licensing Authority will treat a period of a disqualification as being that which a driver would have been eligible to serve, and will disregard the decision of a court to waive or reduce a disqualification period either on the grounds of exceptional hardship under S.35 of the Road Traffic Offenders Act 1988 or for "special reasons" under S.34 of the Road Traffic Offenders Act 1988.

4.7 Where a recent conviction has resulted in a short period disqualification (less than 56 days), an application is unlikely to be granted unless a period of at least 6 months has

elapsed from the end of the disqualification period. This 6-month period may be reduced, at the discretion of the Licensing Committee where an applicant has successfully completed further recognised driver training and testing since the disqualification ended.

- 4.8 If sufficient penalty points have accrued within a three year period under the “totting up” system to cause or merit disqualification for a period not exceeding 12 months, an application for a private hire or hackney carriage driver's licence is unlikely to be granted within a term of 12 months following the end of a disqualification period. This 12-month period may be reduced at the discretion of the Licensing Committee where an applicant has successfully completed further recognised driver training and testing since the disqualification period ended.
- 4.9 The Licensing Authority is unlikely to grant an application for a private hire or hackney carriage driver's licence for a period of three years following the ending of a disqualification exceeding 12 months. The three-year period may be reduced to no less than 12 months at the discretion of the Licensing Committee where an applicant has successfully completed further recognised driver training and testing since the disqualification ended.
- 4.10 The Licensing Authority will not normally entertain an application for a private hire or hackney carriage driver's licence from a person who has been disqualified from driving for a period of 5 years or more.

#### *Driving Under the Influence of Alcohol or Drugs*

- 4.11 Disqualification from driving following a conviction for driving, or being in charge of a vehicle, whilst under the influence of drugs or alcohol, will be considered more serious than a disqualification under paragraphs 4.7 and 4.8 above. A single conviction is unlikely to result in an application being refused, provided that at least three years have elapsed since the ending of the disqualification. A conviction for ‘refusing or failing to provide a specimen when asked’ may be treated in the same way.
- 4.12 At least five years should elapse following the end of a disqualification period before an application from an applicant with more than one conviction for such an offence is likely to be granted. A special medical examination may be required before an application is considered. Where an applicant is found to be in need of medical treatment, a period of five years shall elapse, after successful treatment, before a further application is likely to be granted.

#### *Drug Related Offences*

- 4.13 An applicant with a conviction for possession of an illegal substance is likely to be required to show a period of at least five years free of conviction before an application is granted. If the applicant has received treatment for addiction, then the period shall be five years following successful detoxification treatment.
- 4.14 The Licensing Authority is unlikely to grant an application from a person convicted of any offence involving the supply of illegal substances to others unless a period of at least 10 years free from criminal conviction has elapsed.

### *Drunkenness (Not in a Motor Vehicle)*

- 4.15 An isolated conviction for drunkenness is unlikely to result in an application being refused or a licence being revoked, provided it is not associated with other criminal conduct.
- 4.16 More than one conviction for drunkenness may indicate a medical problem necessitating a medical report. If an applicant is assessed as being alcohol dependant, a period of three years following successful treatment shall elapse before a further licence application is considered. A current licence holder may have his or her licence suspended pending the outcome of the medical report. A medical report confirming alcohol dependency will result in revocation of a licence.

### *Indecency and Other Sexual Offences*

- 4.17 The Licensing Authority will not normally grant an application from a person convicted of, or cautioned simply or conditionally for, any offence involving sexual misconduct including indecent exposure, indecent assault, soliciting or any other serious sexual offences. Regard will be given also to any other relevant information disclosed at the Chief Constable's discretion.

### *Violence*

- 4.18 The Licensing Authority is unlikely to grant an application from a person convicted of an offence involving the use of violence resulting in actual bodily harm, grievous bodily harm, wounding, or assault, unless at least five years free of such convictions can be demonstrated. A licence holder convicted of such an offence may have his or her licence revoked.
- 4.19 The Licensing Authority is unlikely to grant an application from a person convicted of an offence involving the use of violence or threatening behaviour towards a police officer.
- 4.20 The Licensing Committee will normally revoke a private hire or hackney carriage driver's licence where the holder has been convicted of an offence involving obstruction to, or making a false statement to, or the use of violence or threatening behaviour towards, a police officer or an authorised officer of the Licensing Authority carrying out his or her duty.

### *Dishonesty*

- 4.21 The Licensing Authority is unlikely to grant an application from a person convicted of an offence involving dishonesty unless at least three years free of such convictions can be demonstrated. The Committee may still refuse the application unless the applicant can provide references from at least two trusted sources such as an employer, or probation officer, in support of the application.

### *Repeat Offending*

- 4.22 The Licensing Authority is unlikely to grant an application from a person with a record of persistent offending, where the record shows a lack of regard for the well being of others or for property, unless a period of at least ten years has elapsed since the most recent conviction. The Committee may still refuse the application unless the applicant

can provide character references from at least two trusted sources such as an employer, or probation officer, in support of the application.

## **5. Probationary Licences**

- 5.1 The Committee may grant a 'probationary' licence for a period of less than 12 months provided there is reasonable justification to do so.

## **6. Overseas Residents**

- 6.1 If an applicant has spent six continuous months or more overseas the Licensing Authority will expect to see evidence of a criminal record check from the country or countries covering that period.

## **7. Licences Issued By Other Authorities**

- 7.1 Where an application for a hackney carriage / private hire driver's licence has been referred to the Licensing Committee for determination with regard to this policy, and the applicant already holds such a licence granted by another local authority, the guidance in this policy shall take precedence over any decision of another authority.

## **8. Appeals**

- 8.1 Any person aggrieved by a decision of the Licensing Committee to revoke, suspend or refuse to grant a driver's licence or by any conditions attached to the grant of a licence, may appeal to the Magistrates' Court within 21 days of notification of the decision.