



BARNSLEY

Metropolitan Borough Council

Policy Guidance to Assist with the Assessment of 'Fit and Proper Person' with Regard to all Private Hire and Hackney Carriage Driver Licences

Version 6
Revised 19 February 2020

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1. Introduction to the Guidelines Relating to the Relevance of Convictions

1.1 Powers and Duties

The Local Government (Miscellaneous Provisions) Act 1976, as amended, places on Barnsley Metropolitan Borough Council (the “Authority”) the duty to carry out its licensing functions in respect of hackney carriage and private hire vehicles.

1.2 Objectives

Taxis and private hire vehicles have a specific role to play in an integrated transport system. They are able to provide services in situations where public transport is either not available (for example in rural areas, or outside “normal hours” of operation such as in the evenings or on Sundays), or for those with mobility difficulties.

In setting out its policy, The Council seeks to promote the following objectives:

- (i) The protection of public health and safety;
- (ii) The establishment of a professional and respected hackney carriage and private hire trade;
- (iii) Access to an efficient and effective public transport service;
- (iv) The protection of the environment;
- (v) Improve standards of service and the visibility of hackney carriages/private hire vehicles in support of the regeneration of Barnsley.

The aim of the licensing process, in this context, is to regulate the hackney carriage and private hire trade in order to promote the above objectives. It is the Authority’s wish to facilitate well-run and responsible businesses, which display sensitivity to the wishes and needs of the general public.

1.3 Best Practice Guidance

In formulating this policy, advice contained in the ‘Taxi and Private Hire Vehicle Licensing Best Practice Guidance’ issued by the Department for Transport has been taken into account.

1.4 Status

In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out above.

The purpose of this document is to outline the guidelines which detail the Council’s stance on the relevance of convictions and cautions in respect of applications for the grant of new licences, the renewal of existing hackney carriage and private hire drivers, operators and proprietor’s licences.

Notwithstanding the existence of this policy, each application or enforcement measure will be considered on its own merits. When the Council takes a decision to depart substantially from this policy: clear reasons will be given for doing so.

These guidelines have been produced to assist the General Licensing Regulatory Board (Licensing Board) in their decision-making and to maintain the consistency of the decisions made. They have also been formulated to provide clearer information to current licence holders and potential applicants, with a view to minimising cost and time spent by both the licence holder or applicant and the Council.

The aim of the licensing regime to which these guidelines relate is not to punish the applicant twice for an offence (which includes a conviction or caution), but to ensure that public safety is not compromised.

2 Qualifications and Requirements

2.1 Experience

A person is not able to successfully apply for a hackney carriage or private hire licence until they have held a UK driving licence for a minimum of 12 months or an equivalent foreign licence, issued by a competent licensing authority in another Sovereign State.

Section 51 (1)(b) of The Local Government (Miscellaneous Provisions) Act 1976

2.2 Suitability

The Local Government (Miscellaneous Provisions) Act 1976 deals with the issue of driver suitability:

*“...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a **fit and proper person** to hold a driver’s licence.”*

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

“...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds –

- 1) that he / she has, since the grant of the licence,*
 - i) been convicted of an offence involving dishonesty, indecency or violence,*

or,

- ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or Part of this Act,*

or,

2) *any other reasonable cause.*”

Therefore the wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is **“fit and proper”** – the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.

Whether someone is a “fit and proper person” to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, vulnerable people, foreign visitors and unaccompanied property.

Some areas give rise to particular concern, including -

- **Honesty and trustworthiness** – drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust. *For example, any passenger would expect to be charged the correct fare for a journey and then be given the correct change; they would also expect a driver to hand in any article left by a passenger in a vehicle; and also to maintain confidentiality between driver and passenger.*
- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands.
- **A good and safe driver** – Passengers paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence. The standards expected of private hire driver and/or hackney carriage driver are higher than those of the ordinary motor vehicle driver. In certain circumstances, as set out in section 2.6, the Council will require existing drivers to give an undertaking to take and pass the appropriate private hire or hackney carriage DSA driving test or a driver improvement course as appropriate.
- **Familiarity** - Drivers are expected to have a good knowledge of the area that they are working in.
- **Health** – Drivers are expected to be physically and mentally fit to perform their role.
- **Language** – Drivers are expected to be able to read, speak and understand English, and must be able to make themselves easily understood by their passengers.

2.3 Protecting the Public

The overriding consideration for the Members of the Licensing Board is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked:

“Would you (as a member of the Licensing Board or other person charged with the ability to grant a hackney carriage/private hire driver’s licence) allow your daughter or son, granddaughter or grandson, spouse, mother or father, or any other person you care for or any vulnerable person you know, to get into a vehicle with this person alone?”¹

If the answer to this question is an unqualified yes, then a licence should normally be approved. If there are any doubts in the minds of those making the decision, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant/licence holder to satisfy the Council that they are fit and proper.

2.4 Convictions

The Licensing Board are required to look at any past indicators (convictions including formal cautions, fixed penalties, speeding offences, etc) that may affect a person’s suitability to hold a hackney carriage/private hire driver’s licence and consider the possible implications of granting or renewing such a licence to that person. The imposition of a fixed penalty in place of a prosecution under any enactment may be considered a relevant indicator of suitability.

As part of the licence conditions, the applicant is required to disclose all fixed penalties, convictions and cautions. For this purpose the applicant will be asked to complete a “statutory declaration of convictions” form, prior to the grant or renewal of any licence. If it is later found that the applicant gave false information or failed to disclose convictions, formal cautions, fixed penalties, speeding offences etc, he / she will be required to attend a hearing of the Licensing Board where the licence will normally be revoked.

2.5 Soft information and information from other sources

Following the Bichard Enquiry the Council has been required to undertake enhanced DBS checks for all new drivers and Operators together with all existing drivers and Operators every three years. The Council may receive soft information through DBS checks or from other sources e.g. complaints from the public or intelligence from the Police and/or other agencies such as the Barnsley Safeguarding Children Board. Where this information calls into question whether or not the person is “fit and proper”, Officers may have no alternative but to refer the matter to the Licensing Board for determination.

¹ Paragraph 10.45 Taxi – Licensing Law and Practice Butterworths

2.6 Options for the Licensing Board

When determining an application or reviewing a licence the Licensing Board may:

- a) Take no further action / approve the licence
- b) Give a written warning
- c) Revoke / refuse the licence.
- d) For existing drivers they may ask the driver to give an undertaking that they will undertake and pass the appropriate hackney carriage or private hire DSA driving test. The driver will be required to complete the relevant test at his own expense, within three months, of the Licensing Board's decision, to prove his driving competency. Should the driver:
 - i) refuse to give an undertaking or
 - ii) fail to successfully complete the DSA driving test

within the prescribed period and without reasonable excuse then the Licensing Board will normally revoke the licence. The reason for revocation being that the driver will have failed to confirm to the board that they have taken steps to adequately address the manner of their driving and to show that they are a fit and proper person to hold a licence.

2.7 Offences by Licensed Hackney Carriage or Private Hire Drivers

Where a driver is convicted of an offence while licensed as a hackney carriage or private hire driver it is a legal requirement that they notify the Licensing Section of the Council. Where a conviction, caution or a fixed penalty is imposed on the licence holder for an offence covered in paragraphs 3.2 to 3.8, then the person will be required to attend a Licensing Board meeting and their licence will normally be revoked.

2.8 Time periods following offences

Where a time period is specified for an offence in part 3 below this should commence from the date of conviction or the restoration of the DVLA driving licence whichever is the later.

2.9 Multiple offences of differing types

There will be occasions where a driver has been convicted of a number of offences from different sections of part three e.g. drugs, dishonesty and violence.

In these cases it will be necessary for each driver to be assessed on their own merits and consideration should be given to the types of offences, the severity of the offences, the penalties imposed, how long ago the offences took place and the Councils standard timescales before a person becomes fit and proper.

2.10 Requirements for new applicants

The Council needs to ensure that all new applicants for licences to drive private hire vehicles and hackney carriages are competent to do so and therefore the following requirements will apply to new applicants:

- a) Where a person fails three consecutive theory tests within a four month period it will be unlikely that the person will have the appropriate skills and attributes to be a licensed driver with this Authority and therefore the person should be barred from undertaking any further theory tests for a period of at **least six months** to allow the person to develop the necessary skills, unless there are exceptional circumstances.
- b) At the date of application a medical questionnaire will not be accepted unless it has been signed by a medical practitioner within the last three months and contains the practice stamp.
- c) At the date of application the certificate of good character must have been completed, signed and dated by the referee within the last three months.
- d) At the date of application the DBS check must have been completed within the last three months.
- e) At the date of application no more than 8 current penalty points on their driving licence within the last 4 years, however, the number, type and frequency of an offence will be taken into account in deciding whether or not to grant a licence, see para 3.1 below for further guidance.

In the case of b), c) and/or d) above it may be necessary for further forms to be completed where the determination process for the licence is protracted.

An application will not usually be determined until the result of any pending criminal or motoring prosecution is known.

2.11 The provision of false information

If an applicant provides false information and/or makes a false declaration in relation to their application, the application will normally be refused because the applicant has been dishonest.

If a licence holder provides false information and/or makes a false declaration to the council then their licence will normally be revoked because the applicant has been dishonest.

2.12 Consideration of convictions generally

The general approach with regard to convictions, cautions or fixed penalty notices for existing licence holders or a person making an initial application for a driver's licence are as follows, subject to paragraphs 3.1 to 3.8 below:

- a) Where a driver has been disqualified from driving, the period since the restoration of their driving licence is at least twice the period of disqualification,
- b) No criminal convictions or caution which is not deemed to be spent in accordance with the provisions of the Rehabilitation of Offenders Act 1974, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) or the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2008 (SI 2008/3259).
- c) The council will normally treat a fixed penalty notice as a conviction for the purposes of determining applications.

3 Examples of conduct that could result in Refusal or Revocation of Driver's Licence

3.1 Driving Offences

Private hire and hackney carriage drivers are considered professional drivers and must be aware of the safety of their passengers and the safety of their vehicles at **all** times. Any traffic offences show a lack of responsibility whilst driving either due to the maintenance and safety of their vehicle or in the manner of their driving.

Convictions for traffic offences should not prevent a person from proceeding with the application for/renewal of their licence. However, the number, type and frequency of an offence will be taken into account. In some cases it may be appropriate to issue a licence together with a strong written warning as to their future conduct.

Any driver with EIGHT or more current points endorsed on their driving licence will be expected to go before a hearing of the Licensing Board to explain the circumstances of the offences. The board will normally adopt either of the approaches at c) or d) as set out in paragraph 2.6 above.

3.2 Motor Insurance Offences

The Council takes a serious view of motor insurance offences. An isolated incident in the past should not necessarily bar a new applicant from being issued with a licence however a period of at least three years should have elapsed before they are considered for a hackney carriage or private hire licence. For existing licence holders a conviction for a motor insurance offence, will normally result in revocation.

Two convictions for insurance offences on different occasions should raise serious doubts as to an applicant's suitability. At least 5 years should have elapsed before they are considered for a hackney carriage or private hire licence.

Where a person has three or more separate convictions for insurance offences, irrespective of the timescales for these, their application will normally be refused.

3.3 Sexual Offences

As hackney carriage and private hire drivers often carry unaccompanied and vulnerable passengers, any application where the person has a conviction or formal caution for a sexual offence will normally be refused.

Licence holders should also be aware that if the Licensing Authority receives notification from the police (or other Responsible Authority) that a driver is being investigated for a serious sexual offence, their licence will be suspended immediately pending a Licensing Board hearing (see also section 2.5).

Sexual offences include: offences contrary to the Sexual Offences Act 1956 and the Sexual Offences Act 2003, the making or possession of indecent photographs of children, soliciting, loitering or kerb crawling in connection with prostitution, living off immoral earnings and trafficking for the purposes of sexual exploitation.

3.4 Alcohol Related Offences

3.4.1 Vehicle related offences

The Council views driving or being in charge of a vehicle whilst under the influence of alcohol as a serious offence.

The offences that apply to this section include:

- Driving or attempting to drive with alcohol levels above the prescribed limit
- In charge of a vehicle, driving or attempting to drive when unfit through drink
- Refusal to provide a specimen of breath or blood for analysis
- Aiding and abetting another in the commission of such an offence

Where a person has three or more separate convictions, irrespective of the timescales for these, their application will normally be refused.

3.4.2 Non-vehicle related offences for applicants

An isolated conviction, caution or fixed penalty notice for drunkenness or S. 5 Public Order Act 1986 disorderly conduct, not associated with a motor vehicle and committed at least 12 months before the application will not normally result in an application being refused. The same considerations do not apply to existing licence holders, as any offence will have been committed whilst the holder of a licence.

3.5 Drug Offences

A serious view is taken of any drug related offence, because such offending involves issues of addiction and risk taking behaviour. Where a person has three or more separate convictions, cautions or fixed penalty notices, irrespective of the timescales for these, their application will normally be refused.

Drugs related convictions include: the possession, possession with intent to supply, supply, importation and production of controlled drugs, permitting premises to be used for supply or production of controlled drugs or the smoking of cannabis and the production of cannabis.

3.6 Violence and the causing of death during driving

As hackney carriage and private hire drivers maintain close contact with the public, any conviction, caution or fixed penalty for violence will be taken seriously by the Licensing Board a schedule of offences is attached as Appendix A.

A person convicted of an offence types 1 to 3 listed in Appendix A should normally have their licence refused or revoked until the following time periods have elapsed, unless the Rehabilitation of Offenders Act provides for a longer rehabilitation period:

| Offence Type | Timescale |
|---------------------|------------------|
| 1 | Permanently |
| 2 | 10 years |
| 3 | 7 years |

Where a person has two or more separate convictions for violence, irrespective of the timescales for these, their application will normally be refused.

3.7 Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public, for example, by demanding more than the legal fare or giving incorrect change. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by them retaining any lost property left in their vehicle.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. For these reasons a serious view is taken of any convictions involving dishonesty.

Offences of dishonesty shall include the following offences:

- Theft
- Burglary
- Fraud
- Benefit fraud

- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- False accounting
- Obtaining money or property by deception
- Other deception
- Perverting the course of justice
- Going equipped for burglary, theft or cheat
- Making off without payment
- Fraudulent use of vehicle document
- Aggravated vehicle taking, including being carried
- Taking a vehicle without the owner's consent, including being carried

Two convictions for dishonesty offences should raise serious doubts as to an applicant's suitability. In this instance, at least 5-10 years should elapse before an applicant is considered for a hackney carriage or private hire licence, unless the Rehabilitation for Offenders Act provides for a longer rehabilitation period.

Where a person has three or more convictions for dishonesty offences, irrespective of the timescales involved their application will normally be refused.

3.8 Offences under the Town Police Clauses Acts and Part 11 of the Local Government (Miscellaneous Provisions) Act 1976

The Council takes a serious view of offences under the above legislation, including offences such as operating without a licence or plying for hire. An isolated incident in the past should not necessarily bar a new applicant from being issued with a licence; however, a period of at least one year should have elapsed before they are considered for a hackney carriage or private hire licence.

Two convictions for offences under the above legislation on different occasions should raise serious doubts as to an applicant's suitability. At least 3 years should have elapsed before they are considered for a hackney carriage or private hire licence.

Where a person has three or more separate convictions for offences under the above legislation, irrespective of the timescales for these, their application will normally be refused.

3.9 Complaints

The Licensing Board should consider the history of all complaints made against the driver to determine whether the driver is a fit and proper person to hold a licence.

The Licensing Board will usually expect a complainant as well as the licence holder to attend a hearing so that both sides of the incident can be heard. If the complainant is not willing or able to attend the hearing then the complaint can still be heard.

When considering a complaint the Licensing Board shall have regard to the 'Licensed Driver Code of Good Conduct', when determining whether or not a complaint is made out and also in determining if the driver is a 'fit and proper' person to hold a licence.

3.10 Investigations and criminal prosecutions

In the event of an investigation by any other body and/or a criminal prosecution, the council will take whatever steps are reasonably necessary, including suspension of the licence, for the purpose of protecting the public in accordance with the current enforcement policy.

4 Periods Free from Conviction

The Rehabilitation of Offenders Act 1974 does not apply to applicants for hackney carriage and private hire drivers' licences. This is because the driving of taxis is listed as a "Regulated Occupation" in relation to which questions may be asked as to the suitability of individuals to be granted a licence.

5 Compliance with Conditions and requirements of Licensing Authority

The Licensing Board may take into account a person's history whilst holding a licence, from this or any other authority. The Licensing Board may take into account, in deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as the record of complaints about them, also their compliance with licence conditions and their willingness to co-operate with the reasonable requests of Licensing Officers.

Where a person received three formal warnings for an offence or breach of licence conditions in a 12-month period, the person will be asked to attend a hearing of the Licensing Board. Where these breaches could affect public safety, for items such as failure to complete daily vehicle checks, defective tyres, incorrect signage, the Licensing Board will normally revoke the persons licence.

6 Re-application following refusal or revocation

Where a Licence has been refused or revoked by the Council (or another Local Authority) a further application will be refused if received within five years from the date of the refusal/revocation, as it will be deemed that the persons circumstances will not have changed significantly within that period to make them 'fit and proper'.

7 Migrant Workers

In April 2007 the Licensing Board agreed enhanced procedures for dealing with applications from migrant workers who have only resided in the United Kingdom for a short period of time. Where appropriate migrant workers will be required to meet the requirements of this policy.

8 Rights of Appeal

In all cases where the Council:

- refuse an application for a licence
- refuse to renew a licence
- suspend a licence, or
- revoke a licence

The driver will have the right of appeal to the Licensing Board and/or Magistrates' Court.

In all cases where a licence is refused, revoked or suspended the driver will be notified in writing of his/her rights of appeal.

Any applicant refused a licence on the grounds that the Licensing Board is not satisfied he/she is a fit and proper person to hold such a licence, or whose licence has been suspended, revoked or had a condition attached has a right of appeal by way of written complaint, to the Magistrates Court within 21 days of the notice of decision.

9 Conclusion

Any applicant having a previous or current conviction should not necessarily prevent them from obtaining a hackney carriage or private hire licence. However, there are certain offences that are considered so serious that they will usually prevent a person obtaining a licence. It is this Council's policy to consider the safety, protection and well being of the general public by ensuring all licensed drivers are in good health, are safe and competent drivers and are able to maintain their vehicles to an acceptable standard.

A person who has committed an offence and who is made to wait for a rehabilitation period to lapse prior to their application being accepted is more likely to value their licence and act accordingly.

The Licensing Board should bear in mind that the purpose of the actions it takes should not be to punish or financially penalise licence holders, but rather to ensure public safety.

10 Glossary

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| <u>Appeal</u> | A means by which a Board hearing decision can be reviewed by the Magistrates Court or the Crown Court. The decision of the Board may be upheld or overturned. |
| <u>Board</u> | Local Councillors gathered together to discuss the suitability of a person to hold a taxi related licence. |
| <u>Conviction</u> | Judicially determining that someone is guilty of a crime or the acceptance of guilt by admitting a caution or accepting fixed penalty notice for a criminal offence. |
| <u>DBS</u> | Disclosure Barring Scheme |

| | |
|---|---|
| <u>DSA</u> | Driving Standards Agency. |
| <u>Fit and Proper Person</u> | A person who is: a safe and competent driver, of no threat to the general public, has a good knowledge of Barnsley borough, is healthy, has a good character and is therefore deemed fit and able to hold a licence. |
| <u>Hackney Carriage</u> | A vehicle that can carry passengers for hire or reward, can be hailed by a prospective passenger and can park on a rank to await the approach of passengers; a car available for public hire. |
| <u>Licensed Driver Code of Good Conduct</u> | The code of conduct which sets out the standards expected of a licensed driver. |
| <u>Mitigating Circumstances</u> | The conditions surrounding a conviction. These conditions may alter the seriousness of a crime. |
| <u>Plying for Hire</u> | To actively invite or responding to a hail for a taxi with the intent to charge a specific fare for the service. |
| <u>Private Hire Vehicle</u> | A car which must be pre-booked with a private hire operator. This type of vehicle cannot stand in a rank or ply for hire. |
| <u>Proprietor</u> | The person in possession of a vehicle which maybe the subject of a hiring agreement or hire purchase agreement. |
| <u>Operator</u> | This is the business section, which in this country can cover anything from sole proprietor (not being just a driver or proprietor) up to the largest firm in the country, which runs 2,500 vehicles. |
| <u>Rehabilitation</u> | The period to which the standing authority feels a person has repented their crimes. |
| <u>Revoke</u> | To take back something for an indefinite period of time. |
| <u>Suspend</u> | To hold something away from its owner for a period of time. |
| <u>Written Warning</u> | A letter advising that although a conviction was not serious enough to have warranted the suspension or revocation of the licence, the offence committed as unacceptable and has caused concern among the Board as to the suitability to hold such a licence. If, in the future, similar behaviour is illustrated, the consequences could be much more severe, possibly leading to the suspension or revocation of the licence. |

Appendix A – Violent Offences and offences of causing death while driving

The list of offences below shows examples of types of violent offences and is not meant to be an exhaustive list.

Type 1

- Murder
- Manslaughter
- Arson intending to endanger life or being reckless as to the endangerment of life
- Causing death by dangerous or careless driving, including:
 - Causing death by careless driving when unfit through drugs
 - Causing death by careless driving when unfit through drink
 - Causing death by careless driving with alcohol level above the limit
 - Causing death by careless driving then failing to supply a specimen for analysis
 - Causing death by careless driving whilst unlicensed or uninsured
 - Manslaughter or culpable homicide while driving a vehicle
 - Causing death by dangerous driving

Type 2

- Arson
- Unlawful wounding or grievous bodily harm with intent
- Riot
- Violent disorder
- Kidnapping
- False imprisonment
- Threats to kill
- Unlawful possession of a firearm, including aggravated firearms offences
- Robbery

Type 3

- Unlawful wounding or causing grievous bodily harm
- Assault occasioning actual bodily harm
- Affray
- Possession of an offensive weapon
- Possession of a blade or sharply pointed article
- Threats to commit criminal damage

Other violent offences

- Common assault
- Assault on the police
- Assault with intent to resist arrest
- S. 4 Public Order Act 1986 (fear or provocation of violence)

- S. 4A Public Order Act 1986 (intentional harassment, alarm or distress)
- Criminal damage