

**Guidelines on the relevance of  
Convictions, Cautions, and Conduct**

**1. Drivers**

When submitting an application for a licence to drive a hackney carriage or a private hire vehicle, or to renew such a licence, applicants are required to declare on the application form ALL previous convictions, cautions, penalties and motoring endorsements they may have received, with the exception of protected cautions and convictions which are detailed below. Applicants are also required to declare any on-going criminal investigations, prosecutions, or similar legal proceedings of which they are the subject.

Hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974, , therefore convictions which would ordinarily be considered 'spent' must be declared and may be considered in the determination of the application.

The Rehabilitation of offenders Act 1974 ( Exceptions Order 1975) (2013) Order introduced new categories of 'protected cautions' and 'protected convictions', which mean that after the stated period of time an applicant must be treated as not having been charged with, convicted of or sentenced for any of those offences that would fall within the categories of protected cautions / convictions, as such protected cautions and protected convictions do not need to be disclosed

**Protected Cautions**

A caution is only a “protected caution” if:

- It does not relate to a listed offence.
- It was given to a person aged under 18 at the time of the caution and two years or more have elapsed.
- It was given to a person aged 18 or over at the time of the caution and six years or more have elapsed.

**Protected Convictions**

A conviction is only a protected conviction if:

- It does not relate to a “listed offence” such as violence and sexual offences.
- No custodial sentence was imposed.
- It is the only conviction that the individual has received.
- It was received by a person aged under 18 at the time of the conviction and five and a half years or more have elapsed; and
- It was received by a person aged 18 or over at the time of the conviction and 11 years or more have elapsed.

NB the reference to “listed offence” is as per list detailed in the current Rehabilitation of offenders Act 1974 ( Exceptions Order 1975) (2013 and 2020). At the time of drafting this policy this was the

2020 order, the “listed offences” for the purposes of protected cautions and convictions is subject to change and is therefore not detailed in this policy, the “listed offences” should be taken from the Exceptions order 1975 ( 2013 and 2020)

There has been recent changes to legislation introduced on 28 November 2020 which means that:

- warnings, reprimands, and youth cautions will no longer be automatically disclosed on a DBS certificate.
- the multiple conviction rule has been removed, meaning that if an individual has more than one conviction, regardless of offence type or time passed, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed.

Upon initial application, all driver applicants will be required to obtain an enhanced level disclosure from the Disclosure and Barring Service (DBS). This level of disclosure includes details of spent convictions and police cautions, (with the exceptions as detailed above) as well as any non- conviction information deemed relevant to the application. This level of check is considered appropriate as a licensed driver may be left in sole charge of passengers under 18 years of age or other vulnerable adults, at any time and without prior knowledge. The Council shall facilitate these applications upon payment of the required fee.

As well as submitting an application for an enhanced DBS disclosure, a driver applicant is required to sign up and maintain subscription to the to the DBS update service he/she will not be required to obtain a further enhanced DBS disclosure unless a check on the online update service reveals a change in status to the disclosure.

Please note there is a time limit applied by the DBS in respect of sign up to the online system. Failure to maintain subscription to the online update service may result in the suspension / revocation of a licence.

The Council will undertake 6 monthly online checks on the status of all licensed drivers DBS disclosures/ certificates.

Where a change in status of a disclosure is indicated a licensed driver will be required to submit a further enhanced disclosure, this may be at renewal or during the duration of a current licence.

## 2. Vehicle Licence Holders

There is no explicit requirement within legislation for vehicle licence holders (proprietors) to be fit and proper, the City Council has absolute discretion over granting a vehicle licence (hackney and private hire) and will therefore undertake a variety of checks before issuing a vehicle licence. There needs to be public trust and confidence in the standards applied by the City Council as part of this process applicants for vehicle licences will be required to complete a basic disclosure and complete a statutory declaration at each application. The exception to this is there is no such requirement for licensed drivers to undertake such checks in respect of vehicle licences as licensed drivers have already been subject to enhanced DBS disclosures and 6 monthly checks on the online DBS update service.

Vehicle proprietors (both hackney carriage and private hire) have two principal responsibilities:

- 1) They must ensure that the vehicle is maintained to an acceptable standard at all times, and;
- 2) They must ensure the vehicle is not used for illegal or illicit purposes

It is recognised that some vehicle licence holders rent or track their vehicle to a licensed driver, in such circumstances the vehicle licence holder must ensure that they have adequate management control systems in place to ensure that the vehicle is properly maintained, they cannot pass all responsibility to the licensed driver.

Vehicle licence holders that fail to maintain their vehicle in a satisfactory condition are likely to be give rise to considerations in respect of whether the licence holder is suitable to hold a vehicle licence.

In addition to vehicle maintenance standards, the disclosure of any convictions, cautions, reprimands, investigations etc will be taken into account in determining an application and the relevant considerations are listed in the relevance of convictions, cautions, reprimands and conduct listed below

Where vehicle licence applicant(s) have more than one conviction, serious consideration will need to be given as to whether they are a fit and proper person to hold a licence. Similarly a single serious conviction which could undermine public safety will be sufficient cause to refuse a vehicle licence application and revoke or suspend an existing vehicle licence holder.

### 3. Private Hire Operators

In performing their duties private hire operators obtain and hold considerable amounts of personal and private information about their passengers, which must be treated in confidence and not revealed to others, or used by the operator or their staff for criminal or unacceptable purposes.

As public trust and confidence in the overall safety and integrity of the private hire system is vital, private hire operators, including directors and shareholders are required to submit upon application, a basic level DBS certificate, private hire operator licence conditions require a new certificate is provided every 12 months. The Council will have regard to the standards applied to licensed drivers with the following exceptions:

- Information disclosed on an enhanced DBS (as part of a PH/ HC driver application/ licence) will not be taken into account in respect of the private hire operator licence unless such information would also be revealed on a basic disclosure i.e., unspent convictions
- Where applicant(s) have more than one conviction, serious consideration will need to be given as to whether they are a fit and proper person to hold a licence. However in respect of applicants for or holders of a private hire operator's licence regard will also be had to the criteria list in XX below and how any conviction or other conduct matter could be considered relevant to the role of private hire operator. In particular isolated motoring offences may have less relevance to public safety in respect of a private hire operator role, however an applicant for or holder of a private hire operator's licence with a pattern of motoring offences may still give rise to concern as it would demonstrate a general lack of regard for public safety, a consideration which may reflect into other elements of their role as a private hire operator.

The previous business conduct of a private hire operator may also be taken into account when determining whether a person is fit and proper to be a private hire operator, a person who has been bankrupt, investigated for financial irregularities or other similar conduct will have such conduct considered as part of the fit and proper test. The considerations given to such matters will depend on the factors listed in the relevance of convictions, cautions, and conduct below.

#### 4. General Policy

As a general rule, the Council will expect applicants (drivers, vehicle, and operators) for licences and licence holders to be free from previous convictions, cautions and be of good conduct. However, a person with convictions or cautions will not be excluded from holding a licence but should be expected to have:

- remained free of conviction for an appropriate period and
- shown adequate evidence of good character from the time of conviction.

Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.

Particular regard will be had to any failure to accurately complete an application (whether that be new application or renewal) this may give rise to serious concerns regarding an applicant's honesty for example failure to disclose a relevant matter in regard to conduct or the previous suspension / revocation of licences will likely result in the refusal to grant a licence. The application forms also make it clear that providing a false statement or omitting information may be a criminal offence.

Each case will be decided on its own merits. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.

On application to renew a licence, if no further convictions have been received since the previous application was considered, the Council will not consider it necessary to review convictions considered on the previous application. However, in cases where new convictions, or other relevant information has been received, all convictions may be taken into consideration, even if they have been previously considered.

## 5. Relevance of Convictions, Cautions, and Conduct

In determining the relevance of a conviction, offences or cautions, relevant to applicants for and holders of driver, vehicle and operator licences consideration will be given to the nature and seriousness of the offence involved, the period of time elapsed since the event and the applicant's/ licensees conduct subsequent to that.

In circumstances where previous convictions, cautions or other information relating to criminal matters is disclosed, the Council, will have regard to the following:

- The relevance of the offence(s) or other matters revealed in the application.
- The seriousness of any offence(s) or any other matter revealed.
- The class / nature of the offences(s).
- The age of the offences(s).
- The age of the person at the time of the offence(s).
- Whether the disclosure reveals a pattern of behaviour.
- Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters; and
- Any other information that is deemed appropriate for consideration in determining whether the person is a 'fit' and 'proper' person.

In addition to the above, the Council is also entitled to use all other records and information available to it in determining applications or entitlement to continue holding a licence. This may include information held by the Council or other licensing authorities and information held by the police.

The overall offending history will be considered when assessing a person's suitability to be licensed or to continue holding a licence.

Where the applicant has been convicted of a criminal offence the Council cannot and will not review the merits of the conviction. It is noted that cautions are not convictions, but rather are an admission of guilt to a criminal matter. The Council may have regard to cautions when considering an application, and will take the following matters into consideration:

- The nature of the offence
- Any history of related cautions or convictions
- The guidelines applying to convictions of that category.

The issue of summons or the arrest and release on bail with or without charge can indicate that there has been an event, which may cause the Council to review the suitability of an applicant or a licensed holder to hold a licence.

Although some specific guidelines on the relevance of convictions are contained in the following sections for examples of offences to which the Council will pay particular regard, the Council will give equal consideration to offences falling outside of these categories and the examples given. Offences of a similar nature or differently entitled in any statutory provision, modification or re-enactment will be taken into account in accordance with the guidelines.

The specific time periods detailed below should be regarded as a minimum time period that an applicant is expected to be free from conviction, caution, reprimand etc.

### **Crimes resulting in death**

Where an applicant or licensee 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.

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

### **Offences involving violence**

Where an applicant/ licensee has a conviction for an offence of violence, 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.

### **Possession of a weapon**

Where an applicant/ licensee has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### **Sexual and indecency offences**

Where an applicant/ licensee has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, 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/ licensee has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

### **Drugs**

Where an applicant/ licensee 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/ licensee has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant/ licensee will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

### **Discrimination**

Where an applicant/ licensee has a conviction involving or connected with discrimination in any form a licence will not be granted until at least 7 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. Any motoring conviction, fixed penalty notice or requirement to attend driver training course, demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

### **Drink driving/driving under the influence of drugs/using a hand-held telephone or handheld device whilst driving**

Where an applicant /licensee has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Where an applicant/ licensee has a conviction for using a hand-held mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

### **Other motoring offences**

A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on

their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance, or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

#### **Hackney carriage and private hire offences**

Where an applicant / licensee has a conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

#### **Vehicle use offences**

Where an applicant has a conviction or caution for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

