

3. Policy Considerations - Relevance of Convictions, Cautions and Fixed Penalty Notices in Relation to the Licensing of Drivers and Operators

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.3 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.
- 3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, 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.
- 3.5 The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.
- 3.6 For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

3.7 Violence

Drivers of hackney carriage and private hire vehicles are often entrusted with the care of vulnerable persons.

It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.

Where the commission of an offence involved loss of life a licence will normally be refused.

In particular an application will normally be refused where the applicant has a conviction for violence such as those listed below, or similar offence(s):

- a. Murder
- b. Manslaughter
- c. Manslaughter or culpable homicide while driving

In general an applicant with convictions for violence, as listed below (or similar offences), which are less than 10 years old, is unlikely to be considered favourably.

- a. Arson
- b. Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- c. Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
- d. Grievous bodily harm with intent (s.18 Offences Against the Person Act)
- e. Grievous bodily harm with intent (s.20 Offences Against the Person Act)

- f. Robbery
- g. Possession of firearm
- h. Riot
- i. Assault Police
- j. Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- k. Violent disorder
- l. Resisting arrest

In general an applicant with convictions for violence, as listed below (or similar offences), which are less than 8 years old, is unlikely to be considered favourably.

- a. Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- b. Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- c. Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)
- d. Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- e. Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
- f. Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- g. Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)

In general an applicant with convictions for violence, as listed below (or similar offences), which are less than 5 years old, is unlikely to be considered favourably.

- a. Common assault
- b. Affray
- c. S5 Public Order Act 1986 offence (harassment, alarm or distress)
- d. S.4 Public Order Act 1986 offence (fear of provocation of violence)
- e. S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- f. Obstruction
- g. Possession of offensive weapon
- h. Criminal damage

3.8 Drugs

If any applicant has previous convictions related to drugs and was an addict at the time of the offences, then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment before a licence will be granted. If detoxification treatment was not undertaken the applicant will need to provide other medical evidence to demonstrate that they are no longer dependant on drugs.

An application will normally be refused where the applicant has more than one conviction for offences related to the possession of drugs and the convictions are less than 5 years prior to the date of the application.

An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3 years will require careful consideration of the facts.

3.9 Offences of 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 by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty. In general an applicant with convictions for dishonesty, as listed below, which are less than 4 years old, is unlikely to be considered favourably.

- a. Theft
- b. Burglary
- c. Fraud
- d. Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- e. Handling or receiving stolen goods
- f. Forgery
- g. Conspiracy to defraud
- h. Obtaining money or property by deception
- i. Other deception

4. Licensing Comments

- 4.1 Members must be satisfied that Mr Makey is a fit and proper person to hold a Private Hire driver's licence.
- 4.2 Mr Makey has been interviewed and has provided explanations of the circumstances relating to each offence. The interview notes are contained in separate background papers.
- 4.3 The way in which convictions, cautions and fixed penalties affect licence applications is set out in the Council's policy. The relevant extracts are shown above and are also referred to in the background papers. The Committee must promote its policy and only deviate in exceptional circumstances. If the Committee chooses to deviate from the policy they should give clear and full reasons for doing so.
- 4.4 Mr Makey has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

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