

Report of	Meeting	Date
Corporate Director of Governance	Licensing & Safety Committee	2 April 2008

REVIEW OF GUIDELINES ON THE RELEVANCE OF CONVICTIONS AND POLICE CAUTIONS FOR USE IN DETERMINING APPLICATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS' LICENCES

PURPOSE OF REPORT

- To enable Members to approve for consultation a draft statement of policy and revised guidelines on the relevance of convictions and Police cautions for use in determining applications for Hackney Carriage and Private Hire Drivers' Licenses.

RECOMMENDATION(S)

- Members are recommended to approve the draft policy and revised guidelines attached at Appendix B to this report for consultation.

EXECUTIVE SUMMARY OF REPORT

- The adoption of the attached guidelines on convictions will enable members to consider the relevance of offences in the light of certain changes to the Rehabilitation of Offenders Act 1974. The document will also offer both officers and applicants better guidance to the realistic outcome of an application to drive Hackney Carriage or Private Hire vehicles in advance of the lengthy application process.

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	✓
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	✓

BACKGROUND

- Under section 59 of the Local Government (Miscellaneous Provisions) Act 1976 District Council shall not grant a licence to drive a Hackney Carriage unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence. The same provisions apply to applications for Private Hire drivers' licences under section 51 of the above Act.

- 5.1 As Members are aware the Council has adopted guidelines on the relevance of convictions and Police cautions for use in determining whether an applicant for a driver's license is a fit and proper person. Members are referred to the Home Office guidance in respect of Police Cautions which is annexed hereto and marked as Appendix C. The existence of guidelines helps achieve consistency and reduces the risk of decisions being challenged
- 5.2 The current guidelines have been used since 1992 are attached at Appendix A for Members' information. Members are reminded however, that notwithstanding the guidelines, the overriding factor is that each case should be treated on its own individual merits.
- 5.3 The existing guidelines were derived from the Department of Transport Circular 2/92 and Home Office Circular 13/92 and were never more than a suggestion for local authorities to consider and adapt as appropriate.
- 5.4 The guidelines relate closely to the terms of the Rehabilitation of Offenders Act 1974 which provides that certain convictions may be treated as being 'spent' after certain periods of time. However, the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 provides that in respect of taxi drivers, the normal rehabilitation arrangements do not apply, and where relevant, older convictions can be considered when assessing an individual's suitability to hold a licence.
- 5.5 Current guidance from the Department of Transport both reflects changes in attitude within society and reflects the importance of the licensing regime in ensuring public protection and states:
- "In considering an individual's criminal record, local licensing authorities will want to consider each case on its merits, but they will doubtless take a particularly cautious view of any offences involving violence, and especially sexual attack."
- 5.6 In light of this officers consider that the existing guidelines on the relevance of convictions and Police cautions need to be reviewed and updated. Accordingly, revised draft guidelines together with a statement of policy regarding the relevance of convictions and Police cautions have been drawn up. A copy of the draft Statement of Policy and revised guidelines is attached at Appendix B for Members' consideration.
- 5.7 If Members approve this draft document it is intended to consult with representatives of the trade and other bodies before bringing a final version to Committee for approval.

IMPLICATIONS OF REPORT

6. This report has implications in the following areas and the relevant Corporate Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	✓	No significant implications in this area	

COMMENTS OF THE CORPORATE DIRECTOR OF GOVERNANCE

7. Comments are contained within the report

ANDREW DOCHERTY
CORPORATE DIRECTOR OF GOVERNANCE

Report Author	Ext	Date	Doc ID
Stephen Culleton	5665	13 March 2008	LEGREP1803JA1

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS GENERAL POLICY

[Adopted 1992]

Each case will be decided upon on its own merits.

1. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for three to five years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be protection of the public.
2. The following examples afford a general guide on the action to be taken where convictions are admitted:

a) **Minor Traffic Offences**

Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding, etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence, then a hackney carriage or private hire vehicle licence may be granted after its restoration, but a warning should be issued as to future conduct.

b) **Major Traffic Offences**

An isolated conviction for reckless driving or driving without due care and attention, etc. should normally merit a warning as to future driving conduct and advice on the standard expected of hackney carriage and private hire vehicle drivers. More than one conviction of this type of offence within the last two years should merit refusal and no further application should be considered until a period of one to three years free from convictions have elapsed.

c) **Drunkenness**

i) **With Motor Vehicle**

A serious view should be taken of convictions for driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least three years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic, a period of five years should elapse, after treatment is complete, before a further licence application is considered.



ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem, necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

NOTES TO ASSIST THE LICENSING AND SAFETY COMMITTEE IN INTERPRETING THE GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

The legislation requires that the Council must be satisfied that an applicant is a 'fit and proper person' before a licence can be granted.

The guidelines are to be used as a general guide only, and it is stressed that each application must be decided upon its own merits.

Where offences are not specifically listed in the guidelines, the Committee must decide the relevance they should attach to these offences.

The guidelines relate only to the relevance of convictions, and the Committee must decide the relevance they should attach to these offences.

The guidelines relate only to the relevance of convictions, and the Committee is entitled to take into account any other matters that it considers appropriate in determining the fitness, or otherwise, of an applicant.

Although it is necessary to consider the circumstances and interests of each individual applicant, the overriding consideration should always be the protection of the public.

It is recommended that local authorities adopt their own guidelines relating to the relevance of convictions for use in determining applications for hackney carriage and private hire vehicle (PHV) drivers' licences. The following are examples only and are based on criteria used by the Metropolitan Police.

d) **Drugs**

An applicant with a conviction for a drug related offence should be required to show a period of at least three years free of convictions for an application is entertained or five years after detoxification treatment if s/he is an addict.

e) **Indecency Offences**

As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused a licence until they can show a substantial period (at least three to five years) free of such offences. More than one conviction of this kind should preclude consideration for at least five years. In either case, if a licence is granted, a strict warning as to future conduct should be issued.

f) **Violence**
As hackney carriage and private hire vehicle drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least three years free of such convictions should be shown before an application is entertained and even then, a strict warning should be administered.

g) **Dishonesty**
Hackney carriage and private hire vehicle drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Overseas visitors can be confused by the change in currency, and become 'far game' for an unscrupulous driver.

For these reasons, a serious view should be taken of any conviction involving dishonesty. In general, a period of three to five years free of conviction should be required before entertaining an application.

**STATEMENT OF POLICY CONCERNING THE RELEVANCE OF
CRIMINAL CONVICTIONS RELATING TO THE DETERMINATION OF APPLICATION
OR RENEWAL FOR A HACKNEY CARRIAGE OR
PRIVATE HIRE VEHICLE DRIVER'S LICENCE**

Adopted *** 2008

1. When submitting an application for the grant or renewal of a Hackney Carriage/Private Hire Vehicle Driver's Licence, applicants are required to declare all convictions and cautions they may have.
2. The Council recognises that employment plays an important part in preventing exoffenders from reoffending. Therefore we will also pay due attention to the principles of rehabilitation, so there are no unnecessary barriers for the employment of exoffenders. However, the Council's role as licensing authority is to protect members of the public who travel in Hackney Carriages and Private Hire Vehicles. The safety of the public will therefore be the overriding concern of the Council.
3. Applicants need to be aware that as a consequence of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, applicants for a licence are excluded from the provisions of the Rehabilitation of Offenders Act 1974 in relation to spent convictions and that **all** convictions and cautions (including motoring convictions and fixed penalties) **must** be declared.
4. We will in all cases verify an applicant's identity and require an enhanced criminal record check (CRB) to be undertaken. Where the check reveals that the applicant has a record of convictions or cautions and warnings, we will consider these carefully on the basis of:-
 - How relevant the offences were to the licence applied for;
 - How serious the offences were; and
 - How recent they were.

We reserve the right to seek intelligence from all 'approved sources' such as the Police, Social Services Alcohol and Drug Rehabilitation Units, Probation Services, Child Protection Agency, General Practitioners, etc.
5. We will consider all convictions based upon the Council's guidelines. However we will pay special attention to criminal offences involving dishonesty, violence, drugs, alcohol, criminal damage and sexual offences, together with serious offences connected with the driving of a motor vehicle.
6. Whilst a licence is in force, we shall receive updates from the Police and Courts, of new convictions and cautions for licence holders. This will allow us to decide whether action needs to be taken on the continuation of the licence. It is the responsibility of each licence holder to inform the Council of any conviction, caution or fixed penalty arising during the currency of the licence. A criminal record check is required on application, and thereafter every three years.
7. Any applicant refused a driver's licence on the ground that he/she is not a fit and proper person to hold such a licence has the right of appeal to a Magistrates' Court. Such appeal must be made within 21 days of being notified of the Council's decision.



GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

NOTE:

For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

A. General Arrangements for Determining an Application when a Criminal Conviction has to be taken into account.

- A.1 All convictions will be considered on merit, having regard to the Council's Statement of Policy and these guidelines relating to the Relevance of Criminal Convictions, and will be weighed against the need to protect the public. The protection of the public is though the Council's overriding concern.
- A2 The Licensing Section will determine the application and if any conviction or caution, as laid down in the following relevant conviction guidance, is disclosed through either the application or the Criminal Records Bureau check, the application will be referred to the appropriate licensing committee.
- A3 These guidelines set out minimum periods during which a person should be free of conviction before an application will normally be entertained. It does not follow that a license should be granted after the minimum period has expired.

Specific Guidance on the Relevance of Convictions

B.1.1 Traffic Offences

B.1.2 Traffic Offences [Minor]

- B.1.2.1 Isolated convictions for minor traffic offences e.g. obstruction, waiting in a restricted street, speeding etc., should not normally prevent a person from being granted a licence.
- B.1.2.2 If an applicant has received more than six points within the last two years for speeding or other minor offences, the application will be considered by the appropriate licensing committee to determine his/her suitability.
- B.1.2.3 Convictions relating to minor driving offences committed when the applicant was driving a Hackney Carriage or Private Hire vehicle will be considered in a more serious light.

B.1.3 Traffic Offences [Major]

- B.1.3.1 More than one conviction for driving without due care and attention or similar offence etc., within the last two years will usually merit refusal and normally no further application will be entertained until a period of at least three years free from convictions has elapsed.
- B.1.3.2 A conviction for more serious motoring offences such as causing death by dangerous, careless driving or manslaughter will be treated more seriously and a longer period free of conviction (normally a period of



between 5 and 10 years) will be required before an application is entertained.

B.1.3.3 If an applicant has been disqualified from driving, a period of at least 12 months (after the restoration of the driving licence) should normally be required before an application is entertained.

B.1.3.4 A conviction committed when the applicant was driving a Hackney Carriage or Private Hire Vehicle whilst engaged on licensed activities will be considered in a more serious light and a much longer period of rehabilitation will need to be demonstrated before a licence application will be entertained.

C Drunkenness & Drugs

C.1 With a Motor Vehicle

C.1.1 A serious view will be taken of convictions of driving or being in charge of a vehicle under the influence of drink or drugs. A conviction for these offences will raise grave doubts as to the applicant's fitness to hold a licence. A period of 3 years (after restoration of the driving licence) would normally be required before a licence application is entertained.

C.1.2 If there is any suggestion that the applicant is an alcoholic or has a drug problem, a medical examination with a doctor nominated by the Council will be arranged (the costs of which will be born by the applicant) before an application is entertained. If the applicant is found to be an alcoholic or a drug addict, normally a period of between 5 to 10 years will need to elapse after completion of treatment before a licence application is entertained.

C.1.3 Convictions for offences relating to alcohol or drug abuse commissioned when the applicant was driving a Hackney Carriage or Private Hire will be considered in a more serious light and a much longer period of rehabilitation will need to be demonstrated before a licence application will be entertained.

C.1.4 In this instance confirmation may be sought from a doctor nominated by the Council that the rehabilitation programme has been effective.

C.2 Not in a Motor Vehicle

C.2.1 An isolated conviction for drunkenness or drugs need not debar an applicant from gaining a licence, although further consideration of the application should be required having regard to the circumstances of the offence. However, a number of convictions would usually merit refusal and normally no further application will be entertained until a period of at least 3 years free from convictions has elapsed.

D Indecency Offences

- D.1 As Hackney Carriage and Private Hire Vehicle drivers often carry unaccompanied passengers, applicants with convictions for rape, indecent assault or other similar offences will normally be refused a license.
- D.2 For less serious indecency offences applications will be refused in cases where the applicant remains on the Sex Offenders Register. In any case an application will only be entertained after a substantial period of rehabilitation after removal from the sex offenders register.

E Violence and Abusive Behaviour

- E.1 As Hackney Carriage and Private Hire Vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violent or abusive offences. This category includes public order offences and criminal damage.
- E.2 At least five years free of such convictions will normally be necessary before an application is entertained and even then a strict warning as to future conduct will be given.
- E.3 A conviction for an offence relating to violence committed when the applicant was driving a Hackney Carriage or Private Hire vehicle will be considered in a more serious light and a much longer period of rehabilitation will need to be demonstrated before a licence application will be entertained. Convictions for racially motivated offences will be treated in a similar way.

F Dishonesty

- F.1 Hackney Carriage and Private Hire Vehicle drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Foreign visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver.
- F.2 For these reasons a serious view will be taken of any conviction involving dishonesty. Normally, a period of three to five years free of conviction will be required before entertaining an application.
- F.3 A conviction for an offence relating to dishonesty committed when the applicant was driving a Hackney Carriage or Private Hire Vehicle will be considered in a more serious light and a much longer period of rehabilitation will need to be demonstrated before a licence application will be entertained.

G Offences Under The Town Police Clauses Act 1847 And Part II Of The Local Government (Miscellaneous Provisions) Act 1976 And Any Hackney Carriage Byelaws (Taxi legislation).

G.1 One of the main purposes of the licensing regime set out in the taxi legislation is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire, when deciding if a person is a fit and proper person to hold a licence.

G.2 In particular, an application will normally be refused where an applicant has more than one conviction for an offence under the taxi legislation in the five years preceding the date of the application.

G.3 A conviction for an offence relating to the taxi legislation committed while licensed as a Hackney Carriage or Private Hire Driver, Proprietor or Operator will be considered in a more serious light and a revocation of the appropriate licences may be instigated.