



NORTH WARWICKSHIRE BOROUGH COUNCIL

TAXI LICENSING

(HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES)

Policy Document and Guidance Relating to the
Definition of 'Fit and Proper' Persons

Including

The consideration of the grant, suspension or revocation of hackney carriage and private hire driver's and operator's licences in respect of convictions, cautions and medical conditions.

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Introduction

This document sets out the Council's stance on the relevance of convictions and cautions and medical matters in respect of applications for the grant of new licences, and the renewal of existing hackney carriage and private hire vehicle, driver's operator's and proprietor's licences.

These guidelines are to assist the Licensing Committee and Licensing Sub Committee (collectively referred to as the Committee) in their decision-making and to maintain the consistency of the decisions made. They will also provide clearer information to current and potential applicants.

The objective of the licensing regime is to ensure that, so far as possible, those licensed to drive taxis are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, medically fit, honest and trustworthy. It is not to punish the applicant twice for a conviction or caution, but to ensure that public safety is not compromised.

These guidelines will be taken into account when dealing with new applications as well as renewal applications for an existing private hire/hackney carriage driver's licence, private hire/hackney carriage vehicle licence, and a private hire operator's licence, and also, when considering offences by, or other complaints about, an existing driver.

Each case will be considered on its own merits. Any necessary hearings will be conducted in privacy unless on balance the public interest suggests otherwise. The list of offences and other complaints detailed in this document is not exhaustive and the Council may take into consideration any other matters not specifically listed.

As part of this policy, the Council does not permit a person to apply for a hackney carriage or private hire licence until:

1. They have held a driving licence for a minimum of 2 years.
2. They have passed as a minimum the Blue Lamp Trust standard taxi driving test or a higher qualification at least QCF Level 2.
3. They can demonstrate that they have the right to work in the UK.
4. They have undertaken training approved by the Licensing Authority in Safeguarding Vulnerable Persons & Prevention Of Child Sexual Exploitation.

Any appeals against decisions in respect of refusal to grant must be made to the Magistrates Court.

Legislation

The Local Government (Miscellaneous Provisions) Act 1976 Section 51 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 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 Act of 1847 or of 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.

Procedure

1. The completed application and associated documents will be considered.
2. The Licensing Manager will then grant the licence or renewal where the Applicant is deemed to be fit and proper in accordance with the policy.
3. Where the policy indicates that an application should be refused the Licensing Manager will write to the Applicant and advise that refusal is proposed and indicate the reason why.
4. The Applicant will then be given the chance to make representations to the Councils Licensing Sub Committee ("the Committee") before a decision is made. Representations can be made in person or in writing.
5. The Applicant will need to notify the Council within 21 days if they want their application to be considered by the Committee.
6. When this notification is received a hearing before the Committee will be arranged and the Applicant notified of the date.
7. A report will be prepared and submitted to the Committee which will contain details of why refusal of the application has been proposed and include any evidence that the Applicant has already submitted. The Applicant will be given a copy of the report and the opportunity to submit further evidence in advance of the hearing.
8. The Applicant may attend the hearing and address the Members of the Committee. The Applicant may choose to attend with a legal representative or a friend who may speak on their behalf. The Applicant may choose not to attend but to send in written representations for the Committee to consider. If the Applicant does not attend the Committee may decide to consider the application in their absence.
9. The Committee will then decide whether to grant or refuse the application based on whether they believe that the applicant is fit and proper to hold a licence. The Applicant will be notified of the decision in writing. If the decision is to refuse the application then the written notification will include reasons for the refusal and details of how to appeal.
10. If an Applicant indicates that they do not want their application or renewal to be considered by the Committee or does not respond then the Licensing Manager will review the application after 21 days and decide whether to grant or refuse the licence. The Applicant will then be informed of the decision and reasons in writing along with

the right of appeal.

“Fit and Proper Person”

There is no absolute definition as to what constitutes a “fit and proper person”. However, considering the range of passengers that a driver may carry, for example, elderly people, unaccompanied children, people with disabilities, those who have had too much to drink, lone women and foreign visitors, the Committee will want to have confidence that such people would be able to rely on the driver.

Some important areas that will be considered by the Committee are:

- Honesty and trustworthiness - taxi 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; any passenger would expect to be charged the correct fare for a journey and then 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 fare.
- Courtesy - taxi 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. A driver will be expected not to have any convictions or cautions for offences of a violent or threatening nature.
- Consistently good and safe driving - those 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.
- Good knowledge of the area that they are working in.
- Good physical and mental health.
- Ability to read, speak and understand English, together with a working knowledge of arithmetic in giving the correct change, etc.
- Good knowledge and awareness of any special requirements that disabled passengers may have.
- To be able to exercise judgement in deciding whether a young person or vulnerable adult entering a taxi is placing him / herself in harm's way by association with a controlling or over solicitous adult or by the influence of drugs and / or alcohol.

Protecting the Public

The over-riding consideration of the members of the Committee is to protect the travelling public. Having considered and applied the appropriate guidelines, the following question should be applied:

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If answer is yes, then favourable consideration should be given towards allowing the application to proceed (subject to any other test being completed); or permitting the licence to continue if there is one in force.

If the Committee has reasonable doubts, then an application should be refused until those doubts can be allayed through further evidence being supplied or consideration be given to revocation or suspension of the licence. It is the applicant’s responsibility to provide sufficient evidence to this effect.

Compliance With Conditions And Requirements Of The Licensing Authority

The Committee may take into account an applicant’s relevant history while holding a licence, from this or any other authority, and also, in deciding whether a person is a fit and proper person to hold a licence, or continue to hold, such matters as their record of complaints, or positive comments from members of the public, their compliance with Licence conditions and their willingness to co-operate with Licensing Officers.

Convictions / Cautions

The licence application form requires that the applicant must disclose all convictions and cautions. These include any spent convictions under the Rehabilitation of Offenders Act 1974 s 4, and Rehabilitation of Offenders Act (Exceptions) Order 2003. An existing licence holder must report any such convictions within seven days to the Licensing Authority.

The Committee is required to look at any past indicators (convictions, speeding offences etc.) that may affect a person’s suitability to hold, or continue to hold, a licence and consider the possible implications of granting such a licence, or allowing an existing licence to continue.

Applicants must disclose any cautions they have received or any pending matters. Existing licence holders must report these within 7 days to the Licensing Authority.

If a licence is granted to a person on the basis of false or incomplete information supplied by them the Committee may revoke the Licence and require the applicant to submit a further application which will be considered in the light of the full information now available to the Committee.

The disclosure of any conviction will not necessarily preclude an applicant from being issued a licence. However, all convictions, spent or live, will be assessed, and may be taken into consideration.

All hackney carriage and private hire drivers and operators, proprietors and drivers currently holding a licence must disclose any conviction or caution imposed on them, whether for motoring offences or any other reason, in writing to the Council within 7 days.

Rehabilitation Periods

These guidelines have separated the various offences affecting such an application into categories, each detailing the period that must usually elapse after a particular offence within that category, before an applicant can be considered a fit and proper person to hold a licence. If, after consideration by the Committee, a person does not satisfy these guidelines, then the application should be refused or the licence revoked or suspended until the applicant is able to satisfy them.

The Committee will not consider evidence as to whether an applicant did or did not commit an offence of which a Court has convicted them. The applicant may, however, explain any mitigating factors, which they may consider led to them committing the offence. The Committee may choose to take these factors into account, together with all other relevant information, in deciding whether the applicant is a fit and proper person to hold or retain a licence.

If the applicant or holder of a licence has notified the Council of a conviction but is appealing against it to a higher court, the matter may be referred to the Committee for a decision as to whether the licence / application should be suspended pending the outcome of the appeal.

Convictions for offences may not automatically prevent a person from proceeding with an application or mean that his licence is revoked or suspended. However, the number, type and frequency of any offences will be taken into account. In some cases it may be appropriate to issue a licence together with a strong warning as to future driving conduct, or to give a similar warning to an existing licence holder. If a significant history of offences is disclosed, refusal of an application or a revocation or suspension may result.

Hackney Carriage/Private Hire Offences

Offence	Minimum period free from conviction
Providing false information on licence application	5 Years
Using an unlicensed vehicle	5 Years
Driving a licensed vehicle without a licence/Operating a vehicle without an operator's licence/Proprietor using an unlicensed driver	5 Years
Not wearing identity badge	5 Years
Obstruction of an authorised officer constable/failing to comply with requirement of authorised officer or Constable.	5 Years
Overcharging/Unnecessarily prolonging journey	5 Years
Failing to produce records/documents on request	5 Years
Failing to notify change of details including address, convictions, cautions and accidents.	5 Years

These minimum periods are following conviction by a court or where a driver has accepted a Simple Caution. Officers will prosecute for these offences in accordance with the Enforcement Policy which is available on the Council website.

The Enforcement Policy describes how action will be taken in a graduated manner which is

proportionate to the matter under consideration. For example the actions that can be taken are:

- Informal warning
- Formal Warning
- Formal Action, including Simple caution, Prosecution or actions by the Committee.

TRAFFIC OFFENCES

New applicants:

Any new applicant who has 9 penalty points or more on his driving licence will be required to appear before the Council's Licensing Committee and should expect their application to be rejected. The Licensing Committee may, upon considering any representations by the applicant at a meeting:

- Issue the licence with or without a written warning
- Refuse the application.

For any offences totaling 8 or fewer points on an applicant's driving licence, a licence may be granted, with a formal warning with regard to future conduct.

Any applicant that has been convicted of a major traffic offence will be assessed in accordance with the table below.

Existing Licence Holders

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

Convictions for traffic offences may not automatically prevent a person from proceeding with a renewal of their licence, or from keeping 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 warning as to future driving requirements.

Any existing licence holder who has 9 penalty points or more on his driving licence will be required to appear before the Committee to explain their convictions. The Committee then have the option of:

- Taking no further action
- Giving a written warning
- Requiring the driver to pass a DSA private hire/hackney drivers test, **at the driver's own expense**, within 2 months of their decision.
- Suspending the Licence upon conditions or for a period of time
- Revoking the licence.

Any driver who has been convicted of a major traffic offence will be assessed in accordance with the table below.

Offence	Offence Code	Minimum period free from conviction
Death/serious injury by dangerous driving	DD10/DD80	Not suitable to be licensed
Manslaughter or Culpable Homicide whilst driving a vehicle	DD60	Not suitable to be licensed
Death by careless driving	CD40/CD50/CD60 CD70/CD80/CD90	Not suitable to be licensed
Dangerous/Furious Driving	DD40/DD90/MR09	Not suitable to be licensed
Careless Driving	CD10/CD20/CD30	10 Years
Driving/Attempting to drive under the influence of alcohol or drugs	DR10/DR20/DR80 MR29	10 years
Failing to stop/report an accident/accident offences	AC10/AC20 AC30/MR19	10 Years
In charge of vehicle under the influence of alcohol/drugs	DR40/DR50/DR90	10 Years
Failing to provide a specimen for analysis/refusing to give permission for specimen analysis	DR30/DR31/DR61 DR60/DR70	10 Years
Driving without insurance	IN10	5 Years
Driving or attempting to drive whilst disqualified	BA10/BA30/MR49	10 years
Driving other than in accordance with a licence	LC20/LC50	5 Years
Driving having failed to notify a disability/false declaration about fitness	LC30/LC40	10 Years
Driving whilst using a mobile phone	CU80	5 years
Disqualification following totting up	TT99	5 years from end of disqualification period

MEDICAL PROBLEMS PRESENTED

New applicants

Any applicant who's driving licence has been revoked or refused on medical grounds by the DVLA within the last 5 years; or has received a conviction for driving a vehicle after failing to notify a disability; or made a false declaration about fitness and medical health, will be required to appear before the Licensing Committee and should expect their application to be rejected, until medical proof of current fitness can be provided.

The onus is on the applicant to provide appropriate medical proof from their GP/consultant or nominated practitioner at their own expense, which may be required be brought to any Committee hearing. The Committee may consider issuing a licence if they are satisfied that the report shows a clean bill of health, and that the applicant is a fit person to recommence driving and is deemed to be of no threat to public safety.

If the Committee has any doubts over the applicant's fitness, then the application should be adjourned or refused until further evidence can be produced by the applicant to overcome

these doubts.

Existing Licence Holders

Any existing licence holder whose driving licence has been revoked or refused on medical grounds by the DVLA or who has received an offence of driving a vehicle after failing to notify a disability or a false declaration about fitness and medical health, will be required to appear before the Licensing Committee and should expect their renewal application to be rejected, until medical proof of current fitness can be provided.

If evidence to the above is not declared, but is discovered by officers, the driver must attend a meeting of the Committee to explain why they failed to declare it.

All licensed drivers must submit to a medical inspection every three years by either their own GP/consultant or one of the nominated medical practitioners. However, if at any time the Environmental Health Manager or the Committee feel that a medical condition has arisen or an existing one has deteriorated since a previous medical was taken, an additional medical report may be required to be obtained at the driver's own expense.

SEXUAL OFFENCES

Offence	Minimum Period Free From Conviction
Rape	Not suitable to be licensed
Assault by penetration	Not suitable to be licensed
Sexual assault	Not suitable to be licensed
Sexual offences involving a child or young person	Not suitable to be licensed
Indecent exposure	Not suitable to be licensed
Prostitution/Soliciting	Not suitable to be licensed
Soliciting prostitutes from a motor vehicle or kerb crawling	Not suitable to be licensed
Human trafficking for exploitation	Not suitable to be licensed

DRUG OFFENCES

Offence	Minimum Period Free From Conviction
Supply of controlled drugs/Possession with intent to supply	Not suitable to be licensed
Possession of a controlled drug	5 Years

VIOLENCE AND PUBLIC ORDER OFFENCES AND OFFENCES AGAINST PROPERTY

Offence	Minimum Period Free From Conviction
Murder	Not suitable to be licensed
Manslaughter	Not suitable to be licensed
Grievous Bodily Harm/Unlawful Wounding	Not suitable to be licensed
Robbery	Not suitable to be licensed
Arson With Intent To Endanger Life	Not suitable to be licensed
Arson	10 Years
Riot Or Violent Disorder	10 Years
Possession Of A Firearm	Not suitable to be licensed
Assault Occasioning Actual Bodily Harm	10 Years
Assaulting A Police Officer	10 Years
Threats To Kill	Not suitable to be licensed
Witness Intimidation	10 Years
Affray	10 Years
Possession Of An Offensive Weapon Or Bladed Article	Not suitable to be licensed
Harassment With Fear Of Violence	Not suitable to be licensed
Harassment	10 Years
Criminal Damage (Value Over £5000)	5 Years
Criminal Damage (Value Under £5000)	3 Years
Threatening Behaviour – Section 4 & 4A Public Order Act	7 Years
Common Assault	7 Years
Drunk And Disorderly In A Public Place	5 Years
Disorderly Behaviour – Section 5 Public Order Act	5 Years
Terrorism Offences	Not suitable to be licensed

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, 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 at any convictions involving dishonesty.

Offence	Minimum Period Free From Conviction
Burglary	Not suitable to be licensed
Fraud (Sentence Of Imprisonment)	Not suitable to be licensed
Fraud (No Sentence Of Imprisonment)	5 Years
Theft (Sentence Of Imprisonment)	Not suitable to be licensed
Theft (No Sentence Of Imprisonment)	10 Years
Vehicle taking	5 Years

COMPLAINTS AGAINST DRIVERS

Complaints are occasionally made against hackney carriage and private hire drivers. Such complaints include refusal to assist a disabled passenger, use of abusive language or refusal to accept a fare or threatening or failing to respond to a reasonable request by officers. Such complaints should be considered first by the Licensing Officer for consideration as to the nature of the complaint being serious enough to be forwarded to the Licensing Committee.

The Committee should then consider the complaint together with any history of complaints made against the driver to assess any patterns. On the basis of the evidence, the Committee should consider whether the driver is a fit and proper person to hold a licence.

APPEALS

Any applicant refused a driver’s licence on the grounds that the Committee is not satisfied they are a fit and proper person to hold such a licence, or who has had their licence suspended, revoked or had a condition attached with which they disagree has a right of appeal to the magistrates’ court within 21 days of the notice of decision .

GLOSSARY

Appeal A means by which a Committee hearing decision can be reviewed by the Magistrates Court or the Crown Court. The decision of the Committee may be upheld or overturned.

Caution A signed admittance of guilt of committing an offence where no further action is taken at that time. It may be taken into account in the case of re-offending.

Committee A panel of the Licensing Committee gathered together to consider the suitability of a person to hold a taxi related licence.

Any reference to “Committee” will be classed as the Licensing Committee for the purposes of Licensing.

Conviction Judicial determination that someone is guilty of a criminal offence

Fit and Proper Person A person who is of no threat to the general public, has a good character and is therefore deemed fit and suitable to hold a licence.

Hackney Carriages 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.

Mitigating Circumstances The conditions surrounding a conviction. These conditions may alter the perceived seriousness of a crime.

Plying for Hire To actively invite or respond to a hail for a taxi with the intent to charge a specific fare for the service

Private Hire Vehicles 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.

Proprietor The person in possession of a vehicle which is the subject of a hiring agreement or hire purchase agreement.

Operator This is the business, which in this country can cover anything from a one person business up to the largest firm in the country

Rehabilitation The period to which the standing authority feels a person has repented their crimes.

Revoke To take back something for an indefinite period of time.

Suspend To hold something away from its owner for a period of time.

Written Warning A letter advising that although an offence was not serious enough to have warranted the suspension or revocation of the licence, the offence committed is unacceptable and has caused concern to the committee as to the person’s suitability to hold such a licence. If, in the future, similar behaviour is exhibited, the consequences could be much more severe, possibly leading to the suspension of the licence.