

REPORT OF THE DEPUTY CHIEF EXECUTIVE

REGULATORY COMMITTEE – 23 MARCH 2015

GUIDANCE DOCUMENT RELATING TO THE LICENSING OF HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS

1.0 PURPOSE OF THE REPORT

- 1.1 The purpose of the report is, firstly, to advise the Committee that, on 11 February 2015, Cabinet approved the commencement of a consultation process with regard to a draft guidance document (attached as Appendix 1) relating to the licensing of hackney carriage and private hire vehicle drivers and, secondly, to seek the views of the Committee upon the draft document.

2.0 DESCRIPTION OF DECISION (RECOMMENDATION)

- 2.1 The Committee are recommended to consider the draft guidance document attached and to comment as they consider appropriate.

3.0 BACKGROUND

- 3.1 The guidance document that the Committee utilises in making decisions relating to the licensing of hackney carriage and private hire vehicle drivers was drafted some time ago. This document does not reflect the full range of current driving offences. The draft guidance document attached is more comprehensive in its nature and it is proposed that, in due course, this document should replace the current version, subject to any alterations required by Councillors after the completion of a consultation process. Cabinet agreed that the Council should consult upon the draft guidance document and to receive a further report detailing any responses to the consultation exercise before deciding upon the adoption of the proposed guidance.

4.0 CURRENT POSITION

- 4.1 A further report will be made to Committee on this subject after Cabinet has again considered this issue.

5.0 REASON FOR THE DECISION

- 5.1 To assist the Committee in making decisions relating to the licensing of hackney carriage and private hire vehicle drivers.

6.0 ALTERNATIVE OPTIONS

- 6.1 None.

7.0 RELEVANT CONSIDERATIONS/CONSULTATION

- 7.1 None.

8.0 GLOSSARY

- 8.1 No acronyms or abbreviations have been used in this report.

9.0 LIST OF APPENDICES

9.1 Appendix 1 - draft guidance document relating to the licensing of hackney carriage and private hire vehicle drivers

10.0 BACKGROUND PAPERS

10.1 None.

APPENDIX 1

DRAFT

**GUIDANCE DOCUMENT RELATING TO THE
LICENSING OF HACKNEY CARRIAGE AND PRIVATE
HIRE VEHICLE DRIVERS**

1. INTRODUCTION

- 1.1 These guidelines are intended to assist the Regulatory Committee when making decisions relating to the grant, renewal, suspension or revocation of hackney carriage and private hire vehicle drivers' licences. The guidelines deal with situations where applicants or existing licensees have been convicted of an offence on one or more occasions. The guidelines also indicate what the Committee would consider to be a "fit and proper person" and what might constitute "any reasonable cause" in the context of making decisions about these types of licence. The guidelines are intended to promote consistency in decision making and to inform the public, including licensed drivers and those persons seeking a licence, of the expectations of the Committee. All decisions are made on the civil, balance of probabilities standard of proof. Hearsay evidence is admissible, but needs to be considered carefully as to what weight is attached to it. These guidelines replace those previously used by the Committee.
- 1.2 The guidelines suggest, in respect of some types of offences, minimum periods free from conviction that the Committee would normally expect that a person should be able to demonstrate in order to be granted or retain a licence. These periods vary, depending upon the nature of the offences in question, and are set out below. The guidelines do not deal with every type of offence and the Committee may also consider offences not specifically addressed in the guidelines or other matters which may be relevant. Offences similar to those described in these guidelines, though differently titled in other legislation, will be considered in a similar manner.
- 1.3 The guidelines take into account the DOT Circular 2/92; HO Circular 13/92 Disclosure of Criminal Records: Applicants for Hackney Carriage & Private Hire Vehicle Drivers' Licences.

2 REHABILITATION OF OFFENDERS

- 2.1 The Rehabilitation of Offenders Act 1974 established the principle that a person convicted of one or more of the less serious offences should, after some reasonable time has elapsed, be enabled to carry on a normal life without their offending history counting against them. The Act allows most convictions to become "spent" after some specified period. This means, among other outcomes, that such convictions need not be disclosed by a former offender to a potential employer. It is the intention behind the Act that former offenders are assisted in becoming rehabilitated and going on to pursue law abiding, productive lives. By these means the public are spared the consequences of any further offending behaviour. The periods of time that should elapse after conviction before convictions become spent are laid out in the legislation. These periods were reduced by amendments to the relevant legislation in March 2014. A table summarising these periods is set out at Appendix A.

- 2.2 However, the law recognises that, in certain specified circumstances, for reasons of public safety, potential employers and other decision makers are entitled to be made aware of a person's entire history of offending. The licensing of hackney carriage and private hire vehicle drivers is one such circumstance and so the Council is legally entitled to discover all offences of which an applicant or existing licensee has been convicted, including those which are "spent", and to take these into account when making a decision about a licence.

3 THE DECISION MAKING FRAMEWORK

- 3.1 In making decisions about licences the Committee needs to be satisfied that a person is "fit and proper" to undertake the responsibilities of a hackney carriage or private hire vehicle driver if that person is to be granted, or allowed to retain, a licence. The meaning of "fit and proper" is not defined in legislation, but, in making such a decision, the Committee should consider the following questions suggested in case law:
- a. Is the person a safe driver with a good driving record?
 - b. Does the person have adequate experience and local knowledge of the roads?
 - c. Is the person sober mentally and physically?
 - d. Is the person fit and healthy enough to be a driver, with adequate eyesight (corrected if necessary)?
 - e. Is the person honest?
 - f. Would the person abuse or assault passengers?

In effect, each member of the Committee should answer the question:

Would you, as a member of the Committee charged with the ability to grant, suspend or revoke a hackney carriage or private hire vehicle driver's licence, allow your son, daughter, spouse, partner, mother, father, grandson, granddaughter or any other vulnerable person for whom you care, to get into a vehicle with this person alone?

- 3.2 After a licence is granted, the Committee may suspend, revoke or refuse to renew the licence in a situation where, since being licensed, the licensee has acquired certain types of convictions, or, for "any other reasonable cause". Again, the meaning of "any other reasonable cause" is not defined in legislation. However, case law indicates that the Committee have a wide discretion and are entitled to use their common sense in deciding what constitutes "reasonable cause" for making a decision on the balance of probabilities and giving hearsay evidence the appropriate weight
- 3.3 On all occasions, decisions must be made on their own merits. Whilst the Committee cannot, for legal reasons, review the merits of any conviction, they will consider any aggravating or mitigating features associated with the specific offending if they relate to the issue of the protection of the public. The Committee will consider these guidelines when making their decision but ***the overriding consideration will be the protection of the public.***

- 3.4 ***Therefore, although a person may be able to demonstrate a period free from convictions in excess of the minimum suggested by these guidelines, the Committee may nevertheless decide, in the public interest, that that person should not hold a licence.***
- 3.5 Examples of situations where the Committee may make such a decision could include a record of repeat offending, prolonged periods of offending, planned criminality, vulnerable victims or racially motivated offending or any other factor which leads the Committee to consider that the offender may, by holding a licence granted by the Council, present a risk to the public.
- 3.6 Another example may be a situation where the Committee considered that the nature of any conviction, for example supplying drugs or sexual offending whenever it occurred, demonstrated that the behaviour of the offender presented a particular risk to the safety of the travelling public. The Committee could go on to decide that that person may present a continuing risk.
- 3.7 In a similar way, any mitigating circumstances which indicate a lesser level of culpability or risk to the public could enable the Committee make an exception to these guidelines in granting or allowing drivers to keep licences.

4 FORMAL/SIMPLE CAUTIONS AND ENDORSABLE FIXED PENALTIES

- 4.1 For the purpose of these guidelines formal/simple cautions and endorsable fixed penalties shall be treated as though they were convictions. Current and prospective licensees should note that a caution legally constitutes the admission of guilt of an offence.

5 MULTIPLE CONVICTIONS ARISING FROM A SINGLE INCIDENT

- 5.1 Where a person is convicted of more than one offence arising from a single incident, the convictions will generally be treated as one conviction for the purposes of these guidelines. In this circumstance, the period which a person would normally be expected to show free from conviction will be the longest applicable period calculated by reference to each offence.

6 DECISIONS WITH IMMEDIATE EFFECT

- 6.1 Where the Committee considers the licence of a hackney carriage or private hire vehicle driver should be suspended or revoked, they may direct that their decision be implemented with immediate effect, should they consider it necessary, in the interests of public safety, to do so. Otherwise, the decision of the Committee would not be implemented during the period during which the licensee may commence an appeal against the decision (21 days following notification of the Committee's decision) and then, should an appeal be made, until the matter is determined by the Courts.

7 EXISTING LICENSEES

- 7.1 These guidelines will be applied to existing licensees only in respect of any convictions they acquire after these guidelines are adopted by the Committee.

8 MINIMUM PERIODS FREE OF CONVICTIONS

- 8.1 In order to be certain that a person previously having committed one or more offences is now a fit and proper person to hold a licence the Committee would normally expect that person to have demonstrated that they have behaved in a law-abiding manner for some period of time after committing their most recent offence. The suggested normal minimum periods free of conviction prior to a licence being granted or allowed to be retained are set out below by reference to the type of offence.

9 DRIVING OFFENCES

- 9.1 A person convicted of or accepting a fixed penalty notice for a driving offence will have penalty points endorsed on their driving licence. These points range from 1 to 11 with a greater number of points being endorsed for more serious offences. Penalty points remain on driving licences for 4 or 11 years depending on the offence. Some offences may also result in a disqualification. Separately, acquiring a total of 12 points in a three year period will result in a disqualification under the "totting-up" procedure unless the licensee can demonstrate to the Court that disqualification would cause exceptional hardship.
- 9.2 Exceptional hardship provisions are relevant only to the Court in deciding to disqualify or not. They are not relevant considerations for the Committee and are not mentioned in hackney carriage or private hire legislation. Furthermore, case law relating to driving licences states that the personal circumstances of a driver are irrelevant except, in rare cases, to explain or excuse some conduct of that person.
- 9.3 For the purposes of these guidelines types of driving conviction of similar seriousness are collected together into categories. These guidelines indicate the usual response of the Committee to each type of offence. The categories, in order of seriousness, are:
- a) "Minor" driving offences;
 - b) "Intermediate" driving offences;
 - c) Disqualifications from driving;
 - d) Drink or drug driving offences;
 - e) Dangerous and furious driving offences and racing on the highway; and
 - f) Careless and dangerous driving offences involving serious injury or death.

The driving offence of aggravated taking of a vehicle is dealt with at paragraph 10.1 (Dishonesty) below.

9.4 "MINOR" DRIVING OFFENCES

The following driving offences are considered to be "minor" for the purposes of these guidelines:

- a) Miscellaneous offences: leaving a vehicle in a dangerous position; unlawful pillion riding; play street offences; control of vehicle; uncorrected defective eyesight; refusing to take eyesight test;
- b) Motorway offences (examples include: driving the wrong way, making a U turn, stopping on hard shoulder, learner driver etc.);
- c) Pedestrian crossings offences;
- d) Speed limits offences (less serious speeding resulting in three penalty points only); and
- e) Traffic direction and signs offences (examples include failing to comply with a traffic light or sign or the direction of a Police Constable).

Convictions for minor traffic offences should not normally prevent the granting of a licence or the suspension or revocation of an existing licence. However, where an applicant's DVLA licence is currently endorsed in respect of two or more "minor" driving offences, the Committee would expect that person to demonstrate a period of six months free from conviction depending on the particular circumstances. An existing licensee acquiring two or more minor driving convictions within a four year period should have his licence suspended for six months or revoked depending on the particular circumstances.

9.5 "INTERMEDIATE" DRIVING OFFENCES

The following driving offences are considered to be of "intermediate" seriousness for the purposes of these guidelines:

- a) Accident offences (examples include failing to stop after an accident or failing to give particulars or report an accident within 24 hours);
- b) Disqualified driver offences;
- c) Careless driving: driving without due care and attention and/or without reasonable consideration for other road users;
- d) Insurance offences: using a vehicle uninsured against third party risks;
- e) Licence offences:
 - driving otherwise than in accordance with a licence;
 - after making false declaration about fitness;

after failing to notify a disability; and

after licence revoked or refused on medical grounds;

- f) Failure to give information as to identity of a driver;
- g) Speed limits offences (resulting in 4 to 6 penalty points); and
- h) Construction and use offences: defective brakes, tyres or steering; dangerous load, parts or accessories; breach of requirements as to control of a vehicle, mobile telephone etc.

Where an applicant's DVLA licence is currently endorsed with penalty points in respect of an "intermediate" driving offence but not disqualification, the Committee would expect a period of one year free of conviction before granting a licence depending on the particular circumstances. More than one such conviction could extend this period to three years. Existing licensees can expect suspension for one year or revocation of their licence, depending on the particular circumstances including whether there is more than one conviction.

9.6 DISQUALIFICATIONS FROM DRIVING

Where a person is disqualified from driving for any reason other than the circumstances described in paragraphs 9.7 - 9.9 below, the Committee would expect that person to demonstrate a period of three years free from conviction with this period commencing at the end of any disqualification period or on the date of the conviction, whichever date is the later.

9.7 DRINK OR DRUG DRIVING OFFENCES

Where a person has been convicted of any driving offence relating to drink or drugs the Committee would expect that person to demonstrate a period of five years free from conviction with this period commencing at the end of any disqualification period or on the date of the conviction, whichever date is the later.

9.8 DANGEROUS AND FURIOUS DRIVING OFFENCES AND RACING ON THE HIGHWAY

The Committee would expect any person with a conviction for dangerous or furious driving or motor racing on the highway to demonstrate a period of ten years free from conviction with this period commencing at the end of any disqualification period or on the date of the conviction, whichever date is the later.

9.9 CARELESS AND DANGEROUS DRIVING OFFENCES INVOLVING SERIOUS INJURY OR DEATH

Where a person has been convicted of a careless or dangerous driving offence which involved the causing of serious injury or death a licence will normally never be granted and any existing licence would be revoked. In exceptional circumstances which significantly reduce the culpability of an applicant, the Committee will consider granting a licence after a period of ten years free of conviction. Exceptional circumstances for this purpose will be considered on a case by case basis but must be something truly very unusual or extraordinary going to the basis of the offence and significantly reducing the potential risk to the travelling public.

- 9.10 The information shown above with regard to driving convictions is collated in the table at Appendix B. The offences of aiding, causing and inciting driving offences will be dealt with by the Committee usually in a manner equivalent to the core offences. So, for example, a person convicted of the offence of causing a person to drive otherwise than in accordance with a licence would usually be treated in the same way as a person convicted of the offence of driving than in accordance with a licence.

10 OTHER OFFENCES

10.1 DISHONESTY

There are many types of dishonesty offences with differing levels of seriousness. Examples include theft, fraud, benefit fraud, deception, tax evasion and unauthorised taking of a vehicle. The public and the Council are entitled to expect that hackney carriage and private hire vehicle drivers are honest. It would be reasonably simple for a dishonest driver to defraud a passenger by, for example, asking for more than the correct fare. Drivers are also in a position of responsibility with regard to the possessions of passengers.

For these reasons the Committee will take a serious view of any convictions involving dishonesty. In general, a person with convictions for dishonesty which are less than five years old is unlikely to be allowed to hold a licence. A significant number of dishonesty offences or a prolonged period of offending may extend the period of time required to be free of convictions beyond five years.

10.2 VIOLENCE

Hackney carriage and private hire vehicle drivers will occasionally encounter challenging passengers and the Council expects licensed drivers to behave in a calm manner at all times. The Committee must also be confident that drivers will not engage in any conduct that threatens or puts at risk the personal safety of members of the public. So, a period of three to ten years free of conviction for offences involving violence (depending on the number, nature

and seriousness of the offence(s)) will generally be required in order for that person to be allowed to hold a licence.

Where any offence involved death of an individual a licence will normally never be granted and any existing licence would be revoked. In exceptional circumstances which significantly reduce the culpability of an applicant, the Committee will consider granting a licence after a period of ten years free of conviction. Exceptional circumstances for this purpose will be considered on a case by case basis, but must be something truly very unusual or extraordinary going to the basis of the offence and significantly reducing the potential risk to the travelling public.

10.3 DRUGS

A period of five to ten years free of conviction for any offence involving drugs (depending upon the number, nature and seriousness of the offence(s) including the classification of the drug and whether any offence related to the supply of drugs) will generally be required before a licence is likely to be allowed to be held.

Additionally, a person who was an addict will normally be required to demonstrate evidence of five years free from drug taking after the completion of detoxification treatment.

10.4 SEXUAL OFFENCES

Hackney carriage and private hire vehicle drivers are often entrusted with the care of children and young people and, also, carry adult passengers who are vulnerable for one or more of a number of reasons. It may be possible for an unscrupulous driver to take advantage of such persons.

Therefore, persons convicted of a sexual offence involving a child, young person or vulnerable adult, or for another of the most serious sexual offences such as rape, indecent assault, or other similar offences, will normally not be allowed to hold a licence regardless of the length of time since conviction. In exceptional circumstances which significantly reduce the culpability of an applicant, the Committee will consider granting a licence after a period of ten years free of conviction. Exceptional circumstances for this purpose will be considered on a case by case basis, but must be something truly very unusual or extraordinary going to the basis of the offence and significantly reducing the potential risk to the travelling public.

Persons convicted of other sexual offences such as soliciting, indecent exposure or other similar offences will normally need to demonstrate a period of five to ten years (depending on the nature and seriousness of the offence) free from conviction.

10.5 DRUNKENNESS

An isolated conviction for drunkenness need not prevent a person from holding a licence but the Committee would normally expect a period of one year to have elapsed since conviction. However, more than one conviction could indicate a problem requiring medical examination and/or refusal or revocation of a licence as appropriate.

Additionally, a person who has been identified as an alcoholic will normally be required to demonstrate evidence of five years free from alcohol problems after the completion of detoxification treatment.

10.6 PUBLIC ORDER AND CRIMINAL DAMAGE OFFENCES

Persons convicted of any public order offence or an offence involving criminal damage will normally need to demonstrate a period of one to five years (depending on the number, nature and seriousness of the offence(s)) free from conviction in order for a licence to be likely to be allowed to be held.

10.7 UNLICENSED PLYING FOR HIRE

Using a vehicle to ply for hire whilst unlicensed is, as well as being a serious matter in its own right when considering the fitness of a person to hold a hackney carriage or private hire vehicle driver's licence, likely to invalidate the insurance of the vehicle. So, the Committee would normally take a view of such a conviction similar as to that of a "no insurance" driving offence and expect a person to demonstrate a period of one year free of conviction before allowing a licence to be held. More than one such conviction could extend this period.

10.8 OTHER LICENSING OFFENCES

A person with a conviction for an offence under any provision of the Town Police Clauses Act 1847 (other than the offence of unlicensed plying for hire) or under Part II of the Local Government (Miscellaneous Provisions) Act 1976 would normally be required to show a period of one year free of conviction before a licence is allowed to be held.

10.9 NOTIFICATION OF CONVICTIONS

Where a person holding a hackney carriage or private hire vehicle driver's licence fails to notify the Licensing Authority of any conviction acquired during the period of validity of their licence, in accordance with Condition Six of the licence, or of any conviction acquired before being granted a licence, the Committee will consider that conviction as if it occurred on the date of disclosure or on the date the Licensing Authority became aware of it. This principle is intended to prevent a licensee from gaining an advantage from non-disclosure. The Committee will consider any deliberate non-disclosure as a significant aggravating feature.

APPENDIX A

Rehabilitation of Offenders Act 1974 Amendments as of 10 March 2014

Sentence length	Current rehabilitation period (applies from date of conviction)	New rehabilitation period is period of sentence plus the 'buffer' period below which applies from end of sentence
0 - 6 months	7 years	2 years
6 - 30 months	10 years	4 years
30 months - 4 years	Never spent	7 years
Over 4 years	Never spent	Never spent

For custodial sentences:

For non-custodial sentences:

	1974 Requirement	2014 Requirement
Sentence	Current rehabilitation period (applies from date of conviction)	Buffer period (will apply from end of sentence)
Fine	5 years	1 years (from date of conviction)
Absolute discharge	6 months	None
Conditional discharge, referral order, reparation order, action plan order, supervision order, bind over order, hospital order	Various – mostly between one year and length of the Order	Period of order
Community order (& Youth Rehabilitation Order)	5 years	1 years

As with the current scheme, the above periods are halved for persons under 18 at date of conviction (except for custodial sentences of up to 6 months where the buffer period will be 18 months for persons under 18 at the date of conviction).

APPENDIX B

The table below shows the usual minimum requirements of the Committee in response to the convictions listed. The table also shows, for reference, the codes used by the Driver and Vehicle Licensing Agency (DVLA) in relation to driving licence penalty points.

Convictions	Usual minimum requirement of the Committee
<p><u>“Minor” Driving Offences</u></p> <p>DVLA licence currently endorsed in respect of two or more of the following offences :</p> <p>Miscellaneous offences (MS10 - 30, 60 - 80);</p> <p>Motorway offences (MW10)</p> <p>Pedestrian crossings (PC10 – 30);</p> <p>Speed limits – 3 penalty points (SP10 – 50); or</p> <p>Traffic direction and signs (TS10 – 70)</p>	<p>Applicants – six months free from conviction; existing licensees– suspension for six months or revocation</p>

<p><u>“Intermediate” Driving Offences</u></p> <p>DVLA licence currently endorsed with penalty points or with a “Mutual recognition” code for any of the following offences:</p> <p>Accident offences (AC10 – 30);</p> <p>Disqualified driver (BA10 – 30, MR49);</p> <p>Careless driving (CD10 – 30);</p> <p>Insurance offences (IN10)</p> <p>Licence offences (LC20 - 50);</p> <p>Failure to give information as to identity of a driver (MS90);</p> <p>Speed limits – 4 to 6 penalty points (SP10 – 50); or</p> <p>Construction and use offences (CU10 - 80)</p>	<p>Applicants – one year free from conviction; existing licensees – suspension for one year or revocation</p>
<p><u>Disqualifications from driving</u></p> <p>Disqualifications outside Great Britain (MR19, 39 & 59);</p> <p>DVLA licence currently endorsed with a disqualification under the “totting-up” procedure (TT99)</p>	<p>Three years free from conviction with this period commencing at the end of any disqualification period or on the date of the conviction, whichever date is the later</p>
<p>Drink or drugs (DR10 – 90, MR29);</p> <p>Theft or unauthorised taking of a vehicle (UT50)</p>	<p>Five years free from conviction with this period commencing at the end of any disqualification period or on the date of the conviction, whichever date is the later</p>
<p>Dangerous or furious driving (DD40 & 90, MR09 (without injury or death)); Motor racing on the highway (MS50)</p>	<p>Ten years free from conviction with this period commencing at the end of any disqualification period or on the date of</p>

	the conviction, whichever date is the later
Careless driving (CD40 – 90); or Reckless/dangerous driving (DD10, 60, 80 & 90, MR09 (with injury or death))	Refusal or revocation