

## APPENDIX A – RELEVANCE OF CONVICTIONS

### 1. Introduction

- 1.1 The overriding aim of this Licensing Authority when carrying out its functions relating to the licensing of Hackney Carriage or Private Hire Drivers, Vehicle Proprietors and Operators is the protection of the public and others who use or can be affected by Hackney Carriage and Private Hire services.
- 1.2 The relevant legislation provides that any person must satisfy the Authority that they are a fit and proper person to hold a licence. If an applicant or licence holder falls short of the fit and proper test, then the application should be refused, or the licence revoked. Each case will always be considered on its own merits having regard to this Policy, and the Licensing Authority can depart from the Policy where it considers appropriate to do so.
- 1.3 The licensing process places a duty on the Authority to protect the public. Given the nature of the role, it is paramount that those seeking a living from the trades meet the required standards set by the Authority. As the previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability, it is essential that the Authority considers all relevant factors, including previous convictions, cautions and complaints and the time elapsed since these were committed. The longer the time elapsed since an offence has been committed, the more likely the individual will desist from crime.
- 1.4 Although it is not possible to determine the future behaviour of an individual, taking steps to reduce the risk and protect the public can be achieved by following correct processes and guidance.

### 2. Drivers

- 2.1 An applicant must hold a full DVLA or equivalent driver's licence, have the right to work in the UK, and be a "fit and proper" person. There is no legal definition of what "fit and proper", but a test used by this Authority is as follows:

*'Without prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?'*

- 2.2 The Authority has the power to require an applicant to provide such information as it considers necessary to enable it to determine whether the licence should be granted. This information can include any pre-conditions or tests it considers necessary. The following is required by this Authority: -

- Completed application form and fee
- Passing a local knowledge test
- BTEC Level 2 Certificate – Introduction to the Role of the Professional Taxi and Private Hire Driver
- Group 2 Standards of Medical Fitness
- Enhanced DBS certificate and sign-up to the update service
- Passing English and Maths competency tests
- DVLA driving licence check

2.3 When applying for a licence to drive a hackney carriage or a private hire vehicle, or renew such a licence, applicants are required to declare on their application form all previous convictions, cautions, penalties, and motoring endorsements they may have received, except for protected cautions and convictions which are detailed in paragraphs 2.4 and 2.5 below. 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.

2.4 A caution is only ‘protected’ 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.

2.5 A conviction is only ‘protected’ 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.
- 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).

2.6 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.

2.7 Upon initial application, all driver applicants will be required to obtain an enhanced level disclosure from the DBS and sign up and maintain subscription to the DBS Update service. They would then not be required to obtain a further enhanced level disclosure from the DBS unless a check on the DBS Update service revealed a change in status of the disclosure. The Authority will undertake 6 monthly online checks on the status of all Preston licensed driver DBS certificates. Where a change in status is revealed then the licensed driver will be required to submit a further enhanced disclosure.

### **3. Private Hire Operators**

3.1 As with drivers the role of the Private Hire Operator (PHO) goes far beyond simply taking bookings and dispatching vehicles. While making the booking and dispatching the vehicle and driver, the PHO will obtain significant amounts of personal information. It is therefore vital that a PHO is as trustworthy and reliable as a driver, notwithstanding their slightly remote role. Hackney carriages can also be pre-booked and where that booking is made by anybody other than the driver, there are no controls or vetting procedures in place, in relation to the person who takes that booking and holds that personal information.

3.2 PHO's, including directors and shareholders, are required to submit upon application a basic level DBS certificate and then annually.

3.3 To enable consistent and informed decisions to be made, the following is a working test of fitness and propriety used for PHO's:

*'Would I be comfortable in providing sensitive information such as holiday plans, movements of my family or other information to this person and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes.'*

3.4 PHO's are required to undertake checks on those they employ/use within their business to satisfy themselves that they are fit and proper people to undertake that task and retain that information to demonstrate that compliance with this Authority.

## 4 **Vehicle Proprietors**

- 4.1 Similar considerations apply to vehicle proprietors, both hackney carriage and private hire. Although the vehicle proprietor may not be driving a vehicle, they clearly have an interest in the use of the vehicle. They will be responsible for the maintenance of the vehicle, and vehicles that are not properly maintained have a clear impact on public safety.
- 4.2 Hackney and private hire vehicles are used to transport people in many circumstances and are seen everywhere across the UK at all times of the day and night, in any location. Therefore, they could provide a transportation system for illegal activities of any form of contraband, whether that is drugs, guns, illicit alcohol or tobacco, or people who are involved in or are the victims of illegal activity, or children who may be at risk of being, or are being, abused or exploited.
- 4.3 Vehicle proprietors have, therefore, two principal responsibilities:
- They must ensure that the vehicle is always maintained to an acceptable standard.
  - They must ensure that the vehicle is not used for illegal or illicit purposes.
- 4.4 It is recognised that some vehicle licence holders rent their vehicle to a licensed driver and 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.
- 4.3 Vehicle licence holders that fail to maintain their vehicle in a satisfactory condition are likely to cause some concern to the Authority as to whether they are fit and proper to hold a vehicle licence. Additionally, the disclosure of any convictions, cautions, reprimands, investigations etc will be considered when determining applications and so a condition on vehicle licences require applicants (vehicle proprietors) to submit a Basic Disclosure from the DBS.
- 4.4 To enable consistent and informed decisions to be made, the following is a working test of fitness and propriety is used for vehicle licence holders:

‘Without prejudice, and based on the information before you, would you allow this person to have control of a licensed vehicle that can travel anywhere, at any time of the day or night without arousing suspicion, and be satisfied that they would not allow it to be used for criminal or other unacceptable purposes, and be confident that they would maintain it to an acceptable standard throughout the period of the licence’.

## 5. **General Policy**

- 5.1 As a general rule the Authority will expect applicants 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.
- Show adequate evidence of good character from the time of conviction.

5.2 Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character. Regard will be given to any failure to accurately complete an application as this may give rise to serious concerns regarding an applicant's honesty. Each case will be considered on its own merits and some discretion may be appropriate if the offence is isolated and there are mitigating circumstances.

The table below includes a list of offence types and the minimum time that should have elapsed since the date of conviction before a licence would be granted.

OFFENCE	GUIDANCE			
	CURRENT POLICY	INSTITUTE OF LICENSING	DEPARTMENT FOR TRANSPORT	MINIMUM TIME ELAPSED SINCE CONVICTION
Minor traffic offences	No restriction	7 or more DVLA licence points – 5 Years	More than 1 offence then Committee	7 or more DVLA licence points – 5 Years
Driving disqualification from DVLA totting up	Warning letter	Not considered	Committee	n/a (see above)
Major motoring offences (except below)	3 Years	7 Years Except using a handheld device which is 5 Years	As above except using a handheld device which is 5 Years	7 Years Except using a handheld device which is 5 Years
Causing death by careless driving or by dangerous driving	Taxi and Miscellaneous Committee	7 Years	Not considered	7 Years

Drunkenness in a motor vehicle – single conviction	3 Years since restoration of DVLA driving licence	7 Years	7 Years	7 Years
Drunkenness in a motor vehicle – more than one conviction	Taxi and Miscellaneous Committee	n/a	n/a	n/a
Drunkenness – not in a motor vehicle – single conviction	No restriction	Not considered	Not considered	n/a
Drunkenness – not in a motor vehicle – more than one conviction	Medical examination to determine alcoholism then 3 years since completion of treatment.	n/a	n/a	n/a
Drugs – possession	3 Years	5 Years	5 Years	5 Years plus drug test
Drugs – supply	5 Years	10 Years	10 Years	10 Years
Serious Sexual or Indecency	Taxi and Miscellaneous Committee	Never	Never	Never. In addition, a licence will not be granted to any applicant who is currently on the Sex Offending Register or on any 'barred list'.

Other Sexual or Indecency – single conviction	5 Years and Taxi and Miscellaneous Committee	Never	Never	As above
Other Sexual or Indecency – more than one conviction –	10 Years and Taxi and Miscellaneous Committee	Never	Never	As above
Violence – arson, malicious wounding, grievous bodily harm, robbery, possession of firearm, riot, assault police, common assault with racial aggravation, violent disorder and resisting arrest	5 Years	10 Years for all offences involving violence.  Possession of a weapon or any weapon related offence – 7 Years.	10 Years for all offences involving violence against the person.  Possession of a weapon or any weapon related offence – 7 Years.	10 Years for all offences involving violence against the person.  Possession of a weapon or any weapon related offence – 7 Years.
Violence – common assault, affray, obstruction, criminal damage, and other	3 Years	As above	As above	As above

public order offences				
Dishonesty	3 Years	7 Years	7 Years	7 Years
Other offences and special circumstances	Taxi and Miscellaneous Committee	Not considered	Not considered	Remove
Crimes resulting in death	Not included	Never	Never	Never
Exploitation including slavery, child sexual exploitation, grooming, psychological, emotional, or financial abuse.	Not included	Never	Never	Never
Vehicle use offences – taxi/private hire	Not directly included	7 Years	Not considered	7 Years
Hackney carriage & private hire offences (excluding vehicle use)	Not directly included	7 Years	Not considered	7 Years
Discrimination	Not included	7 Years	7 Years	7 Years