

## Conviction Policy for Hackney Carriage and Private Hire Trade



How we treat convictions and cautions when we consider granting, renewing, suspending or revoking a hackney-carriage licence or private-hire licence, or the status of a vehicle operator or proprietor.

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## Definitions

<u>appeal</u>	A review of our decision. You appeal to the magistrates' court or the crown court. The court may uphold our decision (the court agrees with us) or overturn it (the court agrees with you).
<u>conviction</u>	A court decides someone is guilty of a crime.
<u>custodial sentence</u>	<u>A sentence of imprisonment (for a person over 18) or detention (for a person under 18)</u>
<u>district</u>	The area covered by St Albans District Council.
<u>driver</u>	The person licensed to drive the vehicle.
<u>conviction-free period</u>	A period without any further convictions.
<u>fit and proper person</u>	<p>A person we think has the right characteristics and ability because, for example, they:</p> <ul style="list-style-type: none"><li>• are no threat to the public</li><li>• have good city knowledge</li><li>• are healthy</li><li>• are of good character (including driving record).</li></ul> <p>We therefore regard them as fit and able to hold a licence.</p>
<u>hackney carriage</u>	A vehicle that: can carry passengers for hire or reward; can be hailed by a prospective passenger; can park on a rank to await the approach of passengers; and is available for public hire.
<u>mitigating circumstances</u>	A conviction's circumstances, presented to explain why it happened and try to reduce its seriousness.
<u>private-hire vehicle</u>	A vehicle whose hire must be pre-booked with a private-hire operator. This type of vehicle must not stand in a rank or ply for hire.
<u>proprietor</u>	The person in possession of a vehicle that is the subject of a hiring agreement or hire-purchase agreement.
<u>operator</u>	A business that invites or accepts bookings for a private-hire vehicle.
<u>refuse/refusal</u>	We decide not to give something, usually a licence. It also means, in this policy, revoking or suspending a licence.

<u>revoke</u>	To take away a licence permanently.
<u>suspend</u>	To take away a licence temporarily.
<u>verbal warning</u>	A spoken statement saying that although a conviction or complaint was not serious enough for a written warning, the offence/incident has caused us concern as regards the person's suitability to hold a licence. Similar behaviour in future could lead us to suspend the licence.
<u>written warning</u>	A letter saying that although a conviction or complaint was not serious enough for us to suspend or revoke a licence, the offence/incident has caused us concern as regards the person's suitability to hold a licence. Similar behaviour in future could lead to the licence being suspended or revoked.
<u>we</u>	St Albans District Council, usually acting through its officers.

## Introduction

Convictions will not necessarily stop you getting or keeping a hackney-carriage or private-hire licence.

If a conviction means you have to wait for a while before we will accept your licence application, we believe you are more likely to value your licence and act accordingly.

However, we regard some offences as so serious they will usually prevent you getting or keeping a licence for ever.

Our policy is to consider the safety, protection and well-being of the public by ensuring all licensed drivers are safe, competent drivers who maintain their vehicles to an acceptable standard. Our main aim is to ensure public safety, not punish applicants or licence holders.

We want to keep up the high standard of hackney-carriage and private-hire drivers, operators and proprietors in St Albans. This will maintain the taxi industry's good reputation as well as giving the public a high quality of service.

## Our powers and duties

Our duty to regulate hackney-carriage and private-hire vehicles in the District comes from three laws:

- Local Government (Miscellaneous Provisions) Act 1976
- Town Police Clauses Act 1847 (as amended)
- Road Safety Act 2006 (Sections 52-53)

## Role of the hackney-carriage and private-hire trade

The trade provides services where buses, trains and other public transport are not available. For example, in rural areas buses will often not run at late hours or regularly on Sundays. People with mobility difficulties may find it easier to use wheelchair-accessible hackney carriages than other forms of public transport.

The trade is important in getting people safely home from night clubs and other city-centre locations, which supports the night-time economy.

## Criminal offences and the Rehabilitation of Offenders Act 1974 (as amended)

Hackney-carriage and private-hire drivers are listed as regulated occupations in the Rehabilitation of Offenders Act 1974 (Exceptions) Order (Amendment) (No 2) 2002. Therefore a conviction is never 'spent'. This means that when deciding whether you can be licensed, we will always be able to consider a conviction you have had.

**All** types of criminal offences can be relevant. So we take into account **all** convictions, regardless of the offence, sentence or your age at the time. You

must declare all motoring and criminal convictions on your application form and complete a criminal records bureau search form.

In addition, you must disclose any recent formal cautions you have received and any pending criminal or motoring matters.

We may refer to the Rehabilitation of Offenders Act 1974 as part of our assessment of the convictions. We provide a summary of the Act at Appendix 1.0. The fact that a conviction is not yet spent under the Act may increase the impact of the offence in the Licensing Officer's decision-making.

## **Disclosure and Barring Service Checks**

At application and renewal stage, we require the applicant to complete a Disclosure and Barring Check (DBS). A DBS is an important safety measure for all drivers. The DBS provides details of live and spent convictions, police cautions, intelligence, and other information.

Anyone who would like to be a licensed driver must obtain a disclosure at the "Child and Adult Workforce" level.

Any person arriving in the UK after the age of 14 will be required to provide a certificate of good conduct authenticated by the relevant Embassy or delegation.

## **Right to work**

It is a legal requirement for anyone employing a driver from outside the European Union (formerly known as the European Economic Community) to check whether that person is permitted to work in this country or is subject to work restrictions.

Additionally, all applicants are required to show that they have a right to work in the UK.

Information regarding Certificates of Good Conduct or similar documents from a number of countries is available from:

Passport and Documentary Service Group  
Consular Directorate  
Foreign and Commonwealth Office  
Room G38  
Old Admiralty Building  
London  
SW1A 2PA  
[www.fco.gov.uk](http://www.fco.gov.uk)

## **Best Practice Guidance**

This policy has taken into account the Department for Transport's advice in the Taxi and Private Hire Vehicle Licensing Best Practice Guidance.

## How will we use the policy?

The policy provides guidelines about our current position on the relevance of convictions and cautions when deciding whether to grant licence applications or renewals. We will consider the policy when making licensing decisions.

We will consider each application on its own merits. We will normally follow the policy. If we have to depart substantially from it, we will clearly explain why.

We will take the policy into account when dealing with new applications and 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. The policy will also be used when considering whether to suspend or revoke an existing licence.

## Why do we look at convictions?

We must look at things that may affect a person's suitability to hold a licence, such as convictions (including formal cautions), fixed penalties and speeding offences). This is because past behaviour can indicate how someone will behave in future.

A conviction does not necessarily prevent you getting a licence but we will assess all convictions, spent or live.

We will consider all fixed penalties and formal cautions. Cautions may not always be as serious as convictions, but they will give some indication as to an applicant's character. We will bear in mind that a caution is given where there is *sufficient evidence* for a prosecution and guilt has been admitted.

Penalty notices are similar to fixed penalties, but are issued for a wide range of offences of an anti-social nature. These include behaviour likely to cause harassment, alarm or distress to others, drunk-and-disorderly behaviour in a public place, destroying or damaging property up to the value of £500, retail theft under £200, sale of alcohol to a person under 18 years of age, selling alcohol to a drunken person or using threatening words or behaviour. We will also consider these because they can give an indication of character.

If a court finds you have committed an offence, we have to accept this at face value so we cannot consider your belief that you were not guilty. However, you can tell us about any mitigating factors that led you to commit the offence. We will take these into account.

## Suitability to hold a licence

The law says we may grant a licence **only** if we are satisfied that the person is 'fit and proper'. So you have to prove you are fit and proper on the balance of probability. In other words, you must persuade us that it is more likely than not that you are an appropriate person to hold a licence.

The law says you must be a "fit and proper" person to hold a licence. This means you must:

- be a safe driver with a good driving record
- have adequate driving experience
- be mentally and physically fit
- be honest
- not take advantage of your position to abuse, assault or defraud customers.

We will consider the range of passengers you might carry, such as:

- elderly people
- unaccompanied children
- disabled people
- those who have had too much to drink
- lone women
- foreign visitors
- unaccompanied property.

Some areas cause particular concern:

- **Honesty and trustworthiness** – drivers often know that a customer is leaving a house empty; and they have opportunities to defraud drunken, vulnerable or foreign people, or to steal property left in cars. You must not abuse your position of trust. For example, passengers expect you to charge the correct fare and give the correct change; they expect you to hand in any article they leave in a vehicle; and they expect you to maintain confidentiality.
- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. We do not expect drivers to retaliate with aggressive or abusive conduct. Drivers are expected to avoid confrontation, and to tackle disputes through the proper legal channels. They should never take the law into their own hands.
- **Good and safe driving** – Passengers rely on you to get them safely to their destination. So you should be fully aware of all road-traffic law and your licence conditions.
- **Appropriate Behaviour** – drivers must act appropriately at all times whilst undertaking their duties. Appropriateness will extend to courtesy to the passenger(s) and other road users alike. Drivers should not have or encourage conversations which could cause discomfort to their passengers.

We want to ensure that licensed drivers, operators and proprietors will **not** be a risk to the public. Some applicants say our decisions punish them again for the same conviction but this is not our intention. If you have to wait a while to get a licence, we hope you will value it more highly.

## **Protecting the public**

Our duty to protect the public is always the strongest factor in our decisions.

### **Deciding whether to revoke or suspend a licence immediately**

If we decide to suspend or revoke a licence, this will normally take effect at the end of the 21-day period starting with the day on which we give the driver the notice, unless you lodge an appeal at the court.

However, section 52 of the Road Traffic Act 2006 allows us to suspend or revoke a licence immediately in the **interests of public safety where the risk to the public is great**. If we are using this section, we will give the driver a notice. The notice will explain why we have used this section. The notice takes effect as soon as we give it.

### **Taking account of a person's history**

We may take into account a person's history while holding a licence from this or any other authority. We may take into account the record of complaints about them; their compliance with licence conditions; and their willingness to co-operate with our reasonable requests. (See the sections on **Complaints**, **Breach of licence conditions** and **Administration of justice**.)

**Pages 9–17 set out different types of offence and how we consider them in our decision-making process.**

## Driving offences

Private-hire and hackney-carriage drivers are professionals who must at all times be aware of their passengers' safety and that of their vehicles. All traffic offences result from irresponsible driving or a lack of vehicle maintenance.

Convictions for traffic offences (including fixed penalties) will not necessarily prevent you getting a licence. However, we will consider the number, type and frequency of an offence. In some cases we may issue a licence along with a strong warning as to future driving conduct. If you disclose a significant history of offences, we may refuse your application.

We consider 'death by careless driving' or 'death by dangerous driving' to be an offence of violence, so you should refer to **Violence** on page 13.

For information on alcohol- and drug-related offences, see **Drunkenness and drugs** on pages 10–11.

### Education Courses

You are required to declare Educational Courses completed instead of endorsements (points) placed on your DVLA licence during the currency of your licence, at grant of application.

### 5 or fewer penalty points

For 5 or fewer points on your driving licence, we will usually grant a licence with a verbal warning.

### 6 or more penalty points

If you have 6 or more penalty points, we will usually grant a licence with a written warning unless exceptional circumstances justify a refusal.

### Major traffic offences

Major traffic offences include dangerous driving, driving while disqualified, failing to stop after an accident, using a handheld mobile phone while driving, no insurance, careless driving, and using a vehicle with defective brakes/tyres/steering wheel.

If you have been convicted of one major traffic offence, we will usually expect you to have a conviction-free year before you apply.

If you have been convicted of two or more major traffic offences, we will not normally grant a licence until you have had a conviction-free period of at least two years. We may increase this period if we decide that a *combination* of offences increases the risk to the public.

## **'Totting up' under section 35 Road Traffic Offenders Act 1988**

If there are 12 or more penalty points on your DVLA licence, the court will normally disqualify you for at least six months under the totting-up rules.

If you have been disqualified under totting up, we will normally refuse a licence until you have had a conviction-free period of one year.

As totting up usually leads to disqualification, you may have told the court that this would cause you 'exceptional hardship' so that they do not disqualify you. If the court agreed, you will have retained your DVLA licence. Even if an 'exceptional hardship' argument was successful and you retained your licence, we will still consider refusing a licence and will usually require a conviction-free period of one year.

## Motor insurance offences

An isolated motor insurance incident in the past will not necessarily prevent you getting a licence. However, we take a serious view of motor insurance offences. This is because they show a disregard for the law that could leave the public unable to claim after an accident.

**More than one conviction** for motor insurance offences would raise serious doubts about your suitability for a hackney-carriage or private-hire licence. So if you have been disqualified from driving for such offences, we would require you to wait at **least 3 years** after regaining your DVLA licence before applying to us for a licence.

## Drunkness

### Drunkness with a motor vehicle

We regard driving or being in charge of a vehicle while under the influence of alcohol as a serious offence. A single incident will not necessarily prevent us considering you a fit and proper person. But a single conviction for any drink-driving offence will normally mean you have to wait at least **3–5 years** after regaining your DVLA licence – or 3–5 years after the offence if you were not disqualified – before we will consider you for a licence.

More than one incident raises doubts about future behaviour and your fitness to hold a licence.

### Drunkness without a motor vehicle

We will normally grant a licence if you have only a single conviction (or fixed penalty notice) for drunkness or disorder (or both) not associated with a motor vehicle. We may issue a verbal warning alongside the licence.

Unless there are exceptional circumstances, we will refuse a licence if you have more than *three* convictions or fixed penalty notices for disorder or drunkness (or both). You will normally need a two- or three-year conviction-free period before applying.

## Drug offences

We take a serious view of drug-related offences. Before applying, you would need a conviction-free period of **5-10 years** after a drug-related conviction (including supplying or trafficking). The exact length of time we require will depend on such factors as the type and severity of the offence, and the length of any prison term.

## Sexual offences

As licensed drivers often carry unaccompanied passengers, we will normally refuse applicants with convictions or cautions for any sexual offence until they can show a long period (**usually 7–12 years**) free from conviction.

If the police notify us they are investigating a driver for a sexual offence, we may suspend their licence immediately until the investigation ends. This is because of the potentially high risk to the public.

Offences of holding obscene material also fall into the sexual offences category. We normally expect an applicant to have a conviction-free period of 7–12 years.

## **Offences involving Children**

### **Child Sexual Exploitation (CSE)**

As licensed drivers often carry unaccompanied children, we will normally refuse applicants currently on the Sex Offenders Register.

### **Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)**

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It is easy for an unscrupulous driver to take advantage of such vulnerable persons.

Unless there are exceptional circumstances, we will normally refuse applicants who have any convictions for rape, assault, any sex offence with a child, or any sex offence with a vulnerable person, as defined by the Sexual Offences Act 2003.

### **Violence**

We seek to minimise risks faced by children and young persons using hackney carriage and private hire vehicles.

Therefore we take a more serious view of offences of violence involving children or young persons.

We will normally refuse an application or revoke an existing licence if you have been convicted of **murder, manslaughter or causing death by careless or dangerous driving involving a child**, regardless of the time since your conviction.

Unless there are exceptional circumstances, we will normally refuse applicants who have been convicted of other violent offences involving children.

## Violence

As licensed drivers have close contact with the public, we will regard any convictions for violence as serious when deciding whether the applicant is fit and proper.

We will normally refuse an application or revoke an existing licence if you have been convicted of **murder, manslaughter or causing death by careless or dangerous driving**, regardless of the time since your conviction.

We will normally refuse an application if you have been convicted of other violent offences until you have a conviction-free period of **5–10 years**.

We will treat offences of **criminal damage** as violent offences. For serious offences (including arson) we will normally expect you to have a conviction-free period of **5–10 years** before you apply for a licence. For minor offences we will normally expect this period to be **at least 5 years**.

If convictions are for assaults (common assault, actual bodily harm, grievous bodily harm, grievous bodily harm with intent) involving **domestic violence**, we will expect you to have a conviction-free period of **5–10 years**. The exact length of time will depend on the severity of the assault and any aggravating features.

We will treat as violent any offences against **public order** – including offences under the Public Order Act 1986 (section 1, riot; section 2, violent disorder; section 3, affray; section 4, fear or provocation of violence/intentional harassment, alarm or distress; section 5, harassment, alarm or distress). For serious offences we will normally expect you to have a conviction-free period of **5–10 years** before you apply for a licence. For less serious offences under the Public Order Act 1986, such as section 5 offences, we will normally expect you to have a conviction-free period of **at least 5 years** before you apply for a licence.

## More than one offence

If you have a history of violence (3 or more convictions for any type of violence), we will normally refuse or revoke a licence.

## Possessing a weapon

If you have been convicted of possessing a weapon or any other weapon-related offence, this will cause us serious concern and we will normally refuse your application.

## Hate crimes

As licensed drivers have close contact with the public, we will regard any convictions for hate crimes as serious when deciding whether the applicant is fit and proper.

Hate crime is any crime that is perceived as having been motivated (entirely or partially) by a hostility to or prejudice against a personal characteristic or perceived personal characteristic, such as ethnicity or religion.

This includes any offence that involves unlawful discrimination as an aggravating factor.

Hate crime refers to offences relating to disability, gender-identity, race, religion/faith and sexual orientation. And crimes based on hostility to age, gender or appearance can also be hate crimes.

Hate crime can take many forms including:

- physical attacks such as assault, grievous bodily harm and murder, damage to property, offensive graffiti and arson
- threat of attack including offensive letters, abusive or obscene telephone calls, groups hanging around to intimidate, and unfounded, malicious complaints, and
- verbal abuse, insults or harassment – taunting, offensive leaflets and posters, abusive gestures, dumping of rubbish outside homes or through letterboxes, and bullying at school or in the workplace.

We will normally refuse your application if you have a conviction for a hate crime until you have had a conviction-free period of **5–10 years**.

## Dishonesty

Licensed drivers need to be trustworthy. It is easy for a driver to defraud the public, for example by demanding more than the legal fare or giving incorrect change. Overseas visitors can be confused by our currency and become 'fair game' to a dishonest driver. Similarly, any customer can be defrauded by a driver taking them by a longer route than necessary or by keeping property left in the vehicle.

Members of the public entrust themselves to the driver's care for their own safety and because they expect fair dealing. So we take a serious view of any convictions involving dishonesty.

If you have been convicted of a dishonesty offence, we expect you to have a conviction-free period of **5–10 years** before you apply for a licence.

## Administration of justice

For the licensing service to work effectively, licensed drivers must co-operate with police and our officers.

So we will consider the following matters relevant when deciding whether someone is fit and proper:

- Have they ever failed to surrender to bail?
- Have they ever failed to provide information to a police officer when required?
- Have they ever obstructed a police officer or a local authority officer?

If you have been convicted of one of these offences or a similar offence, you will normally need a conviction-free period of **3–5 years** before you apply for a licence.

## Breach of licence conditions

If you have failed to keep to your licence conditions, we will normally consider issuing a verbal, written or final warning.

Normally we will issue a **verbal warning** for the first complaint; a **written warning** for the second complaint; and a **final warning** for the third complaint (provided in each case we think the complaint is justified).

If an incident is serious enough, we may give a final warning immediately. If we agree that a further complaint is justified, we may suspend or revoke the licence<sup>1</sup>.

<sup>1</sup>

R (application of Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)

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## Complaints against drivers

People often make complaints against licensed drivers. They allege things like refusal to help a disabled passenger, use of abusive language or refusal to accept a fare. We will investigate all complaints and, if the complaint is serious enough, we may ask you to make comments. We may ask you to attend an interview.

We will consider the driver's conduct, taking into account the incident's circumstances and the realities of a trade where members of the public often verbally abuse drivers.

If we are satisfied that the driver's behaviour fell below that of a fit and proper person, we will consider whether to issue a verbal, written or final warning. Normally we will issue a **verbal warning** for the first complaint; **written warning** for the second complaint and a **final warning** for the third complaint (provided in each case that we think the complaint is justified). However, if an incident is serious enough, we may give a final warning immediately. If we agree that a further complaint is justified, we may suspend or revoke the licence

If do not think the complaint is justified, it will remain on the driver's record for 12 months from the date of the complaint letter. This is necessary because our primary focus is protecting the public. What appears to be an unjustified complaint may turn out to be the first of many and a pattern may be established.

If during those 12 months no further complaints are received, we will destroy the complaint. If further complaints are received, we will assess them to see if they establish a pattern of behaviour.

If we find that a complaint is unjustified, we will destroy it and take no further action.

## Pattern of complaints

We will consider the history of all complaints against a driver to assess any patterns. If a pattern is identified, we will consider whether the driver is a fit and proper person to hold a licence. The driver will be able to attend an interview and any pattern can be discussed.

## **Destroying complaints**

If we receive a single complaint but no more complaints of the same type come in during the next 12 months, we will remove the complaint from the driver's record and destroy it.

If a pattern is established, we will keep the complaints on the driver's record until we consider they are no longer relevant to whether the driver is fit and proper.

This length of time will be no longer than is necessary to carry out our functions, in line with the Data Protection Act 1998.

## Appeals

If we refuse, suspend or revoke your licence<sup>2</sup> because we are not satisfied you are a fit and proper person to hold a licence, you can appeal by making a written complaint to the magistrates' court within **21 days of the decision notice**. This means you can write to the court and request an appeal. The court may charge a fee and will explain what to do.

If you are unsuccessful at the magistrates' court, you can then appeal to the crown court.

<sup>3</sup>

R (application of Singh) v Cardiff City Council [2012] EWCH 1852 (Admin)

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## Appendices

### Appendix 1

#### Rehabilitation of Offenders Act 1974

The Act says convictions must be regarded as 'spent' a certain time after the conviction date. However, when you are applying for a licence, convictions are always relevant even if they are spent. Below are some examples.

	<b>Sentence</b>	<b>Rehabilitation period for adult offenders</b>	<b>Rehabilitation period for offenders under 18 at date of conviction</b>
1.	<b>Custodial sentences for life, at her majesty's pleasure or for period over 48 months</b>	<b>Never spent</b>	<b>Never spent</b>
2.	More than 30 months and up to 48 months custodial sentence whether the sentence was suspended or not	7 years beginning on the day sentence (including any licence period) is completed	42 months beginning with the day on which the sentence (including any licence period) is completed
3.	Between 6 months and 30 months custodial sentence whether or not the sentence was suspended	48 months beginning on the day sentence (including any licence period) is completed	24 months beginning with the day on which the sentence (including any licence period) is completed
4.	A custodial sentence of 6 months or less whether or not the sentence was suspended	24 months beginning on the day sentence (including any licence period) is completed	18 months beginning with the day on which the sentence (including any licence period) is completed
5.	A fine	12 months beginning on the day sentence (including any licence period) is completed	<u>6 months beginning with the date of the conviction in respect of which the sentence is imposed</u>
6.	Compensation order	The date on which	The date on which

		the payment is made in full	the payment is made in full
7.	Community Service Order	12 months beginning on the day sentence (including any licence period) is completed	6 months beginning on the day sentence (including any licence period) is completed
.8	A relevant order - i.e. conditional discharge, bound over or probation order, referral order; fit person, supervision and care orders. Hospital order under the Mental Health Acts prohibition or disability Attendance centre orders/remand homes	The day provided for by or under the order as the last day on which the order is to have effect.	The day provided for by or under the order as the last day on which the order is to have effect.
9.	Absolute discharge	no rehabilitation period	no rehabilitation period

The time that must pass in other cases before the conviction becomes 'spent' may vary considerably according to the nature of the offence and other circumstances. **It can be extended, for example, if the person commits another offence during the rehabilitation period.**

<b><u>Policy creation and review</u></b>	
<b><u>Created</u></b>	<b><u>Regulatory Services – Business Compliance Officer [Licensing]</u></b> <b><u>Regulatory Solicitor</u></b> <b><u>2013</u></b>
<b><u>Reviews</u></b>	<b><u>Regulatory Services 2016</u></b> <b><u>Next Review due - 2019</u></b>