



# 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 a vehicle operator or proprietor.

2019-2024

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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>caution</u>	An acceptance of guilt of an offence without a conviction
<u>conviction</u>	A court decides someone is guilty of a crime.
<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 knowledge of the district</li><li>• are healthy- i.e. meets Group II medical requirements</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>licensee</u>	A person who holds a hackney carriage drivers licence, private hire drivers licence or private hire operator's licence issued by St Albans District Council.
<u>mitigating circumstances</u>	The circumstances of a conviction, 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 (be hailed).
<u>proprietor</u>	The person in possession of a vehicle licence.
<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 take further action on 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, driver and private hire operators in the District comes from a number of laws:

- Local Government (Miscellaneous Provisions) Act 1976
- Town Police Clauses Act 1847 (as amended)
- Road Safety Act 2006 (Sections 52-53)
- Immigration Act 2016
- Deregulation Act 2015
- Equality Act 2010

## 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

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 regardless of how old it is.

**All** types of criminal offences can be relevant. So we take into account **all** convictions, regardless of your age at the time of the offence, sentence or the type of offence. You must declare all motoring and criminal convictions on your application form and complete a disclosure and barring service 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 you to complete a Disclosure and Barring Service 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 enhanced "Other Workforce" level.

Any person arriving in the UK if not in the country for five years needs a certificate of good conduct. If any applicant has, from the age of 10 years, spent six continuous months or more living outside the United Kingdom, evidence of a criminal record check (DBS or equivalent) from the country/countries covering the relevant period will be required.

## **Right to Work**

The UK Government has changed the law regarding private hire driver, hackney carriage driver and private hire operator licences with effect from 1 December 2016. These changes will affect you if:

- you apply for a driver's or operator's licence after 1 December 2016; or
- you already hold a driver's or operator's licence and you apply to renew your licence after 1 December 2016.

The legislation does not affect applications for vehicle licences.

### **What do the changes mean?**

The changes mean that, from 1 December 2016, we as a licensing authority have a legal duty to ensure that driver and operator licences are only issued to applicants who have the right to hold a licence in the UK.

In order to comply with this duty we have to check that all applicants after 1 December 2016 have the right to work in the UK. This law applies to everyone regardless of where they were born; how long they have lived in the UK and, if they already hold a driver or operator licence, or for how long they have held that licence.

## How the changes will affect you

For applications received after 1 December 2016 you will be required to provide original and valid evidence of your right to work in the UK **before** your licence will be issued. Should you fail to do so, your licence will not be issued and your application will not be processed further. **It is your responsibility to ensure that you have valid documentation with evidence of your right to work in the UK.**

## Documents

Only certain forms of documentation are acceptable. The list of acceptable documents can be found here:

<https://www.gov.uk/government/publications/right-to-work-checklist>

If you are a British Citizen, all you need to produce is your passport. For British Citizens who do not have British passports, there are other documents which you can produce instead. These are contained in List A on the right to work checklist.

If you have restrictions on your right to work in the UK, you must produce one of the documents in List B on the right to work checklist.

Please note that you must provide the original. We will **not** accept a photocopy.

If you do not possess any of the mentioned forms of documentation, you must let us know as soon as possible. It is your responsibility to make sure that you can provide one of the acceptable forms of documentation, and you should take steps to obtain the necessary documentation. If the documentation you provide demonstrates that you have a permanent right to work in the UK you **will not** be required to produce this on future applications.

In other cases, you will be required to provide your documentation when you next apply to renew your licence, so that your documentation can be checked again. You may be required to produce this evidence earlier if your right to work in the UK is limited to a shorter period.

As part of these changes from the Home Office it is also important to highlight a change with regard to a visa in an expired passport.

If you currently have a visa that confirms your stay in the UK that is attached to an expired passport, this is **no longer accepted**. As a result you will need to apply to the Home Office in order to correct this before being issued with a driver's or operator's licence.

## Best Practice Guidance

The Department for Transport (DfT) has national responsibility for hackney carriage and private hire legislation in England and Wales. As a result of the Office of Fair Trading producing a report on the UK hackney carriage and private hire trade, the DfT was asked to produce best practice guidance for local licensing authorities. This policy has taken into account that Guidance (2010)

The Department for Transport's advice in the Taxi and Private Hire Vehicle Licensing Best Practice Guidance can be found here:

<https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>

This document recognises that licensing authorities may reach their own decisions both on overall policies and on individual licensing matters, in the light of their own circumstances.

We have taken account of the DfT guidance and the Institute of Licensing (IoL) guidance to develop this policy. The IoL guidance can be found on our website:

<https://www.stalbans.gov.uk/business/Business-in-St-Albans/StAlbans-Council-Services-for-Businesses/BusinessLicences/taxi-licences/>

This policy also takes account of the legislative basis of the Council's taxi licensing powers, including those contained in the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976, and the Immigration Act 2016.

## How will we use the policy?

Our overriding aim when carrying out our functions relating to the licensing of hackney carriage or private hire drivers, vehicle proprietors and operators, must be the protection of the public and others who use (or can be affected by) hackney carriage and private hire services. Public protection is at the forefront of our minds when determining whether an individual is considered a "fit and proper person" to hold a licence.

This document is intended to provide guidance on determining suitability, taking into account the character of the applicant or licensee. It sets out how we will review the history of the applicant or licence holder and its relevance to their 'fitness and propriety' or 'character'. As with any guidance it provides a starting or reference point from which decisions can be made taking into account the particular merits of each case.

The relevant legislation provides that any person must satisfy us that they are a fit and proper person to hold a licence. This is the test that we will apply once an applicant has met all other requirements.

Given the important function of the licensing department to protect the public, any requirement should be set at the highest level, subject to the exercise of discretion. We will consider all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.

Each case will always be considered on its merits having regard to the policy, and we can depart from the policy where we consider it appropriate to do so. This will normally happen where we consider that there are exceptional circumstances which warrant a different decision. This approach was endorsed by the High Court in *R (on the application of Nicholds) v Security Industry Authority* [2006] EWHC 1792 (Admin)



## Why do we look at convictions?

The licensing process places a duty on local authorities to protect the public. Given the nature of the role, it is paramount that those seeking a living in the trade meet the required standards. As previous offending behaviour can be considered as a predictor in determining future behaviour as well as culpability. It is essential we consider all relevant factors including previous convictions, cautions and complaints and the time elapsed since these were committed.

Where we become aware of any issues including previous criminal convictions, any arrest, any charges, inappropriate behaviour for a hackney carriage or private hire driver or significant comments on any DBS check, consideration will be given to each licence holder's suitability for licensing against the following criteria (in no particular order):

- nature of the offence/conduct/charge etc.
- circumstances in which the offence/conduct/charge etc. was committed
- timely notification to the Council of offence/conduct/charge
- circumstances of the individual concerned
- subsequent periods of good behaviour
- overall conviction/behaviour history
- sentence imposed by the court
- seriousness of the offence/conduct/charge etc.
- any other character check considered reasonable (e.g. personal references)
- taking all the above issues into account, together with any other relevant issues, whether the protection of the public may be at risk

### Types of convictions

Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime.

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 your character. We will bear in mind that a caution is given where there is *sufficient evidence* for a prosecution. An admission of guilt is required before a caution can be issued. Accordingly cautions will be assessed in the same way as a conviction. Fixed penalties and community resolutions will also be considered in the same way as a conviction. This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

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.

In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, we will decide what action to take in the light of these guidelines.

Where an applicant/licensee is convicted of an offence which is not detailed in this Policy, we will take that conviction into account and use these guidelines as an indication of the approach that should be taken.

### **Number of convictions**

Whilst it is possible that a licence holder may have a number of previous convictions that, individually, meet the guidelines below, the overall offending history must be considered when assessing the licence holder's suitability to continue to be licensed. A series of offences/behaviour over a period of time is more likely to give cause for concern than an isolated minor conviction/demonstration of unacceptable behaviour.

Obviously some discretion can be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. We are looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not normally be granted or renewed.

### **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:

- vulnerable adults

- elderly people
- unaccompanied children
- disabled people
- those who have had too much to drink
- lone women
- tourists including visitors from abroad
- You may also carry 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 behind by passengers 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.

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 as our priority is always to protect the public. If you have to wait a while to get a licence, we hope you will value it more highly.

## 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. If you lodge an appeal, our decision will not take effect until the appeal is determined.

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 tell the driver in writing at the time of the revocation or suspension. The letter will explain why we have used this section in your case. This takes effect as soon as we notify you, regardless of whether or not you appeal.

## Medical

Drivers are required to demonstrate compliance with the medical standards for a group 2 licence and will have to provide a medical certificate, our prescribed form, to this effect.

This should be no older than 3 months at the time of the application. All drivers are required to provide a certificate signed by their registered medical practitioner to declare whether or not they are physically fit, in line with the DVLA Group 2 medical standards, to be the driver of a hackney carriage or private hire vehicle. A medical certificate must be submitted at first application, every 6 years up to 60 years of age, every 3 years up to 70 years of age, and annually thereafter. Where an existing licensed hackney carriage driver applies to obtain a private hire licence, or vice versa, an additional medical certificate will not be required.

We will have regard to the published Department of Transport “best practice” guidance: <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance> (as updated from time to time) when considering the medical fitness of new applicants with insulin dependent diabetes or existing licence holders diagnosed with insulin dependent diabetes during the duration of their licence.

Where there is reasonable doubt over a driver’s fitness, we will require the driver to undertake a medical examination by a registered medical practitioner at any time as specified by us. The applicant is responsible for the payment of all fees required for any medical examination.

If there is reason to suspect alcohol/drugs misuse or dependency, a specialist medical examination and report may be required to ensure that the applicant meets the DVLA Group 2 medical standards in relation to alcohol/drugs misuse and dependency.

### **Policy on exempting drivers on medical and physical condition grounds.**

The requirements of Section 165, which places a duty on a driver of a designated wheelchair accessible vehicle to take a wheelchair user, of the Equality Act 2010<sup>1</sup> do not apply to drivers who are issued with a medical exemption certificate who display the prescribed notice in their vehicle.

Generally, we will seek to consider the contents of a drivers exemption application (completed by the driver and their doctor) when a driver requests to be granted the required exemption, confirming that the driver is not able to provide this service and should be granted an exemption certificate. Any charges associated with additional GP reports must be met by the driver and will not be reimbursed by us.

We are also able to issue certificates to drivers who are exempted by their doctors under strict medical grounds from the duty to carry assistance dogs. Exemption certificates will only be issued when written requirement for this exemption is provided by the driver’s registered GP practice. Any charges associated with additional GP reports must be met by the driver and will not be reimbursed by us.

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<sup>1</sup> Information on the Equality Act 2010 can be found on page 26

## **Safeguarding**

We are committed to ensuring the safety and welfare of all vulnerable persons including children and young people, to whom we provide services directly or indirectly and with whom we come into contact.

Drivers are on the frontline, often coming into contact with people who may be vulnerable, for example because they are young, have learning difficulties, be suffering ill health, or be elderly or who have drunk to excess on a night out, or who may have taken an illegal substance. Such persons may be travelling alone or accompanied by another person.

Sadly there are persons who prey on precisely these people and drivers are often best placed to raise concerns over what they hear or see occurring whilst in their vehicles. Drivers may also have concerns over the vulnerability of passengers who are being dropped off at locations in or out of the district. For example drivers in other authorities have reported concerns that young persons are being dropped off at a particular guest house, hotel or house and are either distressed before being dropped off or after they have been picked up as a fare paying passenger.

Information is provided on our website in relation to safeguarding and applicants and licensees have a duty to report matters if they suspect harm.

### **When you have concerns regarding a child**

If you are worried about a young person, you must do something. There are specialists who can advise you on what to do next.

Children Schools and Families reporting line for Social Services – 0300 123 4043.

If you think a child or young person is in immediate danger call 999.

### **When you have concerns regarding an adult**

Adults at risk reporting line for Social Services – 0300 123 4042.

For up to date information you should visit the safeguarding section of St Albans City and District Council website: <https://www.stalbans.gov.uk/community-and-living/community-safety/safeguardingchildrenandadults/>

## 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.

## Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a fit and proper person to be granted or retain a licence.

### Drink driving/driving under the influence of drugs/using a hand-held telephone or hand held device whilst driving

Where an applicant has been convicted for drink driving or driving under the influence of drugs, a licence will not be granted until at least **7 years** have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Where an applicant has been convicted for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least **5 years** have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.

## Other motoring offences

A minor traffic or vehicle related offence is one which **does not** involve driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in death or injury to any person or damage to any property (including vehicles).

Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least **5 years** have elapsed since the completion of any sentence imposed.

A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in death or injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any

offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least **7 years** have elapsed since the completion of any sentence imposed.

### **Hackney carriage and private hire offences**

Where an applicant has been convicted for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use), a licence will not be granted until at least **7 years** have elapsed since the completion of any conviction imposed.

### **Vehicle use offences**

Where an applicant has been convicted for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles), a licence will not be granted until at least **7 years** have elapsed since the completion of any sentence imposed.

## Motoring Offences

OFFENCE	EXCLUSION PERIOD FOR LICENCE DRIVER/NEW APPLICANT i.e. period free of convictions before a licence will be considered
<p><b>Minor Traffic Offences-</b> 7 or more points on the DVLA licence for minor traffic or similar offences</p> <p>Disqualification from minor traffic or similar offences</p>	<p><b>DVLA Licence free from conviction for 5 years</b></p> <p><b>Revocation- then 5 years free from conviction</b></p>
<p><b>Major Traffic Offences</b> A major traffic or vehicle related offence Disqualification from major traffic or vehicle related offence</p>	<p><b>Suspension/Revocation- 7 years</b></p> <p><b>Suspension/Revocation- 7 years</b></p>
<p><b>Drunkenness/Drugs with Motor Vehicle</b></p>	<p><b>7years</b></p>
<p><b>Motor Vehicle Insurance</b> Driving without valid insurance</p> <p>Whilst working in a hackney carriage or private hire</p>	<p><b>7 years</b></p> <p><b>Immediate Revocation then 7 years</b></p>
<p><b>‘Totting up’ under section 35 Road Traffic Offenders Act 1988</b></p> <p>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. These points can be gained from major <b>and</b> minor traffic offences.</p> <p>If the Court allows an ‘exceptional hardship’ so that they do not disqualify you, you will retain your DVLA licence with 12 penalty points on the licence</p>	<p>If you have been disqualified under totting up, we will normally refuse a licence until you have had <b>7 years</b> free of convictions.</p> <p>We will still normally refuse a licence and will require <b>7 years</b> free of convictions.</p>



## Drug offences

We take a serious view of any drug related offence because taking drugs and driving poses an obvious risk to public safety. Given the ease with which a vehicle can be used to assist the supply of drugs, any applicant who has convictions for the supply of drugs will cause us considerable concern. The nature and quantity of the drugs, whether for personal use or supply are issues which we will consider.

Due to the nature of a driver's involvement with the public, a licence will not normally be granted where the applicant has been convicted for an offence related to the supply or connected with possession with intent to supply, import or production of drugs until a period of at least **10 years** from sentence has past.

### Possession

Where an applicant has been convicted for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least **5 years** have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of **5 years** free from drug taking after detoxification treatment. Any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

## **Offences involving children**

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

One of the aims of this policy is to protect the public and safeguard children and the vulnerable.

Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person) receives “something” (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities. In all cases, those exploiting the child/young person have the power over them by virtue of their age, gender, intellect, physical strength and/or economic or other resources.

Children and young people may be taken to public or private venues, rooms, hotels or houses for the purpose of sexual abuse.

All drivers are expected to report any suspicion or concerns that a child or young person is being transported for the purposes of sexual abuse. Where a driver becomes aware or concerned that they or other drivers are transporting a young person or a number of young people to specific premises or venues either accompanied or alone on a regular basis and they suspect the young person may be subject to exploitation they must report their concerns to Hertfordshire Police.

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

A licence will not be granted where an applicant has been convicted for any CSE related offence.

## **Sexual offences**

As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences will cause us concern. All sexual and indecency offences will be considered as serious.

Where an applicant has been convicted for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted. In addition to the above, we will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

## 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.

Where an applicant has been convicted for an offence of violence (such as ones listed below), or connected with **any** offence of violence, we will normally refuse until at least **10 years** have elapsed since the completion of any sentence imposed.

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assaulting Police
- Common assault which is racially aggravated
- Violent disorder
- Resisting arrest
- Racially-aggravated criminal damage
- Racially-aggravated offence
- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction of a Police officer
- Criminal damage
- **Or any similar offences where the element of the offence is one of threats of violence or actual violence, or offences of public disorder or threatened public disorder (including attempt or conspiracy to commit the offences listed above or similar)**

Licensed drivers have close regular contact with the public so an applicant or current driver involved in violent offences raises an obvious risk to the public.

### Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person a licence will not be granted.

## **Terrorism offences**

If an applicant has been convicted of Terrorism offences or any similar offences (including any attempt or conspiracy to commit), this will give serious concern as to whether the person is fit to carry the public and a licence will not be granted.

## **Possession of a weapon**

Where an applicant has been convicted for possession of a weapon or any other weapon related offence, we will normally refuse a licence until **7 years** have elapsed since the completion of any sentence imposed

## **More than one offence**

Notwithstanding the time periods listed above, we will usually refuse a licence if an applicant has more than one conviction in the last **10 years** for an offence of a violent nature.

## Discrimination

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

It is against the law to discriminate against anyone because of:

- age
- being or becoming a transsexual person
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion, belief or lack of religion/belief
- sex
- sexual orientation

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.

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. Crimes based on hostility to age, gender or appearance can also be hate crimes.

Hate crime can take many forms including but not limited to:

- 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.

If an applicant has been convicted for any discrimination offence we will normally refuse until **7 years** have elapsed since the completion of any sentence imposed.

## Dishonesty

A licensed private hire or hackney carriage driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused.

Licence holders also have access to the names and addresses of their customers and their daily movements. Overseas visitors may not be familiar with the currency or costs of journeys and may be vulnerable to a dishonest driver. Nationally it has been known for drivers to pass information on vulnerable persons to others for later abuse or to abuse vulnerable persons, including taking money from such persons. For all these reasons, a serious view is taken of any conviction involving dishonesty.

Where an applicant has been convicted for any offence of dishonesty, or any offence where dishonesty is an element of the offence, we will normally refuse to licence until at least **7 years** have elapsed since the completion of any sentence imposed.

### **More than one offence**

We will normally refuse a licence if an applicant has been convicted for more than one dishonesty offence. Applicants or existing licence holders that are found to have intentionally misled the Council, or lied as part of the application process, will normally be refused.

## 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.

The licensee shall be guilty of an offence if they:

- Wilfully obstructs an authorised officer acting in pursuance of Part II of the 1976 or the Town Police Clauses Act 1847;
- Fails to comply with any requirements made to them by an authorised officer;
- Without reasonable cause fails to give an authorised officer any other assistance or information which they may require for the performance of their functions.

Where an applicant has been convicted for one of these offences or a similar offence, we will normally refuse to licence until at least **5 years** have elapsed since the completion of any sentence imposed.

## Police investigations

From time to time the police will notify us to advise that a licensed driver is under police investigation. We will assist the police with their investigations and provide them with any relevant information.

Where information that a driver is currently being investigated comes to the attention of the Council, we will usually await the outcome of the investigation to make a decision on the driver's licence. However we may suspend or revoke the licence of the individual immediately if there is potentially high risk to the public.

We are also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police.



## **Breach of driver, vehicle and operator licence conditions**

There are a number of options that shall be considered following the identification of an activity for which the necessary licence, notice or registration has not been applied for or the Licensee has not complied with the conditions of a licence issued by the Council or byelaw made by the Council, or this policy or other legislation has been contravened.

One or more of the following may be deemed appropriate:

- Verbal advice
- Inspection
- Warnings (verbal/written/final written)
- Suspension
- Revocation
- Refusal of future licence application or restriction of such licence by imposition of conditions
- Formal Caution
- Prosecution

## **Compliance with legislation**

Drivers, where applicable, are expected to comply with the provisions of the Town Police Clauses Act 1847, the Local Government (Miscellaneous Provisions) Act 1976, the byelaws made in respect of hackney carriages and conditions relating to the private hire drivers licence, vehicle licences and private hire operators.

They are also expected to comply with Section 37 of the Disability Discrimination Act 1995 and Equality Act 2010 in respect of assistance dogs and wheelchair users.

It is prohibited for anyone (driver or passenger) to smoke within a hackney carriage or private hire vehicle at any time. Appropriate signage must be displayed inside the vehicle in accordance with the Health Act 2006.

## Equality Act 2010

The Equality Act 2010 has implications for both hackney carriage and private hire operators and drivers in respect of disabled access to vehicles.

### Duties to assist passengers in wheelchairs (sections 165 to 167 of Equality Act 2010)

Section 165 places a duty on a driver of designated wheelchair accessible hackney carriages and private hire vehicles.

The duties are:

- Not to refuse to take the passenger while in the wheelchair
- Not to make any additional charge for doing so if the passenger chooses to sit in a passenger seat;
- To take such steps as are necessary to ensure that the passenger is conveyed in safety and reasonable comfort; and
- To give the passenger such mobility assistance as is reasonably required to enable the passenger to get in or out of the vehicle and to secure/convey the wheelchair as appropriate.

Section 167 of the Equality Act allows licensing authorities to maintain a list of “designated vehicles”, that is, a list of wheelchair accessible hackney carriages and private hire vehicles licensed in their area. The consequence of being on this list is that the driver must undertake the duties in section 165.

Following the full commencement of sections 165 and 167 of the Equality Act 2010 on 6th April 2017, we maintain a statutory list of wheelchair accessible vehicles (i.e. designated vehicles). Accordingly, drivers of these vehicles are required to carry passengers in wheelchairs, provide assistance to those passengers, and not charge extra to do so.

It is an offence to fail to undertake the duties in section 165 of the Act. Where an applicant has been convicted of one of these offences or a similar offence, we will normally refuse until at least **7 years** have elapsed since the completion of any sentence imposed.

### Assistance dogs (sections 168 to 171 of Equality Act 2010)

Section 168 places a duty on a driver of a private hire or hackney carriage to carry guide and other assistance dogs at no extra cost.

The duties are:

- To carry the disabled person’s assistance dog and allow it to remain with that person
- Not to make any additional charge for doing so

The driver of a private hire or hackney carriage vehicle commits an offence by failing to comply with a duties imposed by this section of the equality act.

Where an applicant has been convicted of one of these offences or a similar offence, we will normally refuse until at least **7 years** have elapsed since the completion of any sentence imposed.

## **Abuse of drivers by members of the public**

We strongly disapprove of any form of abuse, discriminatory or otherwise, directed at drivers by members of the public. However, we are not the appropriate authority to investigate such incidents. We will only investigate when these incidents are part of a counter allegation following a complaint about a driver. In that situation information will be obtained from all parties prior to a decision being made on the appropriate action for us to take.

Normally incidents of this nature should be reported to the Police using 101 so that they can be investigated. We will assist the police with regards to such investigations as far as possible.

## **Complaints against drivers and operators**

People often make complaints against licensed drivers and operators. 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 the licensee to make comments or ask the licensee to attend an interview.

We will consider the licensee'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 licensee's behaviour fell below that of a fit and proper person, we will consider whether to issue a verbal, written or final warning, 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 revoke the licence.

All complaints will remain on the licensee's record together with the licensee's version of events. 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.

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

We consider it is necessary to retain complaints on file as long as a licensee remains licensed (and for seven years after the licence lapses). This is in compliance with the GDPR data protection principles and the council's disposal schedule.

For existing drivers where we receive more than three complaints from customers on their lack of customer care, overcharging or poor driving, they are required to undertake additional council approved training at their own expense at the next available course.

For existing operators where we receive more than three complaints from customers on their lack of customer care or disability/equality issues, they are required to undertake additional council approved training at their own expense at the next available course.

## Appeals

Where licensing officers have delegated powers to grant licences, they will utilise this policy when making a decision to grant a licence. Whilst officers will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, officers may depart from the guidelines.

Any person aggrieved by any conditions specified in the licence may appeal to the Magistrates' Court within **21 days of the decision notice**.

If we refuse, revoke or suspend your licence 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.

St Albans Magistrates' Court  
C/O Luton Magistrates' Court  
Stuart Street  
Luton  
LU1 5BL

[BD-LutonMCEng@justice.gov.uk](mailto:BD-LutonMCEng@justice.gov.uk)  
Enquiries: 01223 376000

*The details above were correct on 15<sup>th</sup> October 2018. It is your responsibility to check the contact details before lodging an appeal.*

## 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.

##### Adult

	Sentence	Rehabilitation period
1.	2½ years' (30 months') imprisonment and over whether the sentence was suspended or not	Never spent
2.	6 months' imprisonment/youth custody and over but under 30 months whether or not the sentence was suspended	10 years
3.	Under 6 months' imprisonment/youth custody whether or not the sentence was suspended	7 years
4.	A fine, compensation or community service order	5 years
5.	A conditional discharge, bound over or probation order. (Also includes fit person, supervision and care orders.)	1 year or period of probation sentence, whichever is longer
6.	Absolute discharge	6 months
7.	Disqualification, disability or prohibition	Period of sentence unless a longer period as above (e.g. disqualification and a fine – 5 years)
8.	Remand home/ attendance centre orders	1 year after the order expires
9.	Hospital order under the Mental Health Acts	The period of the order plus a further 2 years after the order expires (at least 5 years from the conviction date)

##### Youths

For applicants aged under 17 on the conviction date, the rehabilitation period is halved for items 2, 3 and 4 above.

Sentences that can be passed only on young offenders remain **fixed** and cannot be halved, as follows:

	<b>Sentence</b>	<b>Rehabilitation period</b>
10.	Borstal	7 years
11.	6 months' to 2½ years' detention in a place determined by the Secretary of State	5 years
12.	6 months' detention and less as above	3 years
13.	Detention centre orders	3 years

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 created</u></b>	<b><u>2007</u></b> <b><u>Regulatory Services – Business Compliance Officer</u></b> <b><u>[Licensing]</u></b> <b><u>Regulatory Solicitor</u></b>
<b><u>Review</u></b>	<b><u>2013, 2016, 2018,2024</u></b>