

**TAXI LICENSING SUB-COMMITTEE
GUIDELINES**

**APPLICATIONS FOR HACKNEY CARRIAGE
DRIVERS, PRIVATE HIRE DRIVERS AND
PRIVATE HIRE OPERATORS LICENCES (AND
THE LICENCES OF EXISTING HOLDERS)**

Revised: April 2010

TAXI LICENSING SUB-COMMITTEE'S GUIDELINES IN CONSIDERING APPLICATIONS FOR HACKNEY CARRIAGE DRIVERS, PRIVATE HIRE DRIVERS AND PRIVATE HIRE OPERATORS LICENCES

REFERRAL TO COMMITTEE

- A The Assistant Director (Environmental Health & Trading Standards) has delegated powers to issue licences in respect of hackney carriage drivers, private hire drivers and private hire operators.
- B The Assistant Director (Environmental Health & Trading Standards) only has power to refuse such licences where an applicant has failed his knowledge test or is currently disqualified from driving. The Assistant Director (Environmental Health & Trading Standards) only has the power to revoke an existing driver's licence where the licence-holder is disqualified from driving and no longer holds a licence under Part III of the Road Traffic Act 1998 authorising him to drive a motor vehicle.
- C Subject to D below, the Assistant Director (Environmental Health & Trading Standards) **must** refer to an appropriate Sub-Committee all applications or changes in the circumstances of an existing licence-holder which show:
- (i) any offence of dishonesty, indecency, violence drunkenness or involving the use of drugs, or the carriage of drugs in vehicles; or
 - (ii) any traffic offences in the past three years, if the total number of penalty points exceeds six; or
 - (iii) a traffic offence, in the past ten years, which resulted in disqualification from driving, or
 - (iv) any offence under hackney carriage or private hire licensing legislation; or
 - (v) that in any rolling 12 month period, a licensed vehicle has been stopped and/or inspected on two or more occasions to determine its condition to remain on the road, and has been suspended as a result of such inspection. Inspections for this purpose are not limited to those undertaken solely by the Council's Enforcement Officers but also those undertaken by the Police or VOSA, or a combination of any of the three.

The Assistant Director (Environmental Health and Trading Standards) **may** refer to an appropriate Sub-Committee any applications or changes in the circumstances of licence-holders which show:

- complaints or allegations which reflect upon the person's conduct or behaviour;
- any breach of licensing conditions

'Emergency' meetings may be convened within a shorter timescale than usual where the circumstances warrant the matter to be dealt with on such a basis.

D The Assistant Director (Environmental Health & Trading Standards) is authorised to approve applications for new licences or renewals in cases where criminal and driving convictions are all more than 10 years old, except in the following circumstances when the matter must be referred to a Sub-Committee:

- where the applicant has a conviction for an indictable only offence;
- where the applicant has a conviction for a serious sexual offence; or
- where the convictions are all more than 10 years old and fall outside the above but it is felt that the circumstances justify refusal.

ROLE OF THE COMMITTEE

A For the purposes of its licensing functions, the Sub-Committee acts as an impartial quasi judicial Licensing Authority. Its role is to determine whether licences should be granted, renewed or in cases where a licence holders conduct falls below the standards expected by the Authority, to revoke, suspend and/or refer for training, or warn such licence holder.

B In hearing matters, sufficient opportunity should be given to the applicant, and to the Council's licensing representative, to present their cases fully.

C Both the applicant/licence holder and the Licensing Department's representatives may ask questions of each other, or may be asked questions by the members of the Sub-Committee.

D Questioning should be non-adversarial. It must be remembered that the purpose of the hearing is to hear both sides version of events about the circumstances giving rise to the matter or complaint. If a person is found to be wanting in the standards expected of them, then the time to bring this to their attention is when the Sub-Committee's decision is made known, i.e. not before it has reached a determination on the facts and evidence.

E The Sub-Committee should not discuss the case in front of either

the applicant/licence holder or the Licensing Department's representatives. Any such discussions should be in closed session.

GENERAL GUIDANCE AND POLICY

- | | | |
|---|---|---|
| Must be 'Fit and Proper' | 1 | A licence shall not be granted to an applicant unless the Committee is satisfied that the applicant is a 'fit and proper person' to hold such a licence. |
| Persons refused in the past | 2 | <p>Persons who have been refused licences in the past, on the grounds that they are not fit and proper persons, are not debarred from being granted licences. The Sub-Committee, however, must be able to justify why that person is <u>now</u> considered to be a fit and proper person to hold such a licence when previously they were not. To do this it will be necessary to look at the reasons why the applicant was initially refused and then consider what has occurred since to indicate that the applicant may now be fit to hold a licence.</p> <p>The time lapse between the applications and any measures that the applicant has put in place between the last appearance and the current appearance (e.g. undertaken training, or rehabilitation, or can demonstrate an increased awareness of the need for accountability) may be relevant considerations to take into account. This list is not exhaustive.</p> |
| Persons granted in the past | 3 | Similarly, those persons who have been granted licences in the past have been considered to be fit and proper persons to hold a licence. To refuse a renewal of such a licence, there must be a relevant and significant change in circumstances, or new material evidence presented to the Sub-Committee to justify refusal. |
| Meaning of 'Fit and Proper' | 4 | The term 'fit and proper' person refers only to whether that person is fit and proper to drive a hackney carriage or private hire vehicle, or to operate private hire vehicles. |
| | 5 | There is no definition of the term 'fit and proper'. This is for the Sub-Committee to determine. However, regard should be had to the applicant's driving standards and experience, his character and any relevant previous convictions. Regard should also be had to the medical fitness of an applicant/holder to hold a drivers licence, irrespective of the absence of any antecedent conduct or conviction history. |
| Treat each application on its merits | 6 | Each application for a licence should be considered on its own merits. |

**Public Safety
Paramount**

- 7 The overriding consideration shall always be the safety and protection of passengers and the general public. All other considerations including unemployment, domestic or financial circumstances, shall be secondary to the public safety factor.

Driving Experience	8	As required by law, no application for a drivers licence shall be granted unless the applicant has held a full driving licence for at least one year. In addition, applications should not be granted unless the applicant can demonstrate that they have adequate driving experience.
Conduct of Licence Holder	9	Conduct of licence holders is relevant in considering the imposition of sanctions on their licence. For this reason, complaints by passengers or the general public are taken seriously where they show that a licence holder's conduct has fallen below the standard expected of him by the Council (e.g. unreasonable refusal to carry a passenger, to assist wheel-chair bound passengers, overcharging, rudeness, etc.). This list is not exhaustive.
Current Licence Holders	10	<p>Where a licence holder is found to be no longer a fit and proper person to hold a licence, a licence <u>must</u> be revoked. If, however, it is considered that a person is still a fit and proper person to hold such a licence but that his conduct has fallen below the standard required by the Licensing Authority, the Sub-Committee may decide to suspend him for such a period of time as it considers fit, and/or refer him for BTEC training, or issue him with a warning.</p> <p>Where referral for training is the sanction imposed, failure to undertake the training within the stipulated time, without reasonable excuse, may result in the imposition of one of the more severe sanctions (i.e. suspension or revocation) by the Sub-Committee.</p>
Suspension, Training and Warnings	11	<p>The aim of the suspension of a licence, or the referral for BTEC training, is to bring a licence holder who is falling/has fallen below the standard required back into line. It provides an opportunity for reflection by the licence holder and to assess their conduct against acceptable standards.</p> <p>If, depending on the circumstances of the matter, the Sub-Committee considers that a warning would be sufficient to enable reflection and self assessment of conduct, then a warning should be preferred to suspension.</p> <p>Where a licence holder has undergone a course of training relatively proximate to (i.e. within 9 months of) the trigger event giving rise to the matter before the Sub-Committee, a warning may be regarded as an</p>

inappropriate and/or ineffectual sanction.

Where on the strength of the facts and/or evidence before it, the Sub-Committee is of the view that the licence holder presents a threat to public safety, in deciding to suspend or revoke a licence, the Sub-Committee may also consider whether the suspension or revocation should be with immediate effect. This does not affect the licence holders right to lodge an appeal against the decision. Where this provision is invoked, it is important that the reasons for regarding the licence holder to be a threat are separately recorded, in addition to the substantive decision.

Complaints of Licence Holders' standard, conduct or behaviour

- 12 Where evidence of complaints about the standards, conduct or behaviour or other allegations which reflect upon a licence holder are brought before the Sub-Committee, and the licence holder disputes the allegations, the Sub-Committee should first consider the extent to which the complaints or allegations are substantiated on the facts made known to it.

Reliance on evidence

- 13 In hearing evidence, the Sub-Committee is not bound by the strict rules of evidence. Care, however, should be taken in determining the relevance and admissibility of any evidence put before it. The standard of proof is the 'balance of probability,' rather than 'beyond reasonable doubt'.

Where evidence has been presented which is later deemed to be irrelevant or inadmissible, the Sub-Committee should take care to exclude such from its mind when making its decision.

- 14 The Sub-Committee should be careful to attach the correct weight to evidence presented to it. An independent witness with nothing to gain is more likely to give an unbiased account than someone who has a personal interest in the case. Corroborative evidence will add weight. If witness evidence (i.e. a statement) is presented without calling the maker, then care should be taken in relying upon such evidence in isolation, without more.

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

- | | | |
|--|---|---|
| Convictions previously considered where no change of circumstances | 1 | Applications for the renewal of hackney carriage driver's licences, private hire vehicle driver's licences and private hire operators licences shall not be refused on the grounds of previous convictions, where the convictions have been previously disclosed, with the applicant having been granted a licence, and no further convictions have occurred. |
| Correctness of conviction not to be questioned | 2 | <p>Where evidence of previous convictions are presented to the Sub-Committee, the Sub-Committee <u>must</u> accept its validity (i.e. that the applicant was correctly convicted). Subject to this, the Sub-Committee may, however, consider the circumstances of the offence but only in order to determine the level of its severity as a guide to the appropriate sanction, if any, which may be merited.</p> <p>The sentence imposed by the Court may be relevant in determining its seriousness. It is, however, important to note that in imposing a fine, the court will take account of the offender's financial ability to repay and therefore the mere fact that a fine was imposed should not be regarded as indicative of the lack of seriousness attached to the offence by the court.</p> |
| Consideration of spent convictions | 3 | The Sub-Committee can consider convictions which are usually regarded as spent convictions for the purpose of The Rehabilitation of Offenders Act 1974. <u>This only applies however to applicants for hackney carriage and private hire vehicle drivers' licences i.e. not to operators.</u> |
| | 4 | Such convictions can be considered by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, which makes it clear that licence drivers' and applicants for hackney and private hire drivers' licences with [relevant] convictions do not enjoy the benefit of their convictions ever being 'spent', for licensing purposes. |
| Licences not normally to be granted where convictions for serious crime | 5 | A person with a conviction for serious crime (i.e. an indictable offence) need not be permanently barred from obtaining a licence, but should be expected to remain free of conviction for between three to five years, depending on the circumstances, before an |

**within the last
3-5 years**

application may be granted. Some discretion may be appropriate if the offence is isolated **and** there are mitigating circumstances.

6 The following examples afford a general guide on the action to be taken where convictions are admitted or disclosed:

(a) Minor Traffic Offences

Meaning

(i) Minor traffic offences are offences where the statutory penalty does not allow for a period of imprisonment. They include obstruction, speeding, waiting in a restricted street, failing to comply with traffic regulations.

Considerations

(ii) Convictions for minor traffic offences should not prevent a person being considered for a licence.

(iii) In considering minor traffic offences, the Sub-Committee should take into account the number, the type and the frequency of the offences committed. Cumulation of offences in this way should reflect on the applicant's driving standard and may result in refusal (of a new application) or suspension (of an existing licence holders' licence). Without such aggravating circumstances, a warning or referral for training should ordinarily be sufficient.

**Effect of
disqualification**

(iv) Where several minor traffic offences have resulted in the applicant being disqualified from driving for a period of time, this should be taken as reflecting seriously on the applicant's driving standard. Regard should be had to the length of time that has passed since the restoration of a driving licence, and the holders driving standard since its return.

(v) If a licence is granted to a previously disqualified driver in (iv) above, at least a warning should normally be issued as to future conduct. It may also be appropriate to stipulate a fixed time limit within which the mandatory NVQ training must be undertaken if a licence is issued (or if an existing driver is permitted to retain his licence having pleaded mitigating circumstances). Failure to undertake the training within that time, without reasonable excuse, may result in the imposition of one of the more severe sanctions (i.e. suspension or revocation) by the Sub-Committee.

(b) Major Traffic Offences

Meaning

- (i) Major traffic offences are offences where the penalty could include a term of imprisonment. They include reckless driving, driving without due care and attention, causing death by reckless/dangerous driving, failing to provide a specimen of breath for a breath test and drink or drug driving.

Considerations

- (ii) An isolated conviction for a major traffic offence should merit at least a warning as to future driving and advice on the standard expected of licensed drivers. The seriousness of the circumstances surrounding the conviction and the applicant's driving history since the conviction should determine whether a licence should be granted.

It would be appropriate for the Sub-Committee to stipulate a fixed time limit within which the mandatory NVQ training must be undertaken if a licence is issued (or if an existing driver is permitted to retain his licence having pleaded mitigating circumstances). Failure to undertake the training within that time, without reasonable excuse, may result in the imposition of one of the more severe sanctions (i.e. suspension or revocation) by the Sub-Committee.

- (iii) More than one such major traffic conviction within the last two years should merit refusal and no further application should be considered until a period of at least three years free from conviction has elapsed since the most recent conviction.

Likewise, serious consideration must be given to the more severe sanctions (i.e. suspension and revocation) in the case of currently licensed drivers who acquire more than one major traffic conviction during the preceding two years.

(c) Drunkenness

- (i) With motor vehicles:

(a) A serious view should be taken of convictions of driving, or being in charge of a vehicle, while under the influence of drink.

(b) Where disqualification has occurred as a result of a drink driving offence, at least three years free from conviction should elapse

(after the restoration of the driving licence) before an applicant is granted a licence.

- (c) An isolated incident should not necessarily debar an applicant from being granted a licence, but strict warnings should be given as to future behaviour. The same principle applies to current licence holders.
- (d) More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence.
- (e) If there is any suggestion that the applicant is, or that a current licence holder has become, an alcoholic, a special medical examination should be arranged before the application is entertained. In the case of a current licence holder, it may be prudent to suspend their licence pending this examination taking place.

Alcoholics and medical examinations

In the case of an applicant found to be an alcoholic, a period of five years should elapse after treatment is completed before a further licence application is considered.

In the case of a current licence holder, serious consideration must be given to revocation of a licence. Where this does not follow, detailed notes of the reasons why a lesser sanction was imposed must be made.

- (ii) Not in motor vehicles:

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i)(e) above). In some cases a warning may be sufficient.

- (d) **Drugs**

An applicant with a conviction for drug related offences, including driving while under the influence of drugs, should be required to show a period of at least three years free of convictions before an application is granted, or five years after detoxification treatment if he/she was an addict.

If there is any suggestion that a current licence holder is a drug addict, a special medical examination should be arranged and in the intervening period, it may be prudent to suspend their licence pending the examination taking place.

In the case of a current licence holder, if the examination discloses an addiction, serious consideration must be given to revocation of a licence. Where this does not follow, detailed notes of the reasons why a lesser sanction was imposed must be made.

The Sub-Committee should also take a dim view of any convictions issued to a current licence holder that involve the carriage/transportation of drugs, particularly in licensed vehicles. In such circumstances, there should be a presumption in favour of revocation of a licence.

(e) Indecency Offences

**Presumption
against
approval**

As hackney carriage and PHV drivers often carry unaccompanied passengers, some of whom may be vulnerable members of society, applications from applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should normally be refused.

If an applicant can show a substantial period (at least five years) free of such offences, then the Sub Committee should consider the application on its merits. Only if there are clearly defined grounds which would justify approving the application should such an application be entertained. The presumption, however, should be against approval.

By the same token, current licence holders who acquire convictions for such offences during the term of their licence should normally expect revocation of their licence to follow, unless there are clearly defined grounds justifying the imposition of a lesser sanction.

(f) Violence

As hackney carriage and PHV drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least three years free of such convictions should be shown before a licence is granted. And even then, a strict warning should be administered.

By the same token, current licence holders who acquire convictions for such offences during the term of their licence should normally expect suspension or revocation of their licence to follow, unless there are clearly defined grounds justifying the imposition of a lesser sanction.

(g) Dishonesty

Hackney carriage and PHV drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that businesses and people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver/operator.

For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of three to five years free of conviction should be required before granting a licence.