

Appendix C

Rotherham Metropolitan Borough Council
Hackney Carriage and Private Hire Convictions Policy

DRAFT - FOR CONSULTATION ONLY

1. Introduction

- 1.1 This policy provides guidance to the Licensing Board and its sub-committee (referred to as the Licensing Authority) on the criteria to take into account when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a Hackney Carriage and/or Private Hire driver or Operator Licence.
- 1.2 It is the responsibility of Rotherham MBC (referred to as the Council) to issue Hackney Carriage and Private Hire licences under the Local Government (Miscellaneous Provisions) Act 1976. In exercising this duty the Council will consider the need to ensure the safety of the public as its primary consideration.
- 1.3.1 In seeking to safeguard the safety of the public. The licensing authority will be concerned to ensure:
- That a person is a fit and proper person in accordance with Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II)
 - That the person does not pose a threat to the public
 - That the public are safeguarded from dishonest persons
 - The safety of children, young persons and vulnerable adults
- 1.4 The term “Fit and Proper Person” for the purposes of licensing is not legally defined and in assessing whether someone may be “Fit & Proper” the Council will consider the following, and any other relevant information into account:
- Criminality
 - Human Rights
 - Period of holding a driver’s licence
 - Number of endorsed driving licence penalty points
 - Right to work, and
 - Medical fitness
 - Driver and Vehicle Standards Agency (DVSA) taxi assessment
- In addition the Council will also consider further information sources such as the Police (including abduction notices), Children and Adult Safeguarding Boards and other statutory agencies.
- 1.5 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
- Applicants for a driver’s licence
 - Existing licensed drivers whose licences are being reviewed
 - Licensing officers
 - Members of the licensing committee/sub-committee
 - Magistrates hearing appeals against local authority decisions

- 1.6 In considering this guidance the Licensing Authority will be mindful that each case must be considered on its individual merits and, where the circumstances demand, the committee may depart from the guidelines.
- 1.7 In this policy the word “Conviction” is to be defined as including convictions, cautions, warnings, reprimands and other relevant information. In this policy ‘from date sentence has ended’ means from the date the sentence given has ended and not sentence served has ended.
- 1.8 In this policy the word applicant refers to either new applicants, or those existing licence holders who are seeking renewal. It also includes existing licence holders who are being considered by the Licensing Authority by virtue of offending activity having recently come to light.

2. General Policy

- 2.1 Whilst the committee may consider that a person with a conviction for a serious offence may not need to be automatically barred from obtaining a licence, it is however to be normally expected that the applicant would be required to:
 - a. Remain free of conviction for an appropriate period as detailed below; and
 - b. Show adequate evidence that they are a fit and proper person to hold a licence (the onus will be on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.
- 2.2 The Licensing Authority shall only depart from this policy in exceptional circumstances. The otherwise good character and driving record of the applicant or licence holder will not ordinarily be considered as exceptional circumstances

3. Appeals

- 3.1 Any applicant refused a driver’s licence, or who has their licence suspended or revoked on the grounds that the licensing authority is not satisfied they are a fit and proper person to hold such a licence has a right to appeal to the Magistrate’s Court within 21 days of the notice of refusal [Local Government (Miscellaneous Provisions) Act 1976, s 77 (1)].

4. Powers

- 4.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

- 4.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a Private Hire Vehicle or Hackney Carriage driver's licence, whether spent or not. Therefore the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending. Applicants need to be aware that, in accordance with this Act, all convictions, cautions, warnings and reprimands must be declared.
- 4.3 Under the provisions of Sections 51, 55 and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a Hackney Carriage and/or a Private Hire Vehicle driver's licence and/or Private Hire Vehicle Operator's licence is a "fit and proper" person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:
- How relevant the offence(s) are to the licence being applied for
 - How serious the offence(s) were
 - When the offence(s) were committed
 - The date of conviction
 - Circumstances of the individual concerned
 - Sentence imposed by the court
 - The applicant's age at the time of conviction
 - Whether they form part of a pattern of offending
 - Any other character check considered reasonable (eg personal references)
 - Any other factors that might be relevant
- 4.4 Existing holders of driver's licences are required to notify the licensing authority in writing within seven days of receiving a driving licence endorsement, fixed penalty notice or criminal conviction (including cautions). To fail to do so, will raise serious questions for the Licensing Authority as to the honesty of the licence holder and will be taken into account as part of any subsequent renewal applications.
- 4.5 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the Licensing Officer on 01709 334524 in confidence for advice.
- 4.6 The Licensing Authority conducts enhanced disclosures from the Disclosure and Barring Service (DBS) of any applicant for a driver's licence. Applicants applying for the grant or a renewal of a driver's licence will be required to obtain an enhanced disclosure at their expense.
- 4.7 The Licensing Authority is 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 under the Home Office scheme for reporting offences committed by notifiable occupations.

- 4.8 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.
- 4.9 For renewal applications and current licence holders the guidance will not be applied retrospectively. The policy will be applied if any additional convictions are incurred or brought to the attention of the Council that would call into question a person's suitability to hold a licence.
- 4.10 Any offences not covered by this Policy will not prevent the Council from taking into account the offences.

5 Options when determining an application/licence

- 5.1 When determining an application or reviewing an existing licence the Council have the following options:

- approve the application or take no further action
- refuse the application/revoke the licence/suspend the licence
- issue a warning
- For existing drivers who have accumulated 9, 10 or 11 points on their DVLA driving licence, their Private Hire or Hackney Carriage driver licence will be suspended, until the driver has successfully undertaken a Private Hire or Hackney Carriage DSA driving test, at their own expense.

6. Serious offences involving violence

- 6.1 Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 6.2 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Terrorism offences
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.3 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) to those below and at least 10 years have passed since the completion of any sentence and /or licence period.

- 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
 - Assault Police
 - Common assault with racially aggravated
 - Violent disorder
 - Resisting arrest
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.4 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and at least 5 years have passed since the completion of any sentence and/or licence period:
- Racially-aggravated criminal damage
 - Racially-aggravated offence
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.5 A licence will not normally be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and at least 3 years have passed since the completion of any sentence and/or licence period:
- Common assault
 - Assault occasioning actual bodily harm
 - Affray
 - S5 Public Order Act 1986 offence (harassment, alarm or distress)
 - s.4 Public Order Act 1986 offence (fear of provocation of violence)
 - S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
 - Obstruction
 - Criminal damage
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 6.6 A licence will not normally be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.
- 6.7 In the event of a licence being granted, a strict warning both verbally and in writing should be administered. If a warning is issued, this will remain in place for a period commensurate with the time periods in the relevant sections above.

7. Possession of a weapon

- 7.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public.
- 7.2 Depending on the circumstances of the offence, at least 3 years must have passed since the completion of the sentence, before a licence is granted.

8. Sex and indecency offences

- 8.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences must be closely scrutinised. All sexual offences should be considered as serious, however those applicants with convictions for the most serious sexual offences will normally be refused. For other offences, applicants will be expected to show a substantial period free of conviction for such offences before a licence will be granted.
- 8.2 (a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:
- Rape
 - Assault by penetration
 - Offences involving children or vulnerable adults
 - Grooming, Trafficking or other Sexual Exploitation related offences (adults and / or children)
 - Making or distributing obscene material
 - Possession of indecent photographs depicting child pornography.
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.3 (b) Before an application is allowed, an applicant should be free of conviction for at least 10 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:
- Sexual assault
 - Indecent assault
 - Exploitation of prostitution
 - Indecent exposure
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.4 (c) Before a licence is granted, an applicant should be free of conviction for at least 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he/she has a conviction for an offence such as:
- Soliciting (kerb crawling)
 - Making indecent telephone calls

- Importuning
 - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.
- 8.5 A licence will not normally be granted if an applicant has more than one conviction for a sexual or indecency offence.
- 8.6 In addition to the above the licensing authority will not normally grant a licence to any applicant who is currently on the Sex Offenders Register.

9. Dishonesty

- 9.1 A licensed PHV or taxi driver is expected to be trustworthy. In the course of their working duties drivers will deal with cash transactions and valuable property may be left in their vehicles. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused. For these reasons, a serious view is taken of any conviction involving dishonesty.
- 9.2 In general, a minimum period of 3 years free of conviction or at least 3 years have passed since the completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:
- theft
 - burglary
 - fraud
 - benefit fraud
 - handling or receiving stolen goods
 - forgery
 - conspiracy to defraud
 - obtaining money or property by deception
 - other deception
 - taking a vehicle without consent
 - fare overcharging
 - or any similar offences (including attempted or conspiracy to commit) offences which replace the above

10. Alcohol and Drugs

- 10.1 A serious view is taken of any drug related offence. Taking drugs and driving poses an obvious risk to public safety, whilst applicants who have convictions for the supply of drugs should also be treated with considerable concern, The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered carefully.
- 10.2 As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public. At least 3 years, after the restoration of the driving

licence following a drink drive conviction should elapse before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.

- 10.3 Because of the nature of a driver's involvement with the public, a licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs and at least 10 years have passed since the completion of any sentence and/or licence period.
- 10.4 A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and at least 5 years have passed since the completion of any sentence and/or licence period.
- 10.5 An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.
- 10.6 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.

11 Driving offences involving the loss of life

- 11.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

A licence will not normally be granted unless the applicant is free of conviction for 10 years or (or at least 3 years must have passed since the completion of the sentence, whichever is longer) if he has a conviction for:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

- 11.2 Before a licence is granted, an applicant should be free of conviction for 5 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for:

- Causing death by careless driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers

- 11.3 Minor traffic offences eg obstruction, some speeding offences, pedestrian crossing offences, traffic light offences waiting in a restricted area, etc may not ordinarily merit refusal. However, they will be subject to consideration as part of the Points Enforcement Policy. For existing drivers who have accumulated 9, 10

or 11 points on their DVLA driving licence, their Private Hire or Hackney Carriage driver licence will be suspended, until the driver has successfully undertaken a Private Hire or Hackney Carriage DSA driving test, at their own expense.

- 11.4 Major traffic offences such as driving without due care and attention, reckless driving, some speeding offences, etc will give rise to serious doubts about the applicant's suitability to be a driving professional. An applicant with any such convictions should normally be required to show a period of at least one year free of such convictions. For applicants with more than one offence this should normally be increased to two years.
- 11.5 In cases where the courts have imposed a disqualification in respect of the ordinary driving licence, the periods stated above should normally commence from the date of the restoration of the licence.

12 Outstanding Charges or Summonses

- 12.1 If the individual is the subject of an outstanding charge or summons their application should be suspended until the matter is resolved.
- 12.2 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]

14 Non-conviction information

- 14.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application. Such offences would include serious violent offences and serious sex offences.
- 14.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

15 Licensing Offences

- 15.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed until a period of 3 years has passed since .

16 Insurance Offences

- 16.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for 3 years, however strict

warning should be given as to future behaviour. More than one conviction for these offences would normally prevent a licence being granted or renewed.

- 16.2 At least three years should elapse (after the restoration of the DVLA driving licence), before a licence would normally be granted for a Hackney Carriage or Private Hire drivers licence. An operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance will have his Operator's Licence revoked immediately and prevented from holding a licence for three years.

17 Applicants with periods of residency outside the UK

- 17.1 If an applicant has spent six continuous months or more overseas the licensing authority will expect to see evidence of a criminal record check from the country/countries visited covering the period.
- 17.2 Because of the potential lifetime relevance for some of the most serious offences mentioned in this policy, the Licensing Authority will need to ensure that sufficient background checks are conducted for those applicants who have lived overseas. For EU nationals suitable checks should be available, for those countries for which checks are not available, one option is to require a certificate of good conduct authenticated by the relevant embassy.

18 Summary

- 18.1 Whilst a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed, but in most cases, an applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. If there is doubt about the suitability of an individual to be licensed, the committee needs to be mindful of the need to protect the public and caution should be exercised.
- 18.2 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

Annex A – Motoring offences and penalty points

The following is a guide to the number of penalty points a court may impose, it does not reflect the fact that some offences may incur a disqualification. These codes are recorded from information supplied by the courts (accurate at the time of this document).

| Code | Offence | Penalty Points |
|---|---|----------------|
| Accident Offences | | |
| AC10 | Failing to stop after an accident | 5-10 |
| AC20 | Failing to give particulars or to report an accident within 24 hours | 5-10 |
| AC30 | Undefined accident offences | 4-9 |
| Disqualified Driver | | |
| BA10 | Driving whilst disqualified by order of court | 6 |
| BA30 | Attempting to driver while disqualified by order of court | 6 |
| Careless Driving | | |
| CD10 | Driving without due care and attention | 3-9 |
| CD20 | Driving without reasonable consideration for other road users | 3-9 |
| CD30 | Driving without due care and attention or without reasonable consideration for other road users | 3-9 |
| CD40 | Causing death through careless driving when unfit through drink | 3-11 |
| CD50 | Causing death by careless driving when unfit through drugs | 3-11 |
| CD60 | Causing death by careless driving with alcohol level above the limit | 3-11 |
| CD70 | Causing death by careless driving then failing to supply a specimen for analysis | 3-11 |
| CD71 | Causing death by careless driving then failing to supply A specimen for drug analysis | 3-11 |
| CD80 | Causing death by careless, or inconsiderate, driving | 3-11 |
| CD90 | Causing death by driving: unlicensed, disqualified or Uninsured drivers | 3-11 |
| Construction & Use Of Offences | | |
| CU10 | Using a vehicle with defective brakes | 3 |
| CU20 | Causing or likely to cause danger by reason of use of unsuitable vehicles or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition | 3 |
| CU30 | Using a vehicle with defective tyre(s) | 3 |
| CU40 | Using a vehicle with defective steering | 3 |
| CU50 | Causing or likely to cause danger by reason of load or passengers | 3 |
| C80 | Using a mobile phone while driving a vehicle | 3 |
| Dangerous Driving | | |

| | | |
|-------------------------------|---|----------------|
| DD40 | Dangerous Driving | 3-11 |
| DD60 | Manslaughter or culpable homicide while driving a vehicle | 3-11 |
| DD90 | Furious Driving | 3-9 |
| Drink or Drugs | | |
| DR10 | Driving or attempting to drive with alcohol level above limit | 3-11 |
| DR20 | Driving or attempting to drive while unfit through drink | 3-11 |
| DR30 | Driving or attempting to drive then failing to supply a specimen for analysis | 3-11 |
| DR40 | In charge of a vehicle while alcohol level above limit | 10 |
| DR50 | In charge of vehicle while unfit through drink | 10 |
| DR60 | Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive | 10 |
| DR61 | Failure to supply a specimen for drug analysis in circumstances other than driving or attempting to drive | 10 |
| DR70 | Failing to provide specimen for breath test | 4 |
| DR80 | Driving or attempting to drive when unfit through drugs | 3-11 |
| DR90 | In charge of a vehicle when unfit through drugs | 3-11 |
| Insurance Offences | | |
| IN10 | Using a vehicle uninsured against third party risks | 6-8 |
| Licence Offences | | |
| LC20 | Driving otherwise than in accordance with the licence | 3-6 |
| LC30 | Driving after making a false declaration about fitness applying for a licence | 3-6 |
| LC40 | Driving a vehicle having failed to notify a disability | 3-6 |
| LC50 | Driving after a licence has been revoked or refused on medical ground | 3-6 |
| Miscellaneous Offences | | |
| MS10 | Leaving a vehicle in a dangerous position | 3 |
| MS20 | Unlawful pillion riding | 3 |
| MS30 | Play street offences | 2 |
| MS50 | Motor racing on the highway | 3-11 |
| MS60 | Offences not covered by other codes | As Appropriate |
| MS70 | Driving with uncorrected defective eyesight | 3 |
| MS80 | Refusing to submit to an eyesight test | 3 |
| MS90 | Failure to give information as to identity of driver etc. | 3 |
| Motorway Offences | | |
| MW10 | Contravention of Special Roads Regulations (excluding speed limits) | 3 |
| Pedestrian Crossings | | |
| PC10 | Undefined Contravention of Pedestrian Crossing Regulation | 3 |
| PC20 | Contravention of Pedestrian Crossing Regulations with moving vehicle | 3 |
| PC30 | Contravention of Pedestrian Crossing Regulations with stationary vehicle | 3 |

| Speed Limits | | |
|-------------------------------------|---|------|
| SP10 | Exceeding goods vehicle speed limits | 3-6 |
| SP20 | Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles) | 3-6 |
| SP30 | Exceeding statutory speed limit on a public road | 3-6 |
| SP40 | Exceeding passenger vehicle speed limit | 3-6 |
| SP50 | Exceeding speed limit on a motorway | 3-6 |
| Traffic Directions And Signs | | |
| TS10 | Failing to comply with traffic light signals | 3 |
| TS20 | Failing to comply with double white lines | 3 |
| TS30 | Failing to comply with 'Stop' sign | 3 |
| TS40 | Failing to comply with direction of a constable/warden | 3 |
| TS50 | Failing to comply with a traffic sign (excluding stop signs, traffic signs or double white lines) | 3 |
| TS60 | Failing to comply with a school crossing patrol sign | 3 |
| TS70 | Undefined failure to comply with a traffic direction sign | 3 |
| Special Code | | |
| TT99 | To signify a disqualification under totting-up procedure. If the total of penalty points reaches 12 or more within 3 Years, the driver is liable to be disqualified | |
| Theft or Unauthorised Taking | | |
| UT50 | Aggravated taking of a vehicle | 3-11 |

Source www.direct.gov.uk