

Appendix A - Criminal Convictions and Suitability Policy

4.1—The primary and overriding aim of the Licensing Authority when carrying out its functions relating to the licensing of Taxi or Private Hire Drivers, Vehicle Proprietors and Operators, is the protection of the public and others who use (or can be affected by) Taxi and Private Hire services. This Criminal Convictions and Suitability Policy sets out Guidance on the relevance of arrest, conviction, caution, and/or any other relevant information including complaints and intelligence which can be considered by the Council when determining the fitness and propriety of an applicant and a licence holder. -

- 1.2 Every person licensed by the Council in respect of the hackney carriage or private hire trade must demonstrate at application, renewal, and all other times for the duration of the licence, that they are, and remain, a fit and proper person to hold one or more of the following:
- a. Licence to drive a licensed vehicle as a:
 - hackney carriage driver;
 - private hire driver;
 - dual driver;
 - b. Private Hire operator's licence;
 - c. Vehicle licence:
 - hackney carriage;
 - private hire vehicle.

- 1.3 The Council will apply the test suggested by the Department for Transport in its statutory guidance when assessing the fitness and propriety of an applicant and licence holder, as below: Commonly, the test as to whether a person is suitable to hold a licence is expressed to be:

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

If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.

(Department for Transport Statutory Taxi & Private Hire Vehicle Standards November 2022)

It must be noted that this is not the same test as would be applied by a criminal court and matters which may have been dismissed by that judicial process will still be considered by the Council in considering whether an individual meets the fit and proper test. the Fit and Proper Test.

- 1.4 In addition to physical and mental wellbeing, this test can also be applied to an applicant's handling of a person's sensitive information such as personal data, holiday plans, medical conditions, travel arrangements etc, in respect of all licences the Council issues. The public and the trade are entitled to expect that those licensed by the Council will operate in accordance with the standards set out by the Council and not take advantage of their position of trust for criminal or unacceptable purposes.

2.0 Relevant Factors

2.1 The Council may consider any other matter or matters that may affect whether an applicant or licence holder is a fit and proper person, such factors include but are not limited to:

- Convictions / Cautions for an offence;
- Any diversion scheme offered as an alternative to conviction (i.e. “checkpoint” or restorative approach);
- Matters which have not resulted in a criminal conviction (whether that is the result of an acquittal; a conviction being quashed; a decision not to prosecute; police decision by the Police not to take no further action (NFA); being bailed, being released under investigation, or where an investigation is continuing);
- Mental Health Act Orders;
- Inclusion on any register maintained for the purposes of safeguarding the public;
- Police intelligence/information;
- Drug/alcohol use and Detoxification;
- Other relevant information disclosed;
- Any complaints or the accumulation of complaints regarding a licence holder’s conduct or behaviour;
- Driver behaviours that fall short of criminal behaviour but are indicators of more sinister behaviour, will be considered and addressed to maintain confidence in the taxi and private hire trades and to stop unwanted behaviours before they evolve into criminal acts – example behaviours include:
 - i. Asking a passenger for their contact or social media details
 - ii. Asking personal or intimate questions
 - iii. Inappropriate physical contact with passengers or invasion of their personal space
 - iv. Inappropriate conversations, questions or behaviour
- Surrender of a licence prior to an appearance before the Licensing Panel Committee;
- Matters contrary to the requirements of this policy.

2.2 The Council will, in considering whether an applicant is suitable to hold a licence, require applicants and those renewing a licence to meet the criteria identified below:

	Drivers			Private Hire Operator	Vehicles	
	Hackney Carriage	Private Hire	Dual		Hackney Carriage	Private Hire
Child sexual exploitation awareness	✓	✓	✓	<u>✓</u> <u>✗</u>	✗	✗
Entitled to work in UK	✓	✓	✓	✓	✗	✗
Driving licence	✓	✓	✓	✗	✗	✗
Driving assessment	✓	✓	✓	✗	✗	✗
Theory test	✓	✓	✓	<u>✓</u> <u>✗</u>	<u>✓</u> <u>✗</u>	<u>✓</u> <u>✗</u>

Geography test	✓	✓	✓	✗	✗	✗
Medical fitness	✓	✓	✓	✗	✗	✗
Fit & proper person	✓	✓	✓	✓	✓	✓
DVLA check	✓	✓	✓	<u>✓</u> ✗	✗	✗
DBS check	✓	✓	✓	✓	✓	✓

- 2.3 Any applicant who is the subject of an outstanding charge or summons may have their application held in abeyance or referred to the Licensing Panel Sub-Committee until the matter is resolved. This decision will be made on a case by case basis.
- 2.4 The Council will also take into account relevant situations, information and circumstances that have not led to a conviction. This will include:
- ~~acquittals;~~
 - ~~circumstances in which convictions were quashed due to misdirection to the jury;~~
 - ~~circumstances where the decision was taken not to prosecute;~~
 - information from other sources such as Council officers or partner agencies;
 - complaints from the public.
- 2.5 In considering the most appropriate action to take in relation to non-conviction information (or a complaint), the credibility of the witness / complainant and the licence holder will be taken into account.
- 2.6 If an applicant has been arrested or charged, but not convicted, for a serious offence which suggests they could be a danger to the public, consideration should be given to refusing the application. Such offences might include dishonesty, violence and / or sexual offences, amongst others.
- 2.7 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.
- 2.8 Failure to disclose all arrests; bail arrangements; convictions; fixed penalty notices; cautions (subject to the Exceptions Order); ongoing investigations; and / or pending prosecutions, may affect the grant of a licence or may lead to the revocation of a licence.
- ~~2.9 In assessing the action to take, the safety of the travelling public must always be the paramount concern.~~
- 2.10 Licence holders and applicants for driver, vehicle and operator licences are required to disclose all convictions, fixed penalty notices and cautions, including those that would in other circumstances be regarded as spent under the Rehabilitation of Offenders Act 1974, subject to Schedule 2 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended. This order creates categories of 'protected cautions' and 'protected convictions', which applicants and licence holders must be treated as not having committed, or been charged with, or prosecuted for, or convicted of, or sentenced for, even though 'spent' cautions and convictions may be taken into account.

- 2.11 Licence holders and applicants must also disclose details of any ongoing investigations and any pending prosecutions. This is to include any arrest and subsequent bail where charges have not been laid.
- 2.12 Licence holders are required to notify the issuing authority in writing within 4872 hours, providing full details, where they are arrested and released, charge or convicted of any sexual offence, any offence involving dishonesty or violence, and any motoring offence.
- 2.13 Licence Holders convicted of an offence, or who accept a formal caution for an offence, receive a fixed penalty notice for any offence or receive and accept an endorseable fixed penalty notice, or made the subject of an Criminal Behaviour Order, Community Protection Notice, are required to attend a speed awareness course, are made the subject of any injunction or restraining order, or are arrested for any matter, must give the Council details, in writing and within 4872 of hours of the event.
- 2.14 This will not however be seen as a direction that a licence should be withdrawn; it is for the licensing authority to consider what, if any, action in terms of the licence should be taken based on the balance of probabilities.
- 2.15 A failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of, might be seen as behaviour that questions honesty and therefore the suitability of the licence holder, regardless of the outcome of the initial allegation.
- 2.16 The disclosure of a criminal record or other information will normally prevent an applicant from obtaining a licence until such time, in accordance with the table below, has elapsed since the completion of any sentence imposed.
- 2.17 In making its decision the Council will consider each matter referred to it on its own merits, having regard to the relevance of any offence, the seriousness of the offence, the length of time since the offence occurred and any pattern of offending behaviour or other complaints.
- 2.18 The Council considers all offences to be relevant offences (subject to the above Exemptions Order) when considering the suitability of a person to hold or retain a licence.

2.19 The Council will consider regulatory crimes, including local authority offences, licensing matters, and other offences prosecuted by other authorities when determining the fitness and propriety of an applicant or a licence holder. This includes matters relating to the administration of justice such as failing to surrender to bail, and any other matter where regulations or requirements have been ignored or broken.

- 2.19 The following types of offence will be viewed as serious (in no particular order):
- a. Dishonesty;
 - b. Violence (including Criminal Damage & Sexual Offences);
 - c. Alcohol Related Offences;
 - d. Public Order Offences;
 - e. Motoring Offences;
 - f. Possession of or Possession with the Intent to Supply controlled substances;
 - g. Obscenity (which includes the possession, making or distribution of unlawful obscene images / materials on computer or the internet);
 - h. Racially or Religiously aggravated offences;
 - i. Offences of a discriminatory nature;
 - j. Offences involving Indecency or other offences of a Sexual Nature;

- k. Contravention of Licensing Laws or Conditions;
- l. Disqualification from driving a motor vehicle at any time in the three years prior to applying for a licence;
- m. Offences involving animal cruelty;
- n. Criminal Behaviour Orders;
- o. Failing to declare convictions etc. on application;
- p. Or similar offences or offences which replace the above offences.

2.20 To assist with determination of suitability beyond skills and competence, particularly in relation to the fit and proper person test, and to provide assurance to the public and the trade that the Council operates a transparent, fair and consistent approach to assessing suitability of an individual to be licensed, the Council adopts the provisions of the Institute of Licensing' (IOL) Guidance ~~on~~ determining the suitability of applicants and licensees in the hackney carriage and private hire industry, 2024trades ("the IOL Guidance"). This guidance was widely consulted upon prior to adoption and is accepted as the national standard for local authorities making such assessments. The IOL Guidance can be found at: <https://iol.instituteoflicensing.org/>
~~[https://www.instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_\(16_May_2018\).pdf](https://www.instituteoflicensing.org/documents/Guidance_on_Suitability_Web_Version_(16_May_2018).pdf)~~

2.21 A summary of the policy in relation to criminal, convictions, and the period of time before a licence may be granted are detailed at Table 1, ~~below~~.

3.0 Referrals to the Disclosure and Barring Scheme

3.1 In some circumstances it may be appropriate under the Safeguarding Vulnerable Groups Act 2006 for the Authority to make a referral to the DBS. The Authority will make a referral where a decision is made to refuse or revoke a licence as the individual is thought to present a risk of harm to a child or vulnerable adult.

3.2 The power for the licensing authority to make a referral in this context arises from the undertaking of a safeguarding role. Other situations where a referral is likely to be made are when it is thought that:

- an individual has harmed or poses a risk of harm to a child or vulnerable adult;
- an individual has satisfied the 'harm test'; or
- received a caution or conviction for a relevant offence and;
- the person they are referring is, has or might in future be working in regulated activity.

3.3 If the above conditions are satisfied, the DBS may consider it appropriate for the person to be added to a barred list.

Table 1: Criteria for determining whether an individual should be granted or retain a taxi or private hire driver licence, vehicle licence and private hire operator licence* Summary of IOL Guidance (completion of sentence and or driving ban-to licence granted)

	5 years	7 years	10 years	Never
Conviction <u>for, or related to drunkenness not in a motor vehicle for drink driving or driving under the influence of drugs,</u>	✓	✓		
Conviction for possession of drugs, or related to the possession of drugs	✓			
Conviction for, or related to, the <u>production, import, trade in or</u> supply of drugs, or possession with intent to supply or connected with possession with intent to supply			✓	
<u>Conviction for possession of drugs, or related to the possession of drugs</u>	✓			
Conviction for an offence of violence, or connected with any offence <u>of violence of violence against persons, property, animals, or the State,</u>			✓	
<u>Conviction for an offence of violence, or connected with any offence of violence against a child or vulnerable adult</u>				✓
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				✓
Conviction of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children				✓
Conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence		✓		
Conviction for any offence involving or connected with illegal sexual activity or any form of indecency <u>(includes any sexual harassment)</u>				✓
On the Sex Offenders Register or on any 'barred' list.				✓
Conviction for possession of a weapon or any other weapon related offence		✓		
Conviction involving or connected with discrimination in any form <u>(including non-compliance with the Equality Act 2010)</u>		✓		
MOTORING OFFENCES* motoring offences not relevant to private hire operator licences				
<u>Conviction for drink driving or driving under the influence of drugs, or failing to provide a specimen in relation to a driving matter</u>		✓		
Conviction for using a held-hand mobile telephone or a hand-held device whilst driving	✓			
Minor traffic / vehicle related offence (i.e. all offences other than those involving loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone) which did not result in injury to any person or damage to any property (including vehicles) resulting in 7 or more points on the DVLA licence	✓			

<u>Any Major traffic offence which resulted, including offences resulting in injury to a person or damage to any property (including vehicles)</u>			✓	
<u>Any driver who has accumulated 12 or more points on their DVLA licence and has not been disqualified under the totting up procedure by a court, will not be licensed for a period of 5 years from the date of the accumulation of 12 points or more points</u>	✓			
<u>Any driver who has been disqualified as a result of "totting up", which erases the points when the licence is restored, will not be licensed for a period of 5 years from the date of the disqualification</u>	✓			
Conviction for an offence concerned with or connected to hackney carriage or private hire activity (excluding vehicle use)		✓	✓	
Conviction for any offence which involved the use of a vehicle (including hackney carriages and private hire vehicles)		✓	✓	