



# **Hackney Carriage and Private Hire Licensing**

## **Policy on Convictions and other Relevant Matters**

## 1. Introduction

1.1 This document aims to provide guidance to any person with an interest in public and private hire licensing, on the criteria that may be taken into account by Blackburn with Darwen Council, when determining if an applicant or existing licence holder, is a fit and proper person to hold a licence. This includes:

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Applicants for operators licences
- Existing licensed operators whose licences are being reviewed
- Licensing Officers
- Members of the Licensing Committee / Panel (or other relevant decision making body)
- Magistrates hearing appeals against local authority decisions
- Lancashire Constabulary

1.2 The overriding aim of the Licensing Authority is to protect the public and it is ultimately concerned to ensure:

- That licence holders are fit and proper.
- That the public are not exposed to persons with a history of dishonesty, indecency or violence.
- The safeguarding of children and young persons and vulnerable adults.

1.3 The relevant sections of this policy will also be applied to applicants for, or holders of, Private Hire Operator's licences in so far as they relate to the fitness and propriety of the applicant.

1.4 The term "Fit and Proper" for the purposes of taxi and private hire licensing is not legally defined, but to assist decision makers, Blackburn with Darwen Council has adopted the following test in accordance with the Statutory Guidance issued by the Department for Transport in 2020

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

1.5 All decisions will be made on the balance of probabilities and the Council will not give any applicant the benefit of doubt, or issue licences for a probationary period. If the committee/panel is only "50/50" as to whether the applicant is 'fit and proper', they will not be permitted to hold a Blackburn with Darwen licence.

1.6 Whilst criminal convictions, cautions and motoring offences rightly play a part in the Licensing Authority's consideration of the fitness of an individual, the Council will also take into account other relevant factors, including, but not limited to; the demeanour,

medical fitness, integrity and general character of the applicant; their driving record; information registered on NR3; soft intelligence from the Police or other regulatory body and any relevant information from other Licensing Authorities or statutory bodies.

- 1.7 Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases, or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
- 1.8 In the case of existing licence holders, the Council will also take account of any history of compliance issues, complaints or allegations.
- 1.9 Where Licensing Officers have delegated powers to grant licences, they may do so in accordance with these guidelines. In all other cases, applicants for licences will be referred to the Licensing Committee/Panel. Nothing in this Policy prevents a Licensing Officer from referring any applicant or licence holder to the committee/panel, where they find it appropriate to do so, in the circumstances.
- 1.10 The Council recognises that it must not fetter its discretion and therefore it will consider and determine each case on its own merits, whilst having regard to this policy.
- 1.11 The Licensing Committee/Panel may, in exceptional circumstances, depart substantially from this policy, but it should be noted that, the otherwise good character or driving record of an applicant, would not ordinarily be considered to be exceptional circumstances.
- 1.12 Where the Authority does depart from this policy, it will give clear reasons for doing so.
- 1.13 Whilst existing licences will not be automatically revoked if the holders do not meet the standards in this policy, should the conduct, or offending activity of an existing licence holder be of concern to the Licensing Authority, following its adoption, the Council may consider such activity and re-evaluate any decision made in reliance on any previous policy.
- 1.14 Throughout this policy the term “conviction” includes criminal, civil or motoring convictions, cautions, warnings, reprimands, orders and endorsable Fixed Penalty Notices.
- 1.15 The term “applicant” includes new applicants and existing licence holders.
- 1.16 The term “from date sentence ended” relates to the actual sentence imposed and not to the time served, by the offender.

## **2. General Policy**

- 2.1 Whilst a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, it is normally be expected that they:
- i) Remain free of convictions for an appropriate period; and
  - ii) Demonstrate adequate evidence that they are a fit and proper person to hold a licence
- 2.2 The onus is on the applicant to produce such evidence and simply remaining free of convictions, will not normally be regarded as adequate evidence of fitness and propriety.
- 2.3 The Council may fail to be satisfied that an individual is a fit and proper person to hold a driver's licence or an operator's licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced, or if there is reason to question or doubt the evidence provided, that in itself, could satisfy the Council that it should refuse or revoke a licence.
- 2.4 Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*].

## **3. Powers**

- 3.1 Section 61 of the Local Government Miscellaneous Provisions Act 1976 permits the Licensing Authority to suspend, revoke or refuse to renew a licence, if the licence holder has been convicted of an offence involving dishonesty, indecency, violence; failed to comply with the provisions of the Town Police Clauses Act 1847; failed to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; been convicted of an immigration offence or required to pay an immigration penalty; or for any other reasonable cause.
- 3.2 Section 62 of the Local Government Miscellaneous Provisions Act 1976 permits the Licensing Authority to suspend, revoke or refuse to renew an Operator's Licence if the licence holder has failed to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; if their conduct appears to the Licensing Authority to render them unfit to hold an Operator's Licence; other than those circumstances where the conviction is spent within the meaning Rehabilitation of Offenders Act 1974, has been convicted of an immigration offence or required to pay an immigration penalty; or any other reasonable cause.
- 3.3 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, allows the Licensing Authority to take into account all convictions recorded against an applicant for a 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.

#### **4. Consideration of Offending History**

- 4.1 The Licensing Authority is required to ensure that an applicant for the grant or renewal of a licence is a 'fit and proper' person to hold such a licence.

In considering evidence of an individual's good character and fitness to hold a licence, where previous offences or other information relating to the applicants conduct is disclosed, the Council will consider among other things:

1. How serious the offence(s) are
  2. The intent or harm which was, or could have been caused
  3. When the offence(s) were committed
  4. Any sentence imposed by the court
  5. The circumstances of the individual at the time of the offence
  6. Whether this forms part of a pattern of offending
  7. Any other factors that are considered relevant
- 4.2 The Licensing Authority requires enhanced disclosures from the Disclosure and Barring Service (DBS) of any applicant for a Blackburn with Darwen driver's licence and it follows the relevant Code of Practice on the secure storage, handling, use, retention and disposal of disclosure information.
- 4.3 Blackburn with Darwen Council requires licence holders to be registered with the DBS update service to enable the Licensing Authority to carry out periodic checks using the online service.
- 4.4 Conditions on drivers' licences require holders to notify the Licensing Authority within 48 hours of any arrest, charge or conviction for any sexual offence, any offence involving dishonesty or violence, or any motoring offence. This should trigger an initial review by the licensing authority to consider what, if any, action in terms of the licence, should be taken based on the balance of probabilities at that time.
- 4.5 The Council has a wide discretion on what information it may have regard to when making a determination and is entitled to rely on other records and information that may be available to it, when determining applications or licence reviews. This could include information held by this Council, other licensing authorities, information disclosed by the police under the Common Law Disclosure Scheme, or any other credible source.
- 4.6 Applicants who have a serious criminal history of offending may pose a significant risk to the public and are likely to be refused a licence even after the stated period expressed as being "free from offending" has expired. A serious criminal history of offending would include applicants who have multiple relevant offences, or who have been sentenced to a cumulative term of imprisonment of 6 months or more.
- 4.7 Where an applicant is convicted of an offence which is not detailed in this guidance, the licensing authority will take that conviction into account and use these guidelines as an indication of the approach that should be taken.

4.8 References produced by drivers attesting to their good character must be provided at least 3 working days in advance of the hearing date. They must be current and have been produced by the referee in the full knowledge of the specific reason they are being presented to the Sub-Committee.

## **5. Crimes resulting in death**

Where an applicant 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 they will not be licensed.

## **6. Exploitation**

Where an applicant has been convicted 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, they will not be licensed.

This includes slavery, child sexual exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

## **7. Offences involving violence**

7.1 Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

7.2 A licence will not normally be granted where an applicant has convictions for the following offences unless at least 5 years have passed since the conviction or completion of any sentence:-Common assault; Harassment, S.4 Public Order Act 1986 (fear or provocation of violence); S.5 Public Order Act 1986 (harassment alarm or distress)

7.3 A licence will not normally be granted where the applicant has a conviction for criminal damage unless at least 3 years has passed since the conviction or completion of any sentence.

## **8. Possession of a weapon**

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

## **9. Sexual and indecency offences**

9.1 Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

9.2 The licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

## **10. Dishonesty**

- 10.1 Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.
- 10.2 Applicants or existing licence holders that are found to have intentionally misled the council, or lied as part of the application process, will not be granted a licence, or be permitted to keep their licence.

## **11. Drugs**

- 11.1 Where an applicant has a conviction for, or related to, the supply of drugs, or possession with intent to supply, or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
- 11.2 Where an applicant has a conviction 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 may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.
- 11.3 Applicants with 2 or more convictions for drug related offences will not normally be granted a licence.

## **12. Discrimination**

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

## **13. Motoring convictions**

- 13.1 Licensed drivers are professional drivers charged with the responsibility of carrying the public. 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.
- 13.2 However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally
- 13.3 A minor traffic or vehicle related offence is considered to be one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property, including vehicles.

An applicant with 7 or more points on their DVLA licence for minor traffic or vehicle related offences, will not be granted a licence until at least 5 years have elapsed since the completion of any sentence imposed.

13.4 A major traffic or vehicle related offence is one which is not covered in 13.3 and includes any offence which resulted in 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.

13.5 The committee/panel will have regard to the circumstances of each offence and where offences involve the use of a licensed vehicle in the course of hackney carriage or private hire work, this will be considered to be an aggravating factor.

#### **14. Drink/Drug driving**

14.1 Where an applicant has a conviction 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.

14.2 In the case of driving under the influence of drugs an applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

#### **15. Using a hand held device whilst driving**

Where an applicant has a conviction 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.

#### **16. Licensing offences**

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

#### **17. Non-conviction information**

17.1 The Council will also take into account situations or circumstances that have not led to a conviction for whatever reason, including situations where the person has been arrested and bailed, but not yet charged, acquittals, circumstances in which convictions were quashed on technicalities, circumstances where a decision was taken not to prosecute and complaints from the public.

17.2 When considering the most appropriate action to take in respect of non-conviction information, the Council recognises that it is not bound by the criminal burden of proof and must merely be satisfied, on the balance of probability that the mischief under consideration had occurred.



- 17.3 The Licensing Authority will take into account the credibility of; the complainant; any witnesses; and the licence holder, along with any other evidence produced, when reaching a decision.
- 17.4 If an applicant has been arrested or charged, but not convicted for an offence which suggests they could be a danger to the public, serious consideration will be given to refusing the application or revoking the licence in the first instance, subject to the requirements of section 18.3.
- 17.5 Where an applicant has previously been refused a licence or had a licence revoked, a new licence will not normally be considered until at least 2 years have elapsed since the Council's original decision.
- 17.6 Where compelling new evidence becomes available, and is such that if it had been available at the time of the original decision, it would probably not have resulted in a refusal or revocation, para 17.5 may be dis-applied.
- 17.7 In assessing the appropriate course of action to take, the safety of the travelling public will always be the paramount concern.

## **18. Once a licence has been granted**

- 18.1 **Once a licence has been granted, there is a continuing requirement for the licensee to remain fit and proper to hold the licence. Where the licensing authority is considering a licence review, any conduct or convictions which would have resulted in a refusal to grant a licence in accordance with this policy, will result in an existing licence being revoked.**
- 18.2 Suspension or revocation of a driver's licence ordinarily takes effect at the end of the period of 21 days beginning with the day on which the decision notice setting out the reasons for the suspension or revocation is given to the driver.
- 18.3 If the Licensing Authority deem it necessary for the suspension or revocation to have immediate effect in the interests of public safety, the notice given to the driver must also include a statement issued under Section 61 (2B) Local Government (Miscellaneous Provision) Act 1976, that the suspension or revocation is effective immediately and the reasons why.
- 18.4 Any suspension or revocation of an Operator's Licence takes effect at the end of the period of 21 days beginning with the day on which notice is given to the operator.

## **19. Licences issued by other licensing authorities**

Applicants who hold a driver or operator licence issued by another licensing authority, must not assume that their application will automatically be granted. Only applicants who are considered to be fit and proper by Blackburn with Darwen Council, having regard to the criteria laid out in this policy, will be granted licences.

## **20. Hearings**

- 20.1 Hearing with notice – Where a committee/panel is to be convened to consider whether or not a person is “fit and proper”, notice of the time and date for the committee/panel will be given ahead of the date listed, in order to allow the person to seek independent legal advice and to attend and be represented at the hearing.
- 20.2 Ex-parte hearing – Where a committee/panel is convened as a result of sensitive information being received by the Council, an assessment will be undertaken in balancing a person’s right to a fair hearing, against whether or not it is in the public interest to hold the hearing ex-parte.

## **21. Appeals**

- 21.1 Any applicant refused a licence has the right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.
- 21.2 Anyone aggrieved by the Council’s decision to suspend or revoke their licence, or to impose additional conditions on their licence, has a right of appeal to the Magistrates’ Court within 21 days of the notice of suspension or revocation.