

HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING

STATEMENT OF POLICY **RELEVANCE OF CONVICTIONS FOR NEW APPLICANTS**

Wiltshire Council has a statutory duty under the Town Police Clauses Act 1847, the Transport Act 1985 and the Local Government (Miscellaneous Provisions) Act 1976 to license hackney carriage and private hire vehicles, drivers and operators. Under this legislation the Council shall not grant a hackney carriage or private hire driver's licence or a private hire operator's licence or vehicle licence unless it is satisfied that the applicant is a **"fit and proper person"**.

Applicants for hackney carriage or private hire vehicle licenses will be required to declare any convictions they have. All information given will be treated in strict confidence while the licensing process takes its course and will be retained for no longer than is necessary. An applicant for a driver licence is now included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and all previous convictions, if considered relevant to the application, can now be considered.

An applicant for a hackney carriage or private hire driver licence will be required to provide an Enhanced Disclosure from the Criminal Records Bureau. An applicant for a Vehicle Licence or a Private Hire Operator Licence, where there is no intention to drive a licensed vehicle, will be required to provide a Basic Disclosure. Disclosures bring together information held on the Police National Computer, local police records and where appropriate information is held on lists by the Department of Health and the Department of Education and Employment.

The disclosure of a criminal record or other information will not debar an applicant from obtaining a licence unless Wiltshire Council considers that the conviction(s) renders them unsuitable. In making this decision this authority will consider the nature of the offence, how long ago it was and the age the applicant was when it was committed and any other factors, which may be relevant. However the overriding consideration will be the safety and protection of the public.

Any applicant who is refused a licence on the grounds that he/she is not a fit and proper person to hold such a licence has a right of appeal to a Magistrates' Court under the Local Government (Miscellaneous Provisions) Act 1976. Any person aggrieved by the decision of the Wiltshire Council has a period of 21 days, from the date on which the notice of the Council's decision is served on the applicant, in which to lodge an appeal.

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS FOR NEW DRIVER APPLICANTS

SAFEGUARDING

Everyone has a responsibility for protecting and safeguarding children and adults who may be vulnerable. In the event that the Hackney Carriage Driver, Private Hire Driver, Hackney carriage Operator or Private Hire Operator has concerns a child or adult is suffering or is likely to suffer from any form of maltreatment (whether financial, physical, sexual, emotional or neglect) this should be reported in the following ways:

1. If a child or vulnerable adult is in immediate danger or left alone, contact the police or call an ambulance on 999;
2. In all other cases involving children, referrals should be made to Wiltshire social care services via Wiltshire Multi-Agency Safeguarding Hub (MASH) on 0300 4560108;
3. In all other cases involving adults, referrals should be made to Wiltshire Council Customer Advisers on 0300 456 0111, e-mail customeradvisors@wiltshire.gov.uk

CHILD SEXUAL EXPLOITATION AND ABUSE

‘Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive ‘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 power over them by virtue of their age, gender, intellect, physical strength and/or economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child or young person’s limited availability of choice resulting from their social/economic and/or emotional vulnerability.’(NWG 2008)

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 Wiltshire Police based in the Multi-Agency Safeguarding Hub (MASH) as a matter of urgency on the above number. Drivers are also expected to inform their manager that they have reported their concerns to Wiltshire Police.

Failure to report a suspicion or concern that a young person or young people may be being sexually exploited could lead to the licence being revoked and the individual could also be considered complicit in the sexual exploitation in any subsequent criminal investigation.

1. General Policy

Each case will be decided on its own merits. Although an applicant may have convictions, which would fall under the guidelines of the policy, the Council will always consider the full facts of the case and any mitigating or other circumstances, before making a decision.

An applicant with previous conviction(s) need not be permanently banned from obtaining a license, but depending on the offences involved, they will be expected to have remained **free of conviction** for the periods indicated in these guidelines before an application is considered. The term **free of conviction** will be calculated to run from the date of conviction for each offence recorded. The Council will however retain the discretion to refuse a licence even after such a period has elapsed.

If the offence is isolated, there are mitigating circumstances and/or the period free of conviction has not been satisfied, some discretion may be appropriate, but the overriding consideration should be the safety and protection of the public.

In cases where applicants have been disqualified from driving, the period **free of conviction** will run from the date of the restoration of the driving licence or if required to take a driving test, from the date of passing the test.

Please see examples of how the term **free of conviction** is calculated by referring to paragraph 12 “**Applicants With Previous Convictions**”.

The following examples afford an illustration of the likely response of the Council where convictions or police cautions are revealed.

2. Traffic Offences

Minor Traffic Offences

(A list of offences to which this paragraph applies is attached as **Annex 1**)

If an applicant has received a conviction for a minor traffic offence, 6 months **free of conviction** should have elapsed before an application will be considered.

If an applicant has more than one conviction, in the last three years, 12 months **free of conviction** should have elapsed since the most recent conviction, before an application will be considered.

Major Traffic Offences

(A list of offences to which this paragraph applied is attached as **Annex 2**)

Licensed drivers of hackney carriage and private hire vehicles are responsible for the safety of members of the public who travel in their vehicles and a serious view will always be taken of a conviction for a major traffic offence.

If an applicant has a conviction for a major traffic offence, without disqualification, 12 months **free of conviction** should have elapsed before an application will be considered.

If an applicant has more than one conviction, in the last three years, 2 years **free of conviction** should have elapsed since the most recent conviction, before an application will be considered.

Hybrid Traffic Offences

(A list of offences to which this paragraph applies is attached as **Annex 3**)

Offences of this type will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as a minor traffic offence if the court awarded 3 or less penalty points for the offence.

Disqualification

Where an applicant has been disqualified from driving for a major traffic offence, 3 years **free of conviction** should have elapsed before an application will be considered.

If an applicant has previously accrued sufficient penalty points to require a period of disqualification (totting up), a period of 12 months **free of conviction** should have elapsed before an application will be considered.

In 'totting up' cases where disqualification is considered by the court, but because of 'exceptional circumstances' they decide not to disqualify a driver, 12 months from the date the court made its finding should have elapsed before an application will be considered.

3. Drunkness and Related Offences

With a Motor Vehicle

A very serious view will be taken of convictions of driving or being in charge of a vehicle whilst under the influence of drink or drugs or failing to provide a specimen for analysis.

If an applicant has been disqualified from driving as a result of a conviction for this type of offence, then before an application is considered, 3 years free of conviction should have elapsed.

If an applicant has more than one conviction for this type of offence then serious doubts should be raised as to his/her suitability to hold a licence. Although each case will always be considered on its own merits, the council will always retain the discretion to refuse an application, with the overriding consideration being the safety of the public.

If there is any suggestion that an applicant is or was an alcoholic then grave doubts should arise as to their suitability to hold a licence. A special medical examination should be arranged and depending on the medical evidence and advice given, at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse a licence, with the overriding consideration being the safety and protection of the public.

Not in a Motor Vehicle

An isolated conviction for a drink related offence should not necessarily debar an applicant from obtaining a licence.

If an applicant has more than one conviction for this type of offence, at least 3 years free of conviction should have elapsed since the most recent conviction before an application is considered.

A number of convictions for offences of this type may indicate a medical problem and grave doubts should arise as to the suitability of the applicant to be licensed. In these circumstances a special medical examination should be arranged and depending on the medical evidence and advice given, at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse a licence, with the overriding consideration being the safety and protection of the public.

4. Drugs

A serious view will always be taken of a conviction for any offence involving drugs. Licensed drivers of hackney carriage and private hire vehicles are responsible for the safety of members of the public who are traveling in their vehicles.

An applicant with a conviction for a drug related offence involving a Class A, B or C drug will be required to show a period free of conviction as follows:

1. Class A drug the period will be 5 years
2. Class B drug the period will be 4 years
3. Class C drug the period will be 3 years

If an applicant has more than one conviction for a drug related offence, then depending on the type of drug involved, the period free of conviction which should have elapsed since the most recent conviction will be either double or a combination (if the class of drug is different) from the periods shown above.

If there is any suggestion that an applicant is or was a drug addict then grave doubts should arise as to their suitability to hold a licence. A special medical examination should be arranged and depending on the medical evidence and advice given at least 6 years should have elapsed after any treatment has been completed before an application is considered. Although each case will be considered on its own merits, the Council will retain the discretion to refuse a licence, with the overriding consideration being the safety and protection of the public.

5. Indecency/Sexual Offences

Drivers of hackney carriages and private hire vehicles often carry unaccompanied passengers and a serious view will always be taken of a conviction for an indecency/sexual offence. When considering the seriousness of any indecency/sexual offence, the overriding consideration will always be the safety and protection of the public.

Depending on the seriousness of the offence, an applicant with a conviction for an indecency/sexual offence will not normally be considered for a licence until a substantial period, usually between 5 to 7 years, free of conviction has elapsed.

More than one conviction for an indecency/sexual offence would raise serious doubts of an applicant's suitability to hold a licence. If after careful consideration it is decided to allow an application to continue, at least 10 years free of conviction must have elapsed since the most recent conviction, before an application will be considered.

An applicant with a conviction for a serious sexual offence such as Rape or Unlawful Sexual Intercourse will raise very grave doubts of an applicant's suitability to hold a licence and will generally be refused.

6. Dishonesty

Licensed drivers of hackney carriage and private hire vehicles are expected to be trustworthy persons. The widespread practice of delivering unaccompanied property is indicative of the trust that business people put in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare or knowing that a property is empty, whilst the occupants are away on holiday after taking them to the railway station or airport etc. For these reasons a serious view will be taken of any convictions involving dishonesty.

An applicant with a conviction for an offence such as theft, bilking, handling stolen goods or deception, should be required to show a period of at least 3 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 5 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for a more serious offence such as Burglary, Fraud or Forgery should be required to show a period of at least 5 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of

offence, then at least 7 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

7. Criminal Damage

A minor offence of criminal damage should not necessarily debar an applicant from obtaining a licence.

If an applicant has more than one conviction for this type of offence, at least 3 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

Offences such as arson are considered much more serious and applicants will generally be refused.

8. Violence

As the drivers of licensed hackney carriages and private hire vehicles maintain a close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding, assault or any other type of offence of a violent nature, with the overriding consideration being the safety and protection of the public.

An applicant with a conviction for a minor offence of assault such as common assault, battery, or obstruction should be required to show a period of at least 3 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 5 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for a more serious offence of assault such as ABH, Assault on Police, Affray, Resisting Arrest, Possessing an Offensive Weapon, Racially-aggravated criminal damage or Racially-aggravated offence, should be required to show a period of at least 5 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 7 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for the most serious offences of assault such as GBH, Malicious Wounding or Robbery, should be required to show a period of at least 8 years free of conviction before an application is considered. If an applicant has more than one conviction for this type of offence, then at least 10 years free of conviction should have elapsed since the most recent conviction before an application will be considered.

An applicant with a conviction for an offence of Murder, Manslaughter or Manslaughter or Culpable Homicide While Driving, should raise grave doubts as to the applicants suitability to hold a licence. The Council will normally refuse a licence, the overriding consideration being the safety of the public.

9. Police Cautions

A Police Caution is considered and administered when a person comes to the notice of the Police for the first time. A formal caution is only offered if there is sufficient evidence to lead to a prosecution and the offender admits his/her guilt.

A formal Police Caution will be viewed as a conviction. The period free of conviction will be the same as for a conviction and will run from the date the caution was administered.

10. Other Offences

Where a Binding Order, Community Service Order or a Restraining Order have been imposed by the Court, then no application should be considered, whilst that order is still current. A period of at least 2 years should have elapsed, after the expiry of the order, before an application is considered and even then the overall consideration will be the protection of the public.

11. Pending Offences

An applicant is required to disclose details of any charges pending against him. If there is a pending charge, the application will not be considered until the result of the case is known. The application will then be considered in line with the guidelines relating to the relevance of convictions.

12. Applicants with Previous Convictions

The following are illustrations of how the term 'free of conviction' will be calculated:-

| | | | |
|-----|-----------------------------------|--|--|
| (1) | <u>Offence</u> | <u>Court Date</u> | <u>Date Free of Conviction</u> |
| | Theft | 25.7.02. | 1 st Offence 25.7.05 2 nd Offence 25.7.07 |
| (2) | <u>Offence</u> | <u>Court Date</u> | <u>Date Free of Conviction</u> |
| | ABH | 9.7.98. | 1 st Offence 9.7.03 2 nd Offence 9.7.05 |
| (3) | <u>Offence</u> | <u>Court Date</u> | <u>Date Free of Conviction</u> |
| | Driving a Motor Excess Alcohol | 12.11.99. Disqualified 12 months | 1 st Offence 12.11.03 2 nd Offence 12.11.05 |

Annex 1

MINOR TRAFFIC OFFENCES

| | |
|------|---|
| MS10 | Leaving a vehicle in a dangerous position |
| MS20 | Unlawful pillion riding |
| MS30 | Play street Offences |
| MS40 | Driving with uncorrected defective eyesight or refusing to submit to a test |
| MS70 | Driving with uncorrected defective eyesight |
| MS80 | Refusing to submit to an eyesight test |
| MS90 | Failure to give information as to identity of driver etc |
| MW10 | Contravention of Special Road Regulations (excluding speed limits) |
| PC10 | Undefined contravention of Pedestrian Crossing Regulations |
| PC20 | Contravention of Pedestrian Crossing Regulations with moving vehicle |
| PC30 | Contravention of Pedestrian Crossing Regulations with stationary vehicle |
| TS10 | Failing to comply with traffic light signals |
| TS20 | Failing to comply with double white lines |
| TS30 | Failing to comply with a 'Stop' sign |
| TS40 | Failing to comply with direction of a constable or traffic warden |
| TS50 | Failing to comply with traffic sign (excluding 'Stop' sign, traffic lights or double white lines) |
| TS60 | Failing to comply with school crossing patrol sign |
| TS70 | Undefined failure to comply with a traffic direction sign |

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Annex 2

MAJOR TRAFFIC OFFENCES

| | |
|------|--|
| AC10 | Failing to stop after an accident |
| AC20 | Failing to give particulars or to report an accident within 24 hours |
| AC30 | Undefined accident offences |
| BA10 | Driving while disqualified by order of court |
| BA20 | Attempting to drive while disqualified by order of court |
| CD10 | Driving without due care and attention |
| CD20 | Driving without reasonable consideration for other road users |
| CD30 | Driving without due care and attention or without reasonable consideration for other road users |
| CD40 | Causing death through careless driving when unfit through drink |
| CD50 | Causing death by careless driving when unfit through drugs |
| CD60 | Causing death by careless driving with alcohol level above the limit |
| CD70 | Causing death by careless driving then failing to supply a specimen for analysis |
| DD40 | Dangerous driving |
| DD60 | Manslaughter or culpable homicide while driving a vehicle |
| DD80 | Causing death by dangerous driving |
| DR10 | Driving or attempting to drive with alcohol level above limit |
| DR20 | Driving or attempting to drive while unfit through drink |
| DR30 | Driving or attempting to drive then failing to supply a specimen for analysis |
| DR40 | In charge of a vehicle while alcohol level above limit |
| DR50 | In charge of a vehicle while unfit through drink |
| DR60 | Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive. |
| DR70 | Failing to provide specimen for breath test |
| DR80 | Driving or attempting to drive when unfit through drugs |
| DR90 | In charge of a vehicle when unfit through drugs |
| IN10 | Using a vehicle uninsured against third party risks |
| LC20 | Driving otherwise than in accordance with a licence |
| LC30 | Driving after making a false declaration about fitness when applying for a licence |
| LC40 | Driving a vehicle having failed to notify a disability |
| LC50 | Driving after a licence has been revoked or refused on medical grounds |
| MS50 | Motor racing on the highway |
| MS60 | Offences not covered by other codes |
| UT50 | Aggravated taking of a vehicle |

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Annex 3

HYBRID TRAFFIC OFFENCES

| | |
|------|--|
| CU10 | Using vehicle with defective brakes |
| CU20 | Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition |
| CU30 | Using a vehicle with defective tyre(s) |
| CU40 | Using a vehicle with defective steering |
| CU50 | Causing or likely to cause danger by reason of load or passengers |
| SP10 | Exceeding goods vehicle speed limit |
| SP20 | Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles) |
| SP30 | Exceeding statutory speed limit on a public road |
| SP40 | Exceeding passenger vehicle speed limit |
| SP50 | Exceeding speed limit on a motorway |
| SP60 | Undefined speed limit offence |

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10)

1st September 2010.