

9 CONSIDERATION OF AN APPENDIX TO THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY PROVIDING GUIDANCE ON THE RELEVANCE OF CONVICTIONS. THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847

REPORT BY: Head of Environmental Health and Trading Standards

Purpose

1. That the Committee consider the guidelines to the relevance of convictions with respect to licensing dual drivers as an appendix to the Taxi and Private Hire Policy.

Legal Background – Relevance of Offences

2. Under the terms of the Local Government (Miscellaneous Provisions) Act 1976 s 51 It is a requirement of local authorities that no licence should be granted to someone unless they are “fit and proper” person.
3. The Local Authority is entitled to adopt policies in relation to hackney carriage and private hire licensing. This was established in the case of *Stringer V minister of Housing and Local Government*.

Background

4. The licensing Committee requested that a report be brought to the Committee regarding the relevance of convictions with respect to issuing and retaining dual drivers licences.
5. As part of the application process for dual driver’s licences, all applicants must undertake an enhanced criminal records bureau (CRB) check at the time of application. This check must be repeated at least every three years.
6. The guidance has been based upon advice from the DOT Circular 2/92, HO Circular 123/92 and CRB guidance. It is evident that some of the wording is open to interpretation, but this is to enable the licensing authority to exercise the necessary discretion when assessing individual cases.
7. Under the Local Government (Miscellaneous Provisions) Act 1976, should a licence application be refused or a licence be suspended or revoked for any reason, the applicant has the right to appeal the decision to Magistrate’s Court within twenty-one days of receiving notice of the intention to refuse/suspend/revoke the licence. During the period allowed for an appeal to be lodged, and up to the time the appeal is determined, a licensee has a statutory right to continue working as a dual driver. This is due to change in January 2007 when this right is removed and any refusal, suspension or revocation will be take immediate effect.

8. The Committee is requested to consider the guidelines, as outlined at Appendix 1 and advise officers whether it wishes whether it wishes to adopt the guidance as it is or amend it as they feel necessary, and to provide guidance on any amendments.

Issues

9. The Licensing section feel it is necessary to consult with the Police and our Legal as well as the Committee, therefore it is suggested that the Guidance be considered in full at the December 2007 Committee.

RECOMMENDATION

THAT the Committee note the draft guidance and make comments to officers as part of the consultation period. (Comments required by 18th December, 2007)

Appendix 1

APPENDIX TO TAXI AND PRIVATE HIRE POLICEY

STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS

Section 59 (1) (a) The Local Government (Miscellaneous Provisions) Act 1976 states that a District Council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a 'fit and proper' person to hold the licence.

An enhanced CRB check is carried out on all drivers applying for a dual drivers licence, and every 3 years after that. The CRB shows details of Police Records of Convictions, Cautions, Reprimands and Final Warnings. Enhanced disclosures contain details of all current convictions, as well as spent convictions, cautions, reprimands or final warnings, plus details of other information held by the police.

The criteria for spent convictions as defined by Rehabilitation of Offenders Act 1974 has the effect of removing a convicted persons criminal record, certain offences are removed after a stipulated time. Certain professions including Taxi drivers are exempt from the Act therefore spent and unspent convictions can be considered for applications in relation to determining whether they are a 'fit and proper persons'.

ADVICE FROM THE CRIMINAL RECORD BUREAU ON ASSESSING THE RELEVANCE OF CRIMINAL RECORDS

The suitability of a person with a criminal record will vary, depending on the nature of the job and the details and circumstances of any convictions. Deciding on the relevance of convictions is not an exact science, an assessment of an applicant's skills, experience and conviction circumstances should be weighed against the risk criteria for the job. Responsible parties need to identify what risks might be involved.

To facilitate this process, an applicant's criminal record should be assessed in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. It is recommended that organisations consider the following when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers and clients?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance of items of value?
- Does the post involve direct contact with the public?
- Will the nature of the job present any opportunities for the post holder to reoffend in the place of work?

The answers to such questions should help organisations to determine the relevance of convictions to specific posts. For example, pedophile, or child pornography offences would certainly disqualify any person required to work with children. Some violent offences would be relevant to positions involving unsupervised contact with the public. Fraud should be considered in relation to posts involving the handling of money or possessions.

It is recommended that the following issues are taken in account as a minimum requirement:

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property
- The length of time since the offence occurred
- Any relevant information offered by the applicant about the circumstances, which led to the offence being, committed, for example the influence of domestic or financial difficulties.
- Whether to offence was a one-off, or part of a history of offending
- Whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely
- The country in which the offence was committed, some activities are offences in Scotland and in England and Wales, and vice versa
- Whether the offence has since been decriminalized by Parliament
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

When submitting an application for a licence to drive a hackney carriage or private hire vehicle you are requested to declare any convictions or cautions you may have under the Rehabilitation of Offenders Act 1974. The information you give will be treated in confidence and will only be taken into account in relation to your application.

The disclosure of a criminal record or other information will not debar you from gaining a licence unless the authority considers that the conviction renders you unsuitable. In making the decision the authority will consider the nature of the offence, how long ago and what age you were when it was committed and any other factors, which may be relevant.

This policy has been compiled using the DOT Circular 2/92, HO Circular 13/92 and advice from the Criminal Record Bureau.

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

GENERAL POLICY

1. Each case will be decided on its own merits having regard to this policy, the provisions of the Rehabilitation of Offenders Acts and amendments and the protection of the public. Hackney carriage and private hire drivers are expected to be persons of trust and therefore the principal considerations of any case will be whether the property or well being of the public may be at risk
2. Sentences imposed by the Courts reflect the seriousness of an offence and/or a person's past history; for that reason the Council regards a crime as a '**serious crime**' where indicated in this Policy as:-

Any Offence where the term of the sentence passed on conviction is a sentence, which is excluded from the Rehabilitation of Offenders Act 1974 by virtue of section 5 of that Act. That is:

- a) A sentence of imprisonment for life.
- b) A sentence of imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding 30 months.
- c) A sentence of preventative detention.
- d) A sentence of detention during Her Majesty's Pleasure or for life under section 90 or 91 or the Powers of Criminal Courts (Sentencing) Act 2000, 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975, or a sentence of detention for a term exceeding 30 months passed under section 91 of the said Act of 2000 (young offenders convicted of grave crimes) or under section 206 of the said Act of 1975 (detention of children convicted on indictment) or corresponding Court-martial punishment; and
- e) A sentence of custody for life.

A conviction for "serious crime" shall not permanently bar an applicant from obtaining a licence but he/she is expected to have remained free of conviction for any criminal offence, other than minor traffic offences, for three to five years from the end of a served sentence for a "serious crime". The circumstance of the offence, the sentence imposed by the Court or the fact an offence is an isolated one, may be sufficient in part in allowing discretion when considering the issue of a licence but the overall protection of the public must remain the paramount issue.

Where a person has been sentenced to over 5 years imprisonment at any one time the Council regards a sentence of this length as indicating that the offence was very serious. It is unlikely that a licence will be granted or maintained. It must be for the Court to decide the outcome if an applicant with such a history wishes to pursue an appeal against refusal of licence.

In relation to persons whose name appears on the Sex Offenders Register it is unlikely that a licence will be granted or maintained. It must be for a Court to decide the outcome of any applicant with such history wishes to pursue an appeal.

If an existing licence holder is convicted of any offence and is sentenced to any term of imprisonment, whether suspended or not, or their name is placed on the Sex Offenders Register, then (unless indicated otherwise in "Stances" below) their licence will be suspended immediately pending consideration of their "fit and proper" status.

Cautions are given when there is sufficient evidence for a conviction and the individual admits their guilt. Therefore, cautions must be considered as a conviction.

Stances on specific types of offences;

a) Minor Traffic Offences

An applicant whose ordinary driving licence is endorsed with a minor traffic offence, e.g. obstruction, waiting in a restricted street, speeding, etc., shall not be prevented from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's ordinary driving licence then a dual driver badge may be granted after its restoration (subject to statutory requirements), but a warning may be issued as to future conduct.

In relation to existing licence holders an isolated minor traffic offence shall not affect the validity of their licence but more than one such type of offence in a twelve month period may cause their "fit and proper" status to be reviewed.

b) Major Traffic Offences

An applicant who has an isolated conviction for reckless driving or driving without due care and attention, etc., will normally be warned as to future driving and advice on the standard expected of Dual drivers. More than one conviction for this type of offence within the last three years will merit refusal and no further application shall be considered until a period of one to three years free from a conviction of a similar nature has elapsed.

In relation to existing licence holders any conviction for a major traffic offence shall cause their "fit and proper" status to be reviewed immediately as the Council will regard any such conviction as indicating that they have fallen below the standards required for licensed drivers.

c) Drunkenness with motor vehicle

A serious view is taken of convictions of driving or being in charge of a vehicle while under the influence of drink.

An applicant who has an isolated conviction may not necessarily be debarred from holding a licence but strict warnings may be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to the applicant's fitness to hold a licence. At least three years shall elapse (after the restoration of the driving

licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination shall be arranged before the application is entertained. If an applicant is found to be an alcoholic a period of five years shall elapse after treatment is complete before a further licence application is considered.

In relation to existing licence holders any conviction for drunkenness in a motor vehicle shall cause the "fit and proper" status to be reviewed immediately as the Council will regard any such conviction as indicating that they have seriously fallen below the standards required for licensed drivers, and a licence(s) may well be suspended immediately pending consideration of this.

d) Drunkenness not in a motor vehicle

An isolated conviction for drunkenness may not debar an applicant or an existing licence holder for obtaining/continuing to hold a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see © above). In some cases, a warning may be given and/or their "fit and proper" status may be reviewed as appropriate.

e) Drugs

An applicant with a conviction for any offence where drugs have been used, supplied or stolen shall be required to show a period of at least five years free of conviction following the servicing of any sentence imposed by a court before an application is entertained, or seven years after detoxification treatment has been successfully completed if he/she was deemed to be an addict.

In relation to existing licence holders any conviction related to drugs shall cause their "fit and proper" status to be reviewed immediately. The Council will regard any such conviction as indicating that such status is seriously in doubt and a licence(s) may well be suspended immediately pending consideration of this.

f) Further Offences of Indecency

An applicant who has convictions or cautions for offences of Indecent Exposure or any other sexual related offence not previously mentioned shall not automatically be debarred from holding a licence. Each application must be considered in isolation and a guide of 'free from such conviction or caution for at least five years shall be used. If the conviction relates to an offence against children then the offence shall be considered as if it were a 'serious crime'.

In relation to existing licence holders any conviction relating to further offences of indecency shall cause their "fit and proper" status to be reviewed immediately. The Council will regard any such conviction as indicating that such status is seriously in doubt and a licence(s) may well be suspended immediately pending consideration of this.

g) All Other Crimes

All other applications where the applicant has convictions for criminal offences, where sentences of less than those previously mentioned are imposed, or where fines, probation, supervision order or conditional discharges have been imposed and a significant period of time has elapsed since conviction, should be treated entirely on their own merits.

In relation to existing licence holders if any person receives a conviction or caution for any criminal offence within the category of 'all other crime offences' then the suspension of their licence will be imposed or considered giving due thought to their "fit and proper" status in the light of the offence, sentence and circumstances presented.