



MALDON DISTRICT
COUNCIL

Taxi and Private Hire Criminal Convictions Policy

DRAFT

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1. Introduction

The purpose of this policy is to provide guidance on the criteria taken into account by the Council when determining whether or not an applicant or existing licence holder is a fit and proper person to hold a taxi or private hire licence.

The over-riding aim is to protect the safety of the public and to ensure the:-

- person is a fit and proper person;
- person does not pose a threat to the public;
- public are safeguarded from dishonest persons; and the
- safeguarding of children and young persons.

2. General policy

Each case will be determined on its own merits. Whilst the Council may consider that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, it would normally be expected that the applicant would be required to:-

- remain free of conviction for an appropriate period; and
- show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is 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.

Where an applicant has been convicted of a criminal offence, the Council cannot review the merits of the conviction.

The Council will take into account all convictions recorded against the person whether spent or not. The standards set out in this policy are those that would normally be applied, although the Council may depart from these in exceptional circumstances.

3. Pre-requisites to making an application

Every application for a driver's licence must be accompanied by satisfactory evidence that the applicant has (incomplete applications will not be deemed to have been made until such time as they are complete):-

- the right to live and work in the country;
- an enhanced criminal record check and evidence that they are not on a child and / or vulnerable adult barring list;
- a current certificate of medical fitness (to group 2 standard);
- authorisation to drive a vehicle of the same classification as that of their licence;
- a minimum of 3 years post-qualification driving experience (or if not, successful completion of an advanced driving assessment) and, if an EU passport, evidence of at least one year's experience of driving on UK roads;
- adequate literacy and numeracy skills, including sufficient ability to speak and understand English, to provide the service that they wish to be licensed for.

If an applicant has spent 6 continuous months or more overseas, the Council will expect to see evidence of a criminal record check from the country / countries covering this period. The criminal record check must be in English, if not, it must be translated into English by a certified translator acceptable to the Council.

4. Appeals

Any person who has their application for a licence refused or their licence suspended or revoked on the grounds of not being a fit and proper person has a right of appeal to the Magistrates' Court within 21 days of being given notice of refusal, suspension or revocation.

5. Powers

The Council can refuse, suspend or revoke a licence if the applicant / 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.

The Council can take into account all convictions recorded against the applicant or holder of a driver's licence, whether spent or not. The Council will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

6. Consideration of disclosed criminal history

If an applicant or licence holder has any convictions, warnings, cautions or charges awaiting trial, the Council will consider:-

- how relevant the offence(s) are;
- 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 there is a pattern of offending;
- any other character check considered reasonable (e.g. personal references); and
- any other relevant factors.

Existing holders of drivers' licences are required to notify the Council in writing within 7 days of being arrested, receiving a driving endorsement, fixed penalty notice or criminal conviction (including cautions).

Applicants can discuss further what effect a caution / conviction may have on any application by contacting a licensing officer in confidence for advice.

The Council checks enhanced disclosures from the Disclosure and Barring Service (DBS) obtained by the applicant at their expense. The Council will also 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 Council or other Councils and information disclosed by the Police.

It is an offence for any person to knowingly make a false declaration or to omit any material facts when making an application. Where an applicant has given a false statement or declaration, the licence will normally be refused.

7. Serious offences involving violence

As licensed drivers have close contact with the public, a firm line is taken with those who have convictions involving violence.

A licence will not normally be granted where the applicant has a conviction for the following and it is less than 10 years prior to the date of application. Likewise, a licence may be suspended or revoked where an existing licence holder is convicted of the following.

- Murder
- Manslaughter or culpable homicide while driving
- Terrorism
- Similar offences (including attempted or conspiracy to commit)
- Arson
- Malicious wounding or grievous bodily harm
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Possession of a firearm
- Riot
- Violent disorder
- Resisting arrest
- Similar offences (including attempted or conspiracy to commit)

A licence will not normally be granted where the applicant has a conviction for the following and it is less than 5 years prior to the date of application. Likewise, a licence may be suspended or revoked where an existing licence holder is convicted for the following.

- Criminal damage
- Racially aggravated offence
- Assault (Police assault, common assault and assault occasioning actual bodily harm)
- Affray
- Section 5 Public Order Act 1986 offence (harassment, alarm or distress)
- Section 4 Public Order Act 1986 offence (fear of provocation of violence)
- Section 4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage
- Similar offences (including attempted or conspiracy to commit)

A licence will not normally be granted if an applicant has more than one conviction for an offence of a violent nature.

8. Possession of a weapon

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. Depending on the circumstances of the offence, an applicant should be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer). Likewise, a licence may be suspended or revoked where an existing licence holder is convicted for possession of a weapon.

9. Sex and indecency offences

As licensed drivers carry unaccompanied and vulnerable passengers, the Council will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. All sexual and indecency offences will be considered as serious. The Council will not grant a licence to any applicant who is currently on the Sex Offenders Register. If an existing licence holder is added to the Sex Offenders Register, the licence will be revoked.

Applicants with convictions for sexual or indecency for the following offences that involve a third party will normally be refused a licence. Likewise, a licence may be suspended or revoked where an existing licence holder is convicted for the following.

- Rape
- Assault by penetration
- Offences involving children and vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Possession of indecent photographs, child pornography, etc.
- Indecent exposure
- Soliciting (kerb crawling)
- Any sex or indecency offence committed in the course of employment as a taxi or private hire driver
- Similar offences (including attempted or conspiracy to commit)

10. Dishonesty

A licensed driver is expected to be a trustworthy person. The practice of delivering unaccompanied property is indicative of the trust that people place in drivers. They deal with cash transactions and property may be left in their vehicles. The Council's licensing conditions require drivers to return property to the owner within a reasonable period of time. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the agreed fare. For these reasons, a serious view is taken of any conviction involving dishonesty.

In general, minimum periods of 5 years free of conviction or at least 3 years from completion of sentence (whichever is longer) should be required before a licence is granted for the

following offences. A licence may be suspended or revoked where an existing licence holder is convicted for the following offences.

- Theft
- Burglary
- Fraud (including benefit fraud)
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Deception (including obtaining money or property by deception)
- Taking a vehicle without consent
- Similar offence (including attempted or conspiracy to commit)

A licence will not normally be granted if an applicant has more than one conviction for a dishonesty offence. 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 issued with a licence. Likewise, existing licence holders may have their licence suspended or revoked.

11. Drugs

A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply, are issues that will be considered. A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs or more than one conviction related to the possession of drugs and has not been free of conviction for 5 years. Likewise, a licence may be suspended or revoked where an existing licence holder is convicted of a drug-related offence.

An applicant who has an isolated conviction for an offence related to the possession of drugs (other than for supply) within the last 3-5 years may be granted a licence, but consideration will be given to the nature and quantity of drugs.

If there is evidence of persistent drug 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 an applicant was an addict, they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

12. Driving offences

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 or for driving whilst using a mobile phone. A licence will not normally be granted if an applicant has more than one conviction for an offence of driving under the influence of drink or drugs or whilst using a mobile phone.

An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA driving licence, but there is a significant risk to his / her licence status in the event of re-offending and this may be suspended or revoked. Normally, at least 3 years after the restoration of the driving licence following a drink / drug 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.

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. Unless there are exceptional circumstances, a licence will not be granted where there is a conviction for the following offences.

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by driving: unlicensed, disqualified or uninsured drivers
- Any similar offences

13. Licensing offences

Certain offences under taxi or private hire legislation, e.g. plying for hire, overcharging or refusing to carry disabled persons, would normally prevent a licence being granted until 3 years has passed. A licence will not normally be granted if an applicant has more than one conviction for a licensing related offence. Likewise, a licence may be suspended or revoked where an existing licence holder is convicted of licensing offences.

14. Insurance offences

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 the applicant has been free of conviction for 3 years. A licence will not normally be granted if an applicant has more than one conviction for an insurance related offence. Likewise, a licensed driver convicted of driving or being in charge of a vehicle without insurance may have their licence suspended or revoked.

An operator found guilty of aiding and abetting the driving of passengers whilst without insurance will normally have his operators' licence revoked immediately and be prevented from holding a licence for at least 3 years.

15. Outstanding charges or summonses

If the applicant is the subject of an outstanding charge or summons, their application can be processed, but the application will be reviewed at the conclusion of proceedings. If the outstanding charge or summons involves a serious offence and the applicant's conviction history indicates a pattern of unlawful behaviour, the application may be put on hold until proceedings are concluded or the licence may be refused. For existing licence-holders, each case will be determined on its merits: the licence may be suspended or revoked.

16. Non-conviction information

If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence, the application may be refused. For existing licence-holders, each case will be determined on its merits: the licence may be suspended or revoked.

Cautions

Admission of guilt is required before a caution can be issued: each case will be considered on its merits. Likewise, for existing licence-holders, the licence may be suspended or revoked.

Once a licence has been granted

If a licence holder's conduct is such that, were they applying for a new licence their application would normally be refused, consideration will be given to the suspension and revocation of their licence.

A suspension or revocation of the licence takes effect at the end of 21 days, beginning with the day the notice is given to the driver. In the interests of public safety, however, the suspension or revocation of the licence may have immediate effect.

A suspension or revocation of an operator's licence will take effect at the end of 21 days, beginning with the day the notice is given to the operator.

17. Summary

A criminal history in itself will not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. In most cases, an applicant would be expected to remain free from conviction for 3 to 10 years before an application can be considered. There may be occasions, however, when an application can be allowed before 3 years free from convictions have elapsed.

Whilst an applicant may have a number of convictions that individually meet this policy, the overall offending history must be considered. A series of offences over a period of time is more likely to give cause for concern than an isolated, minor conviction. Some discretion can be afforded if an offence is minor and isolated with mitigating circumstances, but the overriding consideration is the protections of the public.