

## Appendix A

### HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING

#### STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS

A District 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 both hackney carriage and private hire vehicles, drivers and operators. Under this legislation a District Council shall not grant a hackney carriage or private hire driver's licence or a private hire operator's licence unless it is satisfied that the applicant is a **"fit and proper person"**.

Applicants for these licenses will be required to declare any convictions they may 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. Applicants for a driver's licence are now included in the Rehabilitation of Offenders Act (Exceptions) Order and all previous convictions, if considered relevant to the application, can now be considered.

Applicants will be required to provide a Standard or Enhanced Disclosure from the Criminal Records Bureau. Disclosures bring together information held on the Police National Computer, local police records and where appropriate information held on lists held by the Department of Health and the Department of Education and Employment.

Relevant conditions specified in the Police Act 1997 indicate anyone in a position which involves regularly supervising or being in sole charge of persons aged under 18 years will qualify for an Enhanced Disclosure. The Wiltshire County Council is responsible for transporting many thousands of pupils to school each day, a large proportion of these being transported by taxis and private hire vehicles licensed by Salisbury District Council. Only applicants who provide an Enhanced Disclosure will be allowed by the Wiltshire County Council to carry out their contract work

Salisbury District Council will require all applicants for a hackney carriage or private hire driver's licence to provide an Enhanced Disclosure. This could vary with applications for a private hire operator's licence, where there is no intention by the applicant to drive. In these circumstances a Standard Disclosure may be more appropriate.

Applicants who provide an Enhanced Disclosure will be requested to complete a "Consent for Release of Information Form" which allows Salisbury District Council to forward the result of the Enhanced Disclosure check to the Wiltshire County Council.

The disclosure of a criminal record or other information will not debar an applicant from obtaining a licence unless this authority 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 what 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 refused a driver's licence or a private hire operator's 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 a District 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

### 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 licence but should be expected to remain **free of conviction** for periods of 6 months up to 7 years depending on the type of offence(s) committed, before an application is entertained. 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.

The term **free of conviction** will be the time period calculated to run from the end of any rehabilitation period as defined in the Rehabilitation of Offenders Act 1974 and not the date of conviction.

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

Convictions for minor traffic offences or an isolated conviction for driving without due care and attention should not prevent a person from making an application.

If an applicant has previously accrued sufficient penalty points to require a period of disqualification (totting up) then before an application is considered, a period of 6 months free of conviction should have elapsed.

If an applicant has been convicted of an offence of dangerous driving or other offences involving obligatory disqualifications, then before an application is considered a period of 12 months free of conviction should have elapsed.

In each case a warning should be given as to the high standards expected of holders of hackney carriage and private hire driver's licences.

### **3. Driving Without Insurance Or Driving Whilst Disqualified**

A serious view will always be taken of a conviction for driving without insurance or driving whilst disqualified. Licensed drivers of hackney carriage and private hire vehicles are responsible for the safety of members of the public who are travelling in their vehicles.

If an applicant has been disqualified from driving as a result of a conviction for these type of offences, then before an application will be considered, 12 months free of conviction should have elapsed.

If an applicant has previously held a licence to drive hackney carriages or private hire vehicles and the disqualification arose as a result of acting as the driver of that type of vehicle, then before an application is considered 18 months free of conviction should have elapsed.

If an applicant has more than one conviction for these type of offences within the last three years, then at least 2 years free of conviction should have elapsed since the most recent conviction before an application is considered.

### **4. Drunkenness and Related Offences**

#### **4.1 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. This is particularly the case where the applicant has previously held a licence and the offence was committed whilst he was driving a licensed hackney carriage or private hire vehicle.

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 previously held a licence to drive hackney carriages or private hire vehicles and the disqualification arose as a result of acting as the driver of that type of vehicle then before an application is considered, 4 years free of conviction should have elapsed.

If an applicant has more than one conviction for this type of offence at least 6 years free of conviction should have elapsed since the most recent conviction before an application is considered.

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 dependant 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.

## 4.2 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 dependant 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. 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 travelling in their vehicles.

An applicant with a conviction for a drug related offence 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 a drug related offence, then at least 6 years free of conviction should have elapsed since the most recent conviction before an application is considered.

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 dependant 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.

## **6. 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.

Applicants with a conviction for an indecency/sexual offence will not normally be considered for a licence until a period of at least 5 years free of conviction has elapsed.

If an applicant has more than one conviction for indecency/sexual offences at least 7 years free of conviction should have elapsed since the most recent conviction before an application is considered.

If an applicant has been convicted of a serious sexual offence such as rape or unlawful sexual intercourse, then grave doubts should arise as to the applicants suitability to hold a licence. 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.

## **7. Dishonesty**

Licensed drivers of hackney carriage and private hire vehicles are expected to be persons of trust. 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 of dishonesty should be required to show a period of at least 3 years free of conviction before an application is considered.

If an applicant has previously held a licence to drive hackney carriages or private hire vehicles and the offence arose as a result of acting as the driver of that type of vehicle then before an application is considered, 4 years free of conviction should have elapsed.

If an applicant has more than one conviction for this type of offence at least 5 years free of conviction should have elapsed since the most recent conviction before an application is considered.

## **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 an offence involving violence 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 at least 7 years free of conviction should have elapsed since the most recent conviction before an application is considered.

## **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 in line with the Rehabilitation of Offenders Act 1974:-

| (1) | <u>Offence</u> | <u>Court Date</u> | <u>Sentence</u> |
|-----|----------------|-------------------|-----------------|
|     | Theft          | 25.7.02.          | Fined £100.00   |

The rehabilitation period for any fine is 5 years, so the period ‘ free of conviction ’ will be calculated from the **25.7.07.**

| (2) | <u>Offence</u> | <u>Court Date</u> | <u>Sentence</u>       |
|-----|----------------|-------------------|-----------------------|
|     | Burglary       | 9.7.98.           | 3 months imprisonment |

The rehabilitation period for any term of imprisonment of less than 6 months is 7 years, so the period ‘ free of conviction ’ will be calculated from **9.7.05.**

| (3) | <u>Offence</u>                              | <u>Court Date</u> | <u>Sentence</u>                          |
|-----|---|-------------------|--|
|     | Driving a Motor Vehicle with Excess Alcohol | 12.11.99.         | Disqualified from driving for 12 months. |

In this case the period ‘ free of conviction ’ will be calculated from **12.11.2000.**