



Summons to Meeting

Thursday 17 September 2020

Licensing Regulatory Panel

Friday 25 September 2020, 2.00 pm

Zoom Virtual Meeting

Membership:

Councillor Allan Daniels
Councillor Adrian Kirkbride
Councillor Alan Smith

Councillor Peter Kendall
Councillor Ron Munby MBE

This meeting will be broadcast live on the Allerdale Borough Council YouTube™ Channel.

Members of the public are welcome to attend the meeting. If you have any questions or queries contact Lee Jardine on 01900 702502.

Agenda

1. Election of Chair

To elect a Chair for the ensuing meeting.

2. Apologies for Absence

3. Declaration of Interests

Councillors/Staff to give notice of any disclosable pecuniary interest, other registrable interest or any other interest and the nature of that interest relating to any item on the agenda in accordance with the adopted Code of Conduct.

4. Questions

To answer questions from members of the public – submitted in writing or by



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electronic mail no later than 5.00pm, 2 working days before the meeting.


The Chairman will move:

That under Section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting for the following items on the grounds that they may involve the likely disclosure of exempt information as defined in paragraph 1 of part 1 of Schedule 12A of the Act.

5. To consider an application for a Hackney Carriage Driver Licence (Pages 3 - 10)

Licensing Criminal Convictions Policy (Pages 11 - 20)

Procedure at Licensing Panel (Pages 21 - 22)



Chief Executive

Date of Next Meeting:

**Friday 2 October 2020, 2.00 pm
Zoom Virtual Meeting**

Agenda Item 5

By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A of the Local Government Act 1972.

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The Relevance of Criminal Convictions Relating to the Determination of the Application to Grant or Renew a Hackney Carriage or Private Hire Driver's Licence

Introduction

1. 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 an existing licence holder is a fit and proper person to hold a Hackney Carriage and/or Private Hire Vehicle driver and/or operator licence.
2. The overriding consideration when having regard to this policy is to protect the safety of the public. The Licensing Authority is concerned to ensure:
 - 2.1 that a person is a fit and proper person.
 - 2.2 that the person does not pose a threat to the public.
 - 2.3 that the public are safeguarded from dishonest person.
 - 2.4 the safeguarding of children and young persons.
3. This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
 - 3.1 Applicants for driver/operator licences
 - 3.2 Existing licensed drivers/operators whose licences are being reviewed
 - 3.3 Licensing Officers
 - 3.4 Members of the Licensing Regulatory Panel (or other relevant decision making body)
 - 3.5 Magistrates hearing appeals against local authority decisions
4. Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the licensing regulatory panel. Whilst officers and the panel will have regard to the guidelines contained in the policy, **each case will be considered on its individual merits and, where the circumstances demand, the officer or the panel may depart from the guidelines.**

General Policy

5. Applicants for a Private Hire/Hackney Carriage Driver Licence must have held a full UK/EC/EEA driving licence for at least three years, such period to be calculated from the date of issue of a full driving licence.
6. There may be occasions where it is appropriate to depart from the guidelines, for example where the offence is a one-off occasion or there are mitigating circumstances or alternatively where there are many or continuous offences which may show a pattern of offending and unfitness.
7. A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would be expected to:
 - 7.1 . remain free of conviction for an appropriate period as stated in the guidelines;
and
 - 7.2 . 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).
8. Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.
9. **Where an applicant has been convicted of a criminal offence, the council cannot review the merits of the conviction** [Nottingham City Council v. Mohammed Farooq (1998)]
10. If an applicant with a history of criminal convictions has been granted a licence, and at the time of renewal of that licence the applicant's circumstances have not changed, the licence should be renewed at the discretion of the Licensing Officer without the need for the application to be referred to the Licensing Panel and without the need for further testing through the Council's nominated driving assessment/test. An application for renewal of a licence which contains new offences or offences which were not previously disclosed will be referred to the Licensing Panel for determination.

Appeals

11. Any applicant refused a driver's licence on the grounds that the council is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.
12. Nothing in the criteria outlined in this policy will remove an applicant's right to appeal to a Magistrates' Court against the Council's refusal to grant or renew a licence, or decision to suspend or revoke a licence, or against any conditions which may have been imposed on any such licence by the local authority.

Powers

13. Section 61 and Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Licensing Authority to suspend, revoke or refuse to renew a driver licence if the application/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.

14. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, allows the council to take into account all convictions recorded against an applicant or the holder of a Private Hire Vehicle or Hackney Carriage 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.
15. In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

Consideration of Disclosed Criminal History

16. Under the provisions of Sections 51, 55, and 59 of the Local Government (Miscellaneous Provisions) Act 1976, the Council is required to ensure that an applicant for the grant or renewal of a Hackney Carriage and/or a Private Hire Vehicle Driver's Licence and/or Private Hire Vehicle Operator's Licence is a "fit and proper" person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look into:
 - 16.1 how relevant the offence(s) are to the licence being applied for.
 - 16.2 how serious the offence(s) were.
 - 16.3 when the offence(s) were committed.
 - 16.4 the date of conviction.
 - 16.5 circumstances of the individual concerned
 - 16.6 sentence imposed by the court.
 - 16.7 whether they form part of a pattern of offending.
 - 16.8 any other character check considered reasonable (e.g. personal references)
 - 16.9 any other factors that might be relevant.
17. In considering whether to revoke a Hackney Carriage or Private Hire Driver or Operator Licence in accordance with s61 of the Local Government (Miscellaneous Provisions) Act 1976, the decision will be made by an authorised member of the Licensing Department following consultation with the Legal and Licensing Manager. The Legal and Licensing Manager may choose to defer the decision to the Licensing Panel.
18. Further, in considering whether to suspend or revoke a Private Hire or Hackney Carriage Driver Licence, if it appears that the interests of public safety require the suspension or revocation to have immediate effect, the decision will be made in accordance with section 61 of the Local Government (Miscellaneous Provisions) Act, 1976 as amended by s52 of the Road Safety Act 2006.

19. Applicants can discuss further what effect a caution/conviction may have on any application by contacting an authorised member of the Licensing Department in confidence for advice.
20. The Licensing Authority conducts disclosures from the Disclosure and Barring Service (DBS) of any applicant for a driver licence. The licensing authority follows the DBS's Code of Practice on the fair use of disclosure information. A copy is available at <https://www.gov.uk/government/publications/dbs-code-of-practice>.
21. Applicants applying for the grant or a renewal of a driver's licence will be required to obtain a disclosure at their expense. The licensing authority abides by the DBS's Policy (<https://www.gov.uk/government/publications/handling-of-dbs-certificate-information>) on the secure storage, handling, use, retention and disposal of disclosure information, which is available on request. An enhanced DBS certificate is required which is no more than 28 days old at grant/renewal of licence which has been carried out for the correct workforce required for taxi driving;
22. More information about the DBS can be found on their website (<https://www.gov.uk/government/organisations/disclosure-and-barring-service>).
23. The Licensing Authority is also entitled to 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 Licensing Authority or other licensing authorities, and information disclosed by the police under the Home Office scheme for reporting offences committed by notifiable occupations.
24. Persons who have not been resident within the United Kingdom for the five years prior to submitting an application, will be required to produce a certificate of good character or equivalent document (at their own cost) issued by the relevant Embassy or High Commission. The certificate must be authenticated, translated and sealed by the Embassy or High Commission. In the event that an applicant is not able to obtain a certificate of good character, they may submit a statutory declaration with regard to their conduct, which must be completed in the presence of a practising solicitor. Applications must be made to the relevant country or the relevant embassy in the UK. The Council may contact the relevant Embassy, High Commission, solicitor or other appropriate body to verify any documents provided. Contact details for Embassies and High Commissions can be found from the Foreign & Commonwealth Office (FCO) on the GOV.UK website.
25. Applicants who have spent six continuous months or more living outside the United Kingdom, during the period of their licence, will be required to produce a certificate of good character or equivalent document at their own cost. This certificate must be issued by the relevant Embassy or High Commission for the country or countries lived in during this period and meet the requirements as set out above.
26. When available, the licensing authority will check on the National Anti-Fraud Network database in respect of refusals and revocations of hackney carriage and private hire licences.

27. It is an offence under Section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976 for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

28. (i) In addition to 27 above, , when applicants for new licences submit an enhanced DBS disclosure certificate as part of application criteria, they must subscribe to the update service within 28 days; and

(ii) Existing licence holders when submitting a new enhanced DBS disclosure certificate when due must subscribe to the update service at that point; and

(iii) Once there is subscription to the update service, the licensing authority will check the records on an annual basis as close to the anniversary of the grant of the licence as possible.

Details of the update service can be found here (<https://www.gov.uk/dbs-update-service>).

Private Hire Operators

29. (i) Private Hire Operators are also required to provide a basic Disclosure and Barring Service (DBS) certificate which is no more than 28 days old at grant/renewal of licence; and

(ii) The applicant/driver must subscribe to the DBS update service throughout the duration of their licence in accordance with paragraph 25 above; and

(iii) Provide written details of the Private Hire Operator's vetting procedures for their staff at the grant/renewal of licence and to notify the Licensing Authority in writing if changes to the procedure are made within the licence duration.

30. All applications for licences for Private Hire Operators, when the DBS certificate shows relevant offences, will be determined in accordance with this policy and in the same manner as an application for a Hackney Carriage or Private Hire Driver's Licence.

Outstanding Charges or Summonses

31. If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.

32. If the outstanding charge or summons involves a serious offence and the individual's conviction history (including "spent" convictions) indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the application may be refused.

Non-conviction Information

33. If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application. Such offences would include violent offences and sex offences.
34. In assessing the action to take, the safety of the travelling public must be the paramount concern.

Cautions

35. Admission of guilt is required before a caution can be issued. Every case will be considered on its own merits including the details and nature of the offence.

Licensing Offences

36. Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed until a period of 3 years following the offence has passed.

Licences Issued By Other Licensing Authorities

37. Where an application for a Hackney Carriage and/or Private Hire Vehicle Driver's Licence/Private Hire Operator's Licence has been referred to the licensing regulatory panel for determination with regard to this policy, and the applicant already holds such a licence granted by another licensing authority, the guidance in this policy shall take precedence over any decision of another licensing authority.

Summary

38. To summarise, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3 to 5 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed where less than 3 years free from conviction have elapsed.
39. While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

Overseas Residents

40. Where the DBS check is unlikely to have any information on a person, due to a short period of residence in the UK, applicants must obtain (at the cost of the applicant) a certificate of good conduct from their embassy or consulate. The

certificate should be authenticated, translated and sealed by the embassy/consulate. The Disclosure and Barring Service provides information on most relevant embassies/consulates. Means of obtaining a certificate can be found on the DBS website (<https://www.gov.uk/government/organisations/disclosure-and-barring-service>)

41. The following examples afford a general guide on the action to be taken where convictions are admitted.

Policy Guidelines

42. Crimes resulting in death

Where an applicant or licensee 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.

43. Exploitation

Where an applicant or licensee 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.

44. Offences involving violence

Where an applicant has a conviction for an offence of violence, 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.

45. 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.

46. Sex and indecency offences

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.

In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

47. Dishonesty

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.

48. Drugs

Where an applicant has any 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.

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 will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

49. 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.

50. Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. 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 or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

51. Drink driving / driving under the influence of drugs / using a hand-held telephone or hand held device whilst driving

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. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

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.

52. Other motoring offences

A minor traffic or vehicle related offence is 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). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

A major traffic or vehicle related offence is one which is not covered above and also 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.

53. Hackney carriage and private hire offences

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

54. Vehicle use offences

Where an applicant has a conviction for any offences which involved the use of a vehicle (including hackney carriage and private hire vehicles), a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Allerdale Borough Council

Revised Procedure at Licensing Panel Meetings

April 2014

Once the Chair has moved the exemption paragraph the press and public will leave the room.

Procedure

Step 1

The Chair will ask those present to introduce themselves and explain the procedure to be followed.

Step 2

The Chair will ask the author of the report (or their substitute) to outline the proposal and the background to the case. Their role will be to provide factual information to the panel.

The Chair invites members of the panel to ask the presenting officer any questions they may have about the application.

Step 3

The Chair invites the applicant or the applicant's representative to address the panel on the merits of their application. The applicant or the applicant's representative is permitted a maximum of 10 minutes. In the case of review applications all speakers are permitted an equal amount of time.

The Chair asks if any member of the panel/officers present have any questions to ask the applicant or the applicant's representative.

Step 4

The Chair invites any party making representations (including any other persons who have been given permission to participate (if any) to present their comments(s). This may include Councillors who have submitted written representations on the application within the requisite timescale.

The Chair asks if any members of the panel have any questions to ask any party making representations.

Step 5

The Chair offers the applicant or the applicant's representative the final opportunity to address the panel. The applicant or the applicant's representative is permitted a maximum of 10 minutes. In the case of a review application all speakers will be allowed an equal amount of time.

Step 6

The Chair will ask the parties to withdraw so that the panel can consider its determination. In considering its determination, the panel may seek advice from its Legal Adviser.

Step 7

The parties will be re-called and informed of the Panel's decision.

- Applicant to be advised that the decision will be confirmed in writing within seven days
- Applicant to be advised of any appeal procedure

All parties will leave swiftly prior to the next case.