



Hackney Carriage & Private Hire Licensing

Statement of Policy & Guidelines relating to
the Relevance of Convictions, Simple
Cautions, Complaints & Other Matters

These guidelines have been issued in conjunction with AGMA Licensing
Authorities.

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INTRODUCTION

This document aims to provide guidance to any person with an interest in Hackney Carriage and Private Hire Licensing. In particular, but not exclusively:

- New / Existing Applicants for Private Hire / Hackney Carriage Drivers' Licences
- New / Existing Applicants for Private Hire Operators' Licences
- Licensing Officers
- Members of the Regulation Committee (or other relevant decision making body)
- Magistrates (hearing appeals against local authority decisions)
- Greater Manchester Police

This document gives a general guide as to the action that might be taken where convictions (including spent convictions), cautions or fixed penalty notices are recorded against an applicant / existing licence holder.

This document also outlines how we will deal with complaints made to the Council, Police, Operators or any other agency; breaches of licensing conditions / byelaws and intelligence received from other agencies (including circumstances which have not resulted in a criminal conviction, caution or other disposal). For example, incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof may still be considered if the Council are satisfied that the incident occurred based on the balance of probabilities.

In accordance with the Council's Scheme of Delegation, where Licensing Officers have the powers to grant or refuse an application; or suspend or revoke a licence they will utilise these guidelines when making a decision.

In some cases applications for licences or existing licence holders will be referred to the Regulation Committee (or other relevant decision making body).

Whilst Officers and the Committee 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 Officers or Committee may depart from the guidelines.

OUR COMMITMENT

Wigan Council is committed, as far as is possible to ensure that:

- all persons holding a licence to drive hackney carriage or private hire vehicles are fit and proper persons;
- the public are not exposed to persons with a history of dishonesty, indecency or violence; and
- the safety of children / young persons and vulnerable adults is protected

The Council will always put the protection of the public first when considering any relevant information recorded against an applicant.

OUR PROCEDURE

When submitting an application for a licence to drive a hackney carriage or private hire vehicle, or for a private hire operators' licence, individuals are required to declare all previous convictions they may have. Individuals are also required to declare all simple cautions, any matters of restorative justice and all fixed penalties they have received. They must also provide details of all other matters of which they are currently the subject of criminal investigation or prosecution.

Applicants for a licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure & Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the Licensing service will, where appropriate contact other agencies for any other information which they may hold for instance, other Council services and Greater Manchester Police. Information received from the Disclosure & Barring Service or other agency will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary. In any event the information will be destroyed in accordance with the requirements of the Data Protection Act 1998 after the application is determined or any appeal against such determination is decided.

The disclosure of criminal convictions / fines or cautions or other relevant information relating to an individual's conduct will not necessarily debar an individual from being granted, retaining or renewing a licence. It will depend on whether or not the individual can satisfy the Council that they are a fit and proper person to hold such a licence.

The Council may fail to be satisfied that an individual is a fit and proper person to hold a driver's licence or an operator's licence for any reason. If adequate evidence that a person is a fit and proper person is not available or if there is reason to question or doubt the evidence provided, then that could amount to reason to refuse a licence.

In considering evidence of an individual's good character and fitness to hold a driver's licence or operators licence, where previous convictions / cautions or other information relating to criminal matters/character is disclosed, the Council will consider:

- the nature of the offence / issue or penalty;
- when it was committed / took place;
- the date of conviction / issue and the length of time which has elapsed;
- the individual's age when the offence was committed / issue took place;
- whether or not it is part of a pattern of criminal behaviour;
- the intent, the harm which was, or could have been caused;
- and any other factors which might be relevant.

A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:

- Remain free of conviction for an appropriate period, before an application is considered;
- 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).

A person with a conviction for a single serious offence or a number of separate offences is not barred from applying for a licence, but would normally be expected to remain free from conviction for an appropriate period, which will depend on the nature of the offence(s). However, remaining free of conviction for a specified period may not be sufficient to show that a person is fit and proper and additional evidence may be required.

Any information we receive will be treated in confidence and will only be taken into account when determining whether an applicant or existing licence holder is a fit and proper person; or whether the Council should exercise any of its powers, which includes the following:

- Refusal of an application
- Issue a formal warning
- Suspend an existing licence
- Revoke an existing licence

There may be occasions where it is appropriate to depart from the guidelines when making a decision. For example where the offence is a one-off and there are mitigating circumstances or alternately, where there are many or continuous offences which may show a pattern of offending and unfitness.

Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals

tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.

Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines

COMPLAINTS AND BREACH OF CONDITIONS / BYELAWS

Any complaint or breach of conditions / byelaws relating to a licence holder's conduct will be investigated thoroughly by the Council's Licensing service. Following that investigation one of the following decisions will be made:

- Take no further action
- Issue a formal warning
- Suspend the licence
- Revoke the licence

Some investigations and breaches may result in prosecution and in those cases the prosecution outcome may be a factor in the above decision.

In certain situations the breach or complaint may be deemed so serious that an immediate suspension or revocation is considered.

WARNINGS

Where it is clear that the licence holder's behaviour is not influenced by verbal or written warnings administered by the Licensing service, a more serious action may be considered.

RE-APPLICATION

Individuals are advised that Council guidelines are that where an individual has had an application refused or a licence revoked, they would normally refuse any subsequent application made within 12 months of the date of the previous refusal or revocation, unless there are substantial material changes in the individual's circumstances. However it should be noted that each case will be considered on its own merits.

APPEALS

Any individual who is refused a licence, or has an existing licence suspended or revoked on the grounds that the Council are not satisfied he / she is a fit and proper person to hold such a licence has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION

The following examples give a general guide as to the action that might be taken where convictions are recorded against an applicant.

A) OFFENCE OF DISHONESTY

Members of the public using hackney carriage and private hire vehicles expect the driver to be honest, responsible and entrust themselves to the care of drivers for their own safety. It would be easy for a dishonest driver to take advantage of the public.

Passengers may include especially vulnerable people and children.

A serious view will be taken of any conviction involving dishonesty. In particular, an application will normally be refused where the individual has a conviction for any of the following offences which is less than 5 years prior to the date of application.

- i) Theft
- ii) Burglary
- iii) Fraud
- iv) Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- v) Handling or receiving stolen goods
- vi) Forgery (e.g. producing false insurance policy)
- vii) Conspiracy to defraud
- viii) Obtaining money or property by deception
- ix) Other deception
- x) Blackmail
- xi) Or similar offences to those above or any offence which may replace any of the above offences.

B) VIOLENCE

Members of the public and in particular, the elderly, infirm, children or vulnerable adults entrust their personal safety to private hire and hackney carriage drivers whenever they take a journey. Passengers often travel alone and are vulnerable to physical attack etc.

Users of private hire and hackney carriage vehicles have a right to expect that drivers are not individuals with a predisposition towards or a propensity for violent behaviour at any level.

In particular:

- i) An application will normally be refused where the individual has a conviction for an offence of:
 - Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Or similar offence(s) which replace the above offences:

- i) An application will normally be refused for a period of five years from the date of the conviction or the date of release from jail, where a custodial sentence has been imposed if the applicant has a conviction for:-
 - Arson
 - Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
 - Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
 - Grievous bodily harm with intent (s.18 Offences Against the Person Act)
 - Unlawful wounding (s.20 Offences Against the Person Act)
 - Robbery
 - Possession of firearm
 - Riot
 - Assault Police
 - Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
 - Violent disorder
 - Resisting arrest

- ii) An application will normally be refused for a period of five years from the date of the conviction or the date of release from jail, where a custodial sentence has been imposed if the applicant has any racially aggravated conviction:-
 - Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)

- Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
 - Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress) (s.31(1)(b) Crime and Disorder Act 1998)
 - Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
 - Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
 - Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- iii) An application will normally be refused for a period of three years from the date of conviction or the date of release from jail, where a custodial sentence has been imposed, where the applicant has a conviction for:-
- Common assault
 - Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
 - Affray
 - S5 Public Order Act 1986 offence (harassment, alarm or distress)
 - S.4 Public Order Act 1986 offence (fear of provocation of violence)
 - S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
 - Harassment- breach of restraining order- on conviction Protection from Harassment Act 1997 s5(5) = s. 5(6)
 - Obstruction
 - Possession of offensive weapon
 - Criminal damage
 - Or any similar offence(s) which replace the above offences

Offences Against Children (Under 14 Years) And Young Persons (Aged 14 To 17 Years)

The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.

C) DRUGS

An application will normally be refused if an applicant has a conviction for an offence that relates to the supply or importation of drugs and the date of the conviction or the date of release from jail (where a custodial sentence has been imposed) is less than 5 to 10 years before the date of the application. However, after 5 years from the date of such a conviction or the date of release from jail (where a custodial sentence has been imposed) the circumstances of the offence and any evidence which shows that a person is now a fit and proper person to hold a licence will be taken into consideration.

An application will normally be refused where an application is made within 3 to 5 years from the date of a conviction or the date of release from jail (where a custodial sentence has been imposed) for an offence relating to the possession of drugs. However, after a period of three years from the date of such a conviction or the date of release from jail (where a custodial sentence has been imposed) consideration will be given to the circumstances of the offence and any evidence to show that an applicant is now a fit and proper person to hold a licence.

An application will normally be refused where an applicant has more than one conviction for offences related to the possession of drugs and the last conviction or the date of release from jail (where a custodial sentence has been imposed) is less than 5 years before the date of the application.

Where evidence is available that an applicant who has convictions for drug related offences has been addicted to drugs, they will have to produce evidence that shows that they have been free of drug taking for at least 5 years after successfully completing a drug treatment programme.

D) SEXUAL AND INDECENCY OFFENCES

As the driver of hackney carriage and private hire vehicles often carry passengers who are alone or may be vulnerable, applicants who have convictions for rape, indecent assault, any sexual offence involving children and any conviction for an offence under the Sexual Offences Act 2003 will normally be refused a licence.

Applicants who have a conviction for a sexual offence such as soliciting, importuning, indecent exposure or any other similar offence(s) will normally be refused a licence until they can show a substantial period usually between 5 and 10 years free of any such convictions from the date of conviction or the date of release from jail (where a custodial sentence has been imposed) before an application is made.

Applicants on the sex offenders register will generally be refused.

After a period of 5 years from the date of a conviction or the date of release from jail (where a custodial sentence has been imposed) consideration will be given to the circumstances of the offence and any evidence to show that an applicant is now a fit and proper person to hold a licence.

Offences Against Children (Under 14 Years) And Young Persons (Aged 14 To 17 Years)

The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.

Intelligence and other information which has not resulted in a criminal conviction

When considering applications, the Council may take into account any information of a sexual nature which does not amount to a criminal offence that is brought to its attention where that information may indicate that an applicant may not be a fit and proper person to hold a licence.

E) DRUNKENNESS

i) In a Motor Vehicle

The manner in which drunkenness offences in a motor vehicle will be dealt with is outlined in Motoring Offences at paragraph F of these guidelines.

ii) Not in a Motor Vehicle

Where an applicant has an isolated conviction for drunkenness, this need not stop an applicant from getting a licence. In some cases, a warning may be appropriate. However, where an applicant has a number of convictions for drunkenness, it could indicate a medical problem, which would require further investigation including a medical examination and the possible refusal of a licence.

F) MOTORING CONVICTIONS

i) Disqualification

Where an applicant has been disqualified from driving by the Courts for a serious traffic offence under Category A of Annex A, an application will generally be refused, unless a period of 5 years free of conviction has passed since the return of the DVLA or other European Union driving licence (as appropriate).

Where an applicant has been disqualified from driving by the Courts for a serious traffic offence under Category B of Annex A, an application will generally be refused unless a period of 5 years free of conviction has passed since the return of the DVLA or other European Union driving licence (as appropriate) unless the offence was an isolated one, in which case, a period of not less than 2 years shall have passed.

Where a disqualification is imposed by a court in a "totting-up" case i.e. where an applicant has been disqualified because of several driving offences an application will generally be refused unless a period of 1 year free of conviction has elapsed since the return of the DVLA or other European Union driving licence (as appropriate).

In "totting-up" cases where a Court does not impose a disqualification because of exceptional circumstances, then because the Council applies different criteria to

the Courts, an application will generally be refused unless an applicant can show a period of 1 year free of conviction from the date of the last Court appearance.

ii) Serious Traffic Offences

Where an applicant has a conviction for a serious traffic offence in Category A of Annex A and a period of disqualification has not been imposed by the Courts, an application will normally be refused where an application is made in the 5 years following the date of the last conviction.

Where an applicant has a conviction for a serious traffic offence in Category B of Annex A and a period of disqualification has not been imposed by the Courts, an application will normally be refused where an application is made in the 5 years following the date of the last conviction unless the offence was an isolated one in which case, a period of not less than 2 years shall have passed.

Where an applicant has had more than one conviction for a serious traffic offence in either Category A or B of Annex A and the Courts have not imposed a period of disqualification, an application will normally be refused where an application is made in 5 years following the date of the last conviction.

iii) Other Traffic Offences

Normally, isolated convictions for other traffic offences should not prevent someone from obtaining a licence. However, the number, type and the frequency of these types of offences will be taken into account. If there are several convictions for these types of offences, an applicant will normally be expected not to have been convicted of an offence in the 6 months prior to an application being made.

A list of relevant offences is shown at Annex B. However, this is not an exhaustive list and there may be other offences which may be relevant.

G) OFFENCES UNDER THE TOWN POLICE CLAUSES ACT AND PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 AND ANY HACKNEY CARRIAGE BYELAWS (THE ACTS)

One of the main purposes of the licensing regime set out in "the Acts" is to ensure the protection of the public. For this reason, a serious view will be taken of convictions for offences under the legislation, particularly offences of illegal plying for hire, when deciding if a person is a fit and proper person to hold a licence.

In particular, an application will normally be refused where an applicant has more than one conviction for an offence under "the Acts" in the two years preceding the date of the application.

H) SPENT CONVICTIONS

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.

The Council will however only take "spent convictions" into consideration if it is considered they are relevant to the application.

I) SIMPLE CAUTIONS AND FIXED PENALTY NOTICES

For the purposes of these guidelines, the Council will treat simple cautions issued in accordance with Home Office guidance and fixed penalty notices as though they were a conviction before the courts.

J) OTHER OFFENCES

The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an individual. If an individual has a conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 10 when deciding whether any action should be taken.

CONTACT DETAILS

Community Protection & Licensing Section
Wigan Council
PO Box 100
Wigan
WN1 1DS

Telephone Number: 01942 404627

Email: licensing@wigan.gov.uk

Website: www.wigan.gov.uk/TaxiLicensing

These guidelines supersede all others and shall take effect from 20th March 2015.

ANNEX A

Serious Traffic Offences

Category A	
Offence Code	Offence
▪ Careless Driving	
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for analysis
CD80	Causing death by careless, or inconsiderate, driving
CD90	Causing death by driving: unlicensed, disqualified or uninsured drivers
▪ Reckless / Dangerous Driving	
DD10	Causing serious injury by dangerous driving
DD40	Dangerous Driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DD90	Furious driving
▪ Mutual Recognition Codes *	
MR09	Reckless or dangerous driving (whether or not resulting in death, injury or serious risk)
MR19	Wilful failure to carry out the obligation placed on driver after being involved in a road accident (hit or run)

▪ Miscellaneous Offences	
MS50	Motor racing on a highway
▪ Theft and Unauthorised Taking	
UT50	Aggravated taking of a vehicle

Other Traffic Offences

Category B	
Offence Code	Offence
▪ Accident Offences	
AC10	Failing to stop after an accident
AC20	Failing to give particulars or report an accident within 24 hours
AC30	Undefined accident offences
▪ Disqualified Driver	
BA10	Driving whilst disqualified by order of court
BA30	Attempting to drive whilst disqualified by order of the Court
▪ Careless Driving	
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

Construction and Use Offences	
CU10	Using a vehicle with defective brakes
CU20	Causing or likely to cause danger by 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
CU80	Breach of requirements as to control of the vehicle, mobile telephone etc
Drink or Drugs	
DG10	Driving or attempting to drive with drug level above the specified limit
DG40	Causing death by careless driving with drug level above the limit
DG60	Driving or attempting to drive when unfit through drugs
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
DR31	Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity
DR40	In charge of a vehicle while alcohol above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving or attempting to drive
DR61	Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive
DR70	Failing to provide a specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs

DR90	In charge of a vehicle while unfit through drugs
<ul style="list-style-type: none"> ▪ Insurance Offences 	
IN10	Using a vehicle uninsured against third party risks
<ul style="list-style-type: none"> ▪ Licence Offences 	
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 after having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
<ul style="list-style-type: none"> ▪ Mutual Recognition Codes * 	
MR29	Driving a vehicle while under the influence of alcohol or other substance affecting or diminishing the mental and physical abilities of a driver
MR49	Driving a vehicle whilst disqualified
MR59	Other conduct constituting an offence for which a driving disqualification has been imposed by the State of Offence
<ul style="list-style-type: none"> ▪ Miscellaneous Offences 	
MS90	Failure to give information as to identity of driver etc

Aiding, Abetting, Counselling or Procuring Offences

For these offences, the codes are similar, but with the number 0 on the code changed to 2.

For example, code LC20 (driving otherwise than in accordance with a licence) becomes code LC22 on your licence if you have helped someone to do this.

Causing or Permitting Offences

For these offences, the codes are similar, but with the number 0 on the code changed to 4.

For example, LC20 (driving otherwise than in accordance with a licence) becomes LC24 on your licence if you've caused or permitted someone to do this.

Inciting Offences

For these offences, the codes are similar, but with the number 0 on the code changed to 6.

For example, DD40 (dangerous driving) becomes DD46 on your licence if you've incited someone to do this.

Mutual Recognition Codes*

You'll get an 'MR' code on your licence if you're disqualified while driving in Northern Ireland, Isle of Man or the Republic of Ireland. Your disqualification period will also be valid in GB and will stay on your licence for 4 years from the date of conviction.

Other Traffic Offences

Offence Code	Offence
▪ Mutual Recognition Codes *	
MR39	Driving a vehicle faster than the permitted speed
▪ Miscellaneous Offences	
MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS60	Offences not covered by other codes
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.
▪ Motorway Offences	
MW10	Contravention of Special Road Regulations (excluding speed limits)
▪ Pedestrian Crossing Codes	
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with a moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with a stationary vehicle

▪ Speed Limits Codes	
SP10	Exceeding goods vehicle speed limits
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
▪ Traffic Direction and Signs Codes	
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with "stop" sign
TS40	Failing to comply with direction of a constable/warden
TS50	Failing to comply with traffic sign (excluding stop signs, traffic lights or double white lines)
TS60	Failing to comply with a school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

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Mutual Recognition Codes*

You'll get an 'MR' code on your licence if you're disqualified while driving in Northern Ireland, Isle of Man or the Republic of Ireland. Your disqualification period will also be valid in GB and will stay on your licence for 4 years from the date of conviction.

Note: If any of the offences involve a licensed hackney carriage or private hire vehicle, they may be treated as though they are a Category A offence under Annex A.