



**AGENDA PAPERS FOR
PUBLIC PROTECTION SUB-COMMITTEE MEETING**

Date: Thursday, 16 April 2015

Time: 6.30 p.m.

**Place: Committee Rooms 2 & 3 Trafford Town Hall, Talbot Road,
Stretford, Manchester, M32 0TH**

A G E N D A	PART I	Pages
1.	ATTENDANCES	
	To note attendances, including Officers and any apologies for absence.	
2.	REVIEW OF PRIVATE HIRE OPERATOR CONDITIONS	
	To consider a report of the Head of Regulatory Services	1 - 10
3.	AMENDMENTS TO THE COUNCIL'S CONVICTIONS GUIDELINES	
	To consider a report of the Head of Regulatory Services	11 - 34
4.	URGENT BUSINESS (IF ANY)	
	Any other item or items (not likely to disclose "exempt information") which, by reason of special circumstances (to be specified), the Chairman of the meeting is of the opinion should be considered at this meeting as a matter of urgency.	
5.	EXCLUSION RESOLUTION (REMAINING ITEMS)	
	Motion (Which may be amended as Members think fit):	
	That the public be excluded from this meeting during consideration of the remaining items on the agenda, because of the likelihood of disclosure of "exempt information" which falls within one or more descriptive category or categories of the Local Government Act 1972, Schedule 12A, as amended by The Local Government (Access to Information) (Variation) Order 2006, and specified on the agenda item or report relating to each such item respectively.	

6. **APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - CONVICTIONS THAT EXCEED THE SCHEME OF DELEGATION**

To consider a report of the Head of Regulatory Services. Para. 1 35 - 36

7. **APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - CONVICTIONS THAT EXCEED THE SCHEME OF DELEGATION**

To consider a report of the Head of Regulatory Services. Para. 1 37 - 46

8. **URGENT BUSINESS (IF ANY)**

Any other item or items (likely to disclose "exempt information") which, by reason of special circumstances (to be specified), the Chairman of the meeting is of the opinion should be considered at this meeting as a matter of urgency.

THERESA GRANT

Chief Executive

Membership of the Committee

Councillors C. Candish (Chairman), B. Sharp (Vice-Chairman), D. Bunting, A. Duffield, M. Freeman, D. Jarman, P. Lally, M. Sephton and J. Smith.

Further Information

For help, advice and information about this meeting please contact:

Natalie Owen, Democratic & Scrutiny Officer

Tel: 0161 912 4221

Email: natalie.owen@trafford.gov.uk

This agenda was issued on **Tuesday, 7 April 2015** by the Legal and Democratic Services Section, Trafford Council, Trafford Town Hall, Talbot Road, Stretford M32 0TH.

TRAFFORD COUNCIL

Report to: Public Protection Sub-Committee
Date: 16th April 2015
Report for: Decision
Report of: Head of Regulatory Services

Report Title

REVIEW OF PRIVATE HIRE OPERATOR CONDITIONS

Summary

It has been established that once a vehicle has been licensed as a hackney carriage, it is a hackney carriage for the duration of that licence, wherever it is located and can, therefore, be used for pre-booked work in any district in England and Wales.

This has become a significant issue in Trafford because of an influx of hackney carriages licensed by other local authorities working through Trafford private hire operators.

Officers are proposing additional conditions be introduced to the private hire operator conditions to require operators to take more responsibility for the control of 'out of area' taxis.

Recommendation(s)

That the Sub-Committee authorises the Head of Regulatory Services to consult with private hire operators on the proposed new private hire operator conditions set out in Appendix A and the revised penalty point list set out in Appendix B.

That the Head of Regulatory Services report back to the Sub-Committee on the outcome of that consultation together with final recommendations for the Sub-Committee to consider.

Contact person for access to background papers and further information:

Name: Joanne Boyle
Extension: 4129

Background Papers: None

1. Background

- 1.1 In 2010 the High Court handed down a judgement in the case of Stockton-on-Tees Borough Council v Fidler, Hussain & Zamanian. The judgement was that once a vehicle is licensed as a hackney carriage, it is a hackney carriage for the duration of that licence, wherever it is located, and can be used for pre-booked work in any district in England and Wales.
- 1.2 The judgement made it clear that it is not an offence for a licensed private hire operator to take bookings, and then dispatch a hackney carriage licensed by another district to undertake pre-booked work.
- 1.3 The situation has created a number of issues in Trafford, these include:
 - possible prejudice to public safety
 - inconsistent standards
 - increase in illegal plying for hire
 - the inability to enforce or undertake spot checks on these vehicles
 - confusion for the customer and possible reduced DDA compliance
 - conflict between the local trade and out of area trade
 - loss of income to the local authority
- 1.4 In order to address some of these issues it is proposed that additional conditions be inserted into the existing private hire operator conditions (see Appendix A) and a revised list of penalty points be introduced for non-compliance (see Appendix B).

2. Recommendations

- 2.1 That the Sub-Committee authorises the Head of Regulatory Services to consult with private hire operators on the proposed new private hire operator conditions set out in Appendix A and the revised penalty point list set out in Appendix B.
- 2.2 That the Head of Regulatory Services report back to the Sub-Committee on the outcome of that consultation together with final recommendations for the Sub-Committee to consider.



**TRAFFORD
COUNCIL**

PRIVATE HIRE OPERATOR'S LICENCE CONDITIONS

REVISED:

Private hire operators' licences are issued subject to the following conditions. You are advised to study these carefully, as you are warned that for non-compliance with any one condition, the licence may be suspended or revoked.

1.	Definitions	
	"The Council"	means the TRAFFORD ;
	"The District"	means the area of the Council;
	"The Act"	means the Local Government (Miscellaneous Provision) Act 1976
	"Private Hire Vehicle"	has the same meaning as in the Act
	"Vehicle"	means a private hire vehicle;
	"Operator"	means a person holding a licence to operate private hire vehicles issued by the Council under Section 55 of the Act;
	"Premises"	means the operator's place or places of business for the purpose of operating vehicles;
	"Authorised Officer"	means any officer of the Council authorised in writing by the Council for the purpose of regulating private hire vehicles;
	"Plate"	means the plate issued by the Council for the purpose of identifying the vehicle as a licensed private hire vehicle;
	"Badge"	means the badge issued by the Council for the purpose of identifying a driver as a licensed private hire driver;
	"Meter"	means any device for calculating the fare to be charged in respect of any journey in a vehicle by reference to the distance travelled or the time elapsed since the start of the journey or a combination of both.

2.	Licence	Date of Implementaion
	The licence shall remain the property of the Council at all times and shall be renewed annually.	

3.	Details of Vehicle(s)	
	The operator shall keep at their premises the following details of all vehicles that they operate:	AMENDED
(a)	the name and address of the proprietor;	
(b)	the vehicle licence holder;	
(c)	the vehicle licence expiry date;	
(d)	the registration number	
(e)	make, type and colour	
(f)	plate number;	
(g)	copy of the current Insurance Certificate;	
	and these details shall be produced on request to an authorised officer or police constable at any time.	

4.	Details of Vehicle(s)not licensed by the Council	
	The operator shall keep at the premises the details identified in Condition 3 above for all other vehicles used by him for hire, but which are not private hire vehicles licensed by the Council. Such records must be individually and separately identifiable. These details shall be produced on request to an authorised officer or police constable, provided such request is made for proper purposes including the investigation of any complaint, the detection and prosecution of crime and the efficient operation of the Council's scheme of licensing.	NEW

5.	Details of Driver(s)	
	The operator shall keep at their premises the following details of all drivers employed or used by them:-	AMENDED
(a)	name and address;	
(b)	badge number;	
(c)	expiry date of the private hire vehicle driver's licence;	
	and these details shall be produced on request to an authorised officer or police constable at any time.	

6.	Details of Driver(s) not licensed by the Council	
	For the avoidance of doubt, Condition 5 of these conditions also applies	NEW

	where the operator allocates pre-booked work to a vehicle that is not a private hire vehicle licensed by the Council. Where such vehicle is a hackney carriage, condition 5(c) shall be construed accordingly. Such records must be individually and separately identifiable. These details shall be produced on request to an authorised officer or police constable, provided such request is made for proper purposes including the investigation of any complaint, the detection and prosecution of crime and the efficient operation of the Council's scheme of licensing.	
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7.	Control of Drivers	
	The operator shall take all reasonable steps to ensure that drivers of vehicles employed, used or controlled by them observe and perform the conditions attached to their private hire vehicle driver's licence and all other relevant statutory requirements, including Road Traffic Legislation.	NEW

8.	Record of Bookings	
(a)	The operator shall, before the commencement of each journey, record in a manner prescribed by the Council, the following details of each booking:-	AMENDED
	(i) the time and date of booking;	
	(ii) the method by which it was received (e.g. telephone, personal call etc);	
	(iii) by computer, or in a suitable book, with numbered pages set out:	
	(iv) the picking up and setting down points, by reference to street names;	
	(v) the date and time when the journey is to commence;	
	(vi) the name (and address) of the hirer;	
	(vii) the plate number of the vehicle allocated to the booking;	
	(viii) the name and badge number of the driver allocated to the booking;	
	(ix) the call sign of the vehicle allocated to the booking;	
	(x) the registration number of the vehicle allocated to the booking;	
(b)	These records shall be kept at the premises for at least 12 months from the date of the last entry or such longer period as may, by written notice, be required by an authorised officer.	AMENDED
(c)	These records shall be produced on request to an authorised officer or police constable at any time.	

9.	Record of bookings allocated to vehicles not licensed by the Council	
(a)	For the avoidance of doubt, Condition 8 of these conditions also applies where the operator allocates a booking to a Hackney Carriage not licensed by the Council.	NEW
(b)	The receipt of advance bookings by the operator for Hackney Carriage	NEW

	vehicles licensed by another Authority or which are subsequently allocated to a HCV licensed by another Authority must be maintained in a completely separate register of bookings and in the same format as condition 8. If a computerised booking system is in place those booking records must be kept in a completely separate and distinct area of the systems hard drive to enable easy inspection by the Council.	
10.	Notice to Customer	
	Where a Hackney Carriage licensed otherwise than by Trafford Council may be allocated by the operator, the operator shall inform the customer of that fact, whether by a pre-recorded announcement during a telephone call, by written terms visible when booking on an Internet site or signing up to an App, or by any other method likely to bring the information to the attention of the customer at the time of booking or prior to making a booking.	NEW
11.	Prompt Attendance	
	The operator shall ensure that when a vehicle has been hired to be in attendance at an appointed time and place, the vehicle shall, unless delayed or prevented by sufficient cause, punctually attend at the appointed time and place.	
12.	Picking Up and Setting Down of Passengers	
	The operator shall, so far as is possible, ensure that drivers in their employment or control do not pick up or set down passengers:-	NEW
(a)	at a hackney carriage stand;	
(b)	at any place that may cause a risk of accident or obstruction to other road users and pedestrians.	
13.	Fares	
	Where a request for a hiring is received and the vehicle to be used for that hiring is not fitted with a meter, the operator must so inform the person making the booking and shall not accept the booking without first telling that person the basis of the hire charge (and if requested, put that information in writing).	NEW
14.	Lost Property	
(a)	The operator shall deliver any property left in the vehicle and handed to them by the driver, to the licensing office as soon as possible, and in any event within 24 hours.	NEW
(b)	the operator shall keep a record of all lost property retained by them.	NEW
15.	Premises	
	The operator's premises must be within the Council's district.	NEW

16.	Waiting and Reception Room	
	The operator shall ensure that any rooms provided on the premises for the purpose of booking or waiting shall be kept clean, adequately lit, heated and ventilated at all times and be provided with adequate seating for customers.	
17.	Drunk and Disorderly Persons	
	The operator shall not allow any person who is drunk, or is behaving in a disorderly manner, to remain on the premises.	NEW
18.	Planning Permission	
	The operator shall not commence using any premises for their business without having first obtained written permission to do so from the relevant planning authority and shall comply with any conditions attached to such permission.	
19.	Nuisance to Nearby Residents	
	The operator shall at all times carry out their business so as not to cause nuisance or annoyance to nearby residents.	NEW
20.	Change of Address	
	The operator shall notify the Council in writing within 7 days of any change in:-	
(a)	their home address;	
(b)	their premises address;	
(c)	the name of their firm;	NEW
(d)	the licensed vehicles used or controlled by them;	
(e)	the names and addresses of the drivers in their employment or under their control.	
21.	Complaints	
	The operator shall keep a record of any complaints concerning a contract for hire or purported contract for hire relating to or arising from their business and of any action, if any, which the operator has taken or proposes to take in respect of such complaint.	NEW
22.	Convictions	
	The operator shall within 14 days disclose to the Council in writing details of convictions imposed on them during the period of their licence.	AMENDED

23.	Loss of Licence	
	The operator shall report the loss of their licence to the Police as soon as the loss is known. A duplicate may be issued by the Council on payment of a fee.	NEW
24.	Return of Licence	
	The operator shall immediately return the operator's licence to the Council in the event of the surrender, suspension or revocation of the licence.	NEW
25.	Licence Renewal	
	A licence cannot be renewed if it has expired; a new application will be required.	NEW
26.	Payment by Credit/Debit Card	
	A licence in respect of which the fee has been paid either in part or in full by cheque or credit/debit card shall be of no effect in the event of that payment being subsequently dishonoured.	NEW
27.	Vehicles Kept at Domestic Premises	
	Unless in receipt of written consent from the planning authority, where an operator has their operation base located at domestic premises, they shall ensure that the number of licensed private hire vehicles parked at or kept in the vicinity of those premises (including parking on the highway) at any one time, does not exceed one vehicle in total.	NEW
28.	Satellite Offices	
(a)	The operator may only operate from those premises or such part of which have been approved as operating bases by the Council.	NEW
(b)	All premises from which the operator intends to carry out their business must be declared upon application for a licence. This includes any satellite offices situated at premises which may or may not be controlled by the applicant.	NEW
29.	Company Signs	
	The operator shall ensure that only vehicles which are currently licensed as private hire vehicles with the Council shall display signage approved by the Council as specified in the private hire vehicle licence conditions.	NEW

30.	Taxi meters in vehicles	
	Where any vehicle operated by him is fitted with an approved taximeter, the operator shall ensure that the taximeter is set and properly sealed in accordance with Council regulations.	

31.	Facilities for the disabled, deaf or hard of hearing	
	The operator shall comply with his duties under the Equality Act 2010 and shall make reasonable adjustments to allow access to its services for all disabled people, including the deaf or hard of hearing. In particular, the operator shall provide a system for deaf or hard of hearing customers to book a private hire vehicle e.g. mini-com, website bookings; bookings by text.	NEW
	The system shall be advertised widely on all published material and on the operator's website.	NEW
32.	Guide Dogs	NEW
	The operator shall ensure that guide dogs are carried within the passenger compartment of the vehicle on request.	



**TRAFFORD
COUNCIL**

PRIVATE HIRE OPERATOR - PENALTY POINTS SYSTEM

The conditions in the table relate to the Trafford Private Hire Operator Conditions.

The Penalty Points table approved by the Council is:

		<u>Number of Points</u>	
1.	Records of Vehicles	Failure to maintain records of all vehicles used by the operator in accordance with Conditions 3 & 4.	50
	Records of Drivers	Failure to maintain records of all drivers used by the operator in accordance with Conditions 5 & 6.	50
2.	Records of Hiring	Failure to maintain records of hiring in accordance with Conditions 8 & 9.	75
3.	Notice to Customers	Failure to notify customers of details of vehicle to be dispatched in accordance with condition 10.	50
4.	Records of Complaints	Failure to maintain records of complaints in accordance with Condition 21.	30
5.	Notification of Convictions	Failure to notify the Council of any convictions within the relevant time period in accordance with Condition 22.	75 per conviction
6.	Change of Address	Failure to notify the Council of a change in the Operator's address in accordance with Condition 20.	30
7.	Company Signs	Failure to ensure that only Trafford PHVs display approved signage.	30
8.	Equalities Act 2010	Failure to comply with the duties under the Act	75

The following matters are to be considered by the Licensing Committee and are not to be delegated to Officers.

- | | | |
|-----|---|----------|
| 9. | Gross discourtesy by Operators | Max. 150 |
| 10. | Any such other matters of a substantial nature that the Licensing Committee believes are detrimental to the reputation of the Trafford private hire trade which have brought or are likely to bring the service into disrepute. | Max. 150 |

All penalty points awarded by Officers are subject to a right of appeal before the Licensing Committee.

Appellants must make their written appeal within 21 days of the service of the notification of the award of the points. Appeals will then be placed on the agenda for the next available Licensing Committee.

On accumulation of 150 penalty points the Operator shall be requested to attend before the Licensing Committee for consideration. The Licensing Committee shall take such further action as they consider appropriate.

TRAFFORD COUNCIL

Report to: Public Protection Sub-Committee
Date: 16th April 2015
Report for: Decision
Report of: Head of Regulatory Services

Report Title

AMENDMENTS TO THE COUNCIL'S CONVICTIONS GUIDELINES

Summary

The report proposes amendments to the Council's guidelines relating to the relevance of convictions, formal/ simple cautions, complaints and other matters which may impact on the granting of a hackney carriage or private hire licence (the conviction guidelines).

Recommendation(s)

The Sub-Committee is invited to consider the report and either:

- Adopt the amended conviction guidelines;
- Make a recommendation on an alternative proposal; or
- Make no changes

Contact person for access to background papers and further information:

Name: Joanne Boyle
Extension: 4129

Background Papers: None

1.0 BACKGROUND

- 1.1 Relevant legislation provides that the Council shall not grant a licence to hackney carriage proprietors (drivers), private hire drivers and operators unless satisfied the applicant is fit and proper to hold such a driver licence. Similarly an existing licence holder should only retain a licence whilst they remain fit and proper.
- 1.2 In determining whether a person is fit and proper Members are entitled to review a person's history of offending and general previous conduct. In particular the Council is concerned to ensure the public are not exposed to persons with a history of dishonesty, indecency or violence and the safeguarding of children, young persons and vulnerable adults.
- 1.3 For a number of years the Public Protection Sub-Committee has used conviction guidelines when determining the fit and proper status of applicants and licence holders.
- 1.4 The guidelines were developed by the AGMA Licensing Managers' Group. The guidelines are periodically reviewed by the group; such a review has resulted in this report.
- 1.5 Members are entitled to deviate from the guidelines. Where a decision departs from the guidelines Members should give clear reasons for doing so.

2.0 COMPARISON WITH CURRENT GUIDANCE

- 2.1 The position on matters other than convictions and an appearance at the Sub-Committee is clarified. Within the guidelines the word "issue" is used. This includes complaints made to the Council, Police, Operators or any other agency; breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal conviction, caution or other disposal). As an example incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Sub-Committee is satisfied that the incident occurred based on the balance of probabilities.
- 2.2 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 many cases including first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
- 2.3 In addition to checks made to the Disclosure Barring Service Officers will, where appropriate, contact other agencies (Housing providers, BSCB, Children's Services and Greater Manchester Police etc) for any relevant information they may hold. Any information gained will be kept in strict confidence and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998. The Council will sometimes be made aware of other intelligence or low level information about an individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in

order to ensure that they have a comprehensive understanding. Where appropriate, officers will refer such information/ intelligence to an independent allegations management process. Any additional information gathered through this process may then be taken into account at any subsequent Sub-Committee hearing.

- 2.4 Where Panel is convened as a result of sensitive information being received by the Council an assessment will be undertaken in balancing a person's right to a fair hearing against whether or not it is in the public interest to hold the hearing ex-parte.
- 2.5 The conviction guidelines have been in use for many years and have assisted Members in making fair and consistent responses to licence applications and when dealing with licence holders appearing before the Public Protection Sub-Committee.
- 2.6 The proposed amendments are designed to update the existing document.

3.0 Options

- 3.1 The Sub-Committee is invited to consider the report and either:
 - 3.1.1 Adopt the amended conviction guidelines;
 - 3.1.2 Make a recommendation on an alternative proposal; or
 - 3.1.3 Make no changes

[DELIBERATELY LEFT BLANK]

**STATEMENT OF POLICY AND GUIDELINES
RELATING TO THE RELEVANCE OF
CONVICTIONS, FORMAL / SIMPLE CAUTIONS,
COMPLAINTS AND OTHER MATTERS WHICH MAY
IMPACT ON THE GRANTING OF A LICENCE**



**Public
Protection
Partnership**

GREATER MANCHESTER

4th December 2014

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STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This document aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Applicants for operators licences
- Existing licensed operators whose licences are being reviewed
- Licensing Officers
- Members of the Licensing Committee/ Panel (or other relevant decision making body)
- Magistrates hearing appeals against local authority decisions
- Greater Manchester Police

Thereby providing transparency and consistency across the AGMA region, in accordance with the principles of good enforcement and relevant Regulatory Compliance Codes.

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 Committee/ Panel (or other relevant decision-making body). Whilst Officers and the Committee/ 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 Committee/Officer may depart from the guidelines.

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Background

1. In this policy the word "individual" includes an existing licence holder, an applicant for a new licence, and an applicant for the renewal of an existing licence.
2. Licences for drivers of hackney carriages, private hire vehicles or private hire operator may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence.
3. In this policy the word "issue" is used. This includes complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal conviction, caution or other disposal). E.g. incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if Committee/panel is satisfied that the incident occurred based on the balance of probabilities)
4. Licences for operators of private hire vehicles may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence.
5. The document is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous convictions and cautions.
6. The Council is concerned to ensure:
 - a. That a person is a fit and proper person.
 - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
 - c. The safeguarding of children and young persons and vulnerable adults.
7. The public are not normally permitted to attend Committee hearings for private hire, hackney carriage driver applications or private hire operator applications or reviews, however, in determining whether to grant a licence the committee or Officers will take into account the human rights of the wider public and balance these against the human rights of the applicant.
8. When submitting an application for a licence to drive a hackney carriage or private hire vehicle, or for an operators licence, individuals are required to declare all previous convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all fixed penalties and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.

9. The information given will be treated in confidence and will only be taken into account in relation to the relevant application to assist the Council in determining whether the applicant is a fit and proper person to hold a licence for the purposes of sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 and 62 of the Act (i.e. suspension, revocation or refusal to renew a licence).
10. 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 section will where appropriate contact other agencies for any other information which they may hold for instance, Housing Service, Children's 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 and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the application is determined or any appeal against such determination is decided.
11. The disclosure of a criminal convictions/fines or cautions or other relevant information relating to an individuals conduct will not necessarily debar an the 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.
12. 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 good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a licence.
13. 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 and penalty. When it was committed/took place, the date of conviction/issue and the length of time which has elapsed, the individuals 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. Where an individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*].
14. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining new/renewal applications for drivers' licences and operators licences and when considering whether to take any action against and existing licence holder.

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15. 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.

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

16. The guidelines are not an attempt to define what is a “fit and proper person”.

17. Any individual who is refused a driver’s licence or has such a licence suspended or revoked on the ground that the Council is 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.

18. Any individual who is refused an operators licence has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.

19. The guidance will be used for the determination of new applications, the renewal of existing licences and the review of existing licences in relation to hackney carriage drivers, private hire drivers and operator licences.

20. It is common practice for individuals to submit simultaneous applications for Hackney Carriage and Private Hire Driving Licence(s). Licensing Authorities may use the same application form that allows the individual to specify if they are applying both types of driver’s licences or only one type. This provides an efficient service for the customer and saves needless duplication. For dual applications the Licensing Committee/Panel are asked to apply the fit and proper test to each individual application. Similarly where an existing driver who holds both Private Hire and Hackney Carriage Licences is referred to Committee/Panel the fit and proper test will be applied individually to each Licence.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS and OTHER INFORMATION

General Policy

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers and operators are fit and proper persons to hold licences. One aspect of that is the extent to which previous convictions, including but not limited to convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and would not take advantage of passengers or abuse or assault them.
3. 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 many 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.

4. A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to:
 - a. Remain free of conviction for an appropriate period; and
 - b. 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 private hire or hackney carriage driver licence, but would normally be expected to remain free from conviction for an appropriate period (which will depend on the nature of the offence).
 - c. 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.

5. Amongst situations where it may be appropriate to depart from the general policy, for example, may be situations where the offence is an isolated one with mitigating circumstances or where a conviction defaults outside of the policy between the application and determination date. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. In any case which involves certain specified sexual offences, murder or manslaughter a licence will normally be refused.

6. The Council through the Licensing Committee/ Panel will convene to consider any information/ representations received that a person is not/ no longer a “fit and proper” person or a breach of a condition of a licence has been proved they may refuse, revoke or suspend a licence for any specified period.
 - a. Hearing with notice – Where a committee/panel is to be convened to consider whether or not a person is a “fit and proper” person, notice of the time and date when a committee/ panel will be convened will then be given ahead of the date listed in order to allow the person to seek independent legal advice and to attend and be represented at the hearing.
 - b. Ex-parte hearing – Where a committee/ panel is convened as a result of sensitive information being received by the Council an assessment will be undertaken in balancing a persons right to a fair hearing against whether or not it is in the public interest to hold the hearing ex-parte.
 - c. Where new offences are created or existing offences are consolidated or re-enacted etc they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.

7. The following examples afford a general guide on the action, which might be taken where convictions are disclosed:

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a. Offence of Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people and children.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing, passengers may include especially vulnerable people. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty. In general an applicant with convictions for dishonesty, which are less than 5 years old, is unlikely to be considered favourably and are to be referred to panel/committee for determination.

In particular, an application will normally be refused where the individual has a conviction for an offence or similar offences or offences which replace the below offences and the conviction is less than 3 years prior to the date of application

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

b. Violence

Members of the public and in particular, the elderly, infirm and 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.

1. Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons.

It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

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.

Where the commission of an offence involved loss of life a licence will normally be refused. In other cases the matter is to be referred to the Panel for determination where the conviction is less than 10 years prior to the date of application. A conviction less than 5 years old will generally be refused.

2. Offences against Other Persons

As hackney carriage and private hire vehicle drivers maintain close contact with the public, where the commission of an offence involved loss of life a licence will normally be refused.

In other cases where the conviction is less than 10 years prior to the date of the application will be referred to the panel for determination. A conviction less than 3 years old will generally be refused.)

In particular:

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

- ii. An application will also normally be refused where the individual has a conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:
 - Arson

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- 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)
- Grievous bodily harm with intent (s.20 Offences Against the Person Act)
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Violent disorder
- Resisting arrest

iii. An application will also normally be refused where the individual has a conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the conviction is less than 5 years prior to the date of application:

- 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)

iv. An application will also normally be refused where the individual has a conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the conviction is less than 3 years prior to the date of application:

- 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

c. Drugs

After 5 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

An application will normally be refused where the individual has more than one conviction for offences related to the possession of drugs and the convictions are less than 5 years prior to the date of the application.

An offence related to the supply of drugs and the conviction is less than 10 years prior to the date of application will be referred to the Panel for determination. A conviction less than 5 years old will generally be refused.

An application from an individual who has an isolated conviction for an offence related to the possession of drugs within the last 5 years will be referred to the Panel for determination. A conviction less than 3 years old will generally be refused).

If any applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment as required by the Council.

d. Sexual and Indecency Offences

Any individual currently on the sex offenders' register would not normally be granted a licence.

1. Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

Where the commission of a sexual offence involves a child or young person an application for a licence will normally to be refused.

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

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The Council will sometimes be made aware of other intelligence or low level information about an individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Where appropriate, officers will refer such information/ intelligence to the Allegations Management process. Any additional information gathered through this process may then be taken into account at any subsequent licensing panel.

3. Offences against persons other than children / young persons

As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, individual with a conviction for rape, indecent assault, or other similar offences or similar offences under the Sexual Offences Act 2003, will normally be refused a licence.

Individuals with a conviction relating to sexual offences such as soliciting, importuning, indecent exposure or other similar offences or similar offences under the Sexual Offences Act 2003, will normally be referred to the Panel for determination where the conviction is less than 10 years prior to the date of the application. Applicants on the sex offenders register or with a conviction less than 5 years old will generally be refused)

After 5 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

Amongst circumstances, which the Council may wish to consider, are circumstances, which if they occurred at the time of the consideration of the application would not be a criminal offence.

e. Drunkenness

Driving whilst under the influence of drink is unacceptable under any circumstances and puts not only the driver, but passengers and other road users at risk. Such irresponsible behaviour is not conducive with the responsibilities of a private hire or hackney carriage driver.

i. With a motor vehicle (No Disqualification)

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

An application will normally be refused where the individual has a conviction, which does not result in disqualification, for an offence within 2 years of the date of the application.

More than one conviction for this type of offence, within the last 5 years of the date of conviction is likely to merit refusal.

ii. With a motor vehicle (Disqualification)

Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should normally elapse from the date of the restoration of the DVLA licence before an applicant is considered for a licence.

In addition, individual will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

iii. Not in a motor vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate.

More than one conviction for drunkenness could indicate a medical problem necessitating critical examination and refusal of a licence.

In addition, individual will generally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

**MOTORING CONVICTIONS
MAJOR TRAFFIC OFFENCES**

New applicants and existing licensed drivers with a conviction for a 'Major Traffic Offence' as defined below, which is less than 5 years prior to the date of the application (the present date in relation to existing licensed drivers) will be referred to the Panel for determination. A conviction less than 2 years prior to the date of the application will generally be refused.

Where the conviction resulted in a period of disqualification, an application will normally be refused unless a period of 3 years free from conviction has lapsed from the restoration of the DVLA licence and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

In addition, applicants will generally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

For the purposes of these guidelines the following motoring offences are classed as 'Major Traffic Offences':

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of Court
BA30	Attempting to drive while disqualified by order of Court
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 alcohol analysis
CD71	Causing death through careless driving the failing to supply a specimen for drug analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
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 when unfit through drugs
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving / attempting to drive
DR61	Failure to provide specimen for drug analysis in circumstances other than driving / attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
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 having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

Aiding, Abetting, Counselling or Procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12).

Causing or Permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14).

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16).

Or similar offences or offences which replace the above offences.

INTERMEDIATE TRAFFIC OFFENCES

New applicants and existing licensed drivers with a Conviction / Fine / Simple Caution/ Fixed Penalty Points for an offence which falls under the headings of 'Minor' or 'Intermediate' Traffic Offences and where the total number of accumulated points on their drivers licence is less than 12 or does not result in a period of disqualification, can have their applications granted without the application being referred to the Panel. Where an applicant/licensed driver has 12 points but has not been disqualified; or where (s)he has a disqualification for any period, s(he) will be referred to Committee and a licence will not normally be granted unless s(he) has held a DVLA licence for at least 12 months following the expiry of the period of the disqualification.

For the purposes of these guidelines the following motoring offences are classed as 'Intermediate Traffic Offences':

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of 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 tyres
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 phones etc
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 of other road users
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road – not resulting in a fixed penalty
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Exceeding speed limit offence

Aiding, Abetting, Counselling or Procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12).

Causing or Permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14).

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16).

Or similar offences or offences which replace the above offences.

MINOR TRAFFIC OFFENCES

For the purposes of these guidelines the following motoring offences are classed as 'Minor Traffic Offences':

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
SP30	Exceeding statutory speed limit on a public road resulting in a fixed penalty
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

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Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Or similar offences or offences which replace the above offences.

Plying for Hire

In the case of a private hire driver found guilty of an offence of plying for hire, the Committee/ Panel would normally order the licence to be revoked or suspended.

Breach of Conditions, Bye-laws and complaints

Any breach of conditions, breach of bye-laws or complaint relating to a licence holders conduct may be referred to the Panel. A licence holder brought before the Panel will be dealt with by no further action, a formal warning, period of suspension or revocation.

Guidance

Licence holders will be brought before Panel in situations where it is clear that the holder's behaviour is not influenced by verbal or written warnings administered by Licensing Officers. Any licence holder who receives a third warning [verbal or written] in respect of a breach or complaint occurring within a 12 month period [calculated by reference to the date of the breach/complaint] will be brought before the Panel.

All complaints are investigated. Some investigations and breaches will result in prosecution and in those cases the prosecution outcome will be the deciding factor in the decision to refer to Panel as will other prosecutions and cautions administered by other enforcing agencies.

Where this authority administers a caution to a licence holder this does not preclude a referral to panel for the matter for which the licence holder has been cautioned.

In other cases an investigation may result in a warning, such warnings will be relevant to the rolling 12 month period.

In certain situations the breach or complaint may be deemed so serious that an immediate referral to Panel is warranted. In those cases the reasoning for the decision for the immediate referral will be recorded within the formal report to Panel.

Reapplication

Individuals are advised that Council guidelines are that where an individual has had an application refused or a licence revoked, the Committee/ Panel 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.

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 only consider spent convictions if it appears to be relevant for deciding whether the individual is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction. The council will in its consideration the nature of the offence(s), the history or pattern of offending, the lapse of time and whether all the convictions have previously been considered

FORMAL/ SIMPLE CAUTIONS AND ENDORSABLE FIXED PENALTIES

For the purpose of these guidelines formal/simple/conditional cautions and endorsable fixed penalties shall be treated as though they were convictions.

MULTIPLE CONVICTIONS FROM SINGLE INCIDENT

Where an individual has multiple convictions arising from a single incident, the convictions will generally be treated as one conviction for the purposes of these guidelines.

In these circumstances the period for which the individual would normally be expected to show free from conviction will be the longest applicable period calculated by reference to each offence.

OTHER OFFENCES

Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws and Section 167 Criminal Justice and Public Order Act 1994.

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") and Hackney Carriage Byelaws, is to ensure the protection of the public.

For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire and/or touting) when deciding whether an individual is to be treated as a fit and proper person to hold a licence.

In particular, an individual will normally be refused a licence if (s)he has been convicted of an offence under the Acts at any time during the 2 years preceding the application or has more than one conviction within the last 5 years preceding the date of the application.

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Contact details:

Licensing Service
Bury Council
3 Knowsley Place
Duke Street
Bury
BL9 0EJ

Telephone Number: 0161 253 5208
Email: licensing@bury.gov.uk

These guidelines to convictions supersede all others and take effect from: 4th
December 2014.

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

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