

TORRIDGE DISTRICT COUNCIL POLICY ON TREATMENT OF CRIMINAL CONVICTIONS

1.0 Purpose of Policy

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the licensing authority ('the Authority') when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a licence to drive a hackney carriage or private hire vehicle.
- 1.2 This policy will be referred to primarily where a person has received a relevant conviction or caution but also in the case of information received from other agencies such as the police or safeguarding boards. Safeguarding of the public is a priority, therefore, the Council reserve the right not to issue a licence or suspend/revoke a licence awaiting the outcome of an arrest, prosecution or investigation.
- 1.3 The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority will strive to ensure:
- That a person is a fit and proper person to hold a licence
 - That the person does not pose a threat to the public
 - That the public are safeguarded from dishonest, indecent and violent behaviour
 - The safeguarding of children and young or vulnerable persons

NB. For the purposes of this Policy, the term 'convictions' also includes cautions and endorsable fixed penalty notices (FPNs).

2.0 Procedures

- 2.1 The Authority uses enhanced criminal disclosures supplied by the Disclosure and Barring Service (DBS) as part of its procedures to assess an applicant's suitability to hold a licence to drive a hackney carriage or private hire vehicle. The Authority complies fully with the DBS Code of Practice and undertakes to treat all applicants, including ex-offenders, fairly and consistently. The Authority will not keep DBS disclosures for any longer than is reasonably necessary to process a licence application. This may include any period required for consideration of contentious applications by the Authority's Licensing Committee together with any subsequent period required in the event of an appeal to the Magistrates' Court. Strict confidentiality of records is observed at all times. The Authority's policy on the use, storage and retention of criminal disclosures can be viewed on its website at www.torridge.gov.uk.
- 2.2 A criminal conviction will not necessarily preclude a licence being granted. This will depend on the nature and seriousness of the offence, how long ago it was committed and any evidence of repeated or persistent offending (whether for the same offence or for a range of offences). It is recognised that the Policy cannot deal with every conceivable scenario. Where licensing officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant or refuse a licence. In all other cases applications for licences will be referred to the Licensing Committee (or a sub-Committee). Whilst officers and the Committee (or sub-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 officer/Committee may depart from the guidelines. The Authority will provide a written explanation for any departure from Policy.

- 2.3 The Authority may, at its discretion, accept an enhanced disclosure from another Registered Body provided this is no more than 3 months old at the time of application. The Authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence.
This may include information held by the Authority or by other licensing authorities, safeguarding boards and information disclosed by the police under the Home Office scheme for reporting offences committed in respect of notifiable occupations.
- 2.4 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material details in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.
- 2.5 If an application is refused, the Council will not be liable for any costs the applicant may have incurred in making the application and obtaining certificates and qualifications as part of the application process.

3.0 Powers

- 3.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 3.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. The Authority will therefore have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

4.0 Appeals

Any person aggrieved by a decision of the Licensing Committee (or sub-Committee) has the right to appeal to the Magistrates' Court within 21 days of notification of the decision. [Local Government Miscellaneous Provisions Act 1976, s 77 (1)].

5.0 Treatment of Convictions

5.1 Minor Traffic Offences

Convictions for minor traffic offences will not normally prevent a person from proceeding with a licence application. However, if an applicant has accrued six or more penalty points for minor traffic offences this may be indicative of a poor driving standard and a warning will be given about future driving behaviour. If sufficient penalty points have been accrued to require a period of disqualification of the applicant's UK driving licence, then a Hackney Carriage or Private Hire Driver's Licence may be granted after the disqualification period has elapsed and their UK driving licence has been re-instated but the driver will be warned about future driving conduct.

A licensed driver who has acquired six or more penalty points on his/her licence will be given a written warning about future driving conduct. If sufficient penalty points have been accrued to require a period of disqualification of the driver's UK driving licence, then he/she may re-apply for a Hackney Carriage or Private Hire Driver's Licence after the disqualification period has elapsed and their UK driving licence has been re-instated. If a licence is granted, the driver will be given a final warning about future driving conduct. If a licence holder incurs further driving endorsements or convictions, the Committee may suspend, revoke or refuse to renew his/her Hackney Carriage/Private Hire Driver's Licence.

5.2 Major Traffic Offences

An isolated conviction for a major traffic offence may not prevent an applicant from proceeding with a licence application but, if a licence is granted, a warning on future driving conduct and the standards expected of hackney carriage and private hire drivers will be given. In cases where an applicant has more than one conviction for a major traffic offence within the last five years, the Authority may reject the application. No further application will normally be considered until a period of between three to five years free from further convictions has elapsed.

In the case of a licensed driver convicted of a single major traffic offence, a warning on future driving conduct and the standards expected of hackney carriage and private hire drivers will be given. Where a licensed driver has been convicted of more than one major traffic offence within the last three years, the licensing authority may, suspend, revoke or refuse to renew his/her Hackney Carriage/Private Hire Driver's Licence. If a licence is revoked, no further application will normally be considered until a period of between three to five years free from further convictions has elapsed.

Convictions for serious motoring offences such as causing death, manslaughter or culpable homicide by dangerous, reckless or careless driving will be treated more seriously and an application will be rejected unless the applicant can provide evidence of exceptional mitigating circumstances.

In the case of a licensed driver convicted of causing death, manslaughter or culpable homicide by dangerous, reckless or careless driving, the licensing authority will consider immediate suspension or revocation the licence. If a licence is revoked, no further application will normally be considered until a period of between five to ten years free from further convictions has elapsed.

6.0 Alcohol Related Offences

6.1 With motor vehicle:

The Authority will take a serious view of an applicant convicted for driving or attempting to drive a vehicle with levels of alcohol in blood, breath or urine in excess of the permitted limit. An isolated incident will not necessarily prevent an applicant being granted a licence but a strict warning about future behaviour will be issued. If sufficient penalty points have been accrued to require a period of disqualification of the applicant's UK driving licence, then a Hackney Carriage or Private Hire Driver's Licence may be granted after the disqualification period has elapsed and their UK driving licence has been re-instated but the driver will be given a strict warning about future driving conduct. More than one conviction for these types of offence within the last five years will raise serious doubts about the applicant's fitness to hold a licence. In such cases, the Authority may reject the application. No further application will be

considered until a period of at least five years free from convictions has elapsed. If there is any suggestion that the applicant suffers alcohol dependence, the Authority may require a special medical examination to be undertaken. If the applicant is found to be suffering from alcohol dependence, an application will not be considered until a period of at least five years has elapsed after completion of treatment of the condition.

The Authority will take a serious view of a licensed driver convicted of driving or attempting to drive a vehicle with levels of alcohol in excess of the permitted limit as this will raise serious doubts about the person's fitness to hold a licence. In such cases, the Authority may refuse to renew, suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least five years free from convictions of this type has elapsed.

6.2 Without motor vehicle:

An isolated incident will not necessarily prevent an applicant being granted a licence. However, a number of convictions for alcohol-related offences may indicate a medical problem. In such cases, the Authority may require a medical examination to be undertaken as at (3.1) above.

NB. The cost of any medical examination must be paid for by the applicant/driver.

7.0 Drugs

The Authority will take a serious view of convictions for drug related offences. An isolated incident will not necessarily prevent an applicant being granted a licence but a strict warning about future behaviour will be issued. An applicant with a conviction for a drug-related offence will be required to show a period of at least three years free from convictions or five years after de-toxification treatment before the Authority will consider an application. An applicant with more than one conviction for a drug-related offence in the last five years will not be considered for licensing.

The Authority will take a serious view of a licensed driver convicted of a drug-related offence. An isolated incident will result in a strict warning about future conduct. More than one conviction for this type of offence in the last five years will raise serious doubts about the person's fitness to hold a licence. In such cases, the Authority may refuse to renew, suspend or revoke the licence or require a medical examination to be undertaken. If a licence is revoked, no further application will be considered until a period of at least five years free from convictions has elapsed.

8.0 Sexual Offences

8.1 Hackney carriage and private hire drivers frequently carry unaccompanied and/or vulnerable passengers. The Authority will therefore take a serious view of any convictions for a sexual offence. A licence will not be granted if an applicant has a conviction for a sexual offence.

8.2 Unless there are exceptional circumstances, an application will be refused where the applicant has a conviction for an offence such as:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults

- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

In the case of a licensed driver convicted of any of the above offences, unless there are exceptional circumstances, the Authority will immediately revoke the licence.

8.3 A licence will not be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date of application:

- Sexual assault
- Indecent assault
- Possession of indecent photographs, child pornography etc.
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

In the case of a licensed driver convicted of any of the above offences, the Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 10 years free from convictions of this type has elapsed.

8.4 A licence will not be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date of application:

- Indecent exposure
- Soliciting (kerb crawling)
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

In the case of a licensed driver convicted of any of the above offences, the Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 5 years free from convictions of this type has elapsed.

8.5 Applications will be refused where the applicant remains on the Sex Offenders Register.

9.0 Violence

9.1 The Authority will take a serious view of any applicant convicted of an offence involving violence. A licence will not be granted if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

9.2 Unless there are exceptional circumstances a licence will not be granted where the applicant has a conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences

- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

In the case of a licensed driver convicted of any of the above offences, unless there are exceptional circumstances, the Authority will immediately revoke the licence.

9.3 A licence will not be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 10 years prior to the date of application:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

In the case of a licensed driver convicted of any of the above offences, the Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 10 years free from convictions of this type has elapsed.

9.4 A licence will not be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 5 years prior to the date of application:

- Assault occasioning in actual bodily harm
- Common assault
- Affray
- Racially-aggravated criminal damage
- Racially-aggravated offence
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above

In the case of a licensed driver convicted of any of the above offences, the Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 5 years free from convictions of this type has elapsed.

9.5 A licence will not be granted where the applicant has a conviction for an offence or similar offence(s) which replace the offences below and the conviction is less than 3 years prior to the date of application:

- S.5 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)

- Possession of a weapon
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit offences) which replace the above.

In the case of a licensed driver convicted of any of the above offences, the Authority may suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least 3 years free from convictions of this type has elapsed.

10.0 Dishonesty

10.1 It is essential for the public to have trust in hackney carriage and private hire drivers. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. However, there is scope for a dishonest driver to defraud a passenger by demanding more than the legal or agreed fare or by taking a longer route to a destination. Tourists and overseas visitors are particularly at risk from an unscrupulous driver. For this reason, the Authority will take a serious view of any offences involving dishonesty. The Authority will not consider an application until a period of at least three years free from convictions has elapsed. More than one conviction for this type of offence within the last five years will raise serious doubts about the applicant's fitness to hold a licence. In such cases, the Authority may reject the application.

10.2 In the case of a licensed driver convicted of an offence involving dishonesty, the licensing authority, may refuse to renew, suspend or revoke the licence. If a licence is revoked, no further application will be considered until a period of at least three years free from convictions of this type has elapsed.

10.3 Offences involving dishonesty include:

- Theft
- Burglary
- Fraud (including Benefit fraud)
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Taking a vehicle without consent
- And any similar offences