

BOROUGH OF PENDLE

TAXI LICENSING CONVICTIONS POLICY GUIDELINES



TAXI LICENSING – POLICY GUIDELINES TO FITNESS AND PROPRIETY INCLUDING CONVICTIONS AND OTHER RELEVANT INFORMATION

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
- Licensing Officers
- Members of the Licensing Committee
- Magistrates hearing appeals against local authority decisions
- Lancashire Constabulary

Where Officers have delegated powers to grant or refuse Licences, they will utilise these guidelines when making a decision to grant a Licence. In other cases Applications for Licences will be referred to the Taxi and Other Licensing Committee.

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 there are compelling reasons to do so, the Committee/Officer may depart from the guidelines.

Background

1. In this Policy the following words have the following meanings:
 - a. "Applicant" means a person applying for a licence, an existing licence holder applying for renewal of a licence, or an existing licence holder whose licence is subject to a decision by the Council to revoke, suspend or take no further action
 - b. "Application" means an application for a licence, an application for renewal of a licence, or a decision by the Council to revoke, suspend or take no further action in respect of an existing Licence
 - c. "Conviction" means a conviction, caution or formal warning and endorsable fixed penalty
 - d. "Council" means Pendle Borough Council
 - e. "Driver" means a person applying for a licence or a licence holder

- f. "Individual" includes an existing licence holder, an applicant for a new licence, and an applicant for the renewal of an existing Licence
- g. "Issue" includes any 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 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 the Council is satisfied that the incident occurred based on the evidential test of the balance of probabilities)
- h. "Licence" means a licence to drive a hackney carriage or a private hire vehicle.
- i. "Licence Holder" means the holder of a current valid licence granted by the Council.

General Policy

1. Licences for drivers of hackney carriages or 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.
2. 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.
3. 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.
4. The public are not normally permitted to attend Committee hearings for private hire or hackney carriage driver's applications 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.
5. When submitting an application, 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. It is an offence for any person knowingly or recklessly making a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.
6. 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 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a licence).

7. 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, the Council's Housing Service, Lancashire County Council Children's Services and Lancashire Constabulary. 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.
8. The disclosure of a criminal conviction or other relevant information relating to an individual's conduct will not necessarily debar an individual from being granted, retaining or renewing a licence but clearly the conviction will be an important consideration in whether a licence is granted.
9. The Council may not be satisfied that an individual is a fit and proper person to hold a 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.
10. In considering evidence of an individual's good character and fitness to hold a licence, where previous convictions or other information relating to criminal matters/character is disclosed, the Council will consider, amongst other things, 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 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. 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)*]
11. The Council has adopted the following guidelines relating to the relevance of convictions to which it will refer in determining applications for licences and when considering whether to take any action against an existing licence holder, and references to the grant of a licence in these guidelines shall be construed accordingly.
12. 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 given to the factors at paragraph 7 when deciding whether any action should be taken.

13. 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.
14. The guidelines are not an attempt to define what a “fit and proper person” is.
15. Any individual who is refused a licence or has such a licence suspended or revoked has a right of appeal to the Magistrates’ Court within 21 days of the notice of refusal.
16. The guidance will be used for the determination of new applications, the renewal of existing licenses and the review of existing licences in relation to hackney carriage drivers, private hire drivers and operator licences.

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GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION

General Policy

1. Each case will be decided on its own merits. However there are certain offences that are so grave that a person who has committed them should not be allowed a licence such as rape or murder.
2. The Council has a duty to ensure so far as possible that drivers 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. The Council has a duty to take into account any complaints made to the Council, Police, licensed Operators or any other agency, breaches of licensing conditions and any intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal, e.g.
 - a) incidents that 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 Council is satisfied that the incident occurred based on the balance of probabilities.
 - b) Incidents that have resulted in the suspension or revocation of a licence which has been issued by another Council.
4. 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.
5. An Individual 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.

6. Some discretion may be appropriate if the offence is an isolated one with mitigating circumstances. 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 be refused.
7. 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.
8. The following examples afford a general guide on the action, which might be taken where convictions are disclosed.

DRAFT

A. OFFENCE OF DISHONESTY

Applicants 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. Drivers have access to certain information gleaned as part of their operation such as 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 there should be a minimum period of 5 years free of conviction before granting a licence.

Offences involving dishonesty include (but are not limited to);

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one conviction for a dishonesty offence.

Applicants or existing licence holders that are found to have intentionally misled the Council, or lied as part of the application process, will not be issued with a licence.

B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)

Licensed drivers have close, regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.

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

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

- Arson
- Malicious wounding
- Actual bodily harm which is racially aggravated
- Grievous bodily harm
- 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), or offences which replace the above

A licence will not normally be granted where the applicant has a conviction for an offence 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
- Racially-aggravated offence
- Common assault
- Assault occasioning actual bodily harm
- 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)
- Obstruction
- Possession of offensive weapon
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A licence will not normally be granted if an applicant has more than one conviction for an offence of a violent nature.

C. DRUGS

An application will normally be refused where the individual has a conviction for an offence related to the supply, intent to supply or production of drugs and the conviction is less than 10 years prior to the date of application. In the following circumstances consideration will be given to allowing a license within that 10 year period.

An application from an individual who has an isolated conviction for an offence related to the possession of class A drugs or permitting premises to be used for drug activity within the last 7 years will generally be refused.

An application from an individual who has an isolated conviction for an offence related to the possession of Class B drugs within the last 5 years will generally be refused.

An application from an individual who has an isolated conviction for an offence related to the possession of Class C drugs within the last 3 years 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.

A licence will not normally be granted if an applicant has more than one conviction for a drugs related offence.

D. SEXUAL AND INDECENCY OFFENCES

Licensed drivers often carry unaccompanied and vulnerable passengers. Therefore, where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted.

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

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

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 whether they are a fit and proper person to hold a licence. Officers will give appropriate consideration to this information and will consult with other appropriate agencies in order to ensure that they have a comprehensive understanding of the situation. Any additional information gathered through this process may then be taken into account.

E MOTORING CONVICTIONS

I. Major Traffic Offences

- a. An isolated conviction, without disqualification, for an offence such as dangerous driving will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of drivers. However, where the conviction is within 3 years prior to the date of the application the application will normally be refused.
- b. Applications where there is more than one conviction for this type of offence within the last 5 years will normally be refused
- c. A list of offences to which this paragraph applies is attached as **Appendix I**.

II. Minor Traffic Offences

- a. Isolated convictions for minor traffic offences should not normally prevent an application from being granted. However, the number, type and frequency of this type of offence will be taken into account and if there is more than 1 offence of this nature the applicant will normally be expected to show a period free of conviction of at least 6 months.
- b. In particular, an application will normally be refused where the applicant has 12 or more penalty points on his DVLA Licence (whether or not the applicant was convicted by a court for the offences for which the points were imposed) or where the applicant has more than one conviction for this type of offence within the last 6 months.
- c. A list of offences to which this paragraph applies is attached as **Appendix II**.

III. Disqualification

Major Traffic Offence

An application will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

Minor Traffic Offence

An application will generally be refused unless the individual can show a period free from conviction has elapsed from the restoration of the DVLA licence which is equal to the period of disqualification imposed by the court i.e. 3 month disqualification = 3 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for a minor traffic offence(s).

IV. Totting Up

TT99 Totting up – if the total of penalty points reaches 12 or more within 3 years the driver is liable to disqualification by the Court.

Totting up With Disqualification

An application will generally be refused unless the individual can show a period of at least 12 month free from conviction has elapsed from the restoration of the DVLA licence.

Where any of the offences which contribute to a totting up disqualification are a Major Traffic Offence the Council will consider the application under “Disqualification – major traffic offence”

Totting up without Disqualification

In “totting-up” cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver the Council is likely to refuse driver’s licence because different criteria apply and an applicant will normally be expected to show a period of at least 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

In these circumstances the Council will consider the application as a disqualification for the most serious of the offences contributing to the totting up (e.g. where the offences contributing to the totting up are SP30, SP80 and IN10 the Council would consider IN10 under ‘Disqualification – Major Traffic Offence’).

F OFFENCES UNDER THE TOWN POLICE CLAUSES ACTS AND PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

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") 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) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence.

In particular, an applicant will normally be refused a licence where (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.

G DRUNKENNESS

Not in a motor vehicle

An isolated conviction for drunkenness need not debar an applicant from being granted a licence. In some cases, a warning may be appropriate. However, more than 1 Conviction in the last 2 years will merit a refusal.

In addition the applicant 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.

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 only consider spent convictions if it appears to be relevant for deciding whether the applicant 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

MAJOR TRAFFIC OFFENCES
(Paragraph (E,I) refers)

- 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 by careless driving when unfit through drugs
- CD60 Causing death by careless driving with alcohol level above the limit
- CD70 Causing death by careless driving then failing to supply a specimen for analysis
- CD71 Causing death by careless driving then failing to provide a specimen for analysis
- CD90 Causing death by driving; unlicensed, disqualified or uninsured drivers

- CU80 Using a mobile phone whilst driving a motor vehicle

- 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

- 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 a specimen for analysis in circumstances other than driving or attempting to drive
- DR61 Failure to provide a specimen for drug analysis in circumstances other than driving or 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

- 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)

MINOR TRAFFIC OFFENCES
(Paragraph (E,II) refers)

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street Offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
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
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)

Inciting

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