

Appendix 4: Proposed consultation response

Question 1: Do you support the 'bright-line' approach taken in this guidance?

Proposed response:

The Council first adopted a Policy to govern its approach to the licensing of Hackney Carriage and Private Hire trades in 2010, which has been updated since that time. This Policy contains a 'Convictions Policy' which has similar aims to the consultation document. The content of the Convictions Policy was based on that developed in the Greater Manchester area. Accordingly, our Convictions Policy does not adopt a 'bright line' approach and does use the wording "a licence would not normally be granted if..." This wording is used as a means to ensure, and demonstrate, there is no predetermination or bias and allows Members to truly consider the individual merits of the case. A bright line approach does not affect the individual merits of a case, but does provide a clear steer to Members that would necessitate the wording of a decision to reflect why and how that decision was taken.

Question 2: Do you support the provision of guidance on determining suitability for applicants and licensees in the hackney carriage and private hire trades?

Proposed response:

Yes.

Question 3: What do you consider are the main advantages to this guidance?

Proposed response:

It would promote greater consistency between local authorities. In the absence of formal and/or Government guidance, it is also important that the guidance is produced by a noted body i.e. the IoL, but also supported for relevant bodies e.g. Local Government Association, trade bodies, Police etc.

Question 4: Do you think there are potential disadvantages to this guidance?

Proposed response:

A similar approach has been taken by this Council since 2013. However, whilst the current Convictions Policy supports, and is broadly consistent with, the IoL document, it is more prescriptive in its consideration of individual offences. The Council would seek to support the IoL document, but would not wish to lessen its standard or approach unless this was inconsistent. There are also likely to be justifiable local considerations within local authorities, such as historical issues and/or local sensitivities, which seek a higher or more specific standard than that proposed by the IoL document, and this should be acknowledged.

Question 5: Are you likely to recommend that your local authority consider the guidance as a basis for its own policy once the final version is published?

Proposed response:
Yes.

Question 6: Are there any factors which would influence the likelihood of your local authority adopting the Policy?

See response to question 4.

Question 7: Do you have any comments on the introduction to the document?

Proposed response:
No, other than the aforementioned comments regarding the 'bright line' approach.

Question 8: Do you have any comments on the 'Offenders and Offending overview' section of the document?

Proposed response:
The Council's current Convictions Policy does not contain this information. The details about research and findings in relation to offenders and patterns of re-offending, as well insights into why time lapse is an important factor when considering likelihood of re-offending and suitability of an applicant, are useful.

Question 9: Do you have any comments on the 'taxi overview' section of the document?

Proposed response:
Much of this section is similar to that contained in the Council's Policy. The document is therefore useful to ensure that any references are consistent.

Question 10 - Please provide your views to the following statements:

Question 10a:

In determining safety and suitability the licensing authority is entitled to take into account all matters concerning that applicant or licensee. They are not simply concerned with that person's behaviour whilst working in the hackney carriage or private hire trade. This consideration is far wider than simply criminal convictions or other evidence of unacceptable behaviour, and the entire character of the individual will be considered. This can include, but is not limited to, the individual's attitude and temperament.

Proposed response:
We would support this statement and similar wording is contained in the Council's current Policy.

Question 10b:

Convictions for attempt or conspiracy will be regarded as convictions for the substantive crime. A caution is regarded in exactly the same way as a conviction[1]. Fixed penalties and community resolutions will also be considered in the same way as a conviction[2].

[1] This is because a caution can only be imposed following an admission of guilt, which is equivalent to a guilty plea on prosecution.

[2] This is because payment of a fixed penalty indicates acceptance of guilt, and a community resolution can only be imposed following an admission of guilt.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10c:

It is important to recognise that matters which have not resulted in a criminal conviction (whether that is the result of an acquittal, a conviction being quashed, decision not to prosecute or an investigation which is continuing where the individual has been bailed) can and will be taken into account by the licensing authority. In addition, complaints where there was no police involvement will also be considered. Within this document, any reference to "conviction" will also include matters that amount to unacceptable behaviour, but which have not resulted in a conviction.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10d:

In the case of any new applicant who has been charged with any offence and is awaiting trial, the determination will be deferred until the trial has been completed or the charges withdrawn. Where an existing licensee is charged, it will be for the licensing authority to decide what action to take in the light of these guidelines.

Proposed response:

Applicants and existing licence holders are currently presented to Committee when charged with a relevant offence for determination in accordance with the Councils' Policy. We do not currently defer a new application until the trial has been completed or the charges withdrawn. This is because of the aforementioned statements that it is important to recognise that matters which have not resulted in a criminal conviction can and will be taken into account by the Council.

Question 10e:

In all cases, the licensing authority will consider the conviction or behaviour in question, what weight should be attached to it and each and every case will be determined on its own merits, but in the light of these guidelines.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10f:

Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10g:

As the licensing authority will be looking at the entirety of the individual, in many cases safety and suitability will not be determined by a specified period of time having elapsed following a conviction or the completion of a sentence. Time periods do have relevance, but they are not the determining factor.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10h:

In addition to the nature of the offence or other behaviour, the quantity of matters and the period over which they were committed will also be considered. Patterns of repeated unacceptable behaviour are likely to cause greater concern than isolated occurrences as such patterns can demonstrate a propensity for unacceptable behaviour.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10i:

Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will not prevent the grant or renewal of a licence.

Proposed response:

We would support this statement and similar, albeit not as explicit, wording is contained in the Council's current Policy.

Question 10j:

It is also important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operator) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10k:

Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 10l:

Generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 11 - Please provide your views to the following statements:

Question 11a: Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed as a driver, operator or proprietor.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences.

Question 11b: Offences involving violence

Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences. The Council makes the distinction between levels and nature of violence, with differing elapsed periods ranging from 3 to 10 years. Serious violence that includes loss of life would normally be refused.

Question 11c: Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences. The Council makes the distinction between levels and nature of violence, with differing elapsed periods ranging from 3 to 10 years.

Question 11d: Sex and indecency offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity or any form of indecency, a licence will not be granted. In addition, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any 'barred' list.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences.

Question 11e: Dishonesty

Where an applicant has a conviction for any offence of dishonesty, or any offence where dishonesty is an element of the offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, the period of time from the date of offence is currently set at 5 years.

Question 11f: Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between sale and supply of drugs, as well as isolated or multiple offences.

Question 11g: Drugs

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 11h: Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy.

Question 11i: Drink driving/driving under the influence of drugs/using a mobile phone whilst driving

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence or driving ban imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between offences.

Question 11j: Drink driving/driving under the influence of drugs/using a mobile phone whilst driving

Where an applicant has a conviction for using a mobile phone whilst driving, a licence will not be granted until at least 3 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, there is a difference in the period from the date of offence.

Question 11k: Other motoring offences

A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has a second conviction for a minor traffic offence or similar offence, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made, given the wide variety of offences.

Question 11l: Other motoring offences

A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least 7 years have elapsed since the completion of any sentence imposed.

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, the period of time from the date of offence is currently set at 5 years.

Question 11m: Hackney carriage and private hire offences

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

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences with differing elapsed periods ranging from 2 to 5 years.

Question 11n: Vehicle use offences

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

Proposed response:

We would support this statement and similar wording is contained in the Council's current Policy. However, distinctions are made between types of offences with differing elapsed periods ranging from 2 to 5 years.

Question 12: Do you agree that the same standards should be applied to private hire operators as to drivers?

Proposed response:

We are interested to note the applicability of knowledge tests to such licences, but there are limitations as to the level of DBS disclosure that can be applied to operators that are not consistent with drivers. This Council requires that operators provide a list, and attest to the safety and suitability, of those persons that work for (and/or are used by) them. This would include booking staff etc.

Question 13: Do you agree that the same standards should be applied to vehicle proprietors as to drivers?

Proposed response:

We would be interested to consider the arguments that similar standards can be applied to vehicle licences, as there is no explicit regime to regulate settle businesses that provide cars to licensed drivers, but are not licensed drivers themselves.