



Environmental Health & Licensing
Civic Centre, High Street
Esher, Surrey KT10 9SD
Telephone: 01372 474750
Fax: 01372 474915
DX: 36302 Esher
Email: envhealth@elmbridge.gov.uk
Website: www.elmbridge.gov.uk

Elmbridge Borough Council Hackney Carriage & Private Hire Licensing Policy regarding the relevance of convictions and other related information

This Policy is to be read in conjunction with the document
'Elmbridge Borough Council
Hackney Carriage & Private Hire Licensing Policies 2013'

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1. Introduction

- 1.1 This policy sets out the criteria to be taken into account by the Council when determining whether or not an applicant or an existing licence holder is a fit and proper person to be granted, have renewed or continue to hold a Hackney Carriage and/or Private Hire Driver Licence. In addition to criminal convictions the Council will also take into account other factors such as demeanour, attitude, general character, non-criminal behaviour and police or other relevant records or information from a reliable source.
- 1.2 Whilst this policy primarily applies to the determination of driver licences, where a conviction (as defined below) is considered relevant to the fitness and propriety/suitability of an individual to hold or be granted a Private Hire Operator Licence or vehicle licence, then this policy must be referred to in the determination of that licence/application.
- 1.3 The Council is mindful that each case must be considered on its merits and where exceptional circumstances demand, the Council may depart from this policy.
- 1.4 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
 - Applicants for a driver's, vehicle or private hire operator licence
 - Existing licensees whose licences are being reviewed or renewed
 - Licensing officers
 - Members of the licensing committee/sub-committee
 - Magistrates and Judges hearing appeals against local authority decisions
- 1.5 For renewal applications and current licence holders the policy will not be applied retrospectively. However the policy will be applied if any additional convictions are incurred or brought to the attention of the Council that would call into question a person's suitability to hold a licence.
- 1.6 It is the responsibility of Elmbridge Borough Council (referred to as the Council) to issue Hackney Carriage and Private Hire licences under the Local Government (Miscellaneous Provisions) Act 1976, the Town Police Clauses Act 1847 and the Hackney Carriage Byelaws. In exercising this duty the Council must consider the need to ensure the safety of the public its primary consideration. Licences cannot be issued unless the person is considered to be 'fit and proper'.
- 1.7 In seeking to safeguard the safety of the public. The council will be concerned to ensure:

- That a person/applicant is fit and proper in accordance with Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II)
- That the person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safety of children, young persons and vulnerable adults

1.8 There is no judicially approved test of fitness and propriety and, accordingly, a number of local tests have developed. These tend to be based on a test similar to the following:

‘Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver’s licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get in to a vehicle with this person alone?’

If the answer to this question (or a similar test) is an unqualified ‘Yes’ then the test is probably satisfied. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether this person is a fit and proper person to hold a hackney carriage driver’s licence.

1.9 The Council will undertake whatever checks it considers necessary to ensure that licences are not issued to unsuitable people. In assessing the suitability of an applicant or licence holder, the council will take into consideration the following factors:

- Criminality
- Number of endorsed DVLA driving licence penalty points
- The conduct of the applicant in making the application (e.g. whether they have acted with integrity during the application process).
- The previous licensing history of existing / former licence holders.

In addition, the Council will also consider further information from sources such as, but not limited to, the Police (including abduction notices), Children and Adult Safeguarding Boards, Multi Agency Safeguarding Hub, Social Services other licensing authorities, other departments within the Council, and statutory agencies.

1.10 In this policy, the word “applicant” refers to either new applicants, existing licence holders who are seeking renewal and existing licence holders who are being considered by the Council by virtue of offending activity having recently come to light.

1.11 In this policy, the word “conviction” is to be defined as including convictions, cautions, warnings, reprimands and other relevant information.

1.12 The Council reserves the right to overturn or annul a decision that has previously been made, or refuse a renewal of a licence, where clear errors are discovered.

1.13 As licensed drivers often carry unaccompanied and vulnerable passengers, the council will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. A licensed PHV or taxi driver is expected to be trustworthy. In the course of their working duties drivers will deal with cash transactions and valuable property may be left in their vehicles. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused. Taking drugs and driving poses an obvious risk to public safety, whilst applicants who have convictions for the supply of drugs should also be treated with considerable concern, The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered carefully. As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public.

2 General Policy

2.1 Whilst the Council may consider that an applicant with a conviction for a serious offence may not need to be automatically barred from obtaining a licence, it is however to be normally expected that the applicant would be required to:

- a. Remain free of conviction for an appropriate period as detailed below; and
- b. Show adequate evidence that they are a fit and proper person to hold a licence (the onus will be on the applicant to produce such evidence). Simply remaining free of conviction may not generally be regarded as adequate evidence that an applicant is a fit and proper person to hold a licence.

2.2 The standards and criteria set out in paragraphs 4 to 18 below are those that would normally be applied to applications and licences. The Council may depart from these criteria, however it will only do so in exceptional circumstances. The otherwise good character and driving record of the applicant or licence holder will not ordinarily be considered as exceptional circumstances.

3 Powers

3.1 Section 61 of the Local Government Miscellaneous Provisions Act 1976 allow the council to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence, of failure to comply with the provisions of the Town Police Clauses Act 1847 or of failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976, or if he/she has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty, or for any other reasonable cause.

3.2 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, allows the council to take into account all convictions recorded against an applicant or the holder of a Private Hire

or Hackney Carriage driver's licence, whether spent or not. Therefore the council will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending. Applicants need to be aware that, in accordance with this Act, all convictions, cautions, warnings and reprimands must be declared.

4 Consideration of disclosed criminal history

4.1 Under the provisions of Sections 51, 55 and 59, Local Government (Miscellaneous Provisions) Act 1976, the council is required to ensure that an applicant for the grant or renewal of a Hackney Carriage and/or a Private Hire Operator or Vehicle driver's licence is a "fit and proper" person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the council will look at:

- How relevant the offence(s) are to the licence being applied for
- How serious the offence(s) were
- When the offence(s) were committed
- The date of the conviction, warning, caution etc.
- Circumstances of the individual concerned
- Any sentence imposed by the court
- The applicant's age at the time of offence / incident leading to the conviction, warning, caution etc.
- Whether they form part of a pattern of offending
- The applicant's attitude
- Any other character check considered reasonable (e.g. personal references if requested by the Council)
- Any other factors that might be relevant, for example:
 - The previous conduct of an existing or former licence holder,
 - Whether the applicant has intentionally misled the council or lied as part of the application process,
 - Information provided by other agencies/council departments.

Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].

4.2 In this policy 'from date sentence has ended' is taken to be the date which is reached once the whole of the period as sentenced by the court has elapsed and not necessarily the length of time served by the applicant. For example, if a sentence is five years imprisonment then the date that the sentence ends will be five years from the date of sentencing – regardless of the amount of time actually served by the applicant. If the sentence is amended by a court at a later date then this new sentence becomes relevant for the purposes of this policy. The term 'since completion of sentence' is to be construed in a similar way.

4.3 Existing holders of driver's licences are required to notify the council in writing within five working days of receiving a driving licence endorsement, fixed penalty notice, warning,

reprimand, police caution, criminal conviction or other criminal proceedings (including their acquittal as part of a criminal case). In addition, licence holders must inform the council within 3 working days of their arrest for any matter (whether subsequently charged or not). To fail to do so, will raise serious questions for the Council as to the honesty of the licence holder and will be taken into account as part of any subsequent renewal applications.

- 4.4 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence (s57 Local Government (Miscellaneous Provisions) Act 1976). 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.
- 4.5 Any offences or behaviour not expressly covered by this Policy may still be taken into account.

5 Options when determining an application/licence

- 5.1 When determining an application or reviewing an existing licence in relation to convictions or other relevant information the Council have the following options:
- grant the licence or take no further action
 - grant the licence with additional conditions
 - refuse, revoke, or suspend the licence
 - issue a warning which may include the use of enforcement penalty points
- 5.2 If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.

6. Offences involving violence

- 6.1 Licensed drivers have close regular contact with the public. A licence will not normally be granted if the applicant has a conviction for an offence that involved the loss of life such as:
- Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
 - Terrorism offences
 - Any offences (including attempted or conspiracy to commit offences) that are similar to those above.
- 6.2 A licence will not normally be granted until at least 10 years have passed since the completion of any sentence and / or licence period following conviction for an offence shown below:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm
- Assault occasioning actual bodily harm
- Grievous bodily harm
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Violent disorder
- Common assault
- Resisting arrest
- Any racially-aggravated offence against a person or property
- Affray
- Any offence that may be categorised as domestic violence
- Harassment, alarm or distress, intentional harassment or fear of provocation of violence
- Any offence (including attempted or conspiracy to commit offences) similar to those above.

6.3 A licence will not normally be granted until at least 5 years have passed since the completion of any sentence and / or licence period following conviction for an offence shown below:

- Obstruction
- Criminal damage
- Any offences (including attempted or conspiracy to commit offences) that are similar to those above.

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

7. Offences involving a weapon (not a firearm)

7.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public. For firearms offences see 6.2.

7.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 5 years (or at least 5 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted.

7.3 2 or more convictions for a violent offence will normally result in an application being refused.

8. Sexual and indecency offences

8.1 All sexual and indecency offences will be considered as serious. Applicants with convictions for sexual or indecency offences that involve a third party will normally be refused. Such offences include:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Trafficking, sexual abuse against children and / or vulnerable adults and preparatory offences (as defined within the Sexual Offences Act 2003).
- Making or distributing obscene material
- Possession of indecent photographs depicting child pornography.
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Soliciting (kerb crawling)
- Any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
- Making obscene / indecent telephone calls
- Indecent exposure
- Any similar offences (including attempted or conspiracy to commit) or offences which replace the above

8.2 In addition to the above the council will not normally grant a licence to any applicant who is or has ever been on the Sex Offenders Register or similar register.

9. Dishonesty

9.1 A serious view is taken of any conviction involving dishonesty.

9.2 A minimum period of 5 years free of conviction or at least 5 years since the completion of sentence (whichever is longer) is required to have passed before a licence is granted. Offences involving dishonesty include:

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods

- forgery
- conspiracy to defraud
- false representation
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- fare overcharging
- or any similar offences (including attempted or conspiracy to commit) or offences which replace the above

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

9.4 Applicants or existing licence holders that are found to have intentionally misled the council, or lied as part of the application process, will normally be rejected or refused.

10. Alcohol and Drugs

10.1 A serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs or where the driver has been found to be under the influence of psychoactive substances.

10.2 At least 5 years, after the restoration of the DVLA driving licence following a drink drive or driving when under the influence of drugs conviction should elapse before an application will be granted.

10.3 A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 10 years or at least 10 years have passed since the completion of any sentence and/or licence period, whichever is the greater. There will then be full consideration of the nature of the offence and the quantity /type of drugs involved.

10.4 A licence will not normally be granted where the applicant has a conviction for an offence related to the supply of drugs.

10.5 If there is evidence of persistent drugs or alcohol use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) and a satisfactory medical report may be required before the licence is granted. If the applicant was an addict (drug or alcohol) then they would be required to show evidence of 8 years free from drug taking after detoxification treatment.

10.6 A licence will not normally be granted for drunkenness offences not involving a motor vehicle for a period of one year after a single conviction and 2 years after 2 or more convictions within 2 years of each other.

11. Driving offences involving the loss of life

11.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life.

11.2 A licence will not normally be granted if an applicant has a conviction for:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by careless driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

12 Other traffic offences

12.1 Traffic offences such as driving without due care and attention, reckless driving, more serious speeding offences (usually dealt with by a court), or offences of a similar nature will give rise to serious doubts about the applicant's suitability to be a driving professional. An applicant with any such convictions will be required to show a period of at least 1 year free of such convictions. For applicants with more than one offence this should normally be increased to 2 years.

12.2 At least three years should elapse (after the restoration of the DVLA driving licence), before a licence would be granted for a Hackney Carriage or Private Hire drivers licence.

12.3 Traffic offences such as obstruction, some speeding offences (usually dealt with by means of a fixed penalty), pedestrian crossing offences, traffic light offences waiting in a restricted area, or offences of a similar nature may not ordinarily merit refusal. **However, with existing licensees they may be subject to separate consideration as part of the Penalty Points Enforcement Policy.**

12.4 In cases where the courts have imposed a disqualification in respect of the DVLA driving licence, the periods stated above should normally commence from the date of the restoration of the licence.

12.5 In this policy, the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

12.6 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 licensing authority is likely to refuse a hackney carriage or private hire driver's licence because different criteria

apply. An applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

13 Outstanding Charges or Summonses

- 13.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.
- 13.2 If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

14 People banned from working with children and vulnerable adult

- 14.1 A serious view is to be taken of any applicant or licence holder who has been banned from working with children or vulnerable adults. A licence will not be normally be granted if an applicant has been found unfit to work with children or vulnerable adults.

15 Non-conviction information

- 15.1 The Council will take into account intelligence which has not led to a conviction. This may include but not be limited to information regarding acquittals, circumstances in which convictions were quashed due to misdirection to the jury, circumstances where the decision was taken not to prosecute, situations where the person has been arrested and bailed but not yet charged, civil penalties and complaints from the public. In considering the most appropriate action to take following the receipt of information), the credibility of both the witness / complainant and the licence holder will be taken into account.
- 15.2 If an applicant has been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application or revoking an existing licence.
- 15.3 In assessing the action to take, public safety will be the paramount concern. Decisions will be taken on balance of probability.
- 15.4 A licence will not normally be granted until at least 1 year has elapsed since a Criminal Behaviour Order.

16 Licensing Offences

- 16.1 Offences under taxi and private hire and associated legislation such as plying for hire without

a licence, overcharging and refusing to carry disabled persons will prevent a licence being granted or renewed until a period of 3 years has passed since conviction.

17 Insurance Offences

- 17.1 A serious view will be taken of convictions for driving, being in charge of a vehicle without insurance, or allowing person to drive whilst uninsured. A previous isolated incident will not necessarily stop a licence being granted provided an individual has been free of conviction for 3 years. However strict warning should be given as to future behaviour. More than one conviction for these offences will prevent a licence being granted or renewed.
- 17.2 An operator found guilty of aiding and abetting the driving of passengers for hire and reward without insurance will have his Operator's Licence reviewed with a view to revocation and will not be permitted to hold a licence for a period of at least 3 years from the date of any revocation.
- 17.3 Where a specific offence is not mentioned, a suitable period of time will be determined by reference to offences described. The Council reserves the right to refuse a licence where there are aggravating circumstances, even where these guidelines would otherwise indicate that a licence might be granted.

18 Applicants with periods of residency outside the UK

- 18.1 Because of the potential lifetime relevance for some of the most serious offences mentioned in this policy, the Council will need to ensure that sufficient background checks are conducted for those applicants who have lived overseas. For EU nationals a disclosure that is similar to the UK DBS will be required, for those countries for which checks are not available, the council will require a certificate of good conduct authenticated by the relevant embassy.
- 18.2 If an applicant has spent six continuous months or more overseas (since the age of 16) the council will expect to see evidence of a criminal record check from the country / countries visited covering the period.

19 Summary

- 19.1 Whilst a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed, in most cases, an applicant would be expected to have remained free from conviction for 3 to 10 years (detailed above), before an application is likely to be successful. If there is any doubt about the suitability of an individual to be licensed, the Council will be mindful of the need to protect the public and caution will be exercised.

- 19.2 While it is possible that an applicant may have a number of convictions that, individually, do not prevent a licence from being granted, the overall offending history will be considered

when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Some discretion may be afforded if an offence is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.