

CHESHIRE EAST COUNCIL

LICENSING COMMITTEE

Date of meeting: 30th March 2009
Report of: Mrs K Khan – Licensing Solicitor
Title: Taxi Licensing – Convictions Policy

1.0 Purpose of Report

- 1.1 The purpose of the report is to request approval from the Committee for the proposed policy on convictions as they relate to applicants for hackney carriage and private hire drivers licences and licence holders who commit offences.

2.0 Decision Required

- 2.1 The Licensing Committee is requested to approve the convictions policy to relate to both applicants for hackney carriage and private hire drivers licences and licence holders who receive convictions during the course of a licence, as set out within the appendix to this report.

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None.

5.0 Legal Implications

- 5.1 Section 51(1) of the Local Government (Miscellaneous Provisions) Act 1976 ('the Act') provides that a district council shall not grant a private hire drivers licence unless it is satisfied that the applicant is a 'fit and proper' person to hold such a licence. Section 59(1) of the Act provides that a district council shall not grant a licence to driver a hackney carriage unless it is satisfied that the applicant is a 'fit and proper' person to hold a driver's licence.
- 5.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 had the effect of including licensed drivers within the 'regulated occupations' for the purposes of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; this effectively means that the provisions of the Rehabilitation of Offenders Act 1974 do not apply to applicants for hackney carriage and private hire drivers licences.

- 5.3 The local authority may not fetter its discretion and each application must be considered on its own merits.

6.0 Risk Assessment

- 6.1 In order to achieve consistency of decision making, and thereby avoid the risk of successful legal challenge, the Council will require a policy for the consideration of criminal records.

7.0 Background and Options

- 7.1 As set out above, it is a requirement that no licence should be granted to an applicant for a hackney carriage or private hire vehicle licence unless they are a 'fit and proper' person to hold such a licence.
- 7.2 It is suggested that the adoption of a policy in relation to previous conviction is required in order both that applicants have an understanding of the considerations which will be taken into account in relation to their application, and to ensure consistency of decision-making. Any policy adopted by the Council must not preclude the consideration of each application on its own merits as the Council cannot fetter its discretion.
- 7.3 The joint Department of Transport and Home Office Circular (DFt 2/92 and Home Office 13/92) provided guidelines relating to the relevance of convictions. The convictions policies used within the three existing district authorities were based on the guidelines within Circular 2/92. Similarly the policy presented to Committee for adoption on behalf of Cheshire East (attached as an appendix to this report) broadly follows the guidelines within the Circular.

8.0 Overview of Day One, Year One and Term One Issues

- 8.1 It is necessary to have a convictions policy in place for Day One to ensure that applications may be determined on a consistent basis.

9.0 Reasons for Recommendation

- 9.1 The Council is required to ensure that applicants for hackney carriage and private hire drivers licences are 'fit and proper' to hold such a licence. The adoption of a convictions policy allows consistency of decision-making in relation to the consideration of convictions.

For further information:

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Background Documents:

None

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POLICY ABOUT RELEVANT CONVICTIONS

1. Each case will be decided on its own merits
2. The disclosure of a criminal record or other information will not debar an applicant from being licensed unless the Council considers that the conviction/information renders the applicant unsuitable. In making this decision the Council will consider the nature of the offence, how long ago the offence was committed and any other factors which may be relevant.
3. Each application will be decided on its own merits but the general guidelines set out below have been adopted by the Council. The Council will be particularly concerned with convictions for offences involving violence or drugs, indecency offences, or dishonesty. Generally, the Council will be looking for an applicant to have remained free of conviction for a minimum period of three to five years, according to the circumstances, before an applicant is considered to be suitable.
4. Although any mitigating factors will be considered the overriding requirement is the protection of the public.
5. Whilst this policy refers to applicants, the provisions in relation to the relevance of convictions apply equally to licence holders who have received convictions during the course of a licence.

Violence

As licensed drivers are in close contact with members of the public a serious view will be taken with regard to convictions for grievous bodily harm, wounding, assault, or criminal damage. At least 3 years free of such convictions will generally be required before an applicant may be considered suitable to be granted a licence.

Drugs

In view of concern with which the licensing authority view the distribution and use of drugs, an applicant with a conviction for drug related offences will usually be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was a drug addict.

Indecency and sexual offences

Licensed drivers are in close contact with members of the public of both sexes. Applications from persons with convictions for indecent exposure, indecent assault, importuning or any of the more serious sexual offences will be examined particularly carefully. At least 3 to 5 years free of such conviction will be expected before consideration is given to an application. More than one conviction will generally preclude consideration of an application although individual circumstances of each case will be examined.

Dishonesty

Licensed drivers are often in situations where money will change hands and where a considerable degree of trust is placed in the driver by the public. Applicants with convictions for any offence in which dishonesty was a factor will usually be refused until they can show a substantial period (at least 3 years) free of such conviction.

Dishonesty includes theft, burglary, handling stolen property, fraud, etc.

Motoring Convictions

Licensed drivers will be expected to demonstrate competence in the handling of motor vehicles. An applicant with 12 or more penalty points endorsed on his/her DVLA driving licence – but who has not been disqualified under the ‘totting up’ procedure – will generally be considered to be unsuitable.

Where a disqualification has been received either as a result of a single motoring offence or as a result of ‘totting up’ of motoring offences, an applicant will generally be considered to be unsuitable until a period of one to three years after the restoration of the driving licence has elapsed.

Convictions for offences involving alcohol or drugs, which resulted in a period of disqualification, will also be generally considered to render the applicant unsuitable. At least three years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of five years should elapse after treatment is complete before a further licence application is considered.

Plying For Hire Convictions

In the case of a first conviction for an offence of plying for hire, the driver’s licence will normally be suspended for a period of time.

In the case of a second conviction for an offence of plying for hire, the driver's licence will normally be revoked.

At least one to two years free of such convictions will generally be required before an applicant with two convictions for plying for hire may be considered suitable to be granted a licence.

In every instance however, each case will be considered on its own merits.