

## CANNOCK CHASE COUNCIL

### LICENSING/PUBLIC PROTECTION COMMITTEE

#### GUIDANCE IN RESPECT OF MATTERS TO BE CONSIDERED IN DETERMINING HACKNEY CARRIAGE DRIVER'S LICENCE APPLICATION AND RELATED ISSUES

#### 1. Background

- 1.1 On the 16th January, 1990 this Council resolved to adopt the provisions of Part II of the Local Government (Miscellaneous Provisions) Act, 1976 with effect from the 1st April, 1990 which inter alia sets out criteria for the Authority to consider when licensing drivers of hackney carriage vehicles.
- 1.2 Notwithstanding anything in the Act of 1847, a District Council shall not grant a licence to drive a Hackney Carriage:-
- (a) Unless they are satisfied that the applicant is a fit and proper person to hold a drivers licence; or
  - (b) To any person who has not held for at least 12 months, been authorised to drive a motor car, or is not at the date of the application for a drivers licence so authorised.
- 1.3 Applications are made on a prescribed form and are submitted to Environmental Health Services for processing. Delegated powers enable authorisation of the grant of licence under Section 46 of the Town Police Clauses Act, 1847 provided that no offences are revealed. Where offences are revealed, grant of licence is subject to the agreement of the chairman and/or Vice-Chairman of the Amenities Committee. The power to refuse licences or grant subject to conditions was delegated to this Sub-Committee (now the Licensing/Public Protection Committee) by the Amenities Committee at its meeting on 10th November, 1992.
- 1.4 Sections 60 and 61 of the Act states that a District Council can suspend and revoke proprietors' and drivers' licences, in the following circumstances:-
- 1. Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefore under section 46 of the Act of 1847 of section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:-
    - (a) that he has since the grant of the licence:-
      - (i) been convicted of an offence involving dishonesty, indecency or violence; or
      - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or
    - (b) any other reasonable cause.
- 1.5 Set out below are the principal matters to be considered when determining whether a person is a fit and proper person to hold a driver's licence. Other factors that can be considered when

assessing the fitness and propriety of a person include that person's demeanour, appearance and behaviour before either Officers or Members.

## **2. Policy in respect of Current Convictions**

- 2.1 The Rehabilitation of Offenders Act, 1974 details the period of time that is necessary from sentencing to when it becomes spent. This information is contained within the standard application form and is appended to this document at Annex 1.
- 2.2 In 1991 following the coming into force of Section 47 of the Road Traffic Act, 1991, further assistance was provided to the Committee to ensure that there was consistency in granting licences by the introduction of a policy providing guidance upon the relevance of convictions when considering applications for Hackney Carriage and Private Hire Drivers Licences. The policy which had been formulated by the Department of Transport was adopted by the Amenities Committee on the 2nd June, 1992 (Annex 2 to this document).

## **3. Legal Implications in respect of Spent Convictions**

- 3.1 Section 7(3) of the Rehabilitation of Offenders Act, 1974 states "if at any stage in any proceedings before a judicial authority in Great Britain ..... the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it) that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of Section 4(1) (of the Act) and may determine any issue to which the evidence relates in disregard so far as necessary, of those provisions".
- 3.2 The critical element in admitting spent convictions in evidence is that, having been informed that an applicant has spent convictions, the Committee is of the opinion that "justice cannot be done in the case except by admitting or requiring evidence of these spent convictions".
- 3.3 Judge Sedley gave guidance in *Adamson v Waveney District Council* heard in 1997 as to how an authority is to approach the question of spent convictions. He suggested the following stages:-
  - (a) identify what the issue is to which any spent convictions must relate, in this case, the fitness of the applicant to hold a driver's licence.
  - (b) determine whether any or all of the spent convictions on the record are capable of having a real relevance to the issue; the Chief Constable could be expected to have this in mind when responding to the Council's Police check.
  - (c) consider whether to admit the convictions in the light of the issue before it having regard to the class of offence, the age of the offence and, in broad terms, the seriousness of the offence; brief details of the convictions being obtained from the Council's Officers.
  - (d) having admitted some or all of the spent convictions in evidence, the applicant is then entitled to be heard in order to persuade the authority that they are either, in truth, irrelevant or such, by reason of their age, circumstances or lack of seriousness, that they should not jeopardise his application.

3.4 The Committee must then determine the application having in mind not only the interests of the applicant as a person with spent convictions but also the public in whose interests the exceptional powers granted by Section 7(3) of the Rehabilitation of Offenders Act, 1974 are being exercised.

#### 4. **Policy in respect of Medical Assessment**

4.1 In January 1999, the Council adopted a procedure to assess physical fitness to drive Hackney Carriage and Private Hire Vehicles. For new applicants this procedure is as follows:-

- (i) Applicants are required to take a short questionnaire to their own GP in order to obtain a medical history and details of any current medication. This does not involve a physical examination.
- (ii) Applicants are also required to complete a short questionnaire giving brief details of jobs since leaving school, height, weight, smoking habits and any rejection from employment on medical grounds.
- (iii) Both questionnaires are taken, on appointment, to the Council's Medical Practitioner who has specialist skills in occupational health. A comprehensive physical examination is undertaken to assess fitness in accordance to the Group II standard as given in the document 'Medical Aspects of Fitness to Drive'. Account is taken of the responses in the questionnaires. Assessment includes peripheral vision, mobility testing, cardiovascular disorders and diabetes.
- (iv) The independent Medical Practitioner notifies the Licensing Authority that the applicant is either medically fit or unfit to drive a Hackney Carriage/Private Hire vehicle. If the person is deemed fit, an opinion would be given as to the time period, no longer than five years for applicants under 45 years old, three years for applicants between 45 and 60 and one year for applicants over 60, which should elapse before the next medical assessment. No reasons are given to Cannock Chase Council in order to protect confidentiality. However, the applicant is made aware of the reasons.
- (v) Applicants who are then granted a Hackney Carriage or Private Hire Driver's Licence have, as a Condition of Licence, a requirement to notify the Licensing Authority of any serious illness, injury, medication or severe physical deterioration which could affect their ability to drive such a vehicle. The driver would need to ask his GP or consultant whether his condition should be notified to the Licensing Authority.

4.2 For existing drivers as at January 1999, it is a requirement to undergo a medical examination in accordance with the above procedure within three years of its introduction. The phasing in being the oldest 100 drivers assessed within the first year of implementation, followed by the next 100 oldest in year two.

#### 5. **The Decision**

5.1 In respect of an applicant, the Committee may grant the application on the merits of the case and having heard the applicant and or his representative, if that is his wish, and if it is satisfied that he is a fit and proper person to hold a Hackney Carriage Driver's Licence.

5.2 The Committee should allow the applicant and/or his representative the opportunity to speak in support of his application and to ask questions of officers about the report in order to satisfy the rules of natural justice.

5.3 In respect of a matter relating to an existing Licence holder, the Committee has power to revoke or suspend a Licence if it is satisfied that the driver is not a fit and proper person to hold the Licence.

6. **Financial Implications**

6.1 If the application is accepted there are no financial implications for the Council. Should the application be refused, the Council would need to repay the licence fee already received. If refused, the applicant has the right to appeal to the Magistrates Court against the decision. If successful there is a risk that the Court may order the Council to pay the costs of the appeal. The Court is, however, less likely to award costs against the Council if it is satisfied that the Council had acted honestly, reasonably and properly on grounds which reasonably appeared to be sound. The right of appeal is also available to drivers whose Licence is suspended or revoked.

**DISCLOSURE OF CONVICTIONS - REHABILITATION OF OFFENDERS****ACT 1974; AS AMENDED**

SENTENCE	BECOMES SPENT AFTER
Imprisonment of exceeding 6 months but not 30 months	10 years
A term of imprisonment not exceeding 6 months	7 years
Borstal Training	7 years
A fine, probation order or other sentence not otherwise covered in this table	5 years
Absolute Discharge	6 months
Conditional Discharge or bind over	1 year (or until the Order expires, whichever is the longer)
Detention Centre Order	3 years
Remand Home, Attendance Centre or Approved School Order	The period of the Order and a further year after the Order expires
Hospital Order under the Mental Health Act	The period of 5 years from the date of conviction or a period beginning with that date and ending 2 years after the date the order ceases, whichever is the longer
Cashiering, discharge with ignominy or dismissal with disgrace from the Armed Forces	10 years
Dismissal from Armed Forces	7 years
Detention	5 years

NOTE

- (i) A sentence of more than 2½ years' imprisonment can never become spent.
  
- (ii) If you were under 18 years of age on the date of conviction, please halve the period shown in the right-hand column.

**POLICY STATEMENT RELATING TO THE RELEVANCE OF CONVICTIONS**

Your attention is also drawn to the Council's Policy Statement as outlined below which relates to the relevance of convictions for use in determining applications for hackney carriage/private hire drivers' licences.

**GENERAL POLICY**

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application is considered. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.
3. The following examples afford a general guide on the action to be taken where convictions are admitted.

**(a) MINOR TRAFFIC OFFENCES**

Convictions for minor traffic offences eg. obstruction, waiting in a restricted street, speeding etc., should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a hackney carriage/private hire drivers' licence may be granted after its restoration but a warning should be issued as to future conduct.

**(b) MAJOR TRAFFIC OFFENCES**

Convictions for major traffic offences such as driving without due care, driving without insurance; driving whilst disqualified or driving under the influence of drink and drugs should not prevent an application being made to the Council. However, more than one conviction for these type of offences may raise significant doubt as to the applicant's fitness and propriety to hold a licence. At least 3 years should elapse after any such conviction, before an applicant is considered for a licence

**(c) DRUNKENNESS**

**(i) With Motor Vehicle**

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 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 5 years should elapse after treatment is complete before a further licence application is considered.

(ii) **Not in Motor Vehicle**

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

(d) **DRUGS**

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of conviction before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

(e) **INDECENCY OFFENCES**

As hackney carriage/private hire drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.

(f) **VIOLENCE**

As hackney carriage/private hire drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

(g) **DISHONESTY**

Hackney carriage/private hire drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.