



**Epping Forest  
District Council**

**Public Hire Licence Applications Guidance**  
**Guidance to new applicants and existing licence holders**

## Contents

1. Introduction .....	5
1.1 This guidance .....	5
2. Driver Licences - General .....	5
2.1 General .....	5
3. Driver Licences - New Applicants .....	5
3.1 Applications .....	5
3.2 DVLA Driving Licences.....	6
3.3 Character .....	6
3.4 Medical fitness.....	17
3.6 Topographical skills testing .....	19
3.7 Right to live and work in the UK .....	19
3.8 Appeals against a decision to refuse a licence.....	20
3.9 Previous licence holders .....	20
3.10 Action by other licensing authorities .....	20
4. Driver Licences – Current Licence Holders .....	21
4.1 General .....	21
4.2 New convictions .....	21
4.3 Hackney Carriage and PHV offences.....	27
4.4 Complaints .....	29
4.5 PHV Driver Dismissal Notices .....	30
4.6 Immediate suspension of licences.....	31
4.7 Return of licence following suspension/revocation .....	31
4.8 Medical fitness considerations .....	34
4.10 Action by other licensing authorities .....	35
4.11 Debts/Bankruptcy .....	36
4.12 Appeals against a decision to suspend or revoke a licence .....	36
4.13 Renewals .....	36
4.14 Expired DVLA photo cards .....	37
4.15 Late renewals .....	38
4.16 Drivers working after the expiry of their licence .....	38

4.17	Exemption from having to wear badge (PHV drivers only)	38
4.18	Exemption from having to carry guide and assistance dogs	39
4.19	Exemption from having to assist wheelchair users	40
4.20	Refund of licence fees	41
5.	Vehicle Licences - General Regulatory	41
5.1	Hackney Carriage	41
5.2	Private Hire Vehicles	41
6.	Vehicle Licences - New Applicants	42
6.1	Name on the licence	42
6.2	Fit and proper person (Hackney Carriage only)	42
6.3	Appeals	42
7.	Vehicle Licences – Licence Holders	43
7.1	General	43
7.2	Character considerations	43
7.3	Breach of conditions (Hackney Carriage)	43
7.4	Breach of conditions (PHV)	44
7.5	Appeals	44
7.6	Exemption from having to display licence plate (PHV only)	44
8.	Operator Licences – General	45
8.1	General regulatory	45
8.2	Requirement to be licensed	45
8.3	Internet based booking platforms	45
9.	Operator Licences – New Applicants	45
9.1	Who is the licensee?	45
9.2	Applications	46
9.3	Declarations	46
9.4	Fit and proper person	46
9.5	Administrative rules	46
9.6	Consideration of criminal history	47
9.7	Business repute	48
9.9	Right to live and work in the UK	49

9.10 Other PHV applications .....	49
9.11 Pre-licensing inspections.....	49
9.12 Insurance .....	50
9.13 Radio Licences.....	50
9.14 Pre-licensing inspection results.....	50
9.15 Considering an application - Summary.....	51
9.16 Trading names .....	51
9.17 Appeals .....	51
9.18 Outstanding Costs.....	52
10. Operator Licences - Licence Holders.....	53
10.1 General .....	53
10.2 Suspensions and Revocations .....	53
10.3 New convictions .....	53
10.4 Business Repute .....	54
10.5 Change of/acquisition of new operating centre .....	56
10.6 Removal of an operating centre .....	56
10.7 Someone other than the licensee trading at an operating centre .....	57
10.8 Operators whose whereabouts are unknown .....	57
10.9 Small operators becoming standard operators.....	58
10.10 Change of entity.....	58
10.11 Death of a licensed operator.....	58
10.12 Temporarily cessation of trading.....	59
10.13 Compliance visits .....	59
10.14 Refund of licence fees .....	60
10.15 Complaints.....	60
10.18 Use of the term 'Hackney Carriage' etc. in advertisements .....	61
Appendix A The Rehabilitation of Offenders Act, 1974.....	62
Appendix B Sex Offenders Register.....	64
Appendix C Evidence to support the right to work in the UK.....	65
Appendix D Filtering rules for criminal record check certificates.....	68

# 1. Introduction

## 1.1 This guidance

This document is written for the guidance of licence holders and applicants. Each application will be considered on its own particular merits.

Decisions will be made in accordance with the delegated authorities detailed in the Constitution of the Council. Whilst the delegated authorities provide for the majority of cases, **if there is any doubt whatsoever** as to an applicant's suitability to be licensed or licensee's fitness to remain licensed, the case must be referred to a Licensing Sub-Committee.

## 2. Driver Licences - General

### 2.1 General

If the council is satisfied that an applicant meets the necessary requirements, it may grant a licence for three years.

Licences may be refused if the applicant fails to satisfy the council that they:

- are of good character; or
- are fit to act as a driver.

'Fitness' to act as a driver encompasses evidence of:

- medical fitness; and
- appropriate knowledge of the Councils district and knowledge of the Highway Code;
- appropriate knowledge of the councils safeguarding requirements;
- the ability to speak and understand the English language to a reasonable standard.

## 3. Driver Licences - New Applicants

### 3.1 Applications

An applicant must complete and submit:

- an application form;
- a medical declaration (issued by their own GP).

The forms must be accompanied by the following supporting documentation:

- the applicant's birth certificate or passport;
- a full, current DVLA/NI driving licence (see 3.2 below) or a full, current EC/EEA driving licence;

- an enhanced Disclosure and Barring Service (DBS) check or a DBS application reference number;
- a valid check code to access your DVLA record;
- your national insurance number.

If there are any previous surnames/forenames and the applicant cannot produce a passport in their current name the following will also be required, as appropriate:

- marriage certificate; or
- deed poll certificate.

The application must be accompanied by the appropriate application fee.

Any omission or misrepresentation within the application documentation could suggest dishonesty which may result in the application being refused.

Where the applicant is the subject of an outstanding criminal or other charge, they will be advised that their application will be processed, but no final decision on the application will be made pending the conclusion of proceedings (see paragraph 3.3.23).

## **3.2 DVLA Driving Licences**

All applicants must have a full valid UK or European Economic Area (EEA) driving licence. In order to be issued with a driver's licence, the applicant must have held this licence for a minimum of three years.

## **3.3 Character**

Character will normally be assessed on the basis of information supplied by the Disclosure and Barring Service (DBS).

The DBS searches police records and in relevant cases, barred list information and then issues a DBS certificate which allows employers and licensing authorities to make informed decisions.

### **3.3.1 Types of DBS check**

There are two levels of DBS check, known as 'standard' and 'enhanced'. Both the standard and enhanced checks contain details of:

- spent convictions;
- unspent convictions;
- cautions;
- reprimands and final warnings

This information comes from the Police National Computer (PNC).

In addition to the information held on the PNC, the enhanced check will also include information held on the DBS's children and adults barred lists together with any information held locally by police forces that is reasonably considered to be relevant to the licence applied for.

The enhanced check is the higher level of DBS check and is only available for those in certain roles that involve working with children or vulnerable adults.

Given the role can, at any time and without prior knowledge, involve being in sole charge of passengers under 18 years old and vulnerable adults, the council has determined that the **enhanced** DBS check is appropriate in respect of all applicants for hackney carriage and private hire drivers' licences.

### **3.3.2 DBS checking process**

Before submitting an application, the applicant must apply for a DBS check.

The applicant will receive a certificate from the DBS detailing the result of the check. This certificate must then be supplied to the council who will take a copy.

As is usual practice and in accordance with DBS requirements, we will destroy our copy once the licensing process has been concluded.

In the event that an applicant fails to provide their DBS certificate when requested to do so, the application will be treated as incomplete and discontinued.

Any DBS certificates submitted to the council must have been issued no more than three months prior to the date of application.

### **3.3.3 Portability of DBS checks**

In 2013, the DBS launched its Update Service. This enables anyone who applies for a criminal record check to then pay an annual subscription which will allow them to keep their criminal record certificate up-to-date so that they can take it with them from role to role, within the same workforce.

The Update Service will allow the council to carry out free, instant online checks of an individual's certificate, to check that it is up-to-date. When someone is subscribing to this service, we will only have to seek a new criminal record check if the DBS tells us something has changed. In all other cases the council will require a new DBS check each year.

### **3.3.4 Recording convictions/DBS Code of Practice**

The council will comply with DBS's Code of Practice in regard to use/retention of Disclosure information.

The Code of Practice prohibits the recording of information contained in DBS certificates for longer than is necessary. Therefore:

- no information in respect of criminal convictions (other than Hackney Carriage offences) will be entered on any applicant's or driver's record;

- registered Body DBS certificates and copies of applicants' DBS certificates will only be retained for the duration of and purposes of informing our decision making process.

However,

- self-declarations of convictions by applicants and licensed drivers can be retained within the body of their file;
- conviction information provided to the council by third parties (e.g. police) for the purposes of informing our decision making process can be retained within files;
- references to convictions in minutes and reports that are made as part of the decision making process can be retained within files.

### **3.3.5 Spent convictions**

The enhanced DBS check may include any spent convictions and the council is entitled to consider these when coming to a decision provided these are relevant to the role of carrying passengers for hire and reward.

### **3.3.6 Adult Cautions**

Adult Cautions (also known as Police or Simple Cautions) are not convictions but, being admissions of guilt, are taken into consideration in the determination of good character. In considering a caution the following factors will be taken into account:

- the nature of the offence
- the driver's offending history; and
- the guidelines applicable had it been a conviction.

### **3.3.7 Absolute and Conditional Discharges**

A court can dispose of a case by issuing an Absolute or Conditional Discharge which although results from a finding of guilt is not a conviction. However, the council can take the circumstances that resulted in the discharge into consideration when determining fitness. In the event that an applicant has been the subject of an Absolute or Conditional Discharge for an offence that would have resulted in refusal should he have been convicted, further information regarding the case will be requested.

### **3.3.8 Suspended sentences**

Suspended sentences will be treated the same as if they had been put into effect immediately. However, as a court decided to suspend the sentence, this can be taken into consideration when determining an applicant's fitness to be licensed. Consideration will also be given to the applicant's behaviour during the period of suspension.



### 3.3.9 Barred Lists

Part of the role of the DBS is to help prevent unsuitable people from working with vulnerable groups including children, barring them where necessary.

As part of the enhanced DBS check the council is provided with information about whether an applicant is barred from working within regulated activity with children or adults. In most cases, someone on a barred list would not be legally prevented from being a Hackney Carriage or PHV driver, so the council can use its discretion in making decisions. However, in the interests of public safety, unless there are exceptional circumstances, an application will normally be refused where the applicant appears on either barred list.

### 3.3.10 Overseas criminal history checks

Any applicant who has lived in a country other than the UK for one or more continuous periods of between three and 12 months (other than periods of extended vacation) within three years of the date of application is required to produce a 'Certificate of Good Conduct' from the relevant country. The responsibility for obtaining such a document falls to the applicant and not the council. The 'Certificate of Good Conduct' will be an extract from the judicial record or equivalent document issued by a competent judicial or administrative authority for the relevant country.

This Certificate will document any convictions recorded against the individual or to confirm 'good conduct'. This requirement is in addition to the enhanced DBS check which is required for all applicants.

To obtain a Certificate of Good Conduct the applicant will approach the relevant embassy or legation. A translation is required if it is not provided in English.

Where an applicant is unable to provide the above they must explain why and provide references from individuals/bodies who can confirm their conduct for their time in the country (the referee must not be a family member).

The absence of a 'Certificate of Good Conduct' or references will not prevent an application from being considered but the failure to do so will be taken into account at the decision making stage.

Each case must be considered on its merits. Particular consideration will be given to assess whether the applicant has demonstrated that they have provided all the available evidence or made every effort to obtain the information.

### 3.3.11 Asylum seekers

Any applicant who has been granted or is awaiting a decision to be granted asylum/refugee status will **not** be required to produce a Certificate of Good Conduct from the country he is claiming asylum from.

The applicant will, however, be required to obtain a Certificate of Good Conduct from any other country he has resided within the three years prior to the date of application in line with the guidelines at paragraph 3.3.10.

To gain this exemption, the applicant must provide a clear and legible photocopy of either his Certificate of Registration or a letter issued by the Border and Immigration Agency, an executive agency of the Home Office.

### **3.3.12 Consideration of disclosed criminal history**

Where the DBS reports previous criminal convictions and/or other significant comments, consideration will be given to each applicant's suitability for licensing against the following criteria:

- nature of the offence(s);
- circumstances in which any offence was committed;
- subsequent periods of good behaviour;
- overall conviction history;
- sentence imposed by the court;
- any other character check considered reasonable (e.g. personal references).

### **3.3.13 Violence**

Licensed drivers have close regular contact with the public. A firm line will 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 loss of life.

Given the range of offences that involve violence consideration will be given to the nature of the conviction.

In particular:

- (a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:
  - Murder;
  - Manslaughter;
  - Manslaughter or culpable homicide while driving;
  - Terrorism offences.
- (b) Before an application is allowed, an applicant will be free of conviction for at least 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for an offence such as:
  - Aggravated burglary;
  - Arson;
  - Grievous bodily harm;
  - Kidnapping;

- Racially/religiously aggravated assault occasioning actual bodily harm;
  - Racially/religiously aggravated common assault;
  - Racially/religiously aggravated criminal damage;
  - Racially/religiously aggravated threatening/disorderly behaviour;
  - Assault occasioning actual bodily harm;
  - Assault on Police;
  - Assault with intent to resist arrest;
  - Robbery;
  - Riot, violent disorder and affray;
  - Threats to kill;
  - Wounding with intent to cause grievous bodily harm.
- (c) Before an application is allowed, an applicant will be free of conviction for at least 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for an offence such as:
- Common assault;
  - Criminal damage;
  - Harassment;
  - Threatening/disorderly behaviour.

An application will normally be refused if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

In the event of an application being allowed to proceed, a strict written warning will be administered.

### **3.3.14 Possession of a weapon**

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.

Depending on the circumstances of the offence, an applicant should be free of conviction for such an offence for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), before an application is allowed.

### **3.3.15 Sex and Indecency Offences**

As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences will be closely scrutinised. Those with convictions for the more serious sexual offences will be refused. For other offences, applicants will

be expected to show a substantial period free of conviction for such offences before an application will be allowed.

In particular:

- (a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:
- Rape;
  - Assault by penetration;
  - Offences involving children or vulnerable adults;
  - Sexual assault;
  - Indecent assault;
  - Possession of indecent photographs, child pornography etc....;
  - Exploitation of prostitution;
  - Bestiality;
  - or any similar offences or offences which replace the above;
  - or **any** sex or indecency offence that was committed in the course of employment as a Hackney Carriage or PHV driver.
- (b) Before an application is allowed, an applicant will be free of conviction for at least 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for an offence such as:
- Indecent exposure;
  - Soliciting (including kerb crawling);
  - or any similar offences or offences which replace the above.

In addition to the above the council will not normally grant a licence to any applicant who is currently on the Sex Offenders Register (see Appendix B).

An application will normally be refused if an applicant has more than one conviction for a sex or indecency offence.

### **3.3.16 Human trafficking and smuggling**

Human trafficking and smuggling exploits vulnerable people, often by the use of force, violence, deception, intimidation or coercion. Such behaviour is incompatible with that of a licensed driver. Those with convictions for the more serious trafficking offences will be refused. For other offences, applicants will be expected to show a substantial period free of conviction for such offences before an application will be allowed.

In particular:

- (a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:
- Trafficking for prostitution;
  - Trafficking for sexual exploitation;
  - Trafficking for exploitation;
  - or any similar offences or offences which replace the above.
- (b) Before an application is allowed, an applicant should be free of conviction for at least 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for an offence such as:
- Assisting unlawful immigration;
  - or any similar offence which replace the above.

### **3.3.17 Dishonesty**

A licensed PHV or Hackney Carriage driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Hackney Carriage drivers are required pass on details of lost property to the council and to make reasonable efforts to return any lost property to its rightful owner. PHV drivers must pass lost property to their operator.

The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

In general, a minimum period of 3 years free of conviction or at least 3 years from completion of sentence (whichever is longer) will be required before allowing an application to proceed. Offences involving dishonesty include:

- benefit fraud;
- burglary;
- conspiracy to defraud;
- forgery;
- fraud;
- handling or receiving stolen goods;
- obtaining money or property by deception;

- other deception;
- perverting the course of justice;
- taking a vehicle without consent;
- theft;
- and any similar offences.

An application will normally be refused if an applicant has more than one conviction in the last 10 years for an offence of dishonesty.

### **3.3.18 Drugs**

A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered.

An application from an applicant who has an isolated conviction for an offence related to the **possession** of drugs within the last 3-5 years may be considered, but consideration must be given to the nature and quantity of the drugs, as well as the sentence imposed by the court. A more severe court penalty will indicate that a sterner stance will be taken.

An application will normally be refused where the applicant has more than one conviction for offences related to the **possession** of drugs and has not been free of conviction for 5-7 years, again taking into consideration the nature and quantity of the drugs.

An application will normally be refused where the applicant has a conviction for an offence related to the **supply, importing or production** of drugs and has not been free of conviction for 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is the longer).

If there is evidence of persistent drugs use, misuse or dependency (e.g. two or more convictions for possession) a specialist medical examination may be required to ensure that the applicant meets the DVLA Group 2 medical standards in relation to drug misuse and dependency.

### **3.3.19 Driving offences involving the loss of life**

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.

Before an application is allowed, an applicant will be free of conviction for 7 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer) if he has a conviction for:

- Causing death by dangerous driving;
- Causing death by careless driving whilst under the influence of drink or drugs;
- or any similar offences.

Before an application is allowed, an applicant will be free of conviction for 3 years (or at least 3 years must have passed since the completion of the sentence, whichever is longer), if he has a conviction for:

- Causing death by careless driving;
- Causing death by driving: unlicensed, disqualified or uninsured drivers.

### **3.3.20 Drink Driving/Driving Under the Influence of Drugs**

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. An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA driving licence but they will be warned as to the significant risk to his licence status in the event of re-offending. More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public. At least 3 years, after the restoration of the driving licence following a second drink drive conviction should elapse before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed.

### **3.3.21 Endorsable Traffic Offences**

All current endorsable offences will be shown on an individual's DVLA record and will be taken into account, since a poor driving record may raise doubts about the applicant's fitness to drive the public or indicate disrespect for the law.

An endorsable offence will usually attract penalty points and/or a period of disqualification. Some endorsable offences can be only be dealt with by a court prosecution, others can be dealt with by either prosecution or fixed penalty notice.

Endorsable offences include:

- Accident offences;
- Careless driving;
- Construction and Use offences;
- Dangerous driving;
- Drink or drugs offences;
- Driving whilst disqualified;
- Driving without due care and attention;
- Insurance offences;
- Licence offences;
- Speed limit offences;
- Traffic direction and sign offences;
- Theft or Unauthorised Taking.

An isolated conviction for a serious driving offence e.g. without due care and attention, no insurance etc., would normally merit a warning being given as to future driving and advice on the standard expected of licensed drivers. More than one conviction for this type of offence within the last two years would merit refusal and no further application would be considered until a period of 1 to 3 years free from conviction had elapsed.

Convictions for minor (non-endorsable) traffic offences, e.g. obstruction, waiting in a restricted street will not prevent an application from proceeding. Non-endorsable traffic offences are not recorded on driving licences.

### **3.3.22 Illegally Plying for Hire and Touting**

Only Hackney Carriages have the right to ply or stand for hire and it is an offence for any other vehicle to ply for hire.

Section 167 of the Criminal Justice and Public Order Act 1994 created the offence of 'touting', in a public place to solicit persons to hire vehicles to carry them as passengers.

Following a conviction or caution for either offence, at least 12 months will elapse before an application will be considered. Unless there is significant mitigation, an application will normally be refused where the applicant has more than one conviction or caution one of this nature in the last 5 years.

An applicant with an isolated conviction or caution for either offence that is more than one year old, may be licensed subject to a written warning.

### **3.3.23 Outstanding charges or summonses**

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.

If the outstanding charge or summons is for an offence that would result in refusal if convicted, then the application will be put on hold until proceedings are concluded.

### **3.3.24 Non-conviction information**

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 will be given to refusing the application.

In all cases of serious offences, including allegations of sex and serious violent offences full details regarding the circumstances of the case will be obtained from the police before making a decision. If there are reasonable grounds to suggest that the driver presents a risk to the travelling public, consideration will be given to refusing the application.

Any applicant who has been the subject of more than one allegation of a sex offence (even if all allegations have not resulted a prosecution, conviction or caution) will normally have his application refused unless significant mitigation is provided.

In assessing the action to take, the safety of the travelling public must be the paramount concern.



### **3.3.25 Summary**

To summarise, 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. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3 to 7 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed before 3 years free from conviction have elapsed.

Any person who has committed an offence and has to wait before an application is positively considered is more likely to value their licence and act accordingly.

While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must 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. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

## **3.4 Medical fitness**

### **3.4.1 Medical Standards**

Regulation states that Hackney Carriage and PHV drivers must satisfy the council that they are medically fit to hold a driver's licence. In assessing whether an applicant is medically fit, the council will have regard to the medical standard that would apply in relation to a DVLA Group 2 licence.

Group 2 licences are required for large goods vehicles and buses and the medical standards for Group 2 drivers are much higher than those for Group 1 (ordinary motor cars and motor cycles). This higher standard requirement reflects the view that the nature of a licensed driver's employment places him in the category of vocational driver. Additionally the fact that drivers' work patterns are unregulated affords further weight to the need for Group 2 requirement. The Group 2 standard is set out in the DVLA publication 'At a Glance Guide to the Current Medical Standards of Fitness to Drive' and the recommended form will be provided to applicants.

### **3.4.2 Medical reports**

The medical report form requires the doctor to answer either 'yes' or 'no' to set questions with space for explanation/amplification where appropriate. Medical reports will be completed by a medical practitioner who has access to the patient's **full** medical records, this will usually be the applicants own GP.

The medical reports, together with the DVLA guidelines mentioned above, will generally enable the applicant's fitness to be licensed to be determined. It must be emphasised that each case will be considered on its merits. Where doubt exists, the applicant's doctor or consultant may be asked for additional information. When it appears from these enquiries that an applicant does not meet the required standard, he is to be informed of this in writing and given the opportunity to present further (written) medical evidence before a decision is made.

**Council staff will not seek to interpret medical conditions in determining fitness.**

In areas of doubt the advice of the council's specialist occupational medical advisor will be taken. However staff may seek additional information on conditions identified in the medical report to assist the council's advisor.

It is the role of the council's medical advisor to recommend when an application will be refused on medical grounds. However, where an applicant fails to meet DVLA Group 2 medical standards for one of the following conditions and there are no other complicating conditions, the application may be refused without referral to the medical advisor:

Visual acuity (applicants will always be given the opportunity to obtain verification of their visual acuity from an ophthalmic optician before a decision is made to refuse their application);

Hypertension (if an applicant's blood pressure fails to meet the prescribed standard or there is evidence of a history of hypertension, they will always be given the opportunity to obtain additional blood pressure readings before a decision is made to refuse their application);

Epilepsy (other than cases involving head injury).

### **3.4.3 Diabetes**

Applicants for a PHV or Hackney Carriage driver licence will be required to:

- a) hold a DVLA C1 category Group 2 licence ( i.e. one issued after 1 January 1998); or
- b) satisfy the council that he meets the medical requirements which would allow a C1 Group 2 licence to be issued.

In regard to option b), the applicant will need to provide a medical report from a hospital consultant specialising in diabetes confirming:

- the applicant has been undergoing insulin treatment for over four (4) weeks;
- during the twelve (12) months prior to the date of the licence application, the applicant has not suffered a hypoglycaemic episode requiring the assistance of another whilst driving; and,
- the applicant has a history of responsible diabetic control and is at minimal risk of a hypoglycaemic attack resulting in incapacity.

The applicant will also be required to submit a signed declaration that:

- he will comply with the directions for treatment given to him by the doctor supervising that treatment;
- immediately report to The council, in writing, any change in diabetic condition; and,
- provide to the council, as and when necessary, evidence that blood glucose monitoring is being undertaken at least twice daily and at times relevant to

driving a Hackney Carriage or private hire vehicle during employment.

### **3.4.4 Holders of DVLA Group 2 Licences**

After 1 January 1998, any driver who holds a DVLA Group 2 full or provisional licence would have already had a medical prior to being granted this entitlement. This entitlement will be shown on the driver's DVLA driving licence. Any drivers who have this entitlement after 1 January 1998 will not have to complete a Medical Declaration.

### **3.5.1 Drivers with disabilities**

Should a report, or any other specialist advice, i.e. from a medical specialist, indicate that a driver with a physical disability is only fit to drive certain types of vehicles, e.g. those with automatic transmission or those fitted with specified adaptations, the nature of the limitation must be suitably endorsed upon the licence.

### **3.6 Topographical skills testing**

Driver applicants are required to have a significant depth of topographical knowledge. Licences will only be issued to those applicants who have passed the council's knowledge test.

### **3.7 Right to live and work in the UK**

All applicants for a PHV or Hackney Carriage driver's licence must provide documentary evidence confirming their right to live and work in the United Kingdom.

The UK Border Agency has produced a list of documents that can provide this evidence. These are listed at Appendix C. Documents provided from List A establish that the person has an ongoing entitlement to work in the UK; documents from List B indicate that the person has restrictions on their entitlement to be in the UK. A copy of every document produced will be kept.

The provision of a National Insurance number in isolation is not sufficient for the purposes of establishing the right to live and work in the UK. The National Insurance number can only be used for this purpose when presented in combination with one of the documents listed in Appendix C.

Licences granted to drivers whose leave to remain in the UK is time-limited will only be valid for the period for which they are entitled to work in the UK. In order for the licence to be extended (up to the maximum three years) drivers must produce further evidence to prove that they have the right to work in the UK.

In the event of a driver submitting this evidence after, but within three months of the initial expiry of the licence, subject to there being no other concerns, the licence can be extended. However, any driver submitting this evidence more than three months after the expiry of the initial licence will not be afforded this privilege. In such cases the driver will be treated as a new applicant. This will require the driver to obtain a new medical examination and wait until all necessary checks have been completed before a licence can be issued.

In the event that a driver does not have his licence extended, he will, on request, be entitled to a refund of a pro-rata proportion of the grant of licence fee.

### **3.8 Appeals against a decision to refuse a licence**

#### **3.8.1 Hackney Carriage driver applicants**

Any applicant for a driver's licence who is dissatisfied with decision to refuse to grant a licence may appeal in the first instance (and if not already considered by a sub-committee) to a licensing sub-committee and thereafter to the Magistrate's Court.

### **3.9 Previous licence holders**

In considering an application from an individual who has previously been licensed as a Hackney Carriage or PHV driver, their previous history as a licensed driver will be examined.

Where the council has previously refused or revoked a licence or if, when refused or revoked, the driver was given an indicative timescale as to when a new application would be considered, and that timescale has not been met, the application will be referred to a licensing sub-committee.

There will be occasions when a previously licensed driver is making a new application because he failed to renew his licence within 3 months of it expiring. When deciding whether or not to re-license, consideration will be given to the following factors:

- has the driver renewed late previously?
- did the driver work as a Hackney Carriage or PHV driver with an expired licence having been warned that he could not work?
- did the driver continue to work as a Hackney Carriage or PHV driver for more than three months after the licence expired?

If the answer to any of these questions is 'yes', consideration will be given to refusing the application and at least 12 months will elapse before a further application is considered.

### **3.10 Action by other licensing authorities**

Applicants are obliged to declare if they have had an application for a Hackney Carriage or PHV driver's licence refused, or such a licence revoked or suspended by any other licensing authority. If such information is disclosed, the relevant authority will be contacted to establish when the licence was refused, suspended or revoked and the reasons why. Such information can be obtained under the provisions of section 31 the Data Protection Act 1988.

The information disclosed will be assessed and if the driver fails to meet the standards to be licensed or there is any threat to the safety of travelling public, consideration will be given to refusing the application.

If the applicant is currently suspended by another licensing authority, the application will be put on hold pending further enquiries with the authority concerned and the completion of the suspension. Consideration will then be given to the reasons for the suspension when making a licensing decision.

## **4. Driver Licences – Current Licence Holders**

### **4.1 General**

If the council is satisfied that an applicant meets the necessary requirements, it will normally renew a licence for three years except in exceptional circumstances.

In any consideration it must be assumed that drivers do not have other employment. Consideration to revoke or suspend a licence will never be considered lightly. However, the licensing system is designed to protect the public and it would be wrong to avoid this course of action where it is clearly appropriate.

### **4.2 New convictions**

Action taken in respect of new convictions coming to attention will depend upon:

- the seriousness of the latest offence(s);
- any previous criminal history;
- any earlier suspensions, warnings, etc.; and
- promptness of advising the council.

When considering what action to take, the council has four options:

- revocation;
- suspension;
- written warning;
- no further action.

In serious cases resulting in imprisonment (including suspended prison sentences), the revocation of a driver's licence is likely to follow. However, where an offence is less serious; mitigating circumstances are introduced; or the offence appears out of character; a period of suspension or a written warning could be considered appropriate.

Convictions which suggest the public may be at risk are of particular concern.

#### **4.2.1 Adult Cautions**

Adult Cautions (also known as Police or Simple Cautions) are not convictions but, being admissions of guilt, will be taken into consideration in the determination of good character. In considering a caution the following factors will be taken into account:

- the nature of the offence;
- whether the offence was committed in the course of employment;
- the driver's offending history; and
- the guidelines applicable had it been a conviction.

#### **4.2.2 Absolute and Conditional Discharges**

A court can dispose of a case by issuing an Absolute or Conditional Discharge which although results from a finding of guilt is not a conviction. However, the council can take the circumstances that resulted in the discharge into consideration when determining fitness. In the event that a licensed driver has been the subject of an Absolute or Conditional Discharge for an offence that would have resulted in suspension or revocation will he have been convicted, further information regarding the case will be requested.

Although an Absolute or Conditional Discharge may not be a conviction, drivers are still required to declare the matter to the council.

#### **4.2.3 Violence**

Offences against the person must be considered in the light of circumstances surrounding the offence. A very serious view will be taken where the victim is the passenger in a licensed vehicle, if the incident occurs in the course of licensed employment or if the offence is racially or religiously aggravated. A conviction for a violent offence will normally result in suspension or revocation unless significant mitigation is forthcoming.

Offences that will be treated as violent offences are listed at 3.3.13.

#### **4.2.4 Possession of a weapon**

A conviction for possession of a weapon or any other weapon related offence will normally result in suspension or revocation unless significant mitigation is forthcoming. A very serious view will be taken if a licensed driver is found in possession of a weapon when working.

#### **4.2.5 Sex and Indecency Offences**

As licensed drivers often carry unaccompanied and vulnerable passengers, any case of a driver incurring a conviction for a sexual offence e.g. rape, sexual assault, indecent exposure, soliciting, must be dealt with as a matter of urgency. Convictions for sexual offences will be the subject of immediate disciplinary action which is likely to result in suspension/revocation.

If a licence is revoked for a serious sex or indecency offence, or for an offence committed in the course of employment as a Hackney Carriage or PHV driver, it is unlikely that the council will ever consider the individual fit to hold a driver's licence again. Furthermore, the council will not normally grant a licence to any applicant who is currently on the Sex Offenders Register.

#### **4.2.6 Dishonesty**

The honesty of drivers is essential for the reputation of the councils licensing scheme. Hackney Carriage drivers are required pass on details of lost property to the council and to make reasonable efforts to return any lost property to its rightful owner. PHV drivers must pass lost property to their operator.

Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and become 'fair game' for an unscrupulous driver.

A conviction or caution for a dishonesty related offence, which was committed during the course of employment as a Hackney Carriage or PHV driver, will normally result in suspension or revocation unless significant mitigation is forthcoming. If the licence is revoked, this would debar a driver for being licensed for a minimum of 5 years. A conviction or caution for an offence committed outside the course of employment will normally result in a warning or suspension for a first offence; any subsequent cautions or convictions are likely to lead to the revocation of the licence.

#### **4.2.7 Drugs**

Any drug related offence has significant safety implications. The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered. A driver with a conviction for a serious offence will have his fitness to remain licensed reviewed.

If the licence is revoked the driver will generally be required to show a period of at least 5 years free of conviction before being allowed to proceed with a new application. More than one conviction for a drugs related offence will usually debar a driver for a minimum of 7 years. If the convictions are for drug use/misuse a specialist medical examination (in accordance with DVLA Group 2 medical standards) will be required before any application may be allowed to proceed.

#### **4.2.8 Drink Driving/Driving Under the Influence of Drugs**

When a driver is convicted of driving or being in charge of a motor vehicle while under the influence of drink or drugs, disciplinary action will be considered. If the conviction is for an offence that attracts obligatory disqualification, revocation of the Hackney Carriage/PHV driver's licence will be considered regardless of the sentence imposed by the court.

In the event that the driver was not disqualified yet revocation followed, a further application will not be considered until a period equivalent to the minimum period of disqualification for the offence has lapsed since the date of revocation.

Following a second conviction, at least three years will elapse following the return of the DVLA licence before an application will be considered.

#### **4.2.9 Driving offences**

Endorsable driving offences:

All live endorsable offences will be shown on an individual's DVLA record. For major driving offences action will be considered in accordance with the table below, taking into account the penalty imposed which will be an indication of the seriousness of the offence.

Table 1 - Major driving offences

i)	Causing death by dangerous driving	Revocation
i)	Dangerous driving	Revocation
iii)	Causing death by careless driving	Revocation
iv)	Causing death by careless driving whilst under the influence of drink or drugs	Revocation
v)	Driving whilst uninsured Driving without due care and attention/without reasonable consideration Fail to stop/fail to report an accident	One month suspension plus warning letter
	Second conviction within 2 years	Revocation

In normal circumstances any driver accumulating 12 penalty points on his driving licence in a three year period will be disqualified from driving for a minimum of six months. However, the courts have the discretion not to disqualify in exceptional hardship. Where this discretion is exercised and the driver has not been convicted of more than one major offence (see Table 1 above) The council will not revoke the driver's licence but will issue a written warning highlighting the risk of revocation will the driver receive further penalty points and is subsequently disqualified.

#### 4.2.10 Disqualification from driving

A driver cannot hold a Hackney Carriage or PHV driver's licence without a DVLA driving licence, therefore disqualification from driving automatically results in revocation of the Hackney Carriage licence. Revocation will still result even if the driver does not inform the council about a disqualification until the disqualification has ended and he has had his DVLA driving licence restored and an application to be re-licensed will not be considered until a period equivalent to the period of disqualification has lapsed.

Where the period of disqualification is short term (i.e. 28 days or less) revocation is unlikely to be possible such that it would be concurrent with the period of disqualification. In such circumstances the driver will be invited to voluntarily surrender his badge and licence for the duration of the disqualification. The driver will be advised in writing that;

- a) revocation would be the normal course of action but in view of the short timescales it is not reasonable; and
- b) any further disqualifications may result in automatic revocation.

In the event that a driver fails to surrender his badge and licence, revocation must be considered.



#### **4.2.11 Touting**

Section 167 of the Criminal Justice and Public Order Act 1994 created the offence of 'touting', in a public place, to solicit persons to hire vehicles to carry them as passengers. The council takes a serious view of licensed drivers who have been convicted or cautioned for touting (it will also be noted that a conviction for touting is normally accompanied by a conviction for no insurance).

PHV drivers:

Any licensed PHV driver convicted or cautioned for touting will have his licence revoked.

An application to be re-licensed will not be considered until at least 12 months after the date of revocation, subject to him having had no previous similar convictions or cautions. Unless there is significant mitigation, it is unlikely that the council will re-license an applicant who has more than one conviction and/or caution for touting in the last 5 years.

In the event that the council becomes aware of a conviction or caution for touting within three months prior to the expiry of the driver's licence, whilst revocation would be the normal course of action, it is unlikely to be practicable to complete the revocation process (including allowing time for an appeal) before the licence expires.

In such circumstances the licence will be allowed to expire and any further applications will be considered in line with the guidelines above. The driver will also be advised that any renewal application submitted at this time will be refused.

Offences identified by council officers can be treated in the same way as a conviction or caution. On each occasion a full written report of the facts accompanied by witness statements must be submitted by the officer concerned prior to any disciplinary action being taken.

Licensed PHV operators will also need to be informed that their fitness to remain licensed may also come under scrutiny if significant numbers of their drivers are apprehended.

Hackney Carriage drivers:

In the event that a licensed Hackney Carriage driver is convicted of touting his fitness to remain licensed must be reviewed. Options available are a strict written warning, suspension and revocation. Revocation for a first time conviction may be too harsh but a period of suspension would be an appropriate option dependent upon the circumstances. Subsequent convictions will attract more severe penalties.

Hackney Carriage drivers who receive a police caution for the offence will be dealt with by way of a strict warning by letter as to their future behaviour and advised that any further caution/warning/conviction for a similar offence will result in suspension or revocation of the licence.

#### **4.2.12 Illegally plying for hire**

Only licensed Hackney Carriages have the right to ply or stand for hire and it is an offence for any vehicle other than a licensed Hackney Carriage to ply for hire.

PHV drivers:

A serious view is taken of any licensed PHV driver who illegally plies for hire as there will be no record of any journeys undertaken and vehicles that are used to illegally ply for hire are almost always not insured for that usage.

Any licensed PHV driver who is convicted or cautioned for illegally plying for hire will normally have his licence revoked unless significant mitigation is forthcoming (like touting, a conviction is normally accompanied by a conviction for no insurance).

An application to be re-licensed will not be considered until at least 12 months after the date of revocation, subject to him having had no previous similar convictions or cautions. Unless there is significant mitigation, it is unlikely that the council will re-license an applicant who has more than one conviction and/or caution for illegally plying for hire in the last 5 years.

Hackney Carriage drivers:

In the event that a licensed Hackney Carriage driver is convicted or cautioned for illegally plying for hire (e.g. in an unlicensed Hackney Carriage) his fitness to remain licensed must be reviewed.

Options available are a strict written warning, suspension and revocation. Revocation for a first time conviction may be too harsh but a period of suspension would be an appropriate option dependent upon the circumstances. Subsequent convictions will attract more severe penalties.

For both Hackney Carriage and PHV drivers, offences identified by council officers can be treated in the same way as a conviction or caution. On each occasion a full written report of the facts accompanied by witness statements must be submitted by the officer concerned prior to any disciplinary action being taken.

#### **4.2.13 Equality Act offences**

Sections 168 and 171 of the Equality Act 2010 require Hackney Carriage and PHV drivers to carry guide, hearing and other assistance dogs accompanying disabled people and to do so without any additional charge.

The power to prosecute such offences lies with licensing authorities, therefore if the council had already prosecuted the driver it could be considered unreasonable if we were to seek to punish the driver twice by suspending or revoking his licence. However, more than one incident of this type could give the council reason to consider the driver's fitness to be licensed.

#### **4.2.14 Arrests, charges and summonses**

If a licensed driver is arrested, charged or summonsed for a serious offence which suggests he would be a danger to the public, consideration will be given to immediate

suspension of his licence. Such offences would include serious violent offences; all sex and indecency offences; and use of illicit drugs or excess alcohol whilst at work.

In the event that the allegation does not result in a prosecution, conviction or caution, full details regarding the circumstances of the case will be obtained from the police before making a decision regarding the restoration of the driver's licence. If there are reasonable grounds to suggest that the driver presents a risk to the travelling public, consideration must be given to revoking his licence.

A driver who has been the subject of more than one allegation of a sex offence (even if all allegations have not resulted a prosecution, conviction or caution) will normally have his licence revoked unless significant mitigation is provided.

#### **4.2.15 Drivers admitting to sexual contact in a licensed vehicle**

If a licensed driver is accused of a sexual offence by the police or other credible source and subsequently admits to having sexual contact with a passenger, consensual or otherwise, he will have his licence revoked.

This decision will be made regardless of whether or not the driver is charged, cautioned or convicted for any offence.

Unless there are exceptional circumstances, any application to be re-licensed will normally be refused.

#### **4.2.16 Failure to advise the council of convictions**

It is a condition of licensing that a driver informs the council of any convictions or cautions he receives. Therefore, a more serious view will be taken if the driver has failed to declare a conviction or caution.

If, during the renewal of a licence, a DBS check or driving licence check reveals an undeclared conviction consideration will be given to refusing the renewal application. A further application will not be considered for a period of at least 12 months at which point the new applicant guidelines for the relevant offence will be applied.

Furthermore, if a licensed Hackney Carriage or PHV driver has been disqualified from driving and has not informed the council, the renewal application will be refused and a further application will not be considered until a period equivalent to the period of disqualification has lapsed.

### **4.3 Hackney Carriage and PHV offences**

#### **4.3.1 Hackney Carriage offences**

- refusing to be hired without good reason
- demanding more than the legal fare
- abusive language
- misbehaviour
- plying for hire outside of licensed area\*

- failure to carry a copy of Hackney Carriage driver's licence\*
- failure to display badge\*
- failure to issue a receipt when requested
- leaving a Hackney Carriage unattended on a rank\*

#### **4.3.2 PHV offences**

The following are specific offences identified under PHV law:

- failure to display badge (unless exempt)
- failure to produce licence for inspection (within six days of request)

Whilst the majority of allegations of these offences will be the result of customer complaint, any driver receiving a conviction or caution for Hackney Carriage specific offences will result in his previous licensed history being examined. 'One off' offences will normally result in a warning letter being sent to the driver. A series of offences being committed will result in consideration of continued fitness to hold a Hackney Carriage driver's licence.

Specific guidelines for the offences marked \* can be found in paragraphs 4.3.2 - 4.3.5 and 4.3.10.

Offences identified by police or council officer's activity but not resulting in a conviction will be considered in a similar manner to a conviction.

#### **4.3.3 Failing to display a Hackney Carriage or Private Hire Vehicle driver badge**

All licensed drivers must display their badge whilst working.

In this context display means wear on the lapel or equivalent height or attach to the dashboard of the vehicle in such a position as to be clearly visible to passengers entering or seated in the vehicle.

A written warning will be the norm for a first offence of not displaying their badge. Unless there is significant mitigation, a second offence will result in a suspension for one month, and a third offence will result in revocation of the driver's licence.

If the driver is not wearing his badge because it has been lost or stolen and he has informed the council, no further action is necessary. However, if the driver fails to inform the council action as above will be considered.

#### **4.3.4 Failing to wear PHV driver's badge**

All PHV drivers must display their badge whilst working.

In this context display means wear on the lapel or equivalent height or attach to the dashboard of the vehicle in such a position as to be clearly visible to passengers entering or seated in the vehicle.

A written warning will be the norm for a first offence in the period of the current and preceding licence. Unless there is significant mitigation, a second offence will result in a suspension for one month, and a third offence in the same period will result in revocation of the driver's licence.

If the driver is not displaying his badge because it has been lost or stolen and he has informed the council, no further action is necessary. However, if the driver fails to inform the council action as above will be considered.

#### **4.3.5 Leaving a Hackney Carriage unattended on a Hackney Carriage rank**

Hackney Carriage ranks are appointed for the purpose of providing an identifiable place where the public can hire a Hackney Carriage. They also allow Hackney Carriage drivers to ply for hire without the need to drive around.

The drivers of the first two Hackney Carriages on any rank must be with their Hackney Carriages and available for immediate hire, and no Hackney Carriage will be left on a rank unless the driver is willing to be hired. Any Hackney Carriage driver who leaves his Hackney Carriage unattended on a rank is not only committing an offence but is also denying other drivers the opportunity to work.

As ranks are specifically for Hackney Carriages, there is no reason whatsoever for a private hire vehicle to either park or wait on a rank. Any private hire driver doing so is at the very least committing a parking offence and their presence could also be interpreted as illegally plying for hire.

In taking steps to identify the driver it will be assumed that an owner-driver was driving his vehicle. If the vehicle is rented the vehicle owner will be approached and requested to nominate the driver.

### **4.4 Complaints**

#### **4.4.1 Hackney Carriage drivers**

There are a number of different types of complaint and depending within which category they fit results in them being investigated in different ways.

#### **4.4.2 Private Hire**

PHV regulations require PHV operators to record details of complaints made by customers in respect of service, vehicles and drivers, action taken and the outcome. In the first instance complainants are advised to make their complaint to the operator if they have not already done so. If this has been done and the complainant remains dissatisfied, the council will investigate the operator's handling of the complaint.

In the most serious cases e.g. where the standard of behaviour falls far below that expected of a licensed PHV driver, or if it is not appropriate to refer the matter to the operator or other authority, the council will carry out the investigation.

As with complaints about Hackney Carriage drivers, there are a number of different types of complaint and depending within which category they fit results in them being investigated in different ways.

### **4.4.3 Reviewing a driver's complaints record**

The loss of a licence removes the driver's ability to work at their chosen profession, therefore suspension or revocation could be seen as disproportionate in respect of a single lapse in the standard of service provided.

At the conclusion of a complaint investigation, the licensee's complaints history will be examined. Isolated minor complaints will not give any cause for concern but if a driver has attracted a number of complaints (typically three within the preceding two years) the council will review his fitness to remain licensed.

In all cases one of the following actions will result:

a) No further action:

The history of complaints does not give any cause for concern or the complaint is deemed too trivial.

b) Warning:

A pattern of poor behaviour or history of complaints has been identified, but not serious enough to warrant suspension or revocation at this stage. Dependent on the nature of the complaints, the warning can be made in writing or in person.

The opportunity can also be taken to provide advice and guidance on how the driver can improve their behaviour.

c) Suspension:

The driver has demonstrated a pattern of poor behaviour or attracted further complaints since having been warned or previously suspended. If a driver has previously been suspended, a further, longer period of suspension can be considered as an alternative to revocation. The length of any suspension will be determined on an individual basis.

d) Revocation:

The driver continues to demonstrate a pattern of poor behaviour or attracts further complaints despite having been warned or suspended.

At the conclusion of the investigation into any complaint of abuse or poor behaviour that was made by council staff or our policing partners in the course of their work, the case will be referred to a licensing sub-committee for a decision.

### **4.5 PHV Driver Dismissal Notices**

PHV operators are required to advise the council if a driver becomes unavailable by virtue of that driver's unsatisfactory conduct in connection with the driving of a PHV i.e. he is dismissed.

Receipt of all driver dismissal notices must be recorded and the driver's record updated.

A single occurrence of being dismissed will not normally result in any further action, but if a history or pattern of behaviour is evident then the driver's fitness to remain licensed must be reviewed.

#### **4.6 Immediate suspension of licences**

If it comes to notice that a licensed driver has been arrested, charged or cautioned for a serious offence which suggests he would be a danger to the public, consideration will be given to immediate suspension of his licence. Such offences would include serious assaults; rape, paedophilia and other serious sexual and indecency offences; and use of illicit drugs or excess alcohol whilst at work.

In assessing the action to take, the safety of the travelling public must be the paramount concern. If the driver is remanded in custody or subject to bail conditions which preclude him from working as a driver, appropriate disciplinary action will still be initiated.

Any decision by the council to immediately suspend a licence until the outcome of criminal proceedings are known will be conveyed to the licence holder as soon as possible following the decision being made. This will involve the assistance of a council officer who will either hand deliver the letter to the individual concerned or leave it at the registered address of that individual. Recovery of the licence will only be pursued when it is considered safe to do so.

#### **4.7 Return of licence following suspension/revocation**

Except for medical reasons, a licence is suspended for a predetermined period and is returned on the expiry of the suspension. However in the case of revocation, the licensee loses all right to the licence and in order to become re-licensed the driver has to make a new application and has the same status as a new applicant.

In practice an application can be made at any time, but a new licence will not normally be issued until the applicant can show a suitable period free from further conviction.

Each case must be considered on its merits and drivers **will not** be given a date when an application would be successful. The council is unlikely however to give serious consideration to any application for re-licensing until after the minimum guideline periods as shown in Table 3 below.

Furthermore, if, when refused or revoked for any other reason, the driver was given an indicative timescale as to when a new application would be considered, and that timescale has not been met, the case will be referred to the sub-committee.

Whenever a licence has been revoked because of criminal, driving or Hackney Carriage convictions, the applicant is to be warned as to the significance to his licence status if there is any reoccurrence at some time in the future before being allowed to proceed. A new licence will only be issued after all enquiries have been completed satisfactorily.

Table 3 – Guideline Minimum periods before re-licensing

Offence type		Period before re-licensing	
Sex & indecency	Outside employment	At least 7 years	
	In the course of employment	At least 7 years	
Violence	Outside employment	To be referred to sub-committee	
	In the course of employment	At least 2 years in addition to the guidelines at 3.3.13	
Dishonesty	Outside employment	At least 3 years*	
	In the course of employment	At least 5 years*	
Touting/Illegally plying for hire	First caution/conviction	1 year <sup>†</sup>	
	More than one caution/conviction	See guidelines at 3.3.22	
Drugs	First conviction	See guidelines at 3.3.18	
	More than one conviction	At least 2 years in addition to the guidelines at 3.3.18	
Driving under the influence of drink or drugs	Not involving use of a Hackney Carriage or PHV	first conviction	Disqualified - On return of DVLA driving licence
		more than one conviction	Not disqualified – after a period equivalent to the minimum period of disqualification a minimum of 1 year <sup>‡</sup>
	Involving Hackney Carriage or PHV	first conviction	1 year <sup>‡</sup>
		more than one conviction	3 years <sup>‡</sup>



Driving offences involving the loss of life	Outside employment In the course of employment	See guidelines at 3.3.19 At least two years in addition to the guidelines at 3.3.19
Other serious driving convictions		On return of DVLA driving licence or 1 year* whichever is the later.
Persistent serious Hackney Carriage offences (convictions and complaints) including:	Refusal Abusive language Misbehaviour Demanding more than the legal fare Plying for hire elsewhere Plying for hire outside of licensed area	3-5 years <sup>†</sup>
Knowingly working as an Hackney Carriage or PHV driver after expiry of licence		1 year <sup>†</sup>

\* from date of conviction, <sup>‡</sup> from date of return of DVLA driving licence, <sup>†</sup> from date of revocation/refusal

*NB Care must be taken not to regard these periods as rigid and they can be varied (i.e. shortened or lengthened) according to the merits of the particular case.*

## **4.8 Medical fitness considerations**

### **4.8.1 Hackney Carriage**

Drivers are required to continue to satisfy the council that they are medically fit to hold a driver's licence throughout their career. In assessing whether an applicant is medically fit, the council will have regard to the medical standard that would apply in relation to a DVLA Group 2 licence.

Following the initial medical report at application stage, Hackney Carriage drivers are required to undergo a medical examination at the ages of 50, 55, 60, 65 and annually thereafter. If circumstances dictate, medicals may be required at such other times as may be considered appropriate.

In general the same standard of fitness is required as for new applicants and each case must be considered on its merits.

### **4.8.2 Private Hire**

Drivers are required to continue to satisfy the council that they are medically fit to hold a driver's licence throughout their career. In assessing whether an applicant is medically fit, the council will have regard to the medical standard that would apply in relation to a DVLA Group 2 licence.

Following the initial medical report at application stage, PHV drivers are required to undergo medical examination at age 45 and subsequently on renewal until the age of 65 when these will be required annually. If circumstances dictate medicals may be required at such other times as may be considered appropriate.

In general the same standard of fitness is required as for new applicants and each case must be considered on its merits.

### **4.8.3 Diabetes**

Annually the licensee will be required to:

- a) submit to the council, for examination, their valid DVLA C1 category Group 2 I licence; or
- b) provide a medical report from a hospital consultant specialising in diabetes confirming:
  - that during the preceding 12 months the licensee has not suffered a hypoglycaemic episode requiring the assistance of another whilst driving; and,
  - the licensee has a history of responsible diabetic control and is at minimal risk of a hypoglycaemic attack resulting in incapacity.

#### **4.8.4 Retirement age**

No specific retirement age is applied to drivers and subject to providing satisfactory medical evidence of continued fitness to drive and all other licensing criteria are met they can continue to be licensed.

#### **4.8.5 Consideration of immediate suspension of licence**

Where a licence holder appears to fail to meet the required medical standard he is to be invited to voluntarily surrender his licence pending clarification of his medical condition(s). Failure to do so will necessitate the council considering formal immediate suspension action on the basis of safety of the travelling public.

The driver will be invited to present further (written) medical evidence on the medical condition(s) or issue. Should he fail to do so his fitness to remain licensed must be reviewed. Where evidence suggests that it would be dangerous to allow a driver to continue driving for even a short period, the council will suspend the licence forthwith. The driver will be informed that the decision may be reconsidered if and when he provides further medical evidence.

If, having voluntarily surrendered his licence, a driver subsequently asks for it to be returned without having provided further medical evidence, the council will refuse to comply with the request. The driver must be advised that the licence cannot be returned until such time as he can prove that he meets the medical standards.

If it is reported that a driver has collapsed at the wheel whilst driving, immediate steps must be taken to ensure that he does not drive again until medical clearance has been obtained. The driver's licence must be suspended as soon as possible and not restored until satisfactory medical evidence is produced by the driver.

#### **4.8.6 Failure to provide medical evidence**

When a driver fails to submit an age related or annual medical, the council can no longer be certain that he remains medically fit to be licensed. If the driver fails to supply the necessary evidence following a reminder giving him 21 days' notice and due warning of the risk of not supplying the information, consideration must then be given to revoking his licence with immediate effect.

#### **4.10 Action by other licensing authorities**

In the event that a Hackney Carriage or PHV driver has an application refused or a licence suspended or revoked by another licensing authority, full details will be obtained from that authority including the date of the refusal, suspension or revocation and the reasons for it. Such information can be obtained under the provisions of section 31 the Data Protection Act 1988.

Consideration must be given to the information disclosed and if the driver no longer meets the standards to be licensed by the council or there is any threat to the safety of travelling public, consideration will be given to suspending or revoking his licence.

#### **4.11 Debts/Bankruptcy**

Any information received on issues of debt will be considered in determining fitness to remain licensed but will not solely give cause for the instigation of disciplinary action.

If the council receives notification that a licensed driver has been made the subject of a Bankruptcy Restriction Undertaking (BRU) or Bankruptcy Restriction Order (BRO), this indicates that the conduct of the individual has been dishonest or blameworthy in some way. In this instance the driver must provide details of the BRU or BRO and consideration must then be given to his continued fitness to hold a licence.

#### **4.12 Appeals against a decision to suspend or revoke a licence**

Any public hire driver who is dissatisfied with the decision of the council to suspend or revoke his driver's licence may, within the prescribed period, (28 days) appeal to the appropriate magistrates' court.

#### **4.13 Renewals**

A licence can only be issued when:

- The council has received notification from the DBS that the criminal record check has been undertaken; and
- if requested to do so, the driver has submitted his DBS certificate for examination.

In the event that a driver fails to provide their DBS certificate when requested to do so, the licence renewal application will be treated as incomplete and discontinued.

*The following guidelines can continue to be followed for any Disclosures issued before 17 June 2013:*

*One of the main causes of delay in processing licence applications and renewals is the length of time it takes to receive a certificate from the DBS. To ensure that working drivers are not disadvantaged by a problem beyond the council's control, licences may be issued prior to receipt of the DBS certificate as long as the following criteria are met:*

- *the applicant is currently licensed and has undergone a satisfactory DBS check for the current licence;*
- *the applicant has submitted a timely renewal application and applied for a DBS check;*
- *the current licence is due to expire within the next ten days;*
- *the applicant has a valid driving licence and all driving convictions during the period of the current licence have been taken into consideration (see guidelines at sections 4.2.8, 4.2.9, 4.2.10 and 4.2.16);*
- *the council has received nothing from police or any other law enforcement agency to suggest that the applicant may no longer be a fit and proper person;*

- *any pending prosecutions have been considered by the Licensing Manager;*
- *the applicant has signed the declaration on the application form stating that they have not received any convictions since being issued with their last licence;*
- *the applicant's previous licence was issued without the need for a warning letter.*

*The following paragraph will be inserted in the letter accompanying the issue of the licence:*

*"If this is a renewal of a previous licence and you have yet to receive your most recent DBS certificate, or have received it only within the last week, it is likely that this licence has been issued without sight of the DBS certificate. You will therefore be aware that your fitness may be subject to review once that DBS certificate has been considered and if it is unsatisfactory could result in this licence being revoked."*

In the event that the renewal application discloses a medical condition that indicates that the driver may not be fit to be licensed, the driver will be asked to submit additional evidence as a matter of urgency. The driver must be advised that it may not be possible to renew the licence until such information has been received and considered, and failure to submit the information may result in the application being refused.

#### **4.14 Expired DVLA photo cards**

DVLA photo cards are valid for 10 years after which they must be renewed.

However, as it is the photo card that expires not the driving licence, DVLA advise that a driver can continue to drive before a new photo card is issued as long as he:

- has held a Great Britain or Northern Ireland licence issued since 1 January 1976 or another exchangeable licence;
- is not disqualified from driving;
- has not been refused a licence for medical reasons or for failing to comply with medical enquiries;
- would not be refused a licence for medical reasons; and
- keeps to any special conditions which apply to the licence.

As long as the driver meets the criteria above, The council has no objection to a driver continuing to work as a Hackney Carriage or PHV driver while he awaits the issue of a new photo card. However, an expired photo card must be renewed before a new Hackney Carriage or PHV driver's licence can be issued.

#### **4.15 Late renewals**

In the event of a driver submitting an application for renewal of his licence after the expiry of the previous licence there will be no guarantee of the immediate issue of a new licence. The driver may have to wait until all processes, including the return of a satisfactory DBS check, have been completed.

The new licence shall have effect from the date it is issued, not the date of expiry of the preceding licence or the date of application.

Any driver applying to renew his licence more than three months after the expiry of the preceding licence will not be afforded this privilege. In such cases the driver will be treated as a new applicant. This will require the driver to obtain a new medical examination and wait until all necessary checks have been completed before a licence can be issued.

Any driver who submits a renewal application after the expiry of his licence will be advised that he is no longer licensed and cannot work until a new licence is issued.

#### **4.16 Drivers working after the expiry of their licence**

It is an offence for a Hackney Carriage or PHV driver to work without a valid licence and any driver that continues to work after his licence has expired is also likely to invalidate his hire and reward insurance.

Any driver who fails to renew his licence will be advised in writing that his licence has expired and he is no longer permitted to work. The driver will be advised to submit a renewal application immediately. Alternatively, if the driver does not intend to renew he will be instructed to return his badge and expired licence.

In the event that a driver is found working post-licence expiry, he must be reported for the appropriate offence. Regardless of whether any prosecution follows, this information will then be taken into consideration when considering a subsequent renewal application.

It would be appropriate to re-license subject to a written warning if the offence was an isolated occurrence, there were genuine reasons for the driver failing to renew his licence, and he had renewed promptly previously. However, if a driver is found to be working:

- a) after having been warned that his licence has expired; or
- b) more than three months after his licence has expired,  
consideration will be given to refusing his application.

#### **4.17 Exemption from having to wear badge (PHV drivers only)**

The council has determined that exemption will only be granted when the nature of the service is such that:

- to wear a badge presents a specific risk to the personal safety of the driver and/or passengers that would not be present (at least to the same degree) were a badge not to be worn;

- the passenger specifically requests the driver to refrain from wearing the badge for the duration of the individual booking concerned having confirmed to their satisfaction the driver's licensed status and wearing a badge would significantly detract from the service provided.

There is no legal right of appeal against decisions to refuse exemption.

Where an exemption is granted, the driver must be issued with an exemption notice that he will carry at all times when working as a PHV driver.

#### **4.18 Exemption from having to carry guide and assistance dogs**

Sections 168 and 170 of the Equality Act 2010 require Hackney Carriage and PHV drivers to carry guide, hearing and other assistance dogs accompanying disabled people and to do so without any additional charge.

Drivers can only seek exemption from these duties on medical grounds. To apply for an exemption a driver must complete and submit the prescribed form.

The main reasons a Hackney Carriage or PHV driver may wish to apply for a medical exemption are if they have a condition, such as severe asthma, which is aggravated by contact with dogs; if they are allergic to dogs; or if they have an acute phobia to dogs.

Drivers must provide medical evidence to support their application. If a driver has severe asthma or a known allergy to dogs, they are likely to have a medical history and an appropriate medical specialist will hold relevant information about their condition. A driver's General Practitioner will only be approached as a last resort where no other alternatives are available.

If a driver has a chronic phobia to dogs, this would need to be supported by a report from a psychiatrist or clinical psychologist before a driver is granted an exemption.

Where an exemption is granted, the Licensing Team will advise the driver accordingly and issue him with an exemption. The Notice must then be displayed in the windscreen of the driver's vehicle.

Exemptions are not indefinite and the length of the exemption will be based on the medical need. The Notice of Exemption displays the expiry of the exemption and this will not exceed the expiry date of the driver's current licence. If the medical condition is not permanent a further exemption application must be submitted with the licence renewal application. If the driver's medical condition is permanent further exemption applications are not required but a new Notice must be issued with each licence.

Under section 172 of the Equality Act drivers can appeal to a magistrates' court against a decision to refuse an exemption within 28 days of the decision, therefore any driver whose application is refused must be advised of his rights of appeal.

The following DfT publications provide full guidance in respect of considering exemption applications:

- Carriage of Assistance Dogs in Hackney Carriages - Guidance for Licensing Authorities
- Carriage of Guide, Hearing and other Assistance Dogs in Private Hire Vehicles - Guidance on the Duties, Medical Exemptions and Enforcement.

#### **4.19 Exemption from having to assist wheelchair users**

Section 165 of the Equality Act 2010 will place a duty on the drivers of Hackney Carriages and PHVs that have been designated by the council as wheelchair accessible to carry a passenger in a wheelchair and to do so without any additional charge. Drivers will also have a duty to assist the passenger get into and out of the vehicle and to give the passenger such mobility assistance as is reasonably required. This will normally involve the driver deploying the wheelchair ramps or other aid to loading a wheelchair and helping the passenger into the vehicle while the passenger remains in his wheelchair.

The council can exempt a driver from these duties on medical grounds or on the grounds that his physical condition makes it impossible or unreasonably difficult for him to comply with the duties.

Section 165 has yet to come into force but since 1 October 2010 drivers have been able to apply for an exemption in advance of its enactment. To apply for an exemption a driver must complete and submit an exemption form. Most drivers with a medical condition severe enough to warrant an exemption are likely to be under a specialist (consultant) medical practitioner. It is therefore expected that evidence from a specialist will be provided with the exemption application.

In determining whether to issue an exemption certificate The council will consider whether the evidence provided confirms that the driver is unable to safely complete one or more of the following tasks, giving due regard to the type of vehicle the driver will be driving:

- securely erect wheelchair ramps (if applicable);
- safely install a wheelchair and occupant into their vehicle (this may involve pushing a wheelchair up sloping ramps into the vehicle);
- ensure the wheelchair and occupant are secure in readiness for the journey (this may require the driver to help the passenger to get out of the wheelchair and into a seat); and
- reverse the entire process.

Where an exemption is granted, the Licensing Team will advise the driver accordingly and issue him with an exemption certificate and Notice of Exemption. Once section 165 comes in to force the Notice must then be displayed in the windscreen of the driver's vehicle whenever he is working.

Exemptions are not indefinite and the length of the exemption will be based on the medical need. The Notice of Exemption displays the expiry of the exemption and this will not exceed the expiry date of the driver's current licence. If the medical condition is not permanent a further exemption application must be submitted with the licence renewal application. If the driver's medical condition is permanent further exemption applications are not required but a new Notice must be issued with each licence.



Under section 167 of the Equality Act drivers can appeal to a magistrates' court against a decision to refuse an exemption within 28 days of the decision, therefore any driver whose application is refused must be advised of his rights of appeal.

#### **4.20 Refund of licence fees**

The PHV driver regulations make specific references as to when licence fees can be refunded. Although there are so similar requirements in Hackney Carriage regulations, the PHV principles can be applied to Hackney Carriage drivers.

A refund of the fee paid for the *grant of a licence* can be made where a driver's licence ceases to have effect (whether by revocation or otherwise) in the following circumstances:

- the holder is no longer physically fit to hold the licence;
- the licence is surrendered; or
- the holder dies.

The request must be made in writing and accompanied by the licence and badge. The amount refunded will be in proportion to the number of whole **months** remaining on the licence.

## **5. Vehicle Licences - General Regulatory**

### **5.1 Hackney Carriage**

Applicants may be granted a licence if:

- they are a fit and proper person;
- their vehicle conforms with the conditions of fitness and;

### **5.2 Private Hire Vehicles**

The council shall grant a licence in respect of the vehicle if the authority is satisfied.

- that the vehicle is suitable in type, size and design for use as a private hire vehicle
- is safe, comfortable and in a suitable mechanical condition for that use,
- is not of such design and appearance as would lead any person to believe that the vehicle is a Hackney Carriage.

There is no requirement for the owner of the vehicle to prove he is of good character.

## **6. Vehicle Licences - New Applicants**

### **6.1 Name on the licence**

Hackney Carriage and PHV licences will be issued in the name of the vehicle's registered keeper. The registered keeper can be a company or other entity. Where the application is for a Hackney Carriage licence and the registered keeper is a company or other entity, details of a person who will be responsible for the vehicle will be captured at the point of application.

### **6.2 Fit and proper person (Hackney Carriage only)**

#### **6.2.1 General**

To ensure that an applicant is a 'fit and proper person', the council has determined that his character is assessed on the basis of the information provided by an enhanced DBS check this will contain details of all convictions on record, whether spent or unspent and any cautions, warnings and reprimands.

Applicants for a Hackney Carriage licence who are already licensed as Hackney Carriage drivers or existing proprietors already 'approved' by the council will not be required to obtain a further DBS check.

The council will comply with DBS's Code of Practice in regard to use/retention of Disclosure information.

#### **6.2.2 Consideration of criminal history**

Unlike a Hackney Carriage driver, a Hackney Carriage proprietor is not an excepted profession under the Rehabilitation of Offenders Act 1974; therefore only unspent convictions will be taken into consideration when determining the fitness of an applicant.

In assessing an application for a Hackney Carriage proprietor's licence, the guidelines in respect of drivers within section 3.3 will be referred to. However, the relevance of the convictions to the licence applied for must be taken into consideration.

Ultimately, the overriding consideration in reaching a decision will be based on whether the applicant can fulfil his role without posing any likely threat to the general safety of the public.

### **6.3 Appeals**

#### **6.3.1 Hackney Carriage**

Any applicant for a Hackney Carriage licence who is dissatisfied with the decision of The council to refuse to grant him a Hackney Carriage licence may, within the prescribed period (28 days), appeal to the appropriate magistrates' court.

#### **6.3.2 Private Hire**

Any applicant for a private hire vehicle licence who is dissatisfied with the decision of the council to refuse to grant him a vehicle licence may, within the prescribed period

(21 days) appeal to the appropriate magistrates' court. If the applicant is not satisfied with the result he may appeal to the crown court.

## **7. Vehicle Licences – Licence Holders**

### **7.1 General**

The aim is to protect the public interest by ensuring that Hackney Carriages and PHVs are properly maintained and owners comply with the statutory requirements and general standards expected of them.

### **7.2 Character considerations**

#### **7.2.1 Hackney Carriage**

Any proprietor who is convicted of a serious offence may have his fitness to hold a Hackney Carriage licence reviewed.

If a Hackney Carriage licensee has his licence revoked he may not necessarily sell the vehicle(s). An owner-driver, for example, may retain ownership of the vehicle but allow another person to be the licensee. However, the council would need to be assured that the new proprietor was fully aware of their responsibilities and that there was no link in the day-to-day running of a fleet by a revoked proprietor. (A company may appoint another licensee at any time).

Suspension and revocation of vehicle licences.

The council may suspend or revoke, or refuse to renew a vehicle licence on any of the following grounds:

- that the Hackney Carriage or private hire vehicle is unfit for use as a Hackney Carriage or private hire vehicle;
- any offence under, or non-compliance with, the provisions of the legislation by the operator or driver; or
- any other reasonable cause.

Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the proprietor of the vehicle notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew the licence within fourteen days of such suspension, revocation or refusal.

### **7.3 Breach of conditions (Hackney Carriage)**

The conditions set out in the *Hackney Carriage Licensing Inspection Manual* are designed to ensure that an owner maintains his Hackney Carriages properly and complies with all the requirements of his licence. When proprietors neglect their obligations in this respect, action must be taken to remind them of their responsibilities and to apply uniform standards in all cases.

Each case must be dealt with on its merits and, whilst a warning may suffice in many cases, serious breaches or failure to heed an earlier warning may result in revocation or suspension.

Failure to comply with the conditions also affords grounds for refusal of subsequent Hackney Carriage licence applications. Such action will be considered if it is in the public interest to prevent an irresponsible proprietor from re-entering the trade.

#### **7.4 Breach of conditions (PHV)**

A PHV licence can only be suspended or revoked where either the vehicle is no longer fit for use as a PHV (i.e. it does not comply with conditions set out in the PHV Licensing Inspection Manual) or the owner has failed to comply with a condition of the licence.

Each case must be dealt with on its merits and, whilst a warning may suffice in many cases, serious breaches or failure to heed an earlier warning may result in revocation or suspension.

#### **7.5 Appeals**

##### **7.5.1 Hackney Carriage**

Any proprietor who is dissatisfied with the decision of the council to revoke or suspend his Hackney Carriage licence may appeal, within the prescribed period (28 days), to the appropriate magistrates' court.

##### **7.5.2 Private Hire**

The holder of a PHV who is dissatisfied with the decision of the council to revoke or suspend his PHV licence may appeal the decision of the council to the appropriate magistrates' court within the prescribed period (21 days from the day on which that notice is served on the licence holder or owner). If the applicant is not satisfied with the result he may appeal to the crown court.

#### **7.6 Exemption from having to display licence plate (PHV only)**

In granting an exemption the council will need to be satisfied that it is inappropriate for the plate to be displayed. Applicants must make their case in writing detailing the reasons for the exemption and include supporting evidence from customers.

In coming to a decision the following factors must be taken into consideration:

- whether there are exceptional circumstances;
- the nature of the work to be carried out;
- the security of the passengers.

The decision to refuse to grant an exemption is final and there is no statutory right of appeal.

The exemption is only valid for the duration of the licence applied for, therefore a new exemption application must be made with each annual licence application.

No fee will be levied of an aforementioned exemption.

## **8. Operator Licences – General**

### **8.1 General regulatory**

If the council is satisfied that an applicant meets the necessary requirements, it may grant a licence for five years in the terms applied for.

### **8.2 Requirement to be licensed**

A private hire vehicle as a vehicle constructed or adapted to seat fewer than nine passengers which is made available with a driver for hire for the purpose of carrying passengers, other than a licensed Hackney Carriage or a public service vehicle.

### **8.3 Internet based booking platforms**

With ongoing technological advancements, particularly in relation to mobile phone apps, companies have developed, or are in the process of developing, internet based platforms that put potential passengers in touch with licensed operators.

To fall within the definition of an operator the web based booking platform must be making provision for the invitation or acceptance of private hire bookings.

If an online booking facility is simply facilitating a booking by automatically linking potential clients directly to licensed private hire operators then an operator's licence will not be required. Such third party websites are only providing the front line IT aspects and the bookings are made directly with the licensed operators.

However, if the internet based booking platform proposes to take bookings online for private hire journeys and pass these bookings to licensed private hire operators then an operator's licence may be required, and the entity once licensed, must comply with all the conditions under which the licence has been issued.

## **9. Operator Licences – New Applicants**

### **9.1 Who is the licensee?**

The council will grant a PHV operator's licence to any individual, registered company or any unregistered business/firm or partnership considered fit and proper:

- where the applicant is an individual the licence, if granted, will be issued in the name of that individual;
- where the applicant is a registered company (or other body corporate) the licence, if granted will be issued in the name of that body;
- where the applicant is an unregistered firm (two or more people trading in partnership) the licence, if granted will be issued in a name nominated by the firm in its application.

A PHV operator's licence does not entitle an individual (e.g. a single person operator) to drive a private hire vehicle. To act as a PHV driver the individual must obtain a PHV driver's licence. The regulations governing suitability to be a driver are quite distinct from those governing suitability to be an operator. It is quite feasible for an applicant to be granted a PHV operator's licence but refused a driver's licence.

## 9.2 Applications

An applicant must complete and submit an application form.

In addition, every person named in the application form must complete a personal declaration form.

In accordance with the regulations, applications and declarations must be signed in person. Applications cannot be made by proxy.

It is intended that originals of certificates connected with an application will be checked upon inspection of an operator's premises.

## 9.3 Declarations

The applicant for a licence or renewal or variation of a licence will be required to make a declaration that the information given on the form, and material provided, is true. If the declaration proves false or the material misleading, the licence, renewal or variation can be refused on the grounds that the person is not 'fit and proper'. Additionally, false information could lead to the suspension or revocation of any licence granted and to formal legal proceedings being initiated against the applicant.

## 9.4 Fit and proper person

In order for an individual to be licensed as a PHV operator, the council will need to be satisfied that the individual applicant is 'fit and proper'.

In order for a company to be considered 'fit and proper', The council will need to be satisfied that the individuals who make up that company i.e. the company secretary and the board of directors are themselves 'fit and proper'.

In order for an unregistered firm or partnership to be considered 'fit and proper', the council will need to be satisfied that the individuals who make up that firm or partnership, i.e. the partners, are themselves 'fit and proper'.

To ensure that an applicant is a 'fit and proper person', the council has established a number of criteria, or administrative rules, that the applicant will need to meet. Listed below are the administrative rules that the council will follow in reaching decisions on applications for operator licences.

## 9.5 Administrative rules

Criteria for assessing operator licence applications:

- **Convictions:** subject to the Rehabilitation of Offenders Act 1974 applicants must declare any convictions;

- **Business repute:** applicants must declare whether they ever been made bankrupt and if so whether they have had a discharge from bankruptcy suspended for failing to co-operate with the Official Receiver. Applicants must also declare whether they have ever had a disqualification order under the Company Directors Disqualification Act 1986 made against them, thereby disqualifying them from being a director, or taking part in the management, of a limited company;
- **Right of abode and to work:** if required, applicants must supply evidence of their right to work and reside in the United Kingdom (this will be according to the list of specified documents as listed in the Home Office publication ‘Asylum and Immigration Act 1996 -Section 8 Prevention of Illegal Working - Guidance for employers’);
- **Previous applications:** if anyone named on an application has previously been refused an operator's licence or held an operator's licence which was suspended or revoked elsewhere in the country, he will be expected to provide details of the refusal, suspension or revocation upon application.
- **Radio circuit:** if required, applicants must provide evidence that they have an appropriate radio licence and that the radio system used is in accordance with that licence;
- **Insurance:** if required, applicants must provide evidence that they are complying with any insurance requirements with regard to their employees or the premises or the public where the operating centre has public access;
- **Health and Safety:** if required, applicants must be able to show that they are complying with any requirements applicable to their premises, their staff or the public, e.g. environmental health, fire safety;
- **Accounts:** if required, applicants must provide evidence that they comply with the requirements for audited or certified accounts; and, if applicable, provide evidence that the business is VAT registered or awaiting VAT registration.

## 9.6 Consideration of criminal history

A PHV operator is not an excepted profession under the Rehabilitation of Offenders Act 1974; therefore only unspent convictions will be taken into consideration when determining the fitness of an applicant.

In assessing an application for an operator's licence, the guidelines in respect of drivers within section 3.3 will be referred to. However, the relevance of the convictions to the licence applied for must be taken into consideration.

In making a recommendation as to whether an operator application will be refused or approved based on declared convictions the number of convictions per person and the total number of convictions recorded against the individuals that make up the operator also needs to be taken into account in the overall evaluation.

**Ultimately, the overriding consideration in reaching a decision will be based on if the operator (namely the individuals which make up the organisation) can fulfil their roles and run the centre without posing any likely threat to the general safety of the public.**

If a situation arises where an operator licence application from a registered company is likely to be refused solely on the declared convictions of one individual within the organisation, the application may still proceed if the applicant decides to withdraw the name of that individual. It would not be possible for applications from individuals or partnerships to be handled in this way.

To summarise, 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. Some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

## **9.7 Business repute**

In order to be considered 'fit and proper', individuals who make up the organisation will be expected to demonstrate that they have complied with other legal requirements connected with running a business and are of good business repute.

The following factors need to be considered collectively when assessing whether the applicant is of good business repute.

### **9.7.1 Bankruptcy**

- An applicant who is the subject of a Bankruptcy Restriction Order (BRO) or Bankruptcy Restriction Undertaking (BRU) indicates that the conduct of the bankrupt has been dishonest or blameworthy in some other way. If a BRO or BRU has been made, the application will be referred for refusal.
- The fact that an individual has been declared bankrupt is not sufficient in itself to refuse an application.

### **9.7.2 Company directorship**

If an individual has been disqualified from being a company director, or from taking part in the management of a limited company, they can still set up as an operator in partnership or individually. However each application needs to be assessed on its own merits and the following points need to be taken into account:

- The length of the disqualification from being a company director and the reasons and/or circumstances surrounding the disqualification.
- The length of time since the disqualification and any subsequent period where they have demonstrated good business repute or been able to maintain a stable financial position.
- The number of partners who have been disqualified: If both of the partners (or the majority of partners) have been disqualified then the application needs to be assessed carefully and may be refused if the partners are directly involved in the day to day running of the business.
- If only one of the partners has been disqualified and they are not involved in the day to day running of the business then the application will be allowed to proceed.



## **9.9 Right to live and work in the UK**

For each personal declaration it first needs to be ascertained if the individual needs to have the right to live and work in the UK in order to fulfil their role within the business. For instance a director, partner or company secretary does not necessarily need the right to live and work in the UK, as long as they are legally fulfilling their business role within the organisation.

- If the person is directly involved in the day to day running of the operating centre (i.e. an individual applicant and company representative) then they must have the right to live and work in the UK;
- If the individual has declared a UK home address and is involved in running the business then they must have the right to live and work in the UK;
- Licences granted to single applicants whose leave to remain in the UK is time- limited must only be valid for the period for which they are entitled to work in the UK. In order for the licence to be extended (up to the maximum five years) individuals must produce further evidence to prove that they have the right to work in the UK. In the event that an operator does not have his licence extended, he will, on request, be given a refund of a pro-rata proportion of the grant of licence fee.

Applications where the individual's business role requires them to have the right to live and work in the UK, but they do not possess this right, will be refused.

## **9.10 Other PHV applications**

If an individual has ever been involved with a PHV operator licence that has been subject to refusal, suspension or revocation it does not preclude them from having a further operator licence application considered.

In the first instance the council will establish:

- the date of the refusal, suspension or revocation;
- the reason for the refusal, suspension or revocation;

If further investigation is necessary before a licensing decision can be made, the applicant will be asked to provide the following information:

- the role and responsibilities the person had within the business at the time;
- permission to approach any other licensing authority that has refused an operator's licence application or revoked or suspended an operator's licence.

If an individual's previous history whilst holding an operator's licence is such that there is a doubt that they can fulfil their roles in the business and run their operating centre without posing any likely threat to the general safety of the public, then the application may be refused.

## **9.11 Pre-licensing inspections**

Once the applicant's good character, business repute and right to live and work in the UK have been established, and any previous PHV operator licence applications have been considered, the application will proceed to the pre-licensing inspection stage.

All proposed operating centres will be inspected by council officers. As part of the inspection the applicant will be required to provide evidence that they comply with the remaining administrative rules i.e. insurance, radio licences (see below).

The officer will also verify that the applicant has in place:

- a system of record keeping that complies with regulations;
- a system for handling complaints that complies with regulations; and
- a system for handling customers' property lost or found in vehicles.

## **9.12 Insurance**

### **9.12.1 Employer's liability insurance**

Under the terms of the Employers' Liability (Compulsory Insurance) Act 1969, Employers' Liability Insurance (ELI) is a legal requirement for most employers.

Employers' liability cover enables businesses to meet the costs of compensation and legal fees for employees who are injured or made ill at work through the fault of the employer.

By law, an employer must have ELI and be insured for at least £5 million (most insurers automatically provide cover of at least £10 million).

Whilst the council will check to ensure that PHV operators have the necessary insurance, the Health and Safety Executive is responsible for enforcing the law on ELI.

### **9.12.2 Public liability insurance**

For any operating centre specified that is accessible to the public, the PHV operator must have an insurance policy against public liability risks which provides a minimum indemnity of £5 million in respect of any one event.

## **9.13 Radio Licences**

Any PHV operator that communicates with its drivers by radio will be required to hold an appropriate licence issued by Ofcom (Office of Communications).

Licensed PHV operators cannot use CB radio apparatus in connection with a private hire booking at any operating centre or in any private hire vehicle available for carrying out bookings accepted at any such operating centre.

## **9.14 Pre-licensing inspection results**

On completion of the inspection the officer will prepare an inspection report.

- If **all** operating centres do not pass their licensing inspection then the application must be refused on the grounds that it failed to comply with the necessary requirements of the regulations.

- If **not all, but one or more** operating centres do not pass their licensing inspection then the application may be ‘approved, but not as applied for’, with the failed operating centre(s) excluded on grant of the licence.
- If **all** operating centres pass their licensing inspection then the application may be ‘approved’ in the terms applied for.
- If **any** of the proposed operating centres have been specified in another licence or application that has been refused or revoked, then the council may wish to take into account the reasons for that decision. If the decision was based upon public safety reasons that still exist then the application may be refused.

### **9.15 Considering an application - Summary**

When considering an application for a licence, the overriding consideration in reaching a decision will be based on whether the applicant can fulfil his role without posing any likely threat to the general safety of the public.

If an applicant is not considered ‘fit and proper’ the application must be refused.

As each case must be treated on its own merits, some discretion can be afforded. An application from an applicant who is considered ‘fit and proper’, but only after consideration of a declared criminal history for example, could be allowed to proceed subject to an appropriate warning rather than referring it for refusal.

Alternatively, if the council is not completely satisfied as to the applicant’s fitness, it can grant a licence subject to conditions.

### **9.16 Trading names**

An operator is required to notify the council of all names that they advertise to members of the public.

Any trading names that contain the words ‘Hackney Carriage’, ‘Hackney Carriages’, ‘cab’ or ‘cabs’, or any word so closely resembling any of those words as to be likely to be mistaken for it, are not acceptable as their use may be seen to be in contravention of the legislation. The words minicab(s), mini-cab(s), or mini cab(s) are acceptable.

There is no reason why the council will not license operators who have trading names in a language other than English or contain non-English words. However, any such names will be translated into English to ensure that they do not contain any of the words prohibited by the legislation.

### **9.17 Appeals**

Appeals against The council’s decision must be lodged with a magistrates’ court no later than 21 days from the date the applicant is notified of the refusal.

## 9.18 Outstanding Costs

Following an unsuccessful appeal against a decision by the council to refuse, suspend or revoke a licence, it is likely that the operator/applicant will be ordered by the court to pay the council's costs.

As part of any fresh application to be licensed an operator/applicant is required to declare any outstanding licensing debt. The council cannot refuse an application on the grounds of outstanding costs but is within its rights to treat the application as incomplete and decline to process it, if there is an outstanding debt to the council.

Therefore, in the event that the operator/applicant submits a further application to be licensed before all outstanding costs have been paid, the application will not be processed. Furthermore, all monies accompanying that application will be kept and off-set against the outstanding debt.

Only when the debt is fully discharged **and** the application fee is provided in full will the application be processed.

## **10. Operator Licences - Licence Holders**

### **10.1 General**

Once licensed, individuals who make up the organisation holding the licence will be expected to demonstrate that they remain 'fit and proper' to hold the licence and that they continue to comply with other legal requirements connected with running a business.

The overriding consideration in determining an operator's continued fitness to hold the licence will be based on whether he can continue to fulfil his role and run his operating centre(s) without posing any likely threat to the general safety of the public.

Consideration to revoke a licence will never be considered lightly. However, the licensing system is designed to protect the public and it would be wrong to avoid this course of action where it is clearly appropriate.

Any reference in this section to 'a person associated with the licence' refers to an individual who has completed a Personal Declaration.

### **10.2 Suspensions and Revocations**

If the council determines that a licensed operator is no longer fit to be licensed, it can either suspend or revoke the licence.

If The council cannot be satisfied that the operator is providing or in a position to provide a safe service, then the licence may be suspended or revoked with immediate effect in the interest of the safety of the travelling public. Examples of this may include operators who have been convicted of a serious criminal offence or have demonstrated they are using un-licensed drivers and vehicles, or vehicles with no insurance.

In practice the suspension of an operator's licence is rarely practicable as once the licence is suspended and the operator is no longer able to lawfully accept bookings, their licensed private hire drivers and customers move on to a different licensed operator. In reality the operator, whilst still holding an operator's licence (albeit a currently suspended one) no longer has a 'business' to operate, and by the time a suspension is completed the operator has effectively lost his business.

Therefore, as a period of suspension for an operator (however short) has the same impact as a revocation the option to revoke is likely to be taken in all cases.

### **10.3 New convictions**

Any person associated with the licence is required to inform the council within 14 days if they are convicted of any offence.

Action taken in respect of new convictions coming to attention will depend upon:

- the seriousness of the offence(s);
- whether conviction was incurred in the course of the role as an operator;
- any previous criminal history;

- any earlier warnings; and
- promptness of advising the council

When considering what action to take, the council may consider:

- revocation;
- suspension
- written warning;
- no further action

In assessing an operator's continued fitness to hold a licence the guidelines in respect of drivers within paragraph 4.2 will be referred to. However, the relevance of the conviction(s) to an operator's licence must be taken into consideration.

In serious cases resulting in imprisonment, the revocation of the licence could follow. However, where an offence is less serious; mitigating circumstances are introduced; or the offence appears out of character a written warning could be considered appropriate.

To summarise, incurring a criminal conviction (whilst licensed) would not automatically result in the revocation a licence, but the overriding consideration is the protection of the public and any decision will be based on whether the operator (i.e. the individuals which make up the organisation) can fulfil their roles and run the centre without posing any likely threat to the general safety of the public.

### **10.3.1 Touting**

Section 167 of the Criminal Justice and Public Order Act 1994 created the offence of 'touting', in a public place, to solicit persons to hire vehicles to carry them as passengers. The council takes a serious view of licensed operators who have been convicted for touting, and operators that use touts or encourage the practice of touting.

Should a licensed operator, or an individual associated with an operator's licence be convicted of touting then revocation of the licence will most likely follow.

The fitness of an operator to remain licensed may also come under scrutiny if any of their drivers or other employees are convicted or cautioned of touting and they were found to be acting under the operator's instructions at the time.

## **10.4 Business Repute**

### **10.4.1 Bankruptcy**

There is nothing in law to prevent a bankrupt from being self-employed and running their own business, therefore if the council receives notification that an individual holding a licence has been declared bankrupt there is no need to review their fitness to hold a licence.

If the council receives notification that the holder of a licence has been made the subject of a Bankruptcy Restriction Undertaking (BRU) or Bankruptcy Restriction Order (BRO), this indicates that the conduct of the individual has been dishonest or blameworthy in some way. In this instance the licensee must provide details of the BRU or BRO to allow consideration of his continued fitness to hold a licence.

A bankrupt person cannot be a director of a limited liability company. Therefore, in the event that the sole director of a licensed operator that is a limited liability company is made bankrupt, the company would be left without a director. In these circumstances, the fitness of the operator would need to be reviewed.

#### **10.4.2 Disqualification from running a limited company**

Any person associated with an operator's licence and who is subsequently disqualified from being a company director or from taking part in the management of a limited company will need to have his fitness to hold a licence re-assessed. This is regardless of whether the disqualification arose from a conviction or a County Court Judgement.

Factors to take into account when considering the information will be:

- the length of the disqualification;
- the reasons for/circumstances surrounding it; and
- the person's role within the business.

Upon receipt of this information their continued fitness to hold the licence will be reviewed, regardless of their role within the business and whether the licence is held by an individual, partnership, or a limited company.

#### **10.4.3 Liquidated and Dissolved Companies**

Having established with Companies House that a company holding an operator's licence has been liquidated or dissolved, a letter will be sent to the nominated representative of the company seeking the return of the licence as the company is no longer able to trade (in the event that a liquidated company is allowed to continue to trade the nominated representative must provide a letter from the Insolvency Practitioner confirming this).

If the licence of a dissolved company is not surrendered to the council the licence will be formally revoked.

If a new application is submitted by the former directors of the dissolved/liquidated company, it will be processed without delay. The fact that an individual has been associated with a company that has gone into liquidation or been dissolved will be taken into account when considering their new application although it will not necessarily preclude them from being granted a new operator's licence.

Factors that may be taken into consideration when considering the new application are whether the individuals concerned informed the council of the liquidation or dissolution within the required time and whether they returned the licence when asked to do so.

If an individual has failed to notify the council and/or return their licence, they will be sent an appropriately worded warning letter, but the new application will still be allowed to proceed. Where appropriate, the warning letter will inform the recipient that the licence of the dissolved/liquidated company may be revoked unless it is returned to the council.

If the directors of the dissolved company can demonstrate that they are seeking the restoration of the company to the register, any licensing action will be delayed pending the result of the restoration application. Nevertheless, the company cannot trade while seeking restoration and the licence must still be surrendered.

If the company is restored to the Companies House register, the licence may be returned to the operator after it has passed a licensing inspection.

### **10.5 Change of/acquisition of new operating centre**

If an operator wishes to change the address of an operating centre or add an operating centre to his licence he must submit a variation application form. Arrangements will be made for the new operating centre to be inspected before the licence is changed. A licence will not be varied to add reference to a new centre until that centre has been approved by an officer following an inspection. The operator must **not** begin trading from the new address until it has been included on his licence.

If an operator is found to be trading from an operating centre not specified in his licence he will be reported, told to cease trading from that premises and submit a variation application immediately. In most cases this will not preclude the variation application being considered favourably. However, if an operator is found trading from a nightclub or other late night venue (see section 10.15) that is not specified as an operating centre in his licence any subsequent application to vary the licence to include that centre will be refused.

If the council becomes aware that an operator has started trading from a centre not on his licence on more than one occasion, consideration will be given to revoking his licence.

If, having been told to cease trading, an operator continues to trade from the unlicensed premises and fails to submit a variation application within 14 days of the visit from an officer consideration will be given to revoking the licence.

### **10.6 Removal of an operating centre**

As all centres specified on an operator's licence will be subject to regular compliance inspections, it is vital that an operator keeps his licence up to date by arranging for any premises that he has stopped operating private hire vehicles from, to be removed from his licence. This is done by submitting a licence variation application together with the appropriate fee.

Upon receipt of the new varied licence the operator will be asked to return all copies of the previous version of the licence to the council.



If we establish that an operator has failed to notify us that he has ceased trading from an address specified on their licence (yet is still operating from other specified addresses) we will invite the operator to submit a variation application. If no variation is received within 14 days of the form being sent, the council may take action by way of an imposed variation to the licence.

If the operator has previously had a centre removed from his licence for failing to notify us that he is no longer operating from that premises, then consideration will be given to the revocation of the licence.

### **10.7 Someone other than the licensee trading at an operating centre**

If someone other than the entity specified on the operator's licence is operating from an operating centre, a check will be made as to whether the entity trading from there already holds a PHV Operator's Licence at another address.

If the operator does hold a licence at another address, but requires this address to be added to their licence they will be provided with a new variation application form.

If they do not hold a licence the operator will be reported for trading illegally.

The operator who is licensed for the premises will be referred to the council for the revocation of the licence on the grounds that the holder has moved from their operating centre address without notifying us.

### **10.8 Operators whose whereabouts are unknown**

#### **10.8.1 Small operators**

If it is established that a 'small' licensed operator has moved from the address specified on his licence and no other address can be found for them, the council driver and vehicle records will be checked to see whether it has already been notified of the change of address of that individual (most small operators are also licensed drivers and/or vehicle licensees and may have already informed us in one of those capacities). If there is a record of a change of address, the operator will be invited to complete a variation form.

If no other address can be established for them consideration will be given to revoking the licence on the grounds that the council cannot be sure that the operator is complying with the Act and associated regulations or is in a position to provide, a safe service to the public.

#### **10.8.2 Standard operators**

If it is established that a 'standard' licensed operator has moved from their operating centre address without notifying the council and no further details of his whereabouts are known, consideration will be given to revoking the licence.

## **10.9 Small operators becoming standard operators**

An applicant for a PHV Operator's licence may elect to be a 'small' or 'standard' operator. A 'small' operator can have no more than one private hire vehicle available to him for carrying out bookings accepted by him at all of the operating centres specified in his licence.

The holder of a 'small' operator's licence must apply for and obtain a 'standard' licence before he can legally have two or more private hire vehicles available to him for carrying out private hire bookings.

Once the 'standard' licence has been granted the regulations allow the council to issue a refund for a proportion of the fee paid for the grant of the 'small' operator licence. In accordance with the regulations, such a refund will only be remitted upon receipt of a written request from the operator, accompanied by the return of the 'small' operator licence.

If the holder of a 'small' operator's licence fails a licensing inspection on the grounds that he is operating more than two vehicles, he is in breach of a condition of his licence. At this point consideration will be given to revoking their licence.

However if the operator makes a fresh application within 7 days of the failure notice the new application will be allowed to proceed with a warning and the file will not need to be referred.

## **10.10 Change of entity**

PHV Operator licences are not transferable from one person (legal entity) to another. Any operator that wishes, for example, to change from being an individual to a limited company must submit a new application for a licence under this new entity. In this instance the operator must continue to trade as an individual until they have obtained an operator's licence as a limited company.

Should an operator change entity but fail to obtain a new licence and surrender the now redundant licence, consideration will be given to revoking the redundant licence on the grounds that the entity to which the licence was issued is no longer operating PHVs and the licence has not been surrendered. Operators found to be trading under an invalid licence may face prosecution and the revocation of that operator licence.

## **10.11 Death of a licensed operator**

If an operator who holds a licence as an individual dies during the life of the licence, the council can allow another person carrying on the business of the operator to be treated as if he were the operator for a period of up to 6 months.

This means that subject to submitting a copy of the deceased person's death certificate and a satisfactory Personal Declaration form, the new person may act as the operator for a maximum period of six months from the date stated on the council's direction. Shortly after the new person has been allowed to take over the licence, a compliance inspection will be undertaken to ensure that they are meeting the regulatory requirements. Should the new individual wish to carry on the business beyond the six month limit they will need to have applied for, and obtained, another operator's licence. Upon the expiry or withdrawal of the direction, both the direction and the licence specified on it, will need to be returned to the council within 7 days.

## **10.12 Temporarily cessation of trading**

The council will consider putting an operator's licence 'on hold' providing that the licence is returned to the council for safe-keeping, the holder notifies us of his intentions towards his licence in writing, and agrees to comply with the following conditions:

- a) confirm in writing that they undertake not to accept private hire bookings whilst the licence is on hold;
- b) confirm the address where their private hire operator records will be kept and made available for any inspection required; and
- c) confirm in writing that they will continue to comply with any conditions of the licence, or any other obligations imposed on them, that are still be applicable to them during the period that the licence is on hold (while the licence is 'on hold' the operator is required to comply with these conditions for the entire period they are not trading).

Only requests to put the whole licence on hold will be considered. It is not permissible to put individual operating centres on hold.

Allowing operators to put their licences on hold is primarily aimed at sole operators who are temporarily unable to trade e.g. sickness, prolonged absence from the UK. Licences will not be put on hold purely for commercial reasons e.g. trade is slack and the operator wishes to follow some other pursuit; or the operator is failing to meet regulatory licensing requirements. However, where there are exceptional circumstances e.g. an operator is forced to leave their premises, the licence may be put on hold until such time as the operator is able to resume trading. Such action will always be treated as temporary and regular checks will be made with the operator to establish when they intend to resume trading.

When the licensee is ready to resume trading he will ask for the return of his licence and once he has resumed trading, a compliance inspection will be undertaken at the earliest opportunity. If the licensee resumes trading without first informing the council and having his licence restored, he would be trading illegally and risks prosecution.

Should the licensee wish to resume trading from a different address to that specified on the licence, they must first submit a request in order to obtain a variation to the licence. As part of that process, a licensing inspection will need to be carried out at the new address, prior to the return of the licence.

In the event that the licence expires while it is on hold, the operator will need to submit a new application. The practice of putting a licence on hold does not extend the life of the licence.

## **10.13 Compliance visits**

The council has a duty to check that all licensed operators are complying with regulations and meeting the conditions and obligations of their licences. For the most part, this duty is discharged by way of compliance inspections carried out by council officers.

In the event that a compliance inspection fails to meet the required standard, the officer will issue a notice which identifies the reasons.

Any operator who fails to meet the required standard could face the revocation of his licence or removal of one or more operating centres from the licence.

If it is felt that the findings of the compliance inspection are so serious that a risk is posed to the safety of the travelling public then consideration will be given to revoking the licence. Examples of this may include an operator having failed to demonstrate that he is using licensed drivers and vehicles, and vehicles without valid hire and reward insurance policies.

In instances where more minor failings are identified a written warning would be more appropriate.

#### **10.14 Refund of licence fees**

In order to qualify for a refund an operator must meet all of the following conditions:

- a) he has ceased trading at all the centres on his licence;
- b) he has transferred some or all of his business to another operator; and
- c) the operator taking on the business must be licensed to trade from the premises before the date of the transfer.

The only other circumstances when a refund can be granted are when a small operator becomes a standard operator.

The size of any refund will be based on the number of full years remaining on the licence.

Refunds cannot be granted when an operator ceases trading due to ill health or simply chooses to retire during the life of his licence.

#### **10.15 Complaints**

##### **10.15.1 Complaints handling**

Responsibility for reviewing a licensee's fitness in the light of complaints and any consequent suspension or revocation action remains with the council.

Complaints about PHV operators that the council is able to pursue are those that relate to breaches of licensing regulations.

Complaints about the service provided by PHV drivers working for the operator must not be confused with complaints about the operator. In all such instances the complainant must be advised to report the complaint to the operator in the first instance.

##### **10.15.2 Reviewing an operator's complaints record**

The loss of a licence removes the operator's ability to work and can also put innocent drivers out of work, therefore revocation could be seen as disproportionate in respect

of a single lapse in meeting the licensing regulations. However, the council does monitor operators' behaviour and if an operator attracts a number of complaints then his fitness to remain licensed is reviewed.

At the conclusion of a complaint investigation, the licensee's complaints history will be examined. The following actions may result:

- a) **No further action** :There is no pattern or history of complaints.
- b) **Warning letter** : A pattern or history of complaints has been identified, but not serious enough to warrant revocation at this stage.
- c) **Revocation** : Where a pattern of complaints has been identified and where warning(s) have already been issued.

## **10.18 Use of the term 'Hackney Carriage' etc. in advertisements**

### **10.18.1 General**

A licensed PHV operator must not use the terms 'Hackney Carriage', 'Hackney Carriages', 'cab' or 'cabs' or any word so closely resembling any of those words as to be likely to be mistaken for it, in any advertisement that invites bookings at a particular address or using a particular telephone number registered to that address.

In the event that a licensed PHV operator uses one of these terms in its advertising, he will be written to advising that he is breaching the regulations. If the operator fails to heed the advice he will be warned that continued breach could result in his licence being revoked.

If the operator fails to heed the warning, consideration will be given to revoking the licence.

## Appendices

### Appendix A: The Rehabilitation of Offenders Act, 1974

1. The Rehabilitation of Offenders Act, 1974, enables criminal convictions to become 'spent', or forgotten, after a 'rehabilitation period'.

A rehabilitation period is a set length of time from the date of conviction. After this period, with certain exceptions, an ex-offender is not normally obliged to mention the conviction when applying for a Hackney Carriage driver's licence or when involved in criminal or civil proceedings.

2. However, Section 7(3) of the Act affords the opportunity to consider 'spent' convictions if the council is satisfied that an application cannot be properly considered unless account is taken of those convictions that could relate directly to an individual's fitness to hold a licence.
3. This power will not be used lightly and blanket inclusion of all 'spent' convictions in the consideration process is not appropriate. The decision to take into account any 'spent' convictions must be supported by a justifiable reason and that reason must be put forward to the council.
4. Should particular 'spent' convictions play a part in the consideration process the applicant will need to be advised of this, if the application be refused, in the letter of notification.
5. 'Spent' offences which would be appropriate to be considered by The council, or courts, in an application for a licence will include:
  - all types of sexual/indecency offences;
  - convictions for aggravated assault;
  - offences involving drugs (either supply or personal use);
  - offences of dishonesty which show a degree of sophistication of execution, premeditation or are carried out over a lengthy period;
  - a number of serious road traffic offences;
  - more than one drink/drive offence.

The protection and safety of the fare paying passenger and the public at large will be the overriding consideration in determining whether a 'spent' conviction(s) will be considered.

6. The length of the rehabilitation period depends on the penalty imposed - not the offence committed. For a custodial sentence, the length of time actually served is irrelevant: the rehabilitation period is determined by the original sentence given.

Sentences of more than 2½ years can never become 'spent'.

Other sentences become 'spent' after fixed periods from the date of conviction:

a sentence of imprisonment or preventative detention over 2½ years (and equivalents for young offenders)	convictions can never be spent
a sentence of imprisonment between 6 months and 2½ years	10 years*
a sentence of imprisonment of 6 months or less	7 years*
a fine or community service order	5 years*
a conditional discharge, bind over, probation, supervision or care order	1 year from date of conviction or the date when the order expires whichever is the longer
an attendance centre order	1 year after the order expires
an absolute discharge	6 months
a hospital order	5 years or 2 years after the order expires

Notes:

- i) All figures marked \* above, are halved for individuals convicted when under the age of 17 years.
- ii) The rehabilitation periods relate to the sentence imposed by the court, even if it is a suspended sentence, not the time spent in prison.
- iii) For the purpose of calculating the date a conviction becomes 'spent' the start is from the date of conviction.
- iv) If a further conviction is accrued before an earlier one is 'spent', the earlier conviction remains 'live' until the latest conviction is 'spent'.

### Rehabilitation Periods for Young Offenders

In addition to sentences quoted above, the following may apply:

- a sentence to a borstal (abolished in 1983) 7 years
- a sentence to a detention centre (abolished in 1988) 3 years

## Appendix B: Sex Offenders Register

### What is the Sex Offenders Register?

The Sex Offenders Register contains the details of anyone convicted, cautioned or released from prison for sexual offences against children or adults since September 1997, when it was set up.

The offences that result in a person being placed on the register are listed in Schedule 3 of the Sexual Offences Act 2003.

The register, which is run by the police, is not retro-active, so does not include anyone convicted before 1997. There are around 29,000 people on the register in the UK.

### How long do offenders remain on the register?

It depends on the sentence:

Sentence	Period on the Sex Offenders Register
Imprisonment for 30 months or more	Indefinite*
Admitted to hospital subject to a restriction order	Indefinite†
Imprisonment for more than 6 but less than 30 months	10 years* (or 5 years if under 18)
Imprisonment for 6 months or less	7 years* (or 3½ years if under 18)
Admitted to hospital without being subject to a restriction order	7 years* (or 3½ years if under 18)
Caution	2 years‡ (1 year if under 18)

\* from date of conviction

† from date of finding

‡ from date of Caution



## Appendix C: Evidence to support the right to work in the UK

### List A

#### Documents which establish ongoing entitlement to work in the UK

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office, Border and Immigration Agency or UK Border Agency to a national of a European Economic Area country or Switzerland.
4. A permanent residence card issued by the Home Office, Border and Immigration Agency or UK Border Agency to the family member of a national of a European Economic Area country or Switzerland.
5. A Biometric Immigration Document issued by the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
7. An Immigration Status Document issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

10. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

11. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

12. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

13. A letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

## List B

### Documents which indicate restricted entitlement to work in the UK

1. A passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question, provided that it does not require the issue of a work permit.

2. A Biometric Immigration Document issued by the UK Border Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.

3. A work permit or other approval to take employment issued by the Home Office, Border and Immigration Agency or UK Border Agency **when produced in combination with** either a passport or another travel document endorsed to show the

holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer confirming the same.

4. A certificate of application issued by the Home Office, Border and Immigration Agency or UK Border Agency to or for a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.

5. A residence card or document issued by the Home Office, Border and Immigration Agency or UK Border Agency to a family member of a national of a European Economic Area country or Switzerland.

6. An Application Registration Card issued by the Home Office, Border and Immigration Agency or UK Border Agency stating that the holder is permitted to take employment, **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.

7. An Immigration Status Document issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder with an endorsement indicating that the

person named in it can stay in the United Kingdom, and is allowed to do the type of work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

8. A letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

Source: [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

## **Appendix D: Filtering rules for criminal record check certificates**

### **For those 18 or over at the time of the offence:**

An adult conviction will be removed from a DBS criminal record certificate if:

- 11 years have elapsed since the date of conviction; **and**
- it is the person's only offence; **and**
- it did not result in a custodial sentence.

Even then, it will only be removed if it does not appear on the list of offences relevant to safeguarding. The list of offences that will never be filtered is available on the DBS website at [www.dbs.gov.uk](http://www.dbs.gov.uk).

If a person has more than one offence, then details of all their convictions will always be included.

An adult caution will be removed after 6 years have elapsed since the date of the caution – and if it does not appear on the list of offences relevant to safeguarding.

### **For those under 18 at the time of the offence:**

- The same rules apply as for adult convictions, except that the elapsed time period is 5½ years
- The same rules apply as for adult cautions, except that the elapsed time period is 2 years.

Source: [www.gov.uk/dbs](http://www.gov.uk/dbs)