



MANCHESTER CITY COUNCIL

Statement of Policy and Guidelines relating to the relevance of Convictions, Formal /Simple Cautions, Complaints and/or other matters

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Statement of Policy and Guidelines relating to the relevance of Convictions, Formal/Simple Cautions, Complaints and/or other matters

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This policy aims to provide guidance to all parties with an interest in public and private hire licensing thereby providing transparency and consistency in accordance with the principles of good enforcement and relevant Regulatory Compliance Codes. This policy will be of particular interest to:

- Applicants for drivers' licences
- Existing licensed drivers whose licences are being reviewed
- Licensing officers
- Members of the Licensing Committee/ Panel (or other relevant decision making body)
- Magistrates hearing appeals against Manchester City Council decisions

1. In this policy the word "individual" includes an existing licence holder, an applicant for a new licence, and an applicant for the renewal of an existing licence.
2. Licences for drivers of hackney carriages and private hire vehicles may only be granted where the Council is satisfied that the individual is a fit and proper person to hold such a licence.
3. The policy is intended to give guidance on one aspect of whether a person is or is not a fit and proper person namely the situation where a person has previous convictions, formal/simple cautions, has been the subject of restorative justice and/or other matters
4. The Council is concerned to ensure:
 - a. That a person is a fit and proper person.
 - b. That a person does not pose a threat to the public.
 - c. That the public are safeguarded from dishonest persons.
 - d. The safeguarding of children and young persons
5. The public do not normally attend Licensing hearings for hackney carriage or private hire vehicle applications. The Licensing and Appeals Committee however are required to take account of the public's human rights in reaching their decisions.
6. When submitting an application for a licence to drive a hackney carriage or private hire vehicle, applicants are required to declare all previous convictions they may have. Individuals are also required to declare all formal/simple cautions, any matters of restorative justice and all endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.
7. The information given will be treated in confidence and will only be taken into account in relation to the relevant application to assist the Council in determining whether the individual is a fit and proper person to hold a driver's licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976, or whether the Council should exercise any of its powers under section 61 of the Act (i.e. suspension, revocation or refusal to renew a licence).

8. Individuals should be aware that the Council is empowered by law to check with the Criminal Records Bureau for the existence and content of any criminal record held in their name. Information received from the Criminal Records Bureau will be kept in strict confidence while the licensing process takes its course and will be retained no longer than is necessary and in any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and in accordance with good practice after the application/renewal or review of licence is determined or any appeal against such determination is decided.
9. New Applicants - The disclosure of a criminal record or other information relating to criminal and/or other matters will not necessarily debar an applicant from obtaining a driver's licence. Whether or not an applicant will be granted a licence will depend upon whether or not they can satisfy the Council that they are a fit and proper person to hold such a licence.
10. Renewal/ Existing driver - The disclosure of a criminal record or other information on the renewal or during the currency of a licence relating to criminal and/ or other matter will not necessarily debar the renewal or continuance of a driver's licence. Whether a licence will be renewed or continued depends upon whether the Council can be satisfied that the driver remains a fit and proper person to hold such a licence.
11. The Council may fail to be satisfied that an individual is a fit and proper person to hold a driver's licence for any good reason. If adequate evidence that a person is a fit and proper person is not adduced or if there is good reason to question or doubt the evidence provided, then that could amount to good reason to refuse a licence.
12. In considering evidence of an individual's good character and fitness to hold a driver's licence, where previous convictions or other information relating to criminal and/or other matter(s) is disclosed, the Council will consider the nature of the offence, when it was committed, the date of conviction, and/or other matter(s), the individual's age when the offence was committed and any other factors which might be relevant. Where an individual has been convicted of a criminal offence, the Council cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].
13. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining new/renewal applications for drivers' licences, and when considering whether to take any action against an existing licence.
14. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or *other conduct, which may be relevant to an individual.
15. If an individual has a conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 12 when deciding whether any action should be taken. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines
16. The guidelines are not an attempt to define what is a "fit and proper person".
17. Any individual who is refused a driver's licence or has such a licence suspended or revoked on the ground that the Council is not satisfied he is a fit and proper person to hold such a licence has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS, FORMAL/SIMPLE CAUTIONS, AND /OR OTHER MATTERS.

For the purpose of these guidelines formal and simple cautions and endorsable fixed penalties will be treated as though they were convictions.

General Policy

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that drivers are fit and proper persons to hold licences. One aspect of that is the extent to which previous convictions, including but not limited to convictions for offences against children and young persons, dishonesty, sexual offences, traffic offences, violence and drugs indicate that a person is not a fit and proper person, and would not take advantage of passengers or abuse or assault them.
3. Restorative justice is increasingly used by the police as a less formal way of dealing with issues as an alternative to the criminal court system. The Council recognise that restorative justice should not be dealt with as though it were a conviction, but that it can be taken into consideration, when deciding if a person is a 'fit and proper' to hold a licence.
4. A person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to (a) remain free of conviction for an appropriate period and (b) show adequate evidence that he or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence). Simply remaining free of conviction will not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.
5. Amongst situations where it may be appropriate to depart from the general policy, for example, may be situations where the offence is an isolated one with mitigating circumstances or where a conviction defaults outside of the policy between the application and determination date. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. In any case which involves certain specified sexual offences, murder or manslaughter a licence will normally be refused.
6. The following examples afford a general guide on the action, which might be taken where convictions are disclosed.

a. Offence of Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. Passengers may include especially vulnerable people.

For these reasons a serious view is taken of any convictions involving dishonesty. In general an applicant with convictions for dishonesty, which are less than 3-5 years old, is unlikely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for an offence or similar offences or offences which replace the below offences and the conviction is less than 3 years prior to the date of application.

- i. Theft
- ii. Burglary
- iii. Fraud
- iv. Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- v. Handling or receiving stolen goods
- vi. Forgery (eg producing false insurance policy)
- vii. Conspiracy to defraud
- viii. Obtaining money or property by deception
- ix. Other deception

b. Violence

(i) Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons.

Where the commission of an offence involved loss of life a licence will normally be refused. In other cases a period of 5 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will generally be required before an application is likely to be considered favourably.

(ii) Offences against Other Persons

As hackney carriage and private hire vehicle drivers maintain close contact with the public, where the commission of an offence involved loss of life a licence will normally be refused. In other cases a period of 3 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will generally be required before an application is likely to be considered favourably.

In particular:

- i. An application will normally be refused where the applicant has a conviction for an offence or similar offence(s), or similar offence(s) which replace the below offences:
 - Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
- ii. An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or similar offence(s) which

replace the below offences and the conviction is less than 10 years prior to the date of application:

- Arson
- Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
- Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
- Grievous bodily harm with intent (s.18 Offences Against the Person Act)
- Grievous bodily harm with intent (s.20 Offences Against the Person Act)
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Violent disorder
- Resisting arrest

iii An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the conviction is less than 5 years prior to the date of application:

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)

iv An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or similar offence(s) which replace the below offences and the conviction is less than 3 years prior to the date of application:

- Common assault

- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Harassment – breach of restraining order – on conviction Protection from Harassment Act 1997 s.5(5)+s.5(6)
- Obstruction
- Possession of offensive weapon
- Criminal damage

c. Drugs

An application will normally be refused where the applicant has a conviction for an offence related to the supply of drugs and the conviction is less than 5-10 years prior to the date of application.

After 5 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

An application will normally be refused where the applicant has more than one conviction for offences related to the possession of drugs and the convictions are less than 5 years prior to the date of the application.

An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3 to 5 years will require careful consideration of the facts.

If any applicant was an addict then they will normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

d. Sexual and Indecency Offences

(i) Offences against Children (under 14 years) and Young Persons (aged 14 to 17 years)

Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons.

Where the commission of a sexual offence involves a child or young person an application for a licence will normally be refused.

(ii) Offences against persons other than children and young persons

As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, applicants with a conviction for rape, indecent assault, or other similar

offences or similar offences under the Sexual Offences Act 2003, will normally be refused a licence.

Applicants with a conviction relating to sexual offences such as soliciting, importuning, indecent exposure or other similar offences or similar offences under the Sexual Offences Act 2003, will normally be refused a licence until they can show a substantial period (usually between 5 and 10 years) free from any such conviction.

After 5 years, consideration will be given to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence. Amongst circumstances, which the Council may wish to consider, are circumstances, which if they occurred at the time of the consideration of the application would not be a criminal offence.

b. Drunkenness

(i) With a motor vehicle (No Disqualification)

A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink.

An application will normally be refused where the applicant has a conviction, which does not result in disqualification, for an offence within 2 years of the date of the application.

More than one conviction for this type of offence, within the last 5 years of the date of conviction is likely to merit refusal.

(ii) With a motor vehicle (Disqualification)

Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should normally elapse from the date of the restoration of the DVLA licence before an applicant is considered for a licence.

In addition, applicants will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

(iii) Not in a motor vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate.

More than one conviction for drunkenness could indicate a medical problem necessitating critical examination and refusal of a licence.

In addition, applicants will generally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if they were an alcoholic.

MOTORING CONVICTIONS

MAJOR TRAFFIC OFFENCES

An application will normally be refused where an applicant has a conviction for a major traffic offence where the conviction is less than 2 years prior to the date of the application.

An application from an applicant with more than one Major Traffic Offence, within the last 5 years will normally be refused.

If any conviction for a Major Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled “disqualification”.

For the purposes of these guidelines the following motoring offences are classed as ‘Major Traffic Offences’:

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving while disqualified by order of Court
BA30	Attempting to drive while disqualified by order of Court
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death through careless driving when unfit through drugs
CD60	Causing death through careless driving with alcohol level above the limit
CD70	Causing death through careless driving then failing to supply a specimen for alcohol analysis
CD71	Causing death through careless driving the failing to supply a specimen for drug analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR31	Driving or attempting to drive when unfit through drugs
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide specimen for analysis in circumstances other than driving / attempting to drive
DR61	Failure to provide specimen for drug analysis in circumstances other than driving / attempting to drive
DR70	Failing to provide specimen for breath test

DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
MS90	Failure to give information as to identity of driver, etc.
UT50	Aggravated taking of a vehicle

Aiding, Abetting, Counselling or Procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12).

Causing or Permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14).

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16).

Or similar offences or offences which replace the above offences.

INTERMEDIATE TRAFFIC OFFENCES

Any Intermediate Traffic Offence, which has attracted 4 or more penalty points will be treated as though it were a Major Traffic Offence.

One Conviction

Where an applicant has a single Intermediate Traffic Offence within the 12 months immediately preceding the date of application, they will normally be expected to show a period of at least 6 months free from conviction before an application is considered.

Two or more Convictions

Where an applicant has 2 or more Intermediate Traffic Offences in the 12 months immediately preceding the date of application, the applicant will normally be expected to show a period of at least 12 months free from conviction before an application is considered.

If any conviction for an Intermediate Traffic Offence results in a disqualification, applicants should refer to the section of these guidelines entitled "disqualification".

For the purposes of these guidelines the following motoring offences are classed as 'Intermediate Traffic Offences':

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyres
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
CU80	Breach of requirements as to control of the vehicle mobile phones etc
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration of other road users
SP10	Exceeding goods vehicle speed limit
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on a motorway
SP60	Exceeding speed limit offence

Aiding, Abetting, Counselling or Procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12).

Causing or Permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14).

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16).

Or similar offences or offences which replace the above offences.

MINOR TRAFFIC OFFENCES

Any Minor Traffic Offence which has attracted 4 or more penalty points will be treated as though it were an Intermediate Traffic Offence

Single conviction

Where an applicant has a single Minor Traffic Offence in the 12 months immediately preceding the date of application, the application will normally be granted with a letter of warning being placed on the file.

Two or more Convictions

Where an applicant has two or more Minor Traffic Offences in the 12 months immediately preceding the date of application an applicant will normally be expected to show a period of at least six months free from conviction before an application is considered.

For the purposes of these guidelines the following motoring offences are classed as 'Minor Traffic Offences':

MS10	Leaving a vehicle in a dangerous position
MS20	Unlawful pillion riding
MS30	Play street offences
MS70	Driving with uncorrected defective eyesight
MS80	Refusing to submit to an eyesight test
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic direction sign

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Or similar offences or offences which replace the above offences.

DISQUALIFICATION

Disqualification – Major Traffic Offence

An application will generally be refused unless a period of 3 years free from conviction has elapsed from the restoration of the DVLA licence, and 5 years where the disqualification relates to driving whilst unfit through drink or drugs.

Disqualification – Intermediate Traffic Offence

An application will generally be refused unless the applicant can show a period free from conviction has elapsed from the restoration of the DVLA licence which is twice the period of disqualification imposed by the court (i.e. 3 month disqualification = 6 month period free from conviction)

Disqualification – Minor Traffic Offence

An application will generally be refused unless the applicant can show a period free from conviction has elapsed from the restoration of the DVLA licence which is equal to the period of disqualification imposed by the court i.e. 3 month disqualification = 3 month period free from conviction.

TOTTING UP

TT99 Totting up – if the total of penalty points reaches 12 or more within 3 years the driver is liable to disqualification by the Court.

Totting up With Disqualification

An application will generally be refused unless the applicant can show a period free from conviction has elapsed from the restoration of the DVLA licence, which is equal to the period of disqualification imposed by the court.

Where any of the offences, which contribute to a totting up disqualification are a Major Traffic Offence the Council will consider the application under “Disqualification - major traffic offence”

Totting up Without Disqualification

An applicant who has accrued sufficient points for disqualification, under totting up, to be considered by the Court, may argue exceptional hardship and not receive a disqualification from them.

In these circumstances the Council will consider the application as a disqualification for the most serious of the offences, which contributed to the totting up (for example where the offences contributing to the totting up are SP30, SP80 and IN10 the Council would consider IN10 under ‘Disqualification – Major Traffic Offence’).

There may be occasions where an applicant has accrued sufficient points under totting up for the Court to consider disqualification, but successfully argues that exceptional hardship should apply and the Court has not, therefore, imposed a disqualification. In these circumstances the Council expects the individual to supply full details of each of the matters, which led to the totting up. The Council will take those matters into account in accordance with this policy when deciding whether to grant or refuse an application or whether to take action against an existing licence. Should the individual not supply full

details of each of those matters then the Council will take the failure to supply such information into account when deciding whether to take any such action."

SPENT CONVICTIONS

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

FORMAL/SIMPLE CAUTIONS AND ENDORSABLE FIXED PENALTIES

For the purpose of these guidelines formal/simple cautions and endorsable fixed penalties shall be treated as though they were convictions.

MULTIPLE CONVICTIONS FROM A SINGLE INCIDENT

Where an applicant has multiple convictions arising from a single incident, the convictions will generally be treated as one conviction for the purposes of these guidelines. In these circumstances the period for which the applicant would normally be expected to show free from conviction will be the longest applicable period calculated by reference to each offence.

OTHER OFFENCES

Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws and Section 167 Criminal Justice and Public Order Act 1994

One of the main purposes of the licensing regime set out in the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 ("the Acts") and Hackney Carriage Byelaws, is to ensure the protection of the public. For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire and/or touting) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence.

In particular, an applicant will normally be refused a licence if (s)he has been convicted of an offence under the Acts at any time during the 2 years preceding the application or has more than one conviction within the last 5 years preceding the date of the application.

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These guidelines to convictions supersede all others and take effect from: 8 December 2012