

# Policy Statement

## Guidelines to Convictions

### Including Statement of Policy about Relevant Convictions, Cautions, Complaints and other relevant matters

Date of Issue:

**NOTE: It is the view of Rossendale Borough Council that this Statement of Policy and Guidelines to Convictions are compatible with the rights and freedoms under the European Convention on Human Rights.**

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## Introduction

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/ Sub-Committee (or other relevant decision making body)
- Magistrates hearing appeals against Rossendale Borough Council decisions

This policy deals with individual's including existing licence holders, applicants for a new driver licence, and an applicant for the renewal of an existing licence.

## Statement of Policy about relevant convictions, cautions, complaints and other relevant matters

- 1.0 Licences for drivers of hackney carriages and private hire vehicles may only be granted where the Council is satisfied that the applicant is a fit and proper person to hold such a licence.
- 1.1 This policy is intended to give guidance on one aspect of whether a person is or is not a "fit and proper" person, specifically in the situation where a person has previous convictions, cautions and / or fixed penalties.
- 1.2 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.
- 1.3 However, the Licensing and Enforcement Unit, Licensing Committee and any appellate court need to take account of the public's human rights when reaching decisions.
- 1.4 When an application for a licence to drive a hackney carriage or private hire vehicle is submitted, applicants are required to declare all previous convictions they may have, this includes all formal cautions and all fixed penalties they have received.
- 1.5 Furthermore, when an application for a licence to drive a hackney carriage or private hire vehicle is submitted, applicants are required to provide details of all

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criminal matters of which they are currently the subject of criminal investigation or prosecution.

- 2.0 The information provided is treated in confidence and will only be taken into account in relation to the relevant application in order to assist the Council in determining whether the applicant 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.
- 2.1 Applicants should be aware that the Council is empowered by law to check with the Disclosure and Barring Service for the existence and content of any criminal record held in their name.
- 2.2 Information received from the Disclosure and Barring Service will be kept in strict confidence and will be retained no longer than is necessary. In any event will be destroyed in accordance with the requirements of the Data Protection Act 1998 and good practice after the application is determined or any appeal against such determination is decided.
- 2.3 The admission of a criminal record or information relating to criminal matters will not automatically exclude an applicant from obtaining a driver's licence. This will be determined upon whether or not the Council can be satisfied that the applicant is a fit and proper person to hold such a licence. The Council may not be satisfied that an applicant is a fit and proper person to hold a driver's licence for any good reason.
- 2.4 If sufficient evidence that a person is a fit and proper person is not received or if there is good reason to question or doubt the evidence provided, then that could amount to the refusal of a licence.
- 2.5 In considering evidence of an applicant's good character and fitness to hold a driver's licence, where previous convictions or other information relating to criminal matters is disclosed, the Council will consider:
- a) The nature of the offence
  - b) When the offence was committed
  - c) The date of conviction
  - d) The age of the applicant
  - e) Any other factors which might be relevant.
- 2.6 Where an applicant has been convicted of a criminal offence, the Council cannot review the merits of the conviction [*Nottingham City Council v. Mohammed Farooq (1998)*].
- 3.0 The Council has adopted the following guidelines relating to the relevance of convictions to which it refers in determining applications for drivers' licences. The

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guidelines do not deal with every type of offence. However, 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.

- 3.1 The guidelines are not an attempt to define what a “fit and proper person” is. Any applicant refused a driver’s licence on the grounds 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.
- 3.2 The guidelines will also be taken into account by the Council when dealing with applications for the renewal of existing driver’s licences and when considering whether to suspend or revoke an existing driver’s licence.

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## **GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS, CAUTIONS, COMPLAINTS AND OTHER RELEVANT MATTERS**

### **General Policy:**

- 1) Each case will be decided on its own merits.
- 2) The Council has a duty to ensure so far as is possible that drivers are fit and proper persons to hold licences.
- 3) One aspect of that is the extent to which previous convictions indicate that a person is not a fit and proper person, including but not limited to the following:
  - a) convictions for dishonesty
  - b) sexual offences
  - c) traffic offences
  - d) violence
  - e) drugs
  - f) offences against children and young persons
- 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:
  - i) Remain free of conviction for an appropriate period and
  - ii) Show adequate evidence that he or she is a fit and proper person to hold a licence

Simply remaining free of conviction will not generally be regarded as sufficient 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 may be situations where the offence is isolated and there are mitigating circumstances. 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 a sexual offence, 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:-

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**Offence of: - Dishonesty:**

Drivers of a hackney carriage and / or a private hire vehicle are expected to be persons of trust. Licences awarded by Rossendale Borough Council are to those considered under the Council's guidelines, to be a fit and proper person. This is because it is the Council's view that it is relatively 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 the Council takes a serious view of any convictions involving dishonesty. In general if an application is received with a conviction which is less than 3-5 years of the conviction date, it is unlikely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for an offence for:

- Burglary
- Benefit fraud (including offences under ss.111A and 112 of the Social Security Administration Act 1992)
- Bribery
- Conspiracy to defraud
- Forgery ( e.g. producing false insurance policy)
- Fraud
- Handling or receiving stolen goods
- Obtaining money or property by deception
- Theft
- Offence of possession of goods with false trade mark for sale or hire-Trade Marks Act 1994

In addition:

- Other deception
- Similar offences
- Offences which replace the above offences

and the conviction is less than 3-years prior to the date of the application. Between 3 and 5 years after conviction, regard will be had to the circumstances of the offence and any evidence demonstrating that the person is now a fit and proper person to hold a licence.

**Offence of: - Violence**

Members of the public and in particular, the elderly, infirm and children or vulnerable adults entrust their personal safety to private hire and hackney carriage drivers whenever they take a journey. Passengers often travel alone and are vulnerable to physical attack etc.

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Users of private hire and hackney carriage vehicles have a right to expect that drivers are not individuals with a predisposition towards or a propensity for violent behaviour at any level.

Convictions for violence are amongst the most serious of all criminal offences.

### **Offences of violence against children and young people**

Drivers of private hire and hackney carriage vehicles are often entrusted with the transportation of children and young persons who are particularly vulnerable whilst in the care of the driver.

An extremely serious view will be taken where an applicant has been convicted of any offence of violence involving a child (under 14 years of age) or a young person (aged 14 to 17 years) and, in order to afford an appropriate degree of protection to children and young people, an applicant will be required to provide substantial evidence of rehabilitation before the Council will be satisfied that the applicant passes the 'fit and proper' test.

### **Offences against adults**

Private hire and hackney carriage vehicle drivers maintain close contact with the people from all parts of the community and the Council takes the view that law abiding citizens should not be exposed to a risk of violence by placing them in a vehicle driven by a person with a history of criminal violence. The elderly and infirm, the vulnerable, lone females and people who are the worse for wear through drink are all at particular risk from a driver with a tendency to resort to violence.

### **Offence types**

Convictions falling into the most serious group offences of violence involving the loss of life is likely to result in **outright refusal** of an application; e.g.

- murder
- manslaughter
- culpable homicide
- Or similar offences
- Or offences which replace the above offences

Applicants with one or more convictions for very serious violence should expect the application to be refused until a period of at least **ten years** has elapsed from the date of conviction or their release from prison (whichever is most recent); e.g.

- 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) (v) Which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)

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- Grievous bodily harm with intent (s.18 Offences Against the Person Act 1861)
- Grievous bodily harm with intent (s.20 Offences Against the Person Act 1861)
- Robbery
- Possession of firearm
- Riot
- Kidnap
- Assault Police
- Common assault which is racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Violent disorder
- Resisting arrest
- Or similar offences
- Or offences which replace the above offences

Applicants with one or more convictions for serious violence should expect the application to be refused until a period of at least **five years** has elapsed from the date of conviction or their release from prison (whichever is most recent); e.g.

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Fear of provocation of violence which is racially-aggravated (s.4 Public Order Act 1986) or (s.31(1)(a) Crime and Disorder Act 1998)
- Intentional harassment, alarm or distress which is racially-aggravated (s.4A Public Order Act 1986 offence) or (s.31(1)(b) Crime and Disorder Act 1998)
- Harassment which is racially-aggravated (s.2 Protection from Harassment Act 1997) or (s.32(1)(a) Crime and Disorder Act 1998)
- Putting people in fear of violence which is racially-aggravated (s.4 Protection from Harassment Act 1997) or (s.32(1)(b) Crime and Disorder Act 1998)
- Harassment, alarm or distress which is racially-aggravated (s.5 Public Order Act 1986) (s.31(1)(c) Crime and Disorder Act 1998)
- Or similar offences
- Or offences which replace the above offences

Applicants with one or more convictions for other offences of violence should expect the application to be refused until a period of at least **three years** has elapsed from the date of conviction or their release from prison (whichever is most recent); e.g.

- Common assault
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
- Affray
- Battery
- Harassment, alarm or distress (S5 Public Order Act 1986 offence)
- Fear of provocation of violence (s.4 Public Order Act 1986 offence)
- Intentional harassment, alarm or distress (s4A Public Order Act 1986 offence)
- Obstruction
- Possession of offensive weapon

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- Criminal damage
- Or similar offences
- Or offences which replace the above offences

**Offence of: - 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. Between 5 and 10 years, regard will be had 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 conviction is less than 5 years prior to the date of the application.

An application from a person 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.

**Offence of: - 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 to be refused.

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

Hackney carriage and private hire vehicle drivers often carry unaccompanied passengers; therefore applicants will normally be refused a licence if they have a conviction for:

- Indecent assault
- Rape
- Other similar offences
- Offences under the Sexual Offences Act 2003 when the provisions of that Act come into force

Applicants will normally be refused a licence if they have a conviction relating to sexual offences such as:

- Importuning
- Indecent exposure
- Soliciting

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- Other similar offences or offences under the Sexual Offences Act 2003 when the provisions of that Act come into force

until they can show a substantial period (normally between 5 and 10 years) free from any such conviction. After 5 years, regard will be had to the circumstances of the offence and any evidence demonstrating that such a 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.

## **Motoring Convictions**

### **1) Disqualification:**

Where an applicant has been disqualified from driving because of a major traffic offence, the applicant will generally be refused a drivers licence for a hackney carriage or private hire vehicle unless a period of 3 years free from conviction has passed since the reinstatement of the DVLA licence, and 5 years where the disqualification relates to drink driving.

Where several minor traffic offences have resulted in the applicant being disqualified from driving for a period of time, this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 3 years free from conviction must have elapsed from the restoration of the DVLA licence.

In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver, Rossendale Borough Council is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the Court made its finding of exceptional circumstances justifying the non-qualification.

### **2) Major Traffic Offences**

An application will normally be refused where the applicant has a conviction for an offence within 2 years of the date of the application from the date of conviction. More than one conviction for this type of offence within the last 5 years from the date of conviction is likely to merit refusal. A list of offences to which this paragraph applies is attached as **Appendix I**.

### **3) Minor Traffic Offences**

Isolated convictions for minor traffic offences should not prevent a person from obtaining a licence. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature, the applicant will normally be expected to show a period free of conviction of at least 6 months from the date of conviction. A list of offences to which this paragraph applies is attached as **Appendix II**.

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#### **4) Hybrid Traffic Offences**

Offences of the type listed in **Appendix II** will be treated as major traffic offences if the Court awarded 4 or more penalty points for the offence and as minor traffic offences if the Court awarded 3 or less penalty points for the offence.

#### **Offences under the Town Police Clauses Acts and Part II of the Local Government (Miscellaneous Provisions) Act 1976 and Hackney Carriage Byelaws**

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) 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 from the date of conviction or has more than one conviction within the last 5 years preceding the date of the application from the date of conviction.

#### **Drunkenness**

##### ***i. With a motor vehicle***

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 for an offence within 2 years of the date of the application. More than one conviction for this type of offence within the last five years from the date of conviction is likely to merit refusal. Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should elapse after 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 (s)he was an alcoholic.

##### ***ii. 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. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination and refusal of 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 (s)he was an alcoholic.

#### **Spent Convictions**

Rossendale Borough 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.

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### ***Cautions, Reprimands and Fixed Penalties***

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

### **Other relevant offences**

The Council takes a serious view of any convictions involving the law and practice concerning bail conditions. In general if an application is received with a conviction which is less than 3-5 years of the conviction date, it is unlikely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for offences committed under the:

- Bail Act 1976;
- Bail (Amendment) Act 1993;
- Magistrates' Court Act 1980;
- Magistrates' Court Rules 1981;
- Criminal Justice Act 2003
- Powers of Criminal Courts (sentencing) Act 2000

or similar offences or offences which replace the above offences and the conviction(s) are less than 3 years prior to the date of application. Between 3 and 5 years, regard will be had to the circumstances of the offence and any evidence demonstrating that such a person is now a fit and proper person to hold a licence.

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## Appendix I

### 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
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 for other road Users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for
CD80	Causing death by careless, or inconsiderate, driving
CD90	Causing death by driving: unlicensed, disqualified or uninsured drivers
DD40:	Dangerous driving
DD60	Manslaughter or culpable homicide while driving a vehicle
DD80	Causing death by dangerous driving
DD90	Furious 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
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 a specimen for analysis in circumstances other than driving or 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

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MS50:	Motor racing on the highway
MS60:	Offences not covered by other codes (including offences relating to breach of requirements as to control of vehicle)
TT99	To signify a disqualification under 'totting-up' procedure. If the total of penalty points reaches 12 or more within three years, the driver is liable to be disqualified
UT50:	Aggravated taking of a vehicle
<b><i>Aiding, abetting, counselling or procuring</i></b>	
Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)	
<b><i>Causing or permitting</i></b>	
Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)	
<b><i>Inciting</i></b>	
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	

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## Appendix II

### MINOR 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:	Using a mobile phone while driving a motor vehicle
MS10:	Leaving a vehicle in a dangerous position
MS20:	Unlawful pillion riding
MS30:	Play street offences
MS40:	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70:	Driving with uncorrected defective eyesight
MS80:	Refusing to submit to an eyesight test
MS90:	Failure to give information as to identity of driver, etc.
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
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
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
<b><i>Aiding, abetting, counselling or procuring</i></b>	
Offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)	

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<b><i>Causing or permitting</i></b>
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