

REPORT TO LICENSING COMMITTEE

DATE	10th November 2021
PORTFOLIO	Community & Environment
REPORT AUTHOR	James Astin
TEL NO	01143 999 055
EMAIL	jastin@burnley.gov.uk

Amendment to Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information.**PURPOSE**

1. To consider amending the Council's existing 'Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information' (The Convictions Policy) in order to deliver compliance with the Department for Transport (DfT) 'Statutory Taxi and Private Hire Vehicle Standards' - Published in July 2020.

RECOMMENDATION

2. That Licensing Committee approves the amended 'Taxi Licensing - Policy Guidelines to Fitness and Propriety Including Convictions and Other Relevant Information' set out at Appendix B, with immediate effect.

That the Licensing Committee delegates to the Head of Legal & Democracy, in consultation with the Chair of Licensing, the power to make necessary changes to the Taxi Licensing - Policy Guidelines in response to any national review of road traffic legislation which results in an offence being awarded more or fewer penalty points, by re-categorising such offence as major/ minor or hybrid within the Policy guidelines.

REASONS FOR RECOMMENDATION

- 3 To ensure that the Council's Convictions Policy reflects, as a minimum standard, the national statutory standard.

SUMMARY OF KEY POINTS

- 4 Overall, implementation of the DfT recommendations has been a significant piece of work requiring a substantial period of time to scrutinise all the information contained within the body of the DfT guidance document.

Following previous reports on the changes to Council policy and licence conditions that have

been necessary to reflect the statutory standards that were approved at a previous Licensing Committee meeting on 23rd June 2021, this report considers those parts of the national standards relating to convictions. This was outlined to members at that meeting in Section 8 of the Committee Report under the heading '**NEXT STEPS**' that compliance with the DfT recommendations required a review of the existing 'Conviction Policy'.

In doing so, this completes the Council's implementation of the national standards.

The main focus of the DfT recommendations centres on Safeguarding and the risk of abuse and exploitation of children and vulnerable adults. Whilst these occurrences are rare, links between the trade and sexual abuse, human trafficking, modern day slavery and exploitation have been established. The DfT recognises Taxi workers are in a position of trust when dealing with the public. Appropriate and robust measures are therefore necessary to maintain public safety and public confidence in the valuable services the trade offers across the community.

Although the existing policy is robust in comparison to the framework of the DfT guidance, the recommended amendments will serve as a benchmark and provide strength to our existing Conviction Policy.

The Council's convictions policy guides Members and officers to be consistent when considering whether or not an applicant, or an existing licence holder, is a fit and proper person to hold a licence, by setting tariffs for particular offences and circumstances. The Council's policy has been carefully considered against the national standard, and whilst they are generally either in line, or less strict than the Council's policy, there are a small number of areas when the national standard sets a higher tariff, or identifies offences not included in current policy. Where the Council's policy specifies offences not detailed in the national standard they have been retained, in order to provide improved guidance on those matters already determined by local decision making.

The convictions policy provides guidance to any person with an interest in public and private hire licensing including:

- Applicants for new driver and operator licenses
- Existing licensed holders whose licences are being reviewed or renewed
- Licensing officers
- Lancashire Constabulary
- Members of the licensing committee (or other relevant decision making body)
- Magistrates hearing appeals against local authority decisions

The amended version of the policy reflects the extended scope of the national standard, and extends the convictions policy to include:

- Applicants for Vehicle licences
- Existing Vehicle licence holders whose licences are being renewed

- 5 The DfT guidance document lists offence categories in the ANNEX – Assessment Of Previous Convictions (Page 35).

For ease of reference, a copy of the ANNEX is provided at Appendix A.

A copy of the proposed 'Conviction Policy' is available at Appendix B, with relevant changes highlighted. To assist the following key has been used:

YELLOW – Signifies new text that has been added or text that has been amended including relevant offences and the tariff applied to comply with the DfT recommendations. The highlights are to assist members navigating around the conviction policy and will be removed once the recommendations have been agreed.

GREEN – Signifies where exemptions apply to specific licence applicants.

BLUE - Signifies the correct section of the conviction policy the reader should refer to in respect of the tariff applied to this offence i.e. causing death by dangerous or careless driving and aggravated vehicle taking.

In summary, attention is drawn to the following points:

- i. Applicants for **all** hackney carriage and private hire licences should be subject to a 'fit & proper' test by application of the 'Conviction Policy' unless exemptions apply (see paragraph 6 below).
 - ii. Where any national review of Traffic Legislation leads to an offence being awarded more, or less penalty points, then the offence will be re-categorised accordingly within the body of the 'Conviction Policy' without the need for future consideration and agreement by Licensing Committee.
 - iii. The offence of Using A Mobile Device While Driving (Offence Code CU80) is singled out for a more onerous tariff of 5 years where a licence would not normally be granted. The rationale behind this is not explained in the guidance document. It can possibly be assumed to be due to the regularity of drivers having more cause to use in-car radios and hand held devices for communication purposes whilst driving.
- 6 It is recognised that a small minority of operators and vehicle licence holders/vehicle proprietors are not licenced as drivers. In these circumstances, the DfT guidance document recommends an exemption from the traffic offences in Category E. - Motoring Convictions. This is due to the licence applicant either not driving hackney carriage or private hire vehicles themselves or not directly involved with members of the public requiring the services of a driver of such a vehicle.

However, this exemption does not extend to motoring convictions which have caused death by dangerous or careless driving which are so serious that consideration has been given to their inclusion in offences under Offence Category B. - Violence (Other Than Sexual & Indecency Offences).

This exemption corresponds with the DfT ANNEX – Assessment Of Previous Convictions which states:

'Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed'.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

7 None

POLICY IMPLICATIONS

8 Determination of hackney carriage and private hire licences is the responsibility of the Licensing Committee

DETAILS OF CONSULTATION

9 Chair of Licensing Committee – Cllr Jeff Sumner
Vice Chair of Licensing Committee – Cllr Arif Khan
Executive Member For Community & Environmental Services – Cllr Bea Foster
Taxi Task Group Trade Representatives

BACKGROUND PAPERS

10 [Statutory & Best Practice Guidance for taxi and PHV licensing authorities \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

FURTHER INFORMATION

PLEASE CONTACT:

James Astin

ALSO:

Karen Davies

Annex – Assessment of Previous Convictions

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is 'fit and proper' to hold a taxi or private hire vehicle licence. The following recommendations to licensing authorities on previous convictions reflect this. Authorities must consider each case on its own merits, and applicants/licensees are entitled to a fair and impartial consideration of their application. Where a period is given below, it should be taken to be a minimum in considering whether a licence should be granted or renewed in most cases. The Department's view is that this places passenger safety as the priority while enabling past offenders to sufficiently evidence that they have been successfully rehabilitated so that they might obtain or retain a licence.

Crimes resulting in death

Where an applicant or licensee has been convicted of a crime which resulted in the death of another person or was intended to cause the death or serious injury of another person they will not be licensed.

Exploitation

Where an applicant or licensee has been convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children, they will not be licensed. This includes slavery, child sexual abuse, exploitation, grooming, psychological, emotional or financial abuse, but this is not an exhaustive list.

Offences involving violence against the person

Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Possession of a weapon

Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

Sexual offences

Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted. In addition to the above, the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register or on any barred list.

Dishonesty

Where an applicant has a conviction for any offence where dishonesty is an element of the offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

Drugs

Where an applicant has any conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.

Where an applicant has a conviction for possession of drugs, or related to the possession of drugs, a licence will not be granted until at least five years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant may also have to undergo drugs testing for a period at their own expense to demonstrate that they are not using controlled drugs.

Discrimination

Where an applicant has a conviction involving or connected with discrimination in any form, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.

Motoring convictions

Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally. Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence.

Drink driving/driving under the influence of drugs

Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs.

Using a hand-held device whilst driving

Where an applicant has a conviction for using a held-hand mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later.



TAXI LICENSING – POLICY GUIDELINES TO FITNESS AND PROPRIETY INCLUDING CONVICTIONS AND OTHER RELEVANT INFORMATION

Key to highlighting:

YELLOW – Signifies new text that has been added or text that has been amended including relevant offences and the tariff applied to comply with the DFT recommendations. The highlights are to assist members navigating around the conviction policy and will be removed once the recommendations have been agreed.

GREEN – Signifies where exemptions apply to specific licence applicants.

BLUE - Signifies the correct section of the conviction policy the reader should refer to in respect of the tariff applied to this offence ie causing death by dangerous or careless driving & aggravated vehicle taking.

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 document aims to provide guidance to any person with an interest in public and private hire licensing. In particular, but not exclusively:

- Applicants for drivers' Licences
- Existing licensed drivers whose Licences are being reviewed
- Applicants for Operator's Licences
- Existing licenced Operator's whose licences are being renewed
- Applicants for Vehicle licences
- Existing Vehicle licence holders whose licences are being renewed
- Licensing Officers
- Members of the Licensing Committee
- Magistrates hearing appeals against local authority decisions
- Lancashire Constabulary

Where Officers have delegated powers to grant or refuse Licences, they will utilise these guidelines when making a decision to grant a Licence. In other cases Applications for Licences will be referred to the Licensing Committee.

Whilst Officers and the Committee will have regard to the guidelines contained in the policy, each case will be considered on its Individual merits and, where the circumstances demand, the Committee/Officer may depart from the guidelines.

Background

1. In this Policy the following words have the following meanings:
 - a. "Applicant" means a person applying for a Licence, an existing Licence Holder applying for renewal of a Licence, or an existing Licence Holder whose Licence is subject to a decision by the Council to revoke, suspend or take no further action

- b. "Application" means an Application for a Licence, an Application for renewal of a Licence, or a decision by the Council to revoke, suspend or take no further action in respect of an existing Licence
- c. "Conviction" means a conviction, caution or formal warning and endorsable fixed penalty
- d. "Council" means Burnley Borough Council
- e. "Driver" means a person applying for a Licence or a Licence Holder
- f. "Individual" includes an existing Licence Holder, an applicant for a new Licence, and an Applicant for the renewal of an existing Licence
- g. "Issue" includes any complaints made to the Council, Police, Operators or any other agency, breaches of licensing conditions and intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal). E.g. incidents which have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities)
- h. "Licence" means a Licence to drive a hackney carriage or a private hire vehicle.
- i. "Licence Holder" means the holder of a current valid Licence granted by the Council

2. Where this Policy refers to a period free of Conviction:

- (A) Subject to paragraph (B), that period is to be calculated as commencing on the later of –
 - a) the date of the Conviction (or where the Conviction is appealed, the date on which the appeal is finally disposed of or withdrawn or fails for want of prosecution);
 - b) in the case of a Licence Holder, the date the Conviction was reported to the Council;
 - c) in the case of a Licence Holder, the date the Council became aware of the conviction from any other source;
 - d) the date any custodial sentence was completed; or
 - e) the end date of any period of disqualification from driving

and ending on the date of determination of the Application.

- (B) In the case of:
 - i) a refusal to renew a licence; or
 - ii) a suspension or revocation of a Licence other than a suspension or revocation which has immediate effect by virtue of section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976

where the decision to refuse to renew, suspend or revoke is appealed, the period free of Conviction as calculated in accordance with paragraph (A) shall be extended by the period of time equal to the length of period of time commencing on the date of the decision in respect of which such appeal proceedings are commenced and ending on the date on which that appeal is disposed of or withdrawn or fails for want of prosecution, and the end date of the period free of Conviction shall be calculated accordingly.

3. Licences for drivers of hackney carriages or 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.
4. The document 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 and cautions.
5. The Council is concerned to ensure:
 - a. That a person is a fit and proper person.
 - b. The public are not exposed to persons with a history of dishonesty, indecency or violence.
 - c. The safeguarding of children and young persons and vulnerable adults.
6. The public are not normally permitted to attend Committee hearings for private hire or hackney carriage drivers Applications however, in determining whether to grant a Licence the committee or officers will take into account the human rights of the wider public and balance these against the human rights of the Applicant.
7. When submitting an Application, Individuals 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 fixed penalties 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. It is an offence for any person knowingly or recklessly making a false declaration or to omit any material particular in giving information required by the Application for a Licence. Where an Applicant has made a false statement or a false declaration on their Application for the grant or renewal of a Licence, the Licence will normally be refused. Further applications from the same person will not normally be granted within 6 months of the date of the initial refusal.
8. 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 Applicant is a fit and proper person to hold a 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).
9. Applicants for a Licence to drive a hackney carriage or private hire vehicle should be aware that the Council is empowered by law to check with the Disclosure Barring Service for the existence and content of any criminal record and other intelligence held in their name. Officers from the licensing section will where appropriate contact other agencies for any other information which they may hold for instance, the Council's Housing Service, Lancashire County Council Children's Services and Lancashire Constabulary. Information received from the Disclosure Barring Service or other agency 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 is determined or any appeal against such determination is decided.

10. The disclosure of a criminal Convictions or other relevant information relating to an Individual's conduct will not necessarily debar an Individual from being granted, retaining or renewing a Licence. It will depend on whether or not the Individual can satisfy the Council that they are 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 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 Licence, where previous Convictions or other information relating to criminal matters/character is disclosed, the Council will consider the nature of the offence/Issue and penalty. When it was committed/took place, the date of Conviction/Issue and the length of time which has elapsed, the Individuals age when the offence was committed/Issue took place whether or not it is part of a pattern of criminal behaviour, the intent, the harm which was, or could have been caused 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 Applications for Licences and when considering whether to take any action against an existing Licence Holder, and references to the grant of a licence in these guidelines shall be construed accordingly.
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. 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.
15. 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 a "fit and proper person" is.
17. Any Individual who is refused a Licence or has such a Licence suspended or revoked has a right of appeal to the Magistrates' Court within 21 days of the notice of refusal.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION

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. The Council has a duty to take into account any complaints made to the Council, Police, licensed Operators or any other agency, breaches of licensing conditions and any intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal, e.g.
 - a) incidents that have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities.
 - b) Incidents that have resulted in the suspension or revocation of a licence which has been issued by another Council.
4. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
5. An Individual 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). A person with a Conviction for a single serious offence or a number of separate offences is not barred from applying for a private hire or hackney carriage driver Licence, but would normally be expected to remain free from Conviction for an appropriate period (which will depend on the nature of the offence.)
 - c. 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.
6. Some discretion may be appropriate if the offence is an isolated one with 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 certain specified sexual offences, murder or manslaughter a Licence will normally be refused.)

7. In relation to the period that a driver is expected to remain free of Conviction as detailed in paragraphs A-D and F, if an Applicant has more than 1 Conviction for any of the offences listed, the period free of Conviction will increase by 1 year per additional offence.

8. Where the Licensing Committee convene to consider an Application they may do so by:

a. Hearing with notice – Notice of the time and date when a committee will be convened will be given to the Applicant ahead of the date listed in order to allow the person to seek independent legal advice and to attend and be represented at the hearing. The procedure to be followed will be provided to the Applicant with the notice.

b. Ex-parte hearing – which will take place in accordance with the Ex-parte hearings policy. In exceptional circumstances relevant information will be assessed to balance a person's right to a fair hearing against whether or not it is in the public interest to hold the hearing ex-parte.

9. Where new offences are created or existing offences are consolidated or re-enacted etc. they will be treated in a manner appropriate to their severity whether or not this guidance has been updated to reflect the changes.

10. The following examples afford a general guide on the action, which might be taken where Convictions are disclosed.

A. OFFENCE OF DISHONESTY

Applicants 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.

Passengers may include especially vulnerable people and children.

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. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any Convictions involving dishonesty.

In general, a minimum period of 5 years free of conviction should be required before granting a Licence.

Offences involving dishonesty include (but are not limited to);

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception
- Taking a vehicle without consent
- And any similar offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one Conviction for a dishonesty offence.

Applicants that are found to have intentionally misled the council, or lied as part of the Application process, will not be issued with a Licence.

B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)

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

Unless there are exceptional circumstances a Licence will not normally be granted where the Applicant has a Conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence 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
- Actual bodily harm which is racially aggravated
- Grievous bodily harm
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Human Trafficking Offences
- Modern Day Slavery Offences
- Possession of Offensive Weapon
- Causing death by dangerous driving
- Causing death by careless driving
- Or any similar offences (including attempted or conspiracy to commit), or offences which replace the above

A Licence will not normally be granted where the Applicant has a Conviction for an offence 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
- Racially-aggravated offence
- Hate Crime Offences
- Offences of Discrimination
- Possession of a bladed article

- Common assault
- Assault occasioning actual bodily harm
- 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)
- Obstruction
- Criminal damage
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

A Licence will not normally be granted if an Applicant has more than one Conviction for an offence of a violent nature.

C. DRUGS

An Application from an Individual who has a Conviction related to the supply, intent to supply or production of drugs and the Conviction is less than 10 years prior to the date of Application will generally be refused

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class A drugs or permitting premises to be used for drug activity within the last 7 years will generally be refused. A Conviction less than 10 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class B drugs within the last 5 years will generally be refused. A Conviction less than 7 years old will be referred to the Committee for determination.

An Application from an Individual who has an isolated Conviction for an offence related to the possession of Class C drugs within the last 3 years will generally be refused. A Conviction less than 5 years old will be referred to the Committee for determination. .

An Application will normally be refused where the Individual has more than one Conviction for a drugs related offence

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from substance abuse after detoxification treatment as required by the Council.

D. SEXUAL AND INDECENCY OFFENCES

As licensed drivers often carry unaccompanied and vulnerable passengers, the licensing authority will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. All sexual and indecency offences will be considered as serious. Applicants with Convictions for sexual or indecency offences that involve a third party will normally be refused a Licence. Such offences include (but are not limited to);

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Offences involving Sexual Exploitation
- Possession of indecent photographs, child pornography etc.
- Indecent exposure
- Soliciting (kerb crawling)
- Or any sex or indecency offence that was committed in the course of employment as a taxi or PHV driver

Any Individual currently registered on the Sex Offenders' Register or DBS Adult Barred List or DBS Children's Barred List would not normally be granted a Licence.

Intelligence and other information which has not resulted in a criminal conviction

The Council will sometimes be made aware of other intelligence or low level information about an Individual which has not resulted in the conviction of that person but is relevant in relation to their character. Officers will give appropriate consideration to this information and will seek to consult with other appropriate agencies in order to ensure that they have a comprehensive understanding. Any additional information gathered through this process may then be taken into account.

E. MOTORING CONVICTIONS

(Applicants from a vehicle proprietor who does not hold any other hackney carriage or private hire licence issued by Burnley Borough Council will normally be exempt from this conviction category unless otherwise stated)

I. Major Traffic Offences

- a. Where a major traffic offence Conviction is within 3 years prior to the date of the Application the Application will normally be refused.
- b. However where a Conviction for an offence of Using A Mobile Device While Driving (Offence Code CU80) within 5 years prior to the date of the Application, then the application will normally be refused.
- c. An isolated major traffic offence Conviction, occurring prior to these timescales, without disqualification, for an offence such as dangerous driving will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of drivers.
- d. Applications where there is more than one Conviction for this type of offence within the last 5 years will normally be refused.
- e. Applicants where the conviction relates to causing death by dangerous or careless driving are **not** included in this category. (Refer to Offence Category B – Violence (Other Than Sexual & Indecency Offences))
- f. A list of offences to which this paragraph applies is attached as **Appendix I**.

II. Minor Traffic Offences

- a. Isolated Convictions for minor traffic offences should not normally prevent an Application from being granted. However, the number, type and frequency of this type of offence will be taken into account and if there is more than 1 offence of this nature the Applicant will normally be expected to show a period free of Conviction of at least 6 months.
- b. In particular, an Application will normally be refused where the Applicant has 12 or more penalty points on his DVLA Licence (whether or not the Applicant was convicted by a court for the offences for which the points were imposed) or where the Applicant has more than one Conviction for this type of offence within the last 6 months.
- c. A list of offences to which this paragraph applies is attached as **Appendix II**.

III. Hybrid Traffic Offences

- a. Offences of the type listed in **Appendix III** 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.

IV. 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 7 years where the disqualification relates to driving whilst over the prescribed limit or driving whilst unfit through drink or drugs.

If any Applicant was an addict then they will normally be required to show evidence of 5 years free from substance abuse after detoxification treatment as required by the Council.

Minor Traffic Offence

An application will generally be refused unless the individual 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. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for a minor traffic offence(s).

Hybrid Traffic Offence

An application will generally be refused unless the individual 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. e.g. 3 month disqualification = 6 month period free from conviction. Where no disqualification has been given the period free from conviction will be determined by reference to the period(s) free from conviction for hybrid traffic offence(s).

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 individual can show a period of at least 12 month free from conviction has elapsed from the restoration of the DVLA licence.

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

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 the Council is likely to refuse driver’s Licence because different criteria apply and an Applicant will normally be expected to show a period of at least 12 months free from Conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

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

F. OFFENCES UNDER THE TOWN POLICE CLAUSES ACTS AND

PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

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”) 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 where (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.

Draft

G. DRUNKENNESS

Not in a motor vehicle

An isolated Conviction for drunkenness need not debar an Applicant from being granted a Licence. In some cases, a warning may be appropriate. However, more than 1 Conviction in the last 2 years will merit a refusal.

In addition the Applicant 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.

Draft

H. SPENT CONVICTIONS

By virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 taxi drivers are an exempted occupation for the purposes of the 1974 Act and convictions are therefore never spent.

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. The council will in its consideration the nature of the offence(s), the history or pattern of offending, the lapse of time and whether all the convictions have previously been considered

Draft

MAJOR TRAFFIC OFFENCES
(Paragraph (E,I) refers)

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 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 analysis
CD71	Causing death by careless driving then failing to provide a specimen for analysis
CD90	Causing death by driving; unlicensed, disqualified or uninsured drivers
CU80	Using a mobile phone whilst driving a motor vehicle
DD10	Causing serious injury by dangerous driving
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 a specimen for analysis in circumstances other than driving or attempting to drive
DR61	Failure to provide a specimen for drug 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
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)

NOTE:

For CD and DD offences, please refer to Offence Category B – Violence (Other Than Sexual & Indecency Offences)

For UT offence, please refer to Offence Category A – Offences of Dishonesty

Appendix II

MINOR TRAFFIC OFFENCES (Paragraph (E,II) refers)

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
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)

HYBRID TRAFFIC OFFENCES
(Paragraph (E,III) refers)

- 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
- 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 tyre(s)
CU40 Using a vehicle with defective steering
CU50 Causing or likely to cause danger by reason of load or passengers
- LC20 Driving otherwise than in accordance with a Licence
- 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 Undefined 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)