

# Conwy County Borough Council

## Regulatory and Housing Service

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**Name of Policy:**

**Disclosure Barring Service and Criminal Conviction Policy for the issuing of hackney carriage and/or private hire vehicle licences**

<b>Author / Custodian:</b>	John Donnelly
<b>Date agreed and implemented:</b>	
<b>Agreed by:</b>	General Licensing and Regulation Committee
<b>Frequency of Review:</b>	Annual review (01/08/14)
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<b>Equality Impact Assessment completed: (date)</b>	N/A
<b>Member involvement (if any)</b>	Cabinet Member/Licensing and Regulation Committee
<b>Internal or Public Domain:</b>	Internal/public

**VERSION CONTROL:**

<b>Reference:</b>	<b>Status:</b>	<b>Authorised by:</b>	<b>Date:</b>
001	withdrawn	John Donnelly	
002	Live	John Donnelly	14/11/16
003	Live	John Donnelly	01/12/17

<b>FUNCTION</b>	<b>OFFICER</b>
Processing of application	Licensing Officer
Rejection of application	Principal Licensing Officer/Licensing Officer/Senior Licensing Enforcement Officer
Referral of application to Licensing Committee	Principal Licensing Officer/Licensing Officer
Grant/renewal of application	Principal Licensing Officer/Licensing Officer
Refusal of application	Licensing Committee

# Officers and members of the Council may not grant a licence without consideration being given to this policy.

## 1. INTRODUCTION

1.1 The purpose of this policy is to provide guidance on the criteria taken into account by Conwy County Borough Council Licensing Section when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire vehicle and operator licence, applicants for a private hire operator licence, private hire or hackney carriage drivers licence a required to submit an enhanced DBS check upon request, upon application and a every three years from first application.

1.2 The aim of this policy is to protect the safety of the public and ensure:

- That a person is a fit and proper person.
- That the person does not pose a threat to the public.
- That the public are safeguarded from dishonest persons.
- The safeguarding of children, young persons and vulnerable adults.
- That the public have confidence in hackney carriage and private hire drivers and operators.

1.3 This policy 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 licenses are being reviewed
- Licensing Officers
- Members of the General Licensing and Regulation Committee/ Panel (or other relevant decision making body)
- Magistrates or District Judges (magistrates court) hearing appeals against local authority decisions

1.4 Where Licensing Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the General Licensing and Regulation Committee/Panel (or other relevant decision-making body). Whilst officers and the committee/panel 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 (details of such circumstances must be recorded and held with the application/renewal).

- 1.5 Where applicants fail to disclose any previous convictions; cautions; warnings; penalty notices, orders or reprimands on their application form including any pending court proceedings or other matters they will be referred to the General Licensing and Regulation Committee for determination.

## **2. GENERAL POLICY**

- 2.1 Each case will be decided on its own merits.
- 2.3 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).

- 2.3 For the purposes of this Policy, the term 'specified matters' or 'conviction' will include the following:
  - a) Criminal convictions;
  - b) Cautions;
  - c) Fixed penalty notices or other penalty notices;
  - d) Anti-social behaviour orders or other similar orders;
  - e) Breach of licensing conditions;
  - f) Formal Warnings or Reprimands;
  - g) Charges or matters awaiting trial
  - h) Previous Council Decision.

- 2.4 Where an applicant has been convicted of a criminal offence, the council cannot review the merits of the conviction.
- 2.5 Where an applicant has been convicted of an offence of aiding abetting counselling procuring causing permitting or inciting any of the criminal or motoring convictions specified in this guidance, the matter will be considered as a relevant conviction for the substantive matter.

## **3. APPEALS**

- 3.1 Any applicant who has been refused a driver's licence, or a licensed driver whose licence has been suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice.

## 4. POWERS

- 4.1 Section 51 and 59 of the Local Government (Miscellaneous Provisions) Act, 1976 provide that a district council shall not grant a licence-
- (a) Unless they are satisfied that the applicant is a fit and proper person to hold a drivers licence; or
  - b) to any person who has not for at least twelve months been and is not at the date of the application for a drivers licence, the holder of a licence granted under Part III of the Act of 1972 (not being a provisional licence) authorising him to drive a motor car.
- 4.2 Section 61 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew a driver's licence if the applicant/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.
- 4.3 Section 61 (2b) allows the Licensing Authority, if it appears that in the interests of public safety, to suspend or revoke a driver's licence with immediate effect. A Decision Notice explaining why this decision has been taken will be issued to the driver and will have effect when the notice is given to the driver. The driver may appeal this decision but may not drive during the appeal period.
- 4.4 Section 62 of the Act allows the Licensing Authority to suspend, revoke or refuse to renew an operator's licence if the applicant/licence holder has been convicted of an offence to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or grounds of any conduct on the part of the operator which appears to the district council to render him unfit , or due to any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or any other reasonable cause.
- 4.5 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, allows the council to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the Licensing Authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending.

- 4.6 In paragraphs 4.7 to 4.10 below, the Licensing Authority will treat a period of a disqualification as being that which a driver would have been eligible to serve, and may disregard the decision of a court to waive or reduce a disqualification period either on the grounds of exceptional hardship under S.35 of the Road Traffic Offenders Act 1988 or for "special reasons" under S.34 of the Road Traffic Offenders Act 1988.
- 4.7 Where a recent conviction has resulted in a short period disqualification (less than 56 days), an application cannot be granted by an authorised officer unless a period of at least 12 months has elapsed from the end of the disqualification period.
- 4.8 If sufficient DVLA penalty points have accrued within a three year period under the "totting up" system, to cause or merit disqualification for a period not exceeding 12 months, an application for a private hire vehicle driver's licence and/or hackney carriage driver's licence cannot be granted by an authorised officer unless a period of 12 months has elapsed following the end of the disqualification period.
- 4.9 An authorised officer cannot grant an application for a private hire vehicle driver's licence and/or hackney carriage driver's licence unless a period of three years has elapsed following the end of a disqualification exceeding 12 months.
- 4.10 The Licensing Authority will not normally grant an application for a private hire or hackney carriage driver's licence from a person who has been disqualified from driving for a period of 5 years or more.

## **5. CONSIDERATION OF DISCLOSED CRIMINAL HISTORY**

- 5.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the Council is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operators licence is a 'fit and proper' person to hold such a licence. However, if an applicant has any specified matters against them, the council will look into:
- How relevant the offence(s) are to the licence being applied for.
  - the seriousness of the relevant offences
  - When the offence(s) were committed.
  - The date of conviction and age of applicant at time of conviction
  - Sentence imposed by the court.
  - Whether they form part of a pattern of offending.
  - Any other factors that might be relevant.

## 6 VIOLENCE

6.1 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.

6.2 In other cases anyone of a violent disposition should not be licensed until at least **3 years free of such conviction or at least 3 years from completion of sentence (whichever is longer)**. However, given the range of the offences that involve violence, consideration must be given to the nature of the conviction.

6.3 Unless there are exceptional circumstances and application will **normally be refused** where the applicant has a conviction for an offence such as:

- Murder
- Manslaughter
- Manslaughter or culpable homicide while driving
- Terrorism offences
- Or any similar offences or offences which replace the above

6.4 An application will normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace those set out below and the **conviction is less than 10 years or at least 10 years from completion of sentence (whichever is longer)** prior to the date of application:

- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm which is racially aggravated
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault of Police Officers
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Similar offences or offences which replace the above

6.5 An application will normally be refused where the applicant has a conviction for an offence or similar offence(s) which replace those set out below and the **conviction is less than 5 years or**

**at least 5 years from completion of sentence (whichever is longer)** prior to the date of application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Religiously-aggravated offence
- Similar offences or offences which replace the above

6.6 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 or at least 3 years from completion of sentence (whichever is longer)** prior to the date of application:

- 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
- Possession of a weapon (or imitation weapon) or any other weapon related offence other than a firearm.
- Similar offences or offences which replace the above

6.7 An application will normally be refused if an applicant has more than one conviction in the last **10 years or at least 10 years from completion of sentence (whichever is longer)** prior to the date of application for an offence of a violent nature.

## **7. SEX AND INDECENCY OFFENCES**

7.1 As licensed drivers often carry unaccompanied and vulnerable passengers, applicants with convictions for sexual offences will in all circumstances upon application be referred to the General Licensing Committee.

7.2 In particular:

(a) Unless there are exceptional circumstances, an application will normally be refused where the applicant has a conviction for an offence such as:

- Sexual assault
- Indecent assault
- Possession of indecent photographs, child pornography.
- Rape

- Assault by penetration
- Offences involving children or vulnerable adults
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Sexual Grooming or befriending a child on the Internet or by other means with the intention of abusing them
- Similar offences or offences that replace the above
- Offences introduced under the Modern Slavery Act 2015

7.3 In addition to the above the Licensing Authority will not normally grant a licence to any applicant who is currently on the Sex Offenders Register.

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

7.5 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.

## 8. DISHONESTY

8.1 An applicant or licence holder is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Licence holders are required to deposit such property with police within 24 hours. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare, etc. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

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

- 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

- similar offences or offences which replace the above

## 9. DRUGS

- 9.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered.
- 9.2 An application will normally be refused where the applicant has a conviction for an offence related to the supply of drugs and has not been free of **conviction for 5 years or at least 5 years from completion of sentence (whichever is longer)**.
- 9.3 An application will normally be refused where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of **conviction for 5 years or at least 3 years from completion of sentence (whichever is longer)**.
- 9.4 An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 5 years may be considered, but consideration should be given to the nature and quantity of the drugs.
- 9.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the application is allowed to proceed. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.
- 9.6 Drugs will be defined as:
- Any drugs classified under the Misuse of Drugs Act 1971, Class A, B or C
  - Any substance listed under schedule 2 of The Psychoactive Substance Act 2016.

## 10 DRIVING OFFENCES (LOSS OF LIFE)

- 10.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life. Before an application is approved, an applicant should be free of **conviction for 10 years or (or at least 5 years must have passed since the completion of the sentence, whichever is longer)** if he/she has a conviction for:
- Causing death by dangerous driving
  - Causing death by careless driving whilst under the influence of drink or drugs
  - or any similar offences

10.2 Before an application is approved, an applicant should be free of **conviction for 5 years (or at least 5 years must have passed since the completion of the sentence, whichever is longer)** if he/she has a conviction for:

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

## 11 DRIVING UNDER THE INFLUENCE OF DRINK OR DRUGS

11.1 A serious view will be taken of a conviction for driving or being in charge of a vehicle while under the influence of alcohol. A single conviction may not result in an application being refused, provided that at least **5 years have elapsed since the ending of the disqualification**. A conviction for 'refusing or failing to provide a specimen' will be treated in the same way.

11.2 Applicants with more than one conviction for driving or being in charge of a vehicle under the influence of alcohol or refusing or failing to provide a specimen are unlikely to be granted a licence.

## 12 MOTORING CONVICTIONS

### MAJOR TRAFFIC OFFENCES

12.1 An application from an applicant with more than one Major Traffic Offence, within the last **5 years will normally be refused and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed**.

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

12.3 For the purposes of this Policy 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
CU80	Breach of requirements as to control of the vehicle, mobile

	telephone
DD40	Dangerous driving
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

#### MINOR TRAFFIC OFFENCES

- 12.5 Other Traffic Offences not listed will be treated as 'Minor Traffic Offences' for the purposes of this Policy. A minor driving offence is one that occurs between 1 and 3 penalty points. One conviction for a minor driving offence will not usually result in refusal.
- 12.6 More than one minor traffic offence conviction may result in a refusal, particularly where there are several convictions for the same offence e.g. speeding. A licensed driver may be referred to the General Licensing and Regulation Committee where there are more than two offences.

#### 13 OUTSTANDING CHARGES OR SUMMONSES

- 13.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.
- 13.2 If the outstanding charge or summons involves a serious offence and or the individual's conviction history (including 'spent' convictions) indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be deferred until proceedings are concluded or the application may be refused.

#### 14. NON-CONVICTION INFORMATION

- 14.1 If an applicant has, on more than one occasion, been arrested or charged, but not convicted, for a serious offence which suggests he/she could be a danger to the public, consideration should be given to refusing the application. Such offences would include serious violent offences and serious sex offences.
- 14.2 In assessing the action to take, the safety of the travelling public must be the paramount concern.

## **15. OVERSEAS RESIDENTS**

- 15.1 If an applicant has spent six continuous months or more overseas the Licensing Authority will expect to see evidence of a Disclosure Barring Service check from the country or countries covering that period. This does not affect the requirement to provide a full 5 year history in respect of Disclosure Barring Service checks. Further information on the means of obtaining the proof can be found on the DBS website [www.gov.uk/disclosure-barring-service](http://www.gov.uk/disclosure-barring-service) [www.crb.gov.uk/overseas](http://www.crb.gov.uk/overseas)
- 15.2 Applicants for private hire operator licences will be required to provide an Enhanced Disclosure (unless licensed as a driver). However, if an applicant has spent six continuous months or more overseas the Licensing Authority will expect to see evidence of a criminal record check from the country/countries covering the period.

## **16 LICENCES ISSUED BY OTHER AUTHORITIES**

- 16.1 Where an application for a taxi and/or private hire vehicle driver's licence/private hire operator's licence has been referred to the General Licensing and Regulation Committee for determination with regard to this policy, and the applicant already holds such a licence granted by another licensing authority, the guidance in this policy shall take precedence over any decision of another licensing authority.

## **17. BREACH OF LICENSING LEGISLATION, BYELAW OR CONDITION**

- 17.1 The holder of a hackney carriage or private hire driver or operator licence found by an Authorised Officer of the Licensing Authority, or a Police Officer, to be in breach of licensing legislation or a byelaw or licence condition is on the first occasion, likely to be warned in writing as to future conduct, provided that in breaching the licensing legislation, the byelaw or condition, the safety of passengers or the public was not put at risk.

17.2 The General Licensing and Regulation Committee may suspend or revoke a hackney carriage or private hire driver or operator licence where the holder has committed more than one breach of licensing legislation, licence condition or byelaw, or a single breach is considered so serious as to require suspension or revocation.

17.3 The above is irrespective of any legal proceedings which may be pending or have been taken.

## **18. REVOCATION/SURRENDER OF LOCAL AUTHORITY LICENCES.**

18.1 An application will also normally be refused where the applicant's licence has been revoked by any local authority for any offence if the revocation is **less than 3 years** prior to the date of application.

18.2 All such applications received within a period of **5 years** will automatically be referred to the General Licensing and Regulation Committee for determination.

18.3 An application where a licence has been surrendered following a complaint or investigation by the Licensing Authority, will normally be refused if the surrender occurred **less than 3 years** prior to the date of application.

18.4 All such applications received within a period of 5 years will automatically be referred to the General Licensing and Regulation Committee for determination

## **19. SUMMARY**

19.1 To summarise, a criminal history in itself may not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3, 5 or 10 years, according to circumstances, before an application can be approved. However, there may be occasions when an application can be allowed before the prescribed time periods free from conviction have elapsed.

19.2 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

## 20. DISCLOSURE BARRING SERVICE

20.1 Licensing Officers will have no authority, responsibility or discretion when making a decision to grant a licence without a valid (19.2) enhanced Disclosure Barring Service (DBS) check being available. In such cases applications for licences will be referred to the General Licensing and Regulation Committee. Whilst 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 may depart from the guidelines (details of such circumstances must be recorded and held with the application).

20.2 Submitted DBS documents must be:

- Original/watermarked documents.
- Complete (by page number).
- Within three months of the declaration date.