



DRAFT
Taxi Licensing
Suitability Policy

1.0 Introduction

- 1.1 This policy provides guidance to all parties on the criteria that will be taken into account 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 Driver Licence, an Operator Licence or be the proprietor of a licensed vehicle. Whilst criminal convictions play a significant part in the Licensing Authority's determination on whether an individual is fit and proper or not, the Council will also take into account other factors such as demeanour, general character, non-criminal behaviour, driving abilities, and police information and the like.
- 1.2 When the Council makes any decisions or takes any actions in line with this policy, the safety of the public will be its paramount concern.

This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:

- applicants for a driver's licence
- existing licensed drivers
- licensing officers
- the Council's properly delegated decision makers
- magistrates and judges hearing appeals against local authority decisions.

In considering this guidance the Council will be mindful that each case must be considered on its individual merits and, where the circumstances demand, the decision makers may depart from the guidelines.

- 1.3 It is the responsibility of East Herts Council (referred to as the Council) to issue Hackney Carriage and Private Hire licences

under the Local Government (Miscellaneous Provisions) Act 1976. In exercising this duty the Council will consider its duty to ensure the safety of the public as its primary consideration. Licences will not be issued unless the person is considered to be 'fit and proper'.

1.4 In seeking to safeguard the safety of the public the Council will be concerned to ensure:

- that a person is a fit and proper person in accordance with Sections 51, 55 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 (Part II)
- that the person does not pose a threat to the public
- that the public are safeguarded from dishonest persons
- the safety of children, young persons and vulnerable adults.

1.5 In drafting this policy and considering responses to the consultation consideration has been given to the Human Rights Act 1998, particularly in relation to:

- Article 6 (right to a fair trial);
- Article 8 (the right to respect for private and family life);
and
- Protocol 1, Article 1 (protection of property)

1.6 All decisions taken under this policy will be taken in accordance with the Human Rights Act.

1.7 Similarly the impact of this policy on the local community of East Herts, both positive and negative, has been considered.

Decision-making principles

- 1.8 The term “Fit and Proper” for the purposes of taxi and private hire licensing is not legally defined but it has also been described as “safe and suitable” in a number of court cases.
- 1.9 In determining whether a person is fit and proper to hold a **driver’s licence**, those tasked with determining licences / applications are effectively asking the following question of themselves:

“Would you allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get into a vehicle with this person alone?”

- 1.10 In determining whether a person is fit and proper to hold an **operator’s licence**, those tasked with determining licences / applications are effectively asking the following question of themselves:

“Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”

There are no statutory criteria for granting a vehicle proprietor’s licence so the authority has absolute discretion over whether or not to grant. In determining whether a person should be granted a **vehicle licence**, those tasked with determining licences / applications are effectively asking the following question of themselves:

“Would I be comfortable allowing this person to have control of a licensed vehicle that can travel anywhere, at

any time of the day or night without arousing suspicion, and be satisfied that he/she would not allow it to be used for criminal or other unacceptable purposes, and be confident that he/she would maintain it to an acceptable standard throughout the period of the licence?"

- 1.11 If the answer to the pertinent question is an unqualified 'yes', then the person can be considered to be fit and proper. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether a licence should be granted to that person.
- 1.12 In order to assess the suitability of an Applicant (and to inform decision makers when answering the questions above), the Council will undertake whatever checks and apply whatever processes it considers necessary to ensure that licences are not issued to, or used by, unsuitable people. In assessing the suitability of an Applicant or licence holder, the Council will take into consideration the following factors:
- Criminality
 - Period of holding a driver's licence
 - Number of endorsed driving licence penalty points
 - Right to work in the UK
 - Medical fitness
 - Standard of driving / driving ability
 - The conduct of the individual in making the application (which could include whether they have acted with integrity during the application process, made a misleading statement or omission)
 - The previous licensing history of existing / former licence holders

The Council conducts enhanced disclosures from the Disclosure and Barring Service (DBS) on all applicants for a new driver's licence and every three years following the grant

of a driver's licence. Applicants applying for the grant or a renewal of a driver's licence will be required to obtain an enhanced disclosure at their expense.

- 1.13 Hertfordshire Constabulary will be consulted on all new and renewal applications. Applicants and existing licence holders should be aware that any information that the Police provide regarding their fitness and propriety to hold a licence will be considered.
- 1.14 East Herts Council is a member of the National Anti-Fraud Network (NAFN) and as such has access to the National Register of Taxi and Private Hire Licence Revocations and Refusals (NR3). This is an important step in tackling the issue of individuals making applications to different licensing authorities following a refusal or revocation elsewhere. The register will be used in the following way:
- When a new application is received the register will be checked to see if that individual has had a licence revoked or refused by another authority; and
 - When an application to this authority is refused the applicants details will be added to the register; and
 - When a licence which has been issued by this authority is revoked the individuals details will be added to the register.
- 1.15 In addition the Council will also consider further information sources such as the Police (including abduction notices), Children and Adult Safeguarding Boards (or other bodies with a similar function), other licensing authorities and statutory agencies where appropriate.
- 1.16 An individual wishing to be licensed would normally be required to remain conviction free for an appropriate period of time as detailed in this policy. In the case of a new

application for a licence it is the applicant's responsibility to demonstrate how they are fit and proper to hold a licence. Simply remaining free from complaint and/or conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence.

- 1.17 The standards and criteria set out in paragraphs 3 to 12 below are those that would normally be applied to applications and licences. The Council may depart from these criteria; however it must only do so in wholly exceptional circumstances¹. The otherwise good character and driving record of the Applicant or licence holder will not ordinarily be considered as exceptional circumstances.
- 1.18 The Council reserves the right to overturn a decision that has previously been made, or refuse a renewal of a licence, where clear errors are discovered or new information has come to light.

2.0 Powers

- 2.1 Section 61 and Section 62 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Council to suspend, revoke or refuse to renew a licence if the application/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.
- 2.2 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, allows the Council to take into account all convictions

¹ 'Wholly exceptional circumstances will be decided by discussion between the officer dealing with the matter, the Head of Service and the Chair of the Licensing Committee.

recorded against an applicant or the holder of a Private Hire Vehicle or Hackney Carriage driver's licence, whether spent or not. Therefore the Council will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending. Individuals need to be aware that, in accordance with this Act, all convictions, cautions, warnings and reprimands must be declared.

2.3 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 driver's licence and/or Private Hire Vehicle Operator's licence is a "fit and proper" person to hold such a licence. However, if there is any reason to question an individual's fitness and propriety to hold a licence (such as convictions, warnings, charges awaiting trial, police intelligence, complaints or any other matter considered relevant) the Council will look into:

- How relevant the information is to the licence
- How serious the matter(s) were
- When the matter(s) occurred
- The date of the conviction, warning, caution etc.
- The number of matters/offences i.e. lots of minor offences
- Circumstances of the individual concerned
- Any sentence or sanction imposed by a court
- Any comments made by the court or other information laid before the court
- The individual's age at the time of offence / incident
- Whether they form part of a pattern of conduct/offending
- Any other character check considered reasonable (e.g. personal references)
- Any other factors that might be relevant, for example:

- Whether the Applicant has intentionally misled the Council or lied as part of the application process
- Information provided by other agencies / Council departments
- The previous conduct of an existing or former licence holder

2.4 Existing holders or those with open applications are required to notify the Council in writing of certain matters in the following time periods:

- driving licence endorsement within 5 working days;
- fixed penalty notice, warning, reprimand, police caution, criminal conviction or other criminal proceedings (including acquittal as part of a criminal case) within 5 working days;
- arrest for any matter (whether subsequently charged or not) within 3 working days

Failing to notify the Council within the appropriate timescale will raise serious questions for the Council as to the honesty of the individual and will be taken into account in relation to the fitness and propriety of that person.

2.5 Individuals can discuss further what effect any relevant information may have on their application or licence by contacting the Licensing Team for advice. It is in the individual's best interest to bring any relevant detail to the attention of the authority at an early stage.

If you are not sure whether or not to bring a matter to the Authority's attention then the simple answer is that you should. If the matter is not considered relevant then you will have peace of mind and if it is considered relevant it can be dealt with. The costs involved in applying for a licence may be wasted if details come to light later which mean the

application should be refused. Similarly failure to notify the authority of a relevant matter whilst licensed will bring your fitness and propriety into question.

- 2.6 It is an offence for any person knowingly or recklessly to make a false statement or to omit any material matter when giving information required as part of the application for a licence or required by holding a licence. Where an individual has made a false statement or a false declaration or omission on their application for the grant or renewal of a licence, the licence will normally be refused. Where a licence is already in place that licence can be suspended or revoked. Subsequent applications for licences will be refused for a period of five years from the date that the lie or omission came to light.
- 2.7 The Council is entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the Council or other licensing authorities, and information disclosed by the police. Examples of information sources that may be used include but are not limited to social care information, benefits payments, and the like.
- 2.8 The lists of offences within this Policy are not exhaustive. The Council can consider any offences not detailed in this Policy when examining the fitness and propriety of an individual.
- 2.9 **Options at time of new applications or renewals:** When determining the fitness and propriety of an applicant for a licence the Council has the following options:
- approve the application
 - approve the application with a shorter expiry date
 - refuse the application.

2.10 **Options when considering an existing licence:** When considering the fitness and propriety of an existing licence holder the Council has the following options:

- take no action
- issue a warning which may include the use of Licensing Record Points in line with the Council's Licensing Points Scheme
- suspend the licence subject to a 21 day appeal period
- suspend the licence with immediate effect
- revoke the licence subject to a 21 day appeal period
- revoke the licence with immediate effect.

2.11 A suspension or revocation of the licence of a driver normally takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that this is so and an explanation of why, the suspension or revocation takes effect when the notice is given to the driver. [s61(2B) of the Local Government (Miscellaneous Provisions) Act 1976.]

2.12 The Council recognises the different roles of drivers, vehicle proprietors and operators and its responsibility to ensure that they are 'fit and proper' to hold such licences. For driver's licences all of the following sections apply but sections 11 and 12 do not apply to private hire operator's licences or vehicle proprietor's licences.

3.0 Convictions

3.1 Licensed drivers, and potentially private hire operators, have close regular contact with the public. A firm line is to be taken with those who have any convictions.

3.2 Offences including threat to or loss of life and/or violence

Murder	<p>Applications will be refused</p> <p>An existing licence will be revoked</p>
Manslaughter	
Manslaughter or culpable homicide while driving	
Grievous bodily harm	
Violent disorder	
Riot	
Malicious wounding or grievous bodily harm which is racially aggravated	
Aggravated burglary	
Terrorism offences	
Any related offences (including aiding, abetting, attempting or conspiring to commit offences) that are similar in gravity to those above or which replace those above	
Arson	<p>Applications will only be considered if a period of at least 10 years has passed since conviction, the end of any prison sentence or period 'on licence' (whichever is longest)</p> <p>An existing licence will be revoked</p>
Actual bodily harm	
Robbery	
Possession of firearm	
Assault Police	
Resisting arrest	
Any racially aggravated offence against a person or property	
Affray	
Any offence that may be categorised as domestic violence	

Any other Public Order Act offence (harassment, alarm or distress, intentional harassment or fear of provocation of violence)	
Any related offences (including aiding, abetting, attempting or conspiring to commit offences) that are similar in gravity to those above or which replace those above	

3.4 Possession of a weapon

Conviction for possession of an offensive weapon or other weapon related offence	<p>Applications will only be considered if a period of at least 7 years has passed since conviction, the end of any prison sentence or period 'on licence' (whichever is longest)</p> <p>An existing licence will be revoked</p>
A history of two or more separate convictions for offences of a violent nature or weapon related offences	<p>Applications will be refused</p> <p>An existing licence will be revoked</p>

3.5 Other offences

Obstruction	<p>Applications will only be considered if a period of at least 5 years has passed since conviction, the end of any prison sentence or period 'on licence' (whichever is longest)</p> <p>An existing licence will be revoked</p>
Criminal damage	
Common assault	
Any related offences (including aiding, abetting, attempting or conspiring to commit offences) that are similar in gravity to those above or which replace those above	

3.6 As licensed drivers often carry unaccompanied and/or vulnerable passengers, the Council will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. Similarly licensed private hire operators will have access to information regarding the location and movements of these groups of people. All sexual and indecency offences will be considered as serious.

3.7 Sexual and indecency offences

Rape	<p>Applications will be refused</p> <p>An existing licence will be revoked</p>
Assault by penetration	
Offences involving children or vulnerable adults	
Trafficking, sexual abuse against children and/or vulnerable adults and preparatory offences (as defined within the Sexual Offences Act 2003)	
Making or distributing obscene material	

Possession of indecent photographs depicting child pornography	
Sexual assault	
Indecent assault	
Exploitation of prostitution	
Soliciting (kerb crawling)	
Making obscene/indecent telephone calls	
Indecent exposure	
Any related offences (including aiding, abetting, attempting or conspiring to commit offences) that are similar in gravity to those above or which replace those above	
Applicant is currently on the Sex Offenders Register or any other similar register	

- 3.8 In addition to the above the Council will not allow an individual to remain licensed or grant a licence to any individual who is currently on the Sex Offenders Register or any other similar register.
- 3.9 A licensed driver is expected to be trustworthy. In the course of their working duties drivers will deal with cash transactions and valuable property may be left in their vehicles. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused. Both drivers and operators may be privy to information regarding empty homes as taxis are often used as transport to airports etc. For these reasons, a serious view is taken of any conviction involving dishonesty.

3.10 Dishonesty offences

Theft	<p>Applications will only be considered if a period of at least 7 years has passed since conviction, the end of any prison sentence or period 'on licence' (whichever is longest)</p> <p>An existing licence will be revoked</p>
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	
Fare overcharging	
Any related offences (including aiding, abetting, attempting or conspiring to commit offences) that are similar in gravity to those above or which replace those above	

3.11 A serious view is taken of any drug-related offence. Taking drugs and driving poses an obvious risk to public safety, whilst individuals who have convictions for the supply of drugs will also be treated with considerable concern. The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered carefully.

3.12 It is recognised nationally that taxis can travel to any location at any time without raising suspicion so they are the ideal mode of transport for moving illegal items. An individual

applying for an operator's licence with any conviction relating to the supply of illegal substances will be refused.

3.13 As licence holders are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while exceeding the legal limit or under the influence of drink or drugs. If there is any suggestion that an individual is alcohol or drug dependent, a satisfactory special medical report (as specified by the Council at that time) must be provided.

3.14 If there is suspicion of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted or to avoid sanctions being imposed on an existing licence. Such a report will be at the individual's own expense.

If an individual has previously been an addict then they would be required to show evidence of 5 years free from drug taking after detoxification treatment.

3.15 Drug related offences

Conviction for an offence relating to the supply of illegal/controlled drugs	Applications will be refused An existing licence will be revoked
Conviction for possession of illegal/controlled drugs	Applications will only be considered if a period of at least 10 years has passed since conviction, the end of any prison sentence or period 'on licence' (whichever is longest)

	An existing licence will be revoked
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4.0 Driving and traffic offences

4.1 A very serious view is to be taken of any individual who has been convicted of a driving offence that resulted in the loss of life.

4.2 Driving offences including loss of life

Causing death by dangerous driving	<p>Applications will be refused</p> <p>An existing licence will be revoked</p>
Causing death by careless driving whilst under the influence of drink or drugs	
Causing death by dangerous driving	
Causing death by driving: unlicensed, disqualified or uninsured driver	
Any related offences (including aiding, abetting, attempting or conspiring to commit offences) that are similar in gravity to those above or which replace those above	

4.3 Other traffic offences

Minor traffic offences	Will be considered but will not normally result in an application being refused or an existing licence being revoked.
Major traffic offences (one)	At least 1 year free of any other driving conviction (either major or minor) An existing driver licence revoked.
Major traffic offences (two or more)	At least 2 years free of any other driving conviction (either major or minor) An existing driver licence revoked.
Disqualification	At least 5 years free of any other driving conviction (either major or minor) starting from the date the drivers licence is restored An existing driver licence revoked.
Disqualification (two or more)	Application refused An existing driver licence revoked.
New applicant with 7 or more points on their DVLA	Application refused

licence	
Existing licensed driver who accumulates 9 or more points on their DVLA licence	6 weeks to pass the Council approved driving test or licence suspended until successfully completed. (Test to be taken at individuals own expense)
12 or more points on the DVLA licence	Application refused . An existing driver licence revoked .

- 4.4 Minor traffic offences come under the following categories: Construction and use offences, Miscellaneous offences, Motorway offences, Pedestrian crossings, Speed limits and Traffic direction and signs. These offences can also be subject to consideration as part of the Licensing Records Points Scheme.
- 4.5 Major traffic offences, which are all offences not covered in the paragraph above, will give rise to serious doubts about the individual's suitability to be a driving professional. An individual with any such convictions will be required to show a period of at least one year free of any other driving conviction. For individuals with more than one offence this period will be increased to two years.

5.0 Outstanding charge or summons

- 5.1 If the individual is the subject of an outstanding charge or summons their application should be suspended until the matter is resolved.
- 5.2 Outstanding Charges or Summonses

Outstanding charge or summons	Application put on hold until the matter is resolved. Fitness and propriety of existing licence holder will be considered
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6.0 Licensing offences

6.1 Certain offences under taxi legislation will prevent a licence being granted or renewed.

6.2 Licensing offences

Illegal Plying for hire	Applications will only be considered if a period of at least 3 years has passed since conviction An existing licence will be revoked
Overcharging	
Refusing to carry a person with a disability or assistance dog	

7.0 Insurance offences

7.1 A serious view will be taken of convictions for any insurance offence but in particular of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided the Applicant has been free of conviction for 5 years. However, strict warning should be given as to future behaviour. More than one conviction for these offences will prevent a licence being granted or renewed.

7.2 Insurance offences

	Applications will only be considered if a period of at least 5 years has passed since conviction, the end of any prison sentence or
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	<p>period 'on licence' (whichever is longest)</p> <p>An existing licence will be revoked</p>
<p>More than 1 insurance offence</p>	<p>Applications will be refused</p> <p>An existing licence will be revoked</p>

7.3 An operator found guilty of aiding and abetting, or otherwise assisting the driving of passengers whilst without insurance will have his Operator's Licence revoked immediately and will not be permitted to hold a licence for a period of at least three years.

8.0 Discrimination offences

8.1 An applicant for an operator or drivers licence who has been convicted of any offence involving discrimination must:

- be free from a similar conviction for a period of at least 7 years; AND
- demonstrate a thorough understanding of the requirements of the Equality Act 2010 to the satisfaction of the issuing authority.

8.2 Applicants with more than 1 conviction for discrimination offences will be refused.

8.3 Any operator or driver who has been convicted of any of the following will have their licence/s revoked:

- discriminating, whether as the result of a criminal investigation or by way of a successful action in the County Court for a claim of discrimination.

- refusing an assistance dog.
- over-charging a passenger on the basis of their disability.
- allowing a disabled passenger to travel in an unsafe manner.

8.4 Where the applicant for an operator's licence is a company or partnership a conviction for discrimination against any partner, director or secretary of that body will be considered in the same way as it would be for an individual and the licence will be revoked.

9.0 Exploitation offences

9.1 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.

10.1 Non-conviction information

10.1 At any point during a licence application or once an application is held, the Council will take into account of information that becomes known about situations and circumstances that have not led to a conviction. This will include but is not limited to:

- an arrest
- being held on bail
- being charged but not convicted
- acquittals
- circumstances in which convictions were quashed due to misdirection to the jury

- circumstances where the decision was taken not to prosecute, and
- complaints.

10.2 In determining the most appropriate action to take, the Council will take into account, though not limit itself to:

- the source of the information
- the nature of non-conviction information
- the credibility of the witness / complainant
- the range of information / number of complaints available
- the credibility of the licence holder.

With regard to the options available, the Council will have regard to paragraphs 2.9 and 2.10 of this policy.

11.0 Individuals with periods of residency outside the UK

11.1 If at any time an Applicant or existing licence holder has spent six continuous months or more overseas the Council will expect to see evidence of a criminal record check from the country/countries visited covering the whole period spent overseas.

11.2 Because of the potential lifetime relevance for some of the most serious offences mentioned in this policy, the Council will need to ensure that sufficient background checks are conducted for those individuals who have lived overseas. For EU nationals suitable checks should be available, for those countries for which checks are not available, one option is to require a certificate of good conduct authenticated by the relevant embassy. Where an individual cannot demonstrate that they were conviction-free during periods abroad they will be unable to meet the 'fit and proper' criteria. The onus is on the applicant to provide proof of their fitness and propriety and where they cannot applications will be refused.

12.0 Conditional discharge

- 12.1 Applicants are required to notify the Council of any conditional discharge or absolute discharge and these will be considered on a case-by-case basis. As the court can use these options in a variety of cases it is not possible to give comprehensive guidelines regarding the likely outcome of their consideration by the Council.
- 12.2 If an offence is committed during the period of a conditional discharge the courts may re-sentence an offender for the offence for which the conditional discharge was given. At this point the Council may consider that offence under this policy.

13.0 Cumulative impact of offending history

- 13.1 The Council recognises there may be cases where an Applicant or an existing licence holder may have a number of convictions and/or non-conviction matters, none of which, if considered in isolation, would preclude the holding of a licence. A number of convictions and/or non-conviction matters, however, will give cause for concern, thus, in such circumstances the Council will take into account the cumulative nature of these separate convictions and/or non-conviction matters when determining the suitability of that person to hold a licence.

14.0 Appeals

- 14.1 Any Applicant refused a driver's licence or an existing licence holder who has their licence suspended or revoked has a right to appeal to the Magistrate's Court within 21 days of the notice of refusal [Local Government (Miscellaneous Provisions) Act 1976, s 77 (1)].