

 Report of: **Transport & Parking Business Manager**

 **General Purposes Licensing Committee**

 Date: **17<sup>th</sup> March 2006**  Item No:

 Title of Report : **Guidelines Relating to the Relevance of Convictions**

### Summary and Recommendations

 Purpose of report:

 Key decision: No

 Portfolio Holder: N/A

 Deputy Responsibility:

 Ward(s) affected: All

 Report Approved by:

Graham Smith. Transport and Parking Business Manager  
Jeremy Franklin Legal & Democratic Services

 Policy Framework: None

 Recommendation(s):

The Committee is RECOMMENDED to:-

Accept the amendments to the Guidelines Relating to the Relevance of Convictions shown at Appendix 1 of this report, omitting the section in bold in paragraph (a) under the section Traffic Offences.

## Summary of report

1. Recent enquiries of other licensing authorities show that in respect of driving records, when considering both new drivers and the record of existing drivers some authorities look at each individual case, as the Council presently does. The majority appear to have guidelines in place. Those authorities that have guidelines require higher standards of driving of both new applicants and existing drivers than the guidelines in use by Oxford City Council. Many state the number of penalty points on a DVLA licence, above which a licence is refused.
2. Taking into account the fact that a high standard of driving is and must be required of any professional driver, a level of driving licence penalty points which could be regarded as 'acceptable' has been proposed
3. When setting a points level, enquiries were made not only of a number of other licensing authorities, but also car hire firms and driver employment agencies.
4. The points limit ranges from no points in the year preceding the initial application with no more than 4 in total, to as high as 11 points for existing drivers before referral to Committee. The majority range between 6 and 8 points before refusal or referral to Committee.
5. Many hire car firms will not hire to a driver with more than 6 points, certainly not with more than 9. Similarly, employment agencies have difficulty in placing drivers with more than 6 points. Their decision to employ/hire or not is made with knowledge of the driver's record, the decision of passengers to take a taxi is made without that knowledge but with the expectation that a responsible decision has been made on their behalf by the Licensing Authority.

6. To take account of the serious consequences of driving a motor vehicle whilst under the influence of drugs, the use of cannabis by drivers must be prohibited. Users are now more likely to receive a caution than be prosecuted, so slight amendments have been made to the section referring to drugs.
7. The present guidelines are shown at **Appendix 2** and the amended guidelines at **Appendix 1**.
8. Responses have been received from the taxi trade in reply to a letter from the Taxi Licensing Office. **Appendix 3**. Several points are raised and a response to some of them is made below.
9. The amended conditions sent for consultation, initially contained the requirement that a new applicant not be considered if he has acquired more than 3 points within the twelve months prior to the grant of a licence (now shown in bold in **Appendix 1**). After considering representations, it is recommended that this be deleted.
10. Mention is made that the Courts decide the penalty points for drivers and that it should not be revisited. As is the case with other types of offences, a higher standard is required of professional drivers providing a service. This is evidenced by the fact that the Department for Transport adjudicate on drivers with high penalty points and other offences, removing the vocational licence when necessary.
11. Cautions are mentioned. The Transport & Parking Business Manager is reliably informed that the only type of cautions recorded and available to us on a CRB record, are official cautions that have been accepted and signed by a defendant. Thames Valley Police apparently do not operate 'on street' cautions for drugs, when persons are found with small amounts of cannabis, the drugs are taken for disposal. No record of this is available.

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 **background papers:**

**Appendix 1 . Relevance of Convictions - New**  
**Appendix 2 . Relevance of Convictions - Old**  
**Appendix 3 Responses from the taxi trade.**

# Appendix 1

## E GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

### General Policy

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration must be the protection of the public.
3. In the case of offences that have led to a term of imprisonment, the periods given will run from the date that the full sentence awarded by the court would have been completed.
4. Cautions will be taken in to consideration for a period of five years.
5. A new applicant is a person who has not previously held a licence with this authority or whose licence had expired for 8 weeks or more before the application form was received in the Taxi Licensing Office.
6. The following examples afford a general guide on the action to be taken where convictions are admitted.

### Traffic Offences

- a. New applicants should not normally be considered if **they have acquired more than three penalty points within the twelve months** prior to the grant of a licence, they have in the previous two years, been convicted of any single offence which resulted in a points penalty of five or more points. or offences totalling more than six points. If sufficient points have been accrued or offences committed resulting in a period of disqualification of the applicant's DVLA driving licence then a hackney carriage or PHV licence may not normally be granted until a period of twenty four months has elapsed following its restoration and a warning should be issued as to future conduct.

If the DVLA driving licence of an applicant or an existing driver is revoked following the acquisition of six or more points during the first two years since passing the DVLA driving test, then a period of 24 months following the restoration of the licence must have elapsed before a hackney carriage or private hire driving licence can be granted

Drivers already licensed who are convicted any single offence which results in a penalty of five or more points or acquires nine or more penalty points, should be interviewed and may be referred to the Licensing Committee.

When a driver who is already licensed with this authority is disqualified for holding or obtaining a DVLA driving licence, the licence will be suspended. The driver may be required to appear before the Hackney Carriage and Private Hire Licensing Committee before the licence is reinstated.

Drivers already licensed and applicants awaiting the grant of a licence must inform the Taxi Licensing office within 3 days of any conviction.

## **Plying for Hire**

- b.** A serious view is taken of this offence, particularly since the vehicle will almost certainly have been carrying fare-paying passengers whilst uninsured. More than one conviction or caution for this offence within 5 years and a licence holder will be required to appear before the Hackney Carriage and Private Hire Licensing Sub-Committee. A period of twelve months should have elapsed before any application is considered and the applicant should be reminded of the consequences of any repetition.

## **Drunkenness**

- c.** With Motor Vehicle.  
A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of alcohol. A conviction for this offence should raise grave doubts as to the applicants' fitness to hold a licence and at least 3 years should elapse (after the restoration of the driving licence) before an application for a licence is considered. If there is any suggestion that the applicant is

an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence application is considered.

- d. Not in Motor Vehicle.  
An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, more than one conviction for drunkenness could indicate a medical problem necessitating critical examination.

## **Drugs**

- e. A serious view should be taken of this type of offence. An applicant with a conviction or caution for any drug related offence should be required to show a period of at least 3 years free of conviction or caution before an application is entertained, or 5 years after detoxification treatment if he/she was an addict. Any person convicted of supplying drugs should not be considered for the grant of a licence for at least 5 years following conviction. If the applicant has received a custodial sentence, the 5 years should be counted from the completion of the full sentence. If a licence is granted, the applicant should be warned of the serious consequences of driving a motor vehicle whilst under the influence of drugs.

## **Indecency Offences**

- f. As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers: Applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.

No application will be considered from a person currently on the Sex Offender's Register.

## **Violence**

- g. As hackney carriage and private hire vehicle drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be given.
- h. Offences involving breaches of public order should be treated seriously even if the case resulted in the applicant being bound over. More than one offence of this nature may indicate a propensity for this type of behaviour and at least three years free of conviction should be shown before an application is entertained.

## **Dishonesty**

- i. Hackney carriage and private hire vehicle drivers are expected to be persons of trust. The widespread delivery of unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction or if a custodial sentence, 3 to 5 years from the completion should be required before entertaining an application.



# Appendix 2

## **E GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS**

### **General Policy**

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration must be the protection of the public.
3. In the case of offences that have led to a term of imprisonment, the periods given will run from the date that the full sentence awarded by the court would have been completed.
4. Cautions will be taken in to consideration for a period of five years
5. The following examples afford a general guide on the action to be taken where convictions are admitted.

### **Minor Traffic Offences**

- a. Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc. should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a hackney carriage or PHV licence may be granted after its restoration but a warning should be issued as to future conduct.

If the DVLA driving licence of an applicant is revoked following the acquisition of six or more points during the first two years since passing the driving test, then a period of 24 months following the restoration of the licence must have elapsed before a hackney carriage or private hire driving licence can be granted.

## **Major Traffic Offences**

- b. An isolated conviction for reckless driving or driving without due care and attention etc., should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 year free from convictions has elapsed

## **Driving without insurance or driving whilst disqualified**

- c. A serious view will always be taken of a conviction for driving without insurance or driving whilst disqualified. An applicant will generally have to show a period of at least 6 months free from conviction for this type of offence before an application will be considered, or six months from the date of restoration of the driving licence in the case of disqualification. More than one conviction for either offence within the previous three years will require a period of 12 months free of conviction before an application is considered

## **Plying for Hire**

- d. A serious view is taken of this offence, particularly since the vehicle will have been carrying fare paying passengers whilst uninsured. Following a second conviction for this offence within the previous 5 years, a period of 12 months free of conviction should have elapsed before an application is considered and the applicant should be warned of the consequences of any repetition.

## **Drunkenness**

- e. With Motor Vehicle.  
A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicants' fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an application is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the

application is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence application is considered.

- f. Not in Motor Vehicle.  
An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see e. above). In some cases, a warning may be sufficient.

## **Drugs**

- g. A serious view should be taken of this type of offence. An applicant with a conviction or caution for a drug related offence should be required to show a period of at least 3 years free of conviction or caution before an application is entertained, or 5 years after detoxification treatment if he/she was an addict. If a licence is granted, the applicant should be warned of the serious consequences of driving a motor vehicle whilst under the influence of drugs.

## **Indecency Offences**

- h. As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.

No application will be considered from a person currently on the Sex Offender's Register.

## **Violence**

- i. As hackney carriage and private hire vehicle drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be given.

## Dishonesty

- j. Hackney carriage and private hire vehicle drivers are expected to be persons of trust. The widespread delivery of unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

# Appendix 3

**The responses below have been received in response to consultation with the trade. Those parts of the letters relevant to this report have been included.**

## **Royal Cars**

Ibrar Mohammed, Manager.

Licensing Committee:

With reference to your news letter, our views at Royal Cars are as follows:

### 1) Penalty points

With reference to new applicants not being considered for licensing if he/she acquired more than three points, we strongly disagree with this, we suggest that they should be considered. We have checked with the two Bus operating companies in Oxford who provide a public service similar to taxi trade will consider any applicant who has up to six points on licence.

Drivers already licensed do up to four times more mileage compared to a non-taxi driver, hence he/she will acquire penalty points on licence. We would suggest that he/she should be able to drive PHV/HCV as long as he/she is covered by the Insurance Company.

### 2) Plying for Hire

We would suggest to the Licensing Committee that more should be done to clamp down on all these drivers who ply for hire.

**Mr. Ali ASGHAR**, Vehicle proprietor and driver.

I am writing this letter in response to your news letter for the December 2005, and hope these points I am referring to in this letter will be forwarded to the Taxi Licensing Committee.

I. All the drivers that I have talked to, do not agree with your paragraph 3, in which it is stated that drivers already licensed will be referred to the Licensing Committee, should they be convicted of any single offence that results in a penalty of five points or more or acquires nine or more penalty points. This is because as we are aware that BBC Radio 4 have recently reported that thousands of people have been wrongly convicted, because either the warning signs were not placed at the legal prescribed distance or that there were some discrepancies with the road markings, and that these people were called in after up to six months, to inform them that either their driving ban has been removed or the penalty points they acquired have been removed. Also BBC Radio 4 has reported that a Solicitor, Nick Freeman has helped many celebrities win their cases by highlighting the discrepancies as explained above.

It has happened to some of the drivers that the passenger had opened the door and got out of the car while the car was stationary in a queue of traffic that happened to be on a zebra crossing. A police officer was behind the car and stopped him and charged him for stopping on the zebra crossing that carries three penalty points.

If a driver is refused a License due to these penalty points, and few months later it is found that the driver was wrongly convicted, will Oxford City Taxi Licensing pay the compensation for the loss of the earnings incurred?

### **Oxford Private Hire Drivers Union**

Amer Akbar. Secretary.

#### 1. NEW RULES REGARDING DRIVING CONVICTIONS

The proposed changes in my opinion and certainly a considerable number of drivers that I have spoken to is that these changes being proposed are unfair, and are seen to unnecessarily discriminate against drivers for whom it has already become a struggle trying to meet the huge rising costs associated with driving a private hire vehicle in Oxford. The council should not act as both judge and jury when looking at matters to do with speeding convictions, as this is a matter that is quite adequately dealt with by the judicial process. The courts decide if anybody is worthy of holding or not holding a licence, and thus inevitably resulting in the retention or the loss of a driving license. It is recommended that the council should not implement the new rules relating to speeding convictions and leave the decision to the courts.

### **City of Oxford Licensed Taxicab Association**

Alan Woodward, Secretary.

I have no problem with the proposed change in 'traffic offences'.

I have long held the view that any person placed in a position of 'absolute' trust as taxi drivers always are, particularly where vulnerable members of the public are concerned & all too often where vulnerable people place themselves at additional 'extreme' risk due to intoxication. Badge holders **MUST** be 'Fit & proper' and have to be proved to be of absolute trust. Any person having been handed down any term of imprisonment, in my opinion, has to have at one time to have been shown **not** to have been 'fit & proper', sufficient enough to be trusted in a 'one to one' situation with such people. We only have to look at 'fit & proper' badge holders who all too often (without previous convictions) have committed 'offences' over issues of mistrust.

I do have a problem over 'cautions'.

There appears nowadays to be a very thin line between 'cautions' & 'warnings' issued by the police, many 'police' cautions are now issued to 'offenders' by civilian members of police authority staff & often over issues referred to as 'civil' matters, merely a complaint where the element of truth has not been proven. Serious consideration should be given to favour of applicants where cautions have been 'awarded' due to a mere complaint of a civil nature where police choose not to otherwise prosecute.

#### **Plying for Hire**

Such an issue requires urgent attention of this authority, the report relates to 'more than one conviction' under this category, this appears to acknowledge that the offender will be permitted to commit a criminal offence (of which illegal plying for hire is) & then continue to drive, yet, I should remind the authority of the overriding consideration of exclusion to licensing **MUST** be the **protection of the public**. Any

existing badge holder, convicted of illegal plying for hire should be refused a license, he has already proven to place members of the public at severe risk by carrying them whilst carrying NO INSURANCE, I can think of no other total disregard for public safety than denying passengers the right to insurance cover.

A 'caution' for drug offences seems to disregard a 'civilian' type 'warning' issued by a person other than a court or police officer. Class 'C' drugs, such as cannabis are now classed as such, any person over the age of 18 caught by a police officer with 'personal use, would be issued with a street caution & sent on his way, this would not (I believe) be recorded against a persons record? Probably needs confirming, this 'offence' I believe requires clarification for badge refusal.

#### Indecency offences

I am of total approval of these guidelines.

#### Violence

We have witnessed many such offences committed against cab drivers in recent times, all too often the CPS & Thames Valley Police have failed to act upon behalf of badge holders who have acted (lawfully) in self-defence. Again, all too often, where two or more 'offenders' have made statements supportive of each other, the badge holder has found himself being forced to withdraw his complaint or face conviction himself.

The authority should show extreme caution where badge holders of previous good record are convicted or cautioned for aggressive behaviour under circumstances where he/she fears for his safety.