

‘Fit & proper person’: taxi driver’s licence reviews

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Grant of a driver’s licence

The licensing regime is concerned with protection of the public; which is the key consideration. A licensing authority **shall not grant** a licence to drive a hackney carriage/private hire vehicle unless they are satisfied that the applicant is a fit and proper person to hold such a licence. (Ss.51(1)(a)(i)and 59(1) LG(MP) Act 1976).

By s.61 may suspend or revoke ... or refuse to renew the licence on any of the following grounds:

(a) that he has since the grant of the licence-

1. been convicted of an offence (dishon, indec or viol) or
2. been convicted of an offence taxi legisl ... ; or

(b) **any other reasonable cause.**

(emphases added)

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Definition

Section 61 does not mention fit & proper person (*any other reasonable cause*).

Fit and proper person not defined in legislation and no judicially approved test but:

- Secretary of States Guidance: *Statutory Taxi & Private Hire Vehicle Standards 2020* (DfT).
- IoL – *Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades 2018*.
- IoL review of guidance closes 30 November [online via this link](#)
- *any other reasonable cause* considered by higher courts in a number of cases.

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IoL Guidance

- *It is suggested that the expression “safe and suitable” person to hold a driver’s licence is a good interpretation which neither adds nor removes anything from the original term of “fit and proper person” but brings the concept up to date (para.3.17).*
- *Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage licence driver’s licence) 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? (para.3.16 – Button on Taxis).*

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Statutory Taxi & Private Hire Vehicle Standards 2020 (DfT)

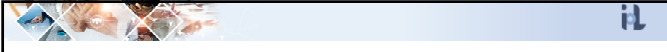
- *Published by the Secretary of State for Transport under section 177(1) of the Policing and Crime Act 2017 in July 2020.*
- *The document sets out a framework of policies that, under section 177(4), licensing authorities “**must have regard**” to when exercising their functions (para.2.6, emphasis in original).*

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Statutory standards

- *It may be helpful when considering ... fit and proper person to pose oneself the following question:*
Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night? (para.5.12)
- *Targeted towards certain behaviour, wide enough to cover all types?*
- *If on the balance of probabilities, the answer to the question is ‘no’, the individual should not hold a licence (para.5.13).*
- *... the safeguarding of the public is paramount (5.14)*


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- The test is on balance of probability – *This means that an applicant or licensee should not be ‘given the benefit of doubt’.* If the committee or delegated officer is only “50/50” as to whether the applicant or licensee is ‘fit and proper’, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction (para.5.14).




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Case law

McCool v Rushcliffe BC [1998] 3 All ER 889 (hearsay evidence admitted of indecent assault not resulting in conviction)

It is in my view impossible to be prescriptive as to what might amount to good reason. What will be (or may be) a good reason will vary from case to case and vary according to the context in which the words appear ... it is appropriate for the local authority or justices to regard as a good reason anything which a reasonable and fair-minded decision maker, acting in good faith and with proper regard to the interests of both the public and the applicant, could properly think it is right to rely on (p.896c-f).




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McCool [1998]

‘One must ... approach this question bearing in mind the objectives of this licensing regime which is plainly intended, among other things, to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers.’




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Leeds City Council v Hussain [2002]

To my mind the phrase “any other reasonable cause” [s.61] has been specifically selected to show the width of the discretion which is given to a council. Their task of making a decision is very much a jury question for them in which they are entitled to take account of all relevant circumstances (p.205, 12).


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Evidence

It is clear from the authorities that the remit is a wide one and there is no doubt that a licensing authority is able to consider failed criminal proceedings in relation to the fit and proper person criterion, as well as any other factors which might be relevant to the fitness or otherwise of an applicant. It is also clear that each case has to be judged on its own evidence and particular facts.

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Convictions

Mitigating factors in relation to offences may be given by a driver. However, the authority cannot go behind the convictions. In any event, the fact of the conviction and the nature of the sentence would already reflect any mitigation that might have been put forward. (*Nottingham City Council v Farooq* 1998 EWHC Admin 991)

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Effect on driver

Any personal circumstances said by the claimant to 'disadvantage him in the labour market' or in any other way are not relevant. As Lord Bingham, cited with approval in *Leeds City Council v Hussain* by Silber J, put it:

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Effect on driver

The council, when considering whether to suspend a licence or revoke it, is focussing on the impact of the licence-holder's vehicle and character on members of the public and in particular, but not exclusively, on the potential users of those vehicles.

This does not require any consideration of the personal circumstances which are irrelevant, except perhaps in very rare cases, to explain or excuse some conduct of the driver.' (paras.25-26)

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Cherwell v Anwar

This decision was applied in *Cherwell v Anwar* [2011] EWCH 2943 (Admin) where a magistrates' court was held to have been wrong to take personal factors into account when reaching their decision (paragraphs 22, 25, 26).

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Question

- How is an authority to deal with potentially unacceptable behaviour by those holding taxi drivers' licences?
- 'Fit & proper person' is the basic criterion.
- Some matters will not lead to refusal on this basis.
- Similarly some matters arising after grant will not require action by the authority.
- Others may warrant a warning or points (if the authority operates a points system).
- But what of matters which may require a response by way of suspension or revocation?
- And if require immediate action?

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On receipt of complaint

- Criminal procedure rules do not apply.
- Civil not criminal burden of proof.
- Strict rules of evidence do not apply – hearsay admissible, evidence may be read.
- Primary responsibility protection of the public.
- ... **all licensing authorities should consider arrangements for dealing with serious matters that may require the immediate revocation of a licence. It is recommended that this role is delegated to a senior officer/manager with responsibility for the licensing service** (Statutory Standards, para.5.11 – emphasis in original)..
- Finding that misconduct occurred and loss of licence may have far reaching direct & indirect consequences for driver.

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Policies

- Policies should be used as internal guidance.
- Cannot be applied rigidly or inflexibly but reasons for departure should be given,
 'The law requires that each case must be considered in the light of the policy but not so that the policy automatically determines the outcome.'

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Evidence

Tribunal not bound by rules of evidence applicable in civil and criminal matters for licensing is the exercise of an administrative discretion: *Kavanagh v Chief Constable of Devon and Cornwall* [1974] QB 624; 2 All ER 697 CA. But the weight to be attached to such evidence must be carefully assessed (*Westminster City Council v Zetfair Ltd* (1990) 88 LGR 288 DC).

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In *Hussain* it was argued that the Appellant had called no live evidence but had relied upon a case summary provided by the police. The court ruled that hearsay evidence is admissible and the authority were entitled to rely on any evidential material which might reasonably and properly influence the making of a responsible judgment in good faith on the question in issue.

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Hearings

- Not a court of law.
- Proceedings informal.
- But procedure must be followed.
- Interview under caution not required but opportunity should be given for driver to give his version of the facts.

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Evidence

- Delegated body (usually committee) to consider whether f&pp.
- Whether f&pp must be decided on the evidence.
- All relevant evidence should be collected, considered and presented.
- Evidence may be subject to cross-examination should the matter go before the magistrates' court or Crown Court on appeal

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Reasons

- adequate reasons must be given
- there has to be a proper basis in fact
- findings of fact should be made
- based on the evidence
- must be sufficient to allow the reason(s) why the decision was reached to be understood

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Reasons - appeals

(R (Hope and Glory Public House Limited) v City of Westminster Magistrates' Court [2011] EWCA Civ 31). In 'very general terms' the Court of Appeal held that 'the magistrates' court should pay careful attention to the reasons given by the licensing authority' and before departing from that decision must be satisfied that the judgment below was wrong ... but that 'the weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, **taking into account the fullness and clarity of the reasons**, the nature of the issues and the evidence given on appeal' (paragraph 45) (emphasis added).

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Immediate suspension/disqualification

- Suspension/disqualification takes effect 21 days from day notice given (s.61(2A)) or on the determination or abandonment of an appeal.
- 'If it appears that the **interests of public safety** require the suspension or disqualification of the licence to have immediate effect, and the notice given to the driver ... includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.' (s.61(2B))

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Singh - suspension

- Section 61 does not confer a power of interim suspension.
- It is a sanction, it cannot be used as an administrative measure to allow authority to investigation matters or wait outcome of prosecution process.
- It is a final determination on the fitness and propriety of the driver.

R (*application of Singh*) v Cardiff City Council [2012] EWCH 1852 (Admin)
 Obiter dicta support for Singh may be found in *Reigate & Bansted Borough Council v Jacek Pawlowski* [2017] EWHC 1764 (Admin).

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Burden of proof

- *Hope & Glory* [2011] EWCA Civ 31 burden of proof on applicant.
- *Mehrdad Kaivanpar v DPP* [2015] EWHC 4127 (Admin)
- Court of Appeal's decision in *Muck IT Ltd v Merritt and others* [2015] EWCA Civ 1124 should be followed:
 - on application burden of proof on applicant
 - on review or renewal burden of proof on LA
- But *Practice Direction on Citation of Authorities* LCJ 2001.

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Burden of proof

- The burden of proof is on the party that is bringing the appeal before the tribunal unless the burden has been shifted to the respondent by case law or legislation.
- Is *Muck It Limited* authority for shifting burden of proof in appeal against revocation of taxi driver's licence from Appellant to Respondent licensing authority? (*Muck It Limited v Merritt & others* [2005] EWCA Civ 1124.)
- No - First, it is a first instance decision not an appeal decision and, secondly, *Muck It* is concerned with *The Goods Vehicles (Licensing of Operators) Act 1995* which implements the European Council Directive 96/26 which provides:
Member States shall see to it that the competent authorities withdraw the authorisation to pursue the occupation of road transport operator if they establish that the conditions of Article 3(1)(a),(b) or (c) are no longer satisfied (emphasis added).
- The burden of proof was therefore shifted by the legislation. There is no such provision in the LG(MPA) 1976. The decision in *Muck It* does not apply to appeals under the 1976 Act. It concerns a totally different licensing regime and appeals system.

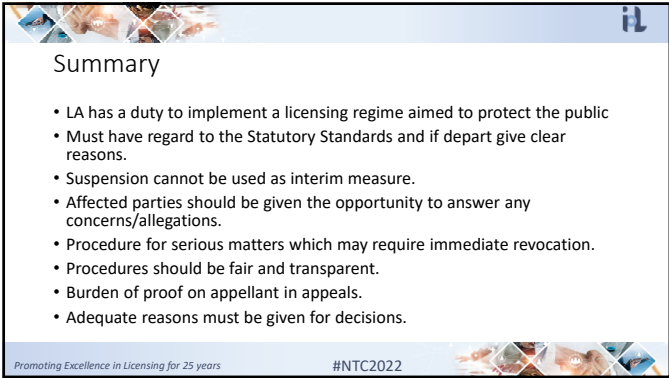
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- Appeals under *The Goods Vehicles (Licensing of Operators) Act 1995* Act lie to the Traffic Tribunal, which has its own rules of procedure. Appeals under s.61 of the 1976 Act are to the magistrates' court and Crown Court each with their own rules (Magistrates' Court Rules 1981; Crown Court Rules 1982).
- Secondly, the leading case of *Hope and Glory in the Court of Appeal* sets out the correct approach to licensing appeals at para.48 (and *Hope & Glory* is cited with approval by the Appellant in his skeleton argument):
It is normal for an appellant to have the responsibility of persuading the court that it should reverse the order under appeal, and the Magistrates Courts Rules envisage that this is so in the case of statutory appeals to magistrates' courts from decisions of local authorities. We see no indication that Parliament intended to create an exception in the case of appeals under the Licensing Act. (Nor did it under the 1976 Act.)

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- The burden of proof cannot be on the respondent to an appeal unless it is shifted by case law or statute. The burden must always be on the appellant to show that the decision below is wrong in the light of the evidence at the appeal. The legal burden of proof therefore remains with the Appellant who must persuade the Court on the balance of probabilities that the Respondent licensing authority's decision that he is not a fit and proper person was wrong.
- This is not to say that the licensed driver has continually to prove that he or she is a fit and proper person. It is only if information comes to the licensing authority's notice which raises questions over whether the driver remains a fit and proper person that the authority will have to exercise its judgement on the matter.

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Summary

- LA has a duty to implement a licensing regime aimed to protect the public
- Must have regard to the Statutory Standards and if depart give clear reasons.
- Suspension cannot be used as interim measure.
- Affected parties should be given the opportunity to answer any concerns/allegations.
- Procedure for serious matters which may require immediate revocation.
- Procedures should be fair and transparent.
- Burden of proof on appellant in appeals.
- Adequate reasons must be given for decisions.

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