



APPROVED 22nd February 2018

**POLICY GUIDELINES TO BE CONSIDERED WHEN DETERMINING APPLICATIONS
FOR STREET TRADING CONSENTS**

NOTE: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights.

This document aims to provide guidance to any person with an interest in street trading consents. In particular, but not exclusively:

- Applicants for street trading Consents
- Existing street trading consent holders that are being reviewed
- Licensing Officers

Officers considering Applications for consents will utilise these guidelines when determining whether to grant such Applications

Whilst Officers 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 Officer may depart from the guidelines.

Background

1. In this Policy the following words have the following meanings:
 - a. "Consent" means a Consent issued under The Local Government (Miscellaneous Provisions) Act 1982 to operate as a street trader in the Borough of Burnley.
 - b. "Applicant" means a person applying for a Consent, an existing Consent holder applying for renewal of a Consent, or an existing Consent holder whose Consent is subject to a decision by the Council to revoke, suspend or take no further action
 - c. "Application" means an Application for a Consent, or an Application for renewal of a Consent.
 - d. "Conviction" means an unspent conviction, caution or formal warning
 - e. "Council" means Burnley Borough Council
 - f. "Individual" includes an existing Consent holder, an applicant for a new Consent, and an Applicant for the renewal of an existing Consent
 - g. investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities)

references to the grant of a Consent in these guidelines shall be construed accordingly.

8. The guidelines do not deal with every type of offence, and do not prevent the Council from taking into account offences not specifically addressed in the guidelines, or other conduct, which may be relevant to an Individual. If an Individual has a Conviction for an offence not covered by the guidelines regard will be had to the factors at paragraph 12 when deciding whether any action should be taken.
9. Offences described in the guidelines and similar offences, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.

GUIDELINES ON THE RELEVANCE OF PREVIOUS CONVICTIONS AND OTHER INFORMATION

General Policy

1. Each case will be decided on its own merits.
2. The Council has a duty to ensure so far as possible that applicants for, and holders of street collection consents are suitable persons. One aspect of that is the extent to which previous Convictions, including but not limited to Convictions for offences against children and young persons, dishonesty, sexual offences, violence and drugs indicate that a person is not suitable.
3. The Council has a duty to take into account any complaints made to the Council, Police, or any other agency, breaches of Consent conditions and any intelligence received from other agencies (including circumstances which have not resulted in a criminal Conviction or other disposal, e.g.
 - a) incidents that have resulted in a police investigation where there has been no further action due to the criminal burden of proof will still be considered if the Council is satisfied that the incident occurred based on the balance of probabilities.
 - b) Incidents that have resulted in the revocation of a consent which has been issued by another Council.
4. Restorative justice and other criminal disposals are increasingly used by the police as a less formal way of dealing with issues and as an alternative to the criminal court system. The Council recognises that restorative justice and other out of court disposals tend to be applied in less serious cases or for first time offenders, nevertheless all such disposals will be taken into account when determining if a person is a fit and proper person.
5. An Individual with a Conviction for a serious offence need not be automatically barred from obtaining a Consent, 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 suitable person to hold a Consent (the onus is on the Applicant to produce such evidence). A person with a Conviction for a single serious offence or a number of separate offences is not barred from applying for a Consent, but would normally be expected to remain free from Conviction for an appropriate period (which will depend on the nature of the offence.)
 - c. Simply remaining free of Conviction will not generally be regarded as adequate evidence that a person is suitable to hold a Consent.
6. Some discretion may be appropriate if the offence is an isolated one with mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account. (In any case which involves certain specified sexual offences, murder or manslaughter a Consent will normally be refused.)

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

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

A. OFFENCE OF DISHONESTY

Applicants are expected to be persons of trust. It is comparatively easy for a dishonest person to defraud members of the public who use their services

Those persons may include especially vulnerable people and children.

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

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

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

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

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

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

B. VIOLENCE (OTHER THAN SEXUAL AND INDECENCY OFFENCES)

Street traders have close, regular contact with the public. A firm line is to be taken with those who have Convictions for offences involving violence. An Application will normally be refused if the Applicant has a Conviction for an offence that involved the loss of life.

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

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

A Consent will not normally be granted where the Applicant has a Conviction for an offence or similar offence(s) which replace the below offences and the Conviction is less than 10 years prior to the date of Application:

- Arson
- Malicious wounding
- Actual bodily harm which is racially aggravated
- Grievous bodily harm
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated
- Violent disorder
- Resisting arrest
- Or any similar offences (including attempted or conspiracy to commit), or offences which replace the above

A Consent will not normally be granted where the Applicant has a Conviction for an offence or similar offence(s) which replace the below offences and the Conviction is less than 5 years prior to the date of Application:

- Racially-aggravated criminal damage
- Racially-aggravated offence
- Common assault
- Assault occasioning actual bodily harm
- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Criminal damage

- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

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

C. DRUGS

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

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

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

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

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

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

D. SEXUAL AND INDECENCY OFFENCES

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

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

Any Individual currently on the sex offenders' register would not normally be granted a Licence.

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

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