

Principles involved in determining ‘fitness’:

Relevant case law

Local Government (Miscellaneous Provisions) Act 1976

- In the case of an application for the grant of a drivers licence or an operators licence the Act places a duty on local authorities.
 - A licence shall not be granted unless the Council is satisfied that the applicant is a ‘fit and proper’ person to hold a licence.
 - The onus is on the applicant to satisfy the Council that he/she is fit and proper to hold the licence
 - What about vehicle proprietors ?
 - Does the general ‘discretion’ include fitness and suitability to hold a licence ?
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Assessing a driver's 'fitness'

- **How long has the applicant held a licence ?**
 - **What if the licence is a 'foreign' one ?**
 - **The 'fit and proper' test**
 - **Minimum age requirement ?**
 - **A driving test**
 - **Assessing medical fitness to drive**
 - **A knowledge/topographical test, PH and HC ?**
 - **Previous convictions – enhanced checks**
 - **Ability to communicate in english**
 - **Must have a right to work in this country ?**
 - **Disability awareness training**
 - **Child sexual exploitation training**
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Assessing an operator's 'fitness'

- **Fit and proper person test applies**
 - **Previous experience/business acumen**
 - **Previous bankruptcy**
 - **Criminal record check – enhanced or not ?**
 - **Public liability insurance**
 - **Right to live and work in this country**
 - **Evidence of appropriate radio communications licence**
 - **Should we prohibit the use of the words 'taxi' or 'cab' ?**
 - **Health and safety in relation to operating premises**
 - **Proof of audited or certified accounts**
 - **Should you carry out a pre-licensing inspection ?**
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Case law on 'fit and proper' test

- **Adamson v Waveney District Council**
 - *'once some, or all of the spent convictions are admitted in evidence before the local authority committee, the applicant is entitled to be heard, not by way of suggesting that the convictions were incorrectly arrived at, but in order to persuade the committee that they are irrelevant by reason of their age, circumstances or lack of seriousness that they should not jeopardise his application. All of that is simple natural justice'*
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Case law on 'fit and proper' test

- **Adamson v Waveney District Council**
 - *'the committee has to come to its own dispassionate conclusions having in mind, not only the interests of the applicant as a person with spent convictions, but also the interests of the public in whose interests the powers were being exercised'*
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Case law on 'fit and proper' test

- **McCool v Rushcliffe Borough Council**
 - *'it is for the applicant to establish that he is a fit and proper person on the balance of probabilities. The real question to be decided is whether or not, on the balance of probabilities, the applicant is a fit and proper person to be granted a licence. This does not require the view to be formed as to whether the person had, in all likelihood, committed a specific offence*
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Case law on 'fit and proper' test

- **McCool v Rushcliffe Borough Council**
 - *'one must, it seems to me, approach this question bearing in mind the objectives of the licensing regime which is plainly intended 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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Case law on 'fit and proper' test

- **Nottingham City Council v Farooq**
 - *'it is not open to local authorities when dealing with applications, to review an individual's convictions. An applicant for a licence can explain the circumstances of the offences for which he was convicted, and put forward mitigating circumstances relating to them, but the authority cannot go behind those convictions'*
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Case law on 'fit and proper' test

- **Leeds City Council v Hussain**
 - *'the Council's focus must be on the impact of the licensee's character on members of the public'*
 - *'this does not require the consideration of the personal circumstances of the driver as they are irrelevant'*
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Case law on 'fit and proper' test

- **Cherwell v Anwar**
 - **Driver's licence was refused on renewal**
 - **Conviction for assault on his wife**
 - **Magistrates, on appeal, took into account hardship issues**
 - *'magistrates must accept the Council's policy and apply it as it they were standing in the shoes of the council considering the application'*
 - *'in this case the court took into account an irrelevant reason, which no reasonable court would have done'*
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Where does the burden of proof lie in proving 'fitness' ?

- **Brighton and Hove v Kaivanpor**
 - Driver's licence was revoked
 - Magistrates dismissed appeal
 - High Court ruled that :
 - *The burden of proof in taxi licence revocation appeals is on the council to show that an individual is not a fit and proper person*
 - *The Magistrates had erred in placing the burden on the driver to satisfy them he was a fit and proper person when considering the revocation of his licence for 'any other reasonable cause'*
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Suspension or revocation

- **S.61 1976 Act : Drivers**
 - **Can suspend, revoke, (or refuse to renew)**
 - **If the driver has been convicted of an offence involving dishonesty, indecency or violence**
 - **Any offence or non-compliance by the driver**
 - **Any other reasonable cause**
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Suspending a licence

- **S.61(2)(b) 1976 Act : applies to drivers**
 - *“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 that is so, and an explanation why, the suspension takes effect when the notice is given”*
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Singh v Cardiff City Council

- **Suspension as a interim measure**
 - Suspension is a 'final' decision on the question of a person's fitness and propriety
 - It cannot be used as an 'interim' measure pending further investigation into a driver's conduct
 - Can still suspend, but properly based on 'fitness' criteria
 - Driver must have a chance to answer any allegations
 - On any appeal, 'new' evidence can be introduced
 - Mechanisms need to be in place to 'lift' suspension if earlier decision cannot later be justified
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Final thought . . .

- **When determining a matter, if in doubt always err on the side of refusal.**
 - **It is easier to defend a decision on appeal in the Magistrates Court than in a Coroners Court .**
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