

Colchester Borough Council - Convictions Policy

1. Introduction

1.1 The key consideration of the Council and the overriding objective in the licensing of hackney carriage and private hire vehicles, drivers and operators is the **safety of the travelling public**. The Council therefore considers its robust approach to convictions and motoring convictions to be fully justified.

1.2 Licensed drivers proprietors and operators have close regular contact with the public who entrust their personal safety to licensed members of the trade whenever they take a journey. Users of licensed vehicles have a right to expect that their driver is not an individual with a predisposition towards or a propensity for violent behaviour at any level. The public also have a right to expect that licensed drivers and operators are trustworthy with no propensity for dishonesty.

1.3 In line with these considerations the Council has a statutory obligation to ensure the applicant is a 'fit and proper' person. This requirement remains with the Council throughout the lifetime of a licence and at the point of renewal. Therefore, **the Council's Convictions Policy (the Policy) will apply to new and renewal applications, when reviewing an existing licence and decisions to suspend or revoke a licence. The Council will also have regard to the Policy when determining its own pre-licensing conditions.**

1.4 Any decision, taken by officers of the Council and/or the Licensing Committee, needs to be justified, proportionate and consistent. The Policy has been drawn up to assist licence holders, officers and members of the Licensing Committee and ensure that the decision making process is open and transparent for all users.

1.5 In the Policy the Council has categorized and assessed the risk to the public of a wide variety of criminal and motoring convictions. The convictions listed are by no means exhaustive however it is anticipated that any convictions not listed will have close enough themes to enable parallels can be drawn from other listed convictions. Also included within the Policy is the stance to be taken on other forms of intelligence which can be considered by the Council as part of its fit and proper test.

2. Relevant legislation

2.1 Hackney carriage and private hire licences are issued by the Council, pursuant to the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847. The 1976 Act prohibits the Council granting a licence to a person unless it is satisfied that the person is 'a fit and proper person'. Section 57 of the Act gives the Council the power to require a person to submit information about themselves so the Council can be satisfied that they are 'a fit and proper person'.

2.2 There is an ongoing responsibility under the 1976 Act for the Council to ensure

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that licence holders continue to meet the 'fit and proper' test for the duration of the licence period and Sections 61 & 62 of the '1976 Act', gives the Council the power to suspend, revoke or to refuse to renew a driver or operator licence.

3. General principles

3.1 In this Policy **any reference to offences should be taken to include convictions, cautions, fixed penalty notices, and any other form of restorative justice.** Such determinations can be regarded as being similar in terms of culpability, evidence and the admission of guilt. The categories include attempts, incitement, aid and abet, cause and/or permit, counsel or procure or conspiracy to commit an individual offence which can attract the same penalty.

3.2 Reference to 'applicants and 'licence holders' in this policy includes drivers, proprietors and operators as appropriate.

3.3 **By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 'taxi' drivers are an exempt occupation for the purposes of the 1974 Act and convictions are therefore never spent.** The Council is therefore able to take into account spent convictions but will do so in a fair and proportionate way.

3.4 The Policy also deals with any civil actions including injunctions, breaches of licensing conditions or byelaws, complaints, allegations, and intelligence made available to the Council by the Police or other partner agencies, and anything considered by the Courts that hasn't resulted in a conviction.

3.5 Anecdotal evidence can be taken into account and may, on occasions, be the sole reason for the refusal, suspension or revocation of a licence. Where allegations are presented as evidence further information must be sought from the applicant.

3.6 The investigating officer/Licensing Committee cannot go behind the existence of a conviction in an attempt to re-try the case. **The conviction will be considered in so far as it relates to whether the applicant/licence holder is a fit and proper person to hold a licence.**

3.7 Each case will be considered on its own merits and discretion may be exercised where appropriate and the appropriate weight attached to the evidence under consideration. The Council will consider –

- the nature of the offence and any penalty imposed
- the length of time since the offence
- the individual's age when the offence was committed
- the history and pattern of offending
- whether the matter has previously been considered

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- the intent or harm that was or could have been caused
- any other relevant matter

3.8 The licensing authority may depart from the policy however it will only do so in exceptional circumstances. The otherwise good character and driving record of the applicant or licence holder will not ordinarily be considered as exceptional circumstances.

3.9 The tables included within the Policy set out the number of points that will be attached for each offence when determining an application or when a licence is renewed or reviewed. The points may be applied to new applicants and existing licence holders. The points will remain on the licence as specified in the table.

4. Application of Points

4.1 In addition to setting out the points to be applied for each offence the tables are colour coded to indicate the Council's stance in relation to a new or renewal application or to the review of a licence.

Red (9 to 12 points) - Where the convictions of an applicant result in the accumulation of 12 or more points an applicant should expect their application to be refused. If a licence holder's conduct is such that, were they to be applying for a new licence, their application would be refused, they should expect consideration to be given to the revocation of their licence.

Orange (5 to 8 points) - Where the convictions of an applicant result in the accumulation of between 8 and 5 points an applicant should expect their application to be referred to the Licensing Committee for determination. If a licence holder's conduct is such that, were they to be applying for a new licence, their application would be referred to the Licensing Committee for determination, they should expect their case to be referred to the Licensing Committee for consideration where it may be suspended or revoked.

Green (0 to 4 points) - Where the convictions of an applicant result in the accumulation of 4 or less points the application is likely to be granted. A licence holder should expect that the points will be applied to their licence but no further action is likely to be taken unless circumstances indicate that consideration by the Licensing Committee is appropriate.

Please note – In addition to points for convictions, licence holders may also receive penalty points for breaches of policy etc under the Council's Penalty Points Scheme. These points will be added to those for convictions and where the total exceeds 12 in any one year the licence holder should expect consideration to be given to the suspension or revocation of their licence.

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5. Investigation Procedure

5.1 The Council will deal with offences as follows –

- On receiving a disclosure from the DBS or other notification a member of the Licensing Team will assess whether any of the convictions and/or any of the additional information received has any relevance as to whether the applicant/licence holder is a fit and proper person to hold a licence,
- A member of the Licensing Team will investigate the facts, which may include interviewing the applicant/licence holder under caution, and prepare a report for the Licensing, Food & Safety Manager (the Manager).
- The Manager will review the case file and, where appropriate, will interview the applicant/licence holder and make his determination. The outcome will be conveyed to the applicant/licence holder in writing.
- In the first instance the applicant/licence holder has a right of appeal to the Licensing Committee. The appellant may submit documentary evidence in advance of the hearing and has the right to address the Committee and/or nominate someone else to do so on their behalf. Appeals must be made in writing to licensing.team@colchester.gov.uk or to the Licensing, Food & Safety Manager, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG within 21 days from the date of notification of suspension/revocation.
- If the right of appeal is exercised the Licensing Committee will consider the facts of the case and make its determination.
- There is a further right of appeal to the Magistrates Court. Any such appeal must be made in writing, within 21 days from the date of the decision/notification of the decision, to the Clerk of the Court, Essex Magistrates' Courts, Osprey House, Hedgerows Business Park, Colchester Road, Springfield, Chelmsford, Essex, CM2 5PF.
- Where an appeal has been made the implementation of any suspension or revocation will be held until its determination.

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6. Criminal Convictions

Level 1 – Serious crime including sexual offences

Offences (including but not limited to) -

Serious Crime including Sexual Offences	
Type of offence	Number of Points (Points are doubled for a term of imprisonment)
Murder	Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for such an offence
Manslaughter	
Manslaughter or culpable homicide while driving	
Causing death by dangerous or careless driving	
Gross indecency with a female	
Gross indecency with a male	
Indecent assault on a female	
Indecent assault on a child under 16 years	
Buggery	
Rape	
Indecent exposure	
Indecent exposure to the annoyance of residents	
Indecent exposure with intent to insult a female	
Unlawful sexual intercourse	
Importuning	
Living of immoral earnings	
Prostitution	
Possessing or distributing obscene material	

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Level 2 - Offences usually associated with violence or high value crime

Offences (including but not limited to) –

Offences usually associated with violence or high value crime										
Years since conviction received (or part year)	1	2	3	4	5	6	7	8	9	10
Type of offence	Number of Points (Points are doubled for a term of imprisonment)									
Possessing Controlled Drugs	12	12	12	12	8	6	4	2	1	0
Possessing Controlled Drugs with intent to supply	12	12	12	12	12	12	10	8	6	4
Producing Controlled Drugs	12	12	12	12	12	10	8	6	4	2
Importing drugs	12	12	12	12	12	12	10	8	6	4
Burglary & Theft – Aggravated	12	12	12	12	12	12	8	6	4	2
Robbery	12	12	12	12	12	12	12	12	8	6
Aggravated vehicle taking (causing death)	12	12	12	12	12	12	12	12	8	6
Arson	12	12	12	12	12	12	12	12	12	12
Grievous Bodily Harm, s20	12	12	12	12	12	12	8	6	4	2
Grievous Bodily Harm, s18	12	12	12	12	12	12	12	12	8	6
Possess Offensive Weapon	12	12	12	8	6	4	2	0	0	0
Possession of Firearm with intent	12	12	12	12	12	8	6	4	2	0
Possession of a Firearm	12	12	12	8	6	4	2	0	0	0
Criminal Damage	12	12	12	8	6	4	2	0	0	0
Violent Disorder	12	12	12	8	6	4	2	0	0	0
Riot	12	12	12	12	8	6	4	2	0	0
Affray	12	12	12	6	5	4	3	2	1	0
Assault on Police Officer	12	12	12	8	6	5	4	3	2	1
Common Assault	12	12	12	8	6	5	4	3	2	0
Racially or religiously aggravated violent disorder	12	12	12	12	8	6	4	3	2	0
Resisting Arrest	12	12	12	8	6	4	2	0	0	0
Using threatening, abusive words or behaviour	5	4	3	2	1	0	0	0	0	0
Battery	5	4	3	2	1	0	0	0	0	0
Breach of the Peace	3	2	1	0	0	0	0	0	0	0
Drunk and Disorderly	3	2	1	0	0	0	0	0	0	0
Obstruction	12	12	12	6	4	2	0	0	0	0
Indecent/nuisance telephone calls	12	12	12	12	12	8	6	4	2	1

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Level 3 - Dishonesty crime

Offences (including but not limited to) –

Dishonesty Crime										
Years since conviction received (or part year)	1	2	3	4	5	6	7	8	9	10
Type of offence	Number of Points (Points are doubled for a term of imprisonment)									
Theft	12	12	12	6	4	2	1	0	0	0
Theft – Shoplifting	12	12	12	6	4	2	1	0	0	0
Theft – Employee	12	12	12	6	4	2	1	0	0	0
Theft – from vehicle	12	12	12	6	4	3	2	1	0	0
Burglary & Theft – Dwelling	12	12	12	12	8	6	4	2	1	0
Burglary & Theft – Non Dwelling	12	12	12	6	4	3	2	1	0	0
Fraudulent Use	12	12	12	6	4	3	2	1	0	0
Handling/receiving	12	12	12	6	4	3	2	1	0	0
Forgery	12	12	12	6	4	3	2	1	0	0
Conspiracy to defraud	12	12	12	6	4	3	2	1	0	0
Obtaining money by deception	12	12	12	6	4	3	2	1	0	0
Obtaining money by forged instrument	12	12	12	6	4	3	2	1	0	0
Deception	12	12	12	6	4	3	2	1	0	0
False Accounting	12	12	12	6	4	3	2	1	0	0
False Statement to obtain benefit	12	12	12	6	4	3	2	1	0	0
Going equipped	12	12	12	6	4	3	2	1	0	0
Taking/driving or attempting to steal vehicle	12	12	12	6	4	3	2	1	0	0
Allow to be carried in a stolen vehicle	12	12	12	6	4	3	2	1	0	0
Perverting the course of justice	12	12	12	12	8	6	4	2	0	0

Level 3 – Smoking offences

Offences (including but not limited to) –

Smoking										
Years since conviction received (or part year)	1	2	3	4	5	6	7	8	9	10
Type of offence	Number of Points (Points are doubled for a term of imprisonment)									
Smoking in a licensed vehicle	3	3	3	2	1	0	0	0	0	0

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7. Road Traffic/Motoring Convictions

Level 1 – Driving offences involving the loss of life

Code	Offence	Number of Points
BA40	Causing death by driving while disqualified	12 for all offences listed in this table Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for such an offence. A current licence would be revoked in all but the most exceptional circumstances
BA60	Causing serious injury by driving while disqualified	
CD40	Causing death through careless driving when unfit through drink	
CD50	Causing death by careless driving when unfit through drugs	
CD60	Causing death by careless driving with alcohol level above the limit	
CD70	Causing death by careless driving then failing to supply a specimen for alcohol analysis	
CD80	Causing death by careless or inconsiderate driving	
CD90	Causing death by driving: unlicensed, disqualified or uninsured drivers	
DD60	Manslaughter or culpable homicide while driving a vehicle	
DD80	Causing death by dangerous driving	
DG60	Causing death by careless driving with drug level above the limit	

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Level 2 – Driving under the influence of alcohol/drugs and other serious driving offences

Years since conviction received (or part year)		1	2	3	4	5	6	7	8	9	10
Code	Offence	Number of Points (Points are doubled for a term of imprisonment)									
AC10	Failing to stop after an accident	12	12	12	12	12	8	6	4	2	1
BA10	Driving while disqualified by order of court	12	12	12	12	12	8	6	4	2	1
BA30	Attempting to drive while disqualified by order of court	12	12	12	12	12	8	6	4	2	1
CU80	Breach of requirement as to control of the vehicle, mobile phone etc.	12	12	12	12	12	8	6	4	2	1
DD10	Causing serious injury by dangerous driving	12	12	12	12	12	8	6	4	2	1
DD40	Dangerous driving	12	12	12	12	12	8	6	4	2	1
DD90	Furious driving	12	12	12	12	12	8	6	4	2	1
DG10	Driving or attempting to drive with drug level above the specified limit	12	12	12	12	12	8	6	4	2	1
DG40	In charge of a vehicle while drug level above a specified limit	12	12	12	12	12	8	6	4	2	1
DR10	Driving or attempting to drive with alcohol level above the limit	12	12	12	12	12	8	6	4	2	1
DR20	Driving or attempting to drive while unfit through drink	12	12	12	12	12	8	6	4	2	1
DR30	Driving or attempting to drive then failing to supply a specimen for analysis	12	12	12	12	12	8	6	4	2	1
DR31	Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity	12	12	12	12	12	8	6	4	2	1
DR40	In charge of a vehicle	12	12	12	12	12	8	6	4	2	1

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	while alcohol level above limit										
DR50	In charge of a vehicle while unfit through drink	12	12	12	12	12	8	6	4	2	1
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive	12	12	12	12	12	8	6	4	2	1
DR61	Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive	12	12	12	12	12	8	6	4	2	1
DR70	Failure to provide a specimen for breath test	4	4	4	4	4	3	2	1	0	0
DR80	Driving or attempting to drive when unfit through drugs	12	12	12	12	12	8	6	4	2	1
DR90	In charge of a vehicle when unfit through drugs	12	12	12	12	12	8	6	4	2	1
AC20	Failing to give particulars or report an accident within 24 hours	12	12	12	12	12	8	6	4	2	1
AC30	Undefined accident offences	12	12	12	12	12	8	6	4	2	1
IN10	Using a vehicle uninsured against third party risks	8	7	6	5	4	3	2	1	0	0
LC20	Driving otherwise than in accordance with a licence	8	7	6	5	4	3	2	1	0	0
MS50	Motor racing on the highway	12	10	8	7	6	5	4	3	2	1
MS90	Failure to give information as to the identity of a driver etc.	6	5	4	3	2	1	0	0	0	0
UT50	Aggravated taking of a vehicle	12	12	12	6	4	3	2	1	0	0

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Level 2 - Convictions relating to Personal Health

Years since conviction received (or part year)		1	2	3	4	5	6	7	8	9	10
Code	Offence	Number of Points (Points are doubled for a term of imprisonment)									
LC30	Driving after making a false declaration about fitness when applying for a licence	12	12	12	12	8	6	4	2	1	0
LC40	Driving a vehicle having failed to notify a disability	12	12	12	12	8	6	4	2	1	0
LC50	Driving after a licence has been revoked or refused on medical grounds	12	12	12	12	8	6	4	2	1	0
MS70	Driving with uncorrected defective eyesight	12	12	12	12	8	6	4	2	1	0
MS80	Refusing to submit to an eye test	12	12	12	12	8	6	4	2	1	0

Please note - Where a licensed driver receives a conviction relating to personal health it will be regarded as a high risk to public safety and immediate suspension will be considered until all safety issues have been resolved and in any other case consideration should be given to revocation.

Where there is a second conviction relating to personal health or any failure to comply with any reasonable request from an authorised officer of the Council in respect of their enquiries into the matter, consideration should be given to the immediate suspension of the licence, its revocation, or a refusal to renew.

Level 3 – Intermediate Road Traffic Offences – Speeding, careless driving, construction and use offences

Years since conviction received (or part year)		1	2	3	4	5	6	7	8	9	10
Code	Offence	Number of Points (Points are doubled for a term of imprisonment)									
AC10	Failing to stop after an accident	12	12	12	12	12	8	6	4	2	1
BA10	Driving while disqualified by order of court	12	12	12	12	12	8	6	4	2	1

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CU10	Using a vehicle with defective brakes	3	3	3	3	2	1	0	0	0	0
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition	3	3	3	3	2	1	0	0	0	0
CU30	Using a vehicle with defective tyre(s)	3	3	3	3	2	1	0	0	0	0
CU40	Using a vehicle with defective steering	3	3	3	3	2	1	0	0	0	0
CU50	Causing or likely to cause danger by reason of load or passengers	3	3	3	3	2	1	0	0	0	0
CD10	Driving without due care and attention	8	7	6	5	4	3	2	1	0	0
CD20	Driving without reasonable consideration for other road users	8	7	6	5	4	3	2	1	0	0
CD30	Driving without due care and attention or without reasonable consideration for other road users	8	7	6	5	4	3	2	1	0	0
SP10	Exceeding goods vehicle speed limits	6	6	6	6	5	4	3	2	1	0
SP20	Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)	6	6	6	6	5	4	3	2	1	0
SP30	Exceeding statutory speed limit on a public road	6	6	6	6	5	4	3	2	1	0
SP40	Exceeding passenger vehicle speed limit	6	6	6	6	5	4	3	2	1	0
SP50	Exceeding speed limit on a motorway	6	6	6	6	5	4	3	2	1	0

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Level 4 – Minor Road Traffic Offences – Motorway, pedestrian crossing, traffic direction and signs and miscellaneous offences

Years since conviction received (or part year)		1	2	3	4	5	6	7	8	9	10
Code	Offence	Number of Points (Points are doubled for a term of imprisonment)									
MS10	Leaving a vehicle in a dangerous position	3	3	3	3	2	1	0	0	0	0
MS20	Unlawful pillion riding	3	3	3	3	2	1	0	0	0	0
MS30	Play Street Offences	2	2	2	2	1	0	0	0	0	0
MS60	Offences not covered by other codes (as appropriate)										
MW10	Contravention of special roads regulations (excluding speed limits)	3	3	3	3	2	1	0	0	0	0
PC10	Undefined contravention of pedestrian crossing regulations	3	3	3	3	2	1	0	0	0	0
PC20	Contravention of pedestrian crossing regulations with moving vehicle	3	3	3	3	2	1	0	0	0	0
PC30	Contravention of pedestrian crossing regulations with stationary vehicle	3	3	3	3	2	1	0	0	0	0
TS10	Failing to comply with traffic light signals	3	3	3	3	2	1	0	0	0	0
TS20	Failing to comply with double white lines	3	3	3	3	2	1	0	0	0	0
TS30	Failing to comply with 'stop' sign	3	3	3	3	2	1	0	0	0	0
TS40	Failing to comply with direction of constable/warden	3	3	3	3	2	1	0	0	0	0
TS50	Failing to comply with traffic sign (excluding 'stop' signs)	3	3	3	3	2	1	0	0	0	0
TS60	Failing to comply with school crossing patrol sign	3	3	3	3	2	1	0	0	0	0
TS70	Undefined failure to comply with traffic directions sign	3	3	3	3	2	1	0	0	0	0

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Totting Up

4.3 If the number of current points on the DVLA licence exceeds 12 points a new application will be refused or a current licence suspended or revoked. A further application will not be approved until the DVLA licence demonstrates that the number of current points on the licence is below 12 points.

4.4 When disqualified from driving under the 'totting up' procedures, the licence will remain suspended until the driver has achieved a pass in 'driving skills' training with a nationally recognised and accredited driving assessment programme. ***(add in our driving course details here and below)***

4.5 Where a licence shows 12 points or more but no disqualification was imposed because of 'exceptional hardship'; the requirement to undertake 'driving life skills' development and be successful will apply and must be achieved within 3 months of the Court decision or the licence will be suspended and not restored or renewed until successful in a 'driving life skills' programme with a nationally recognised and accredited driving assessment programme.

4.6 If there is a further period of disqualification the licence will be revoked and not considered for renewal for a minimum period of 12 months from the end of the disqualification period. Where there is a third period of disqualification the minimum period is 3 years. In both cases the licence will remain suspended and not restored or renewed until successful in a 'driving life skills' programme with a nationally recognised and accredited driving assessment programme.

Repeated convictions

4.8 Repeated convictions on a DVLA licence for the following offences or combination of offences will result in a licence being refused, suspended or revoked and not restored until the number of active occasions for those types of offence has reduced to one or less.

Code	Offence
CU10	Using a vehicle with defective brakes
CU30	Using a vehicle with defective tyre(s)
CU40	Using a vehicle with defective steering
CU80	Breach of requirement as to control of the vehicle, mobile telephone etc.
IN10	Using a vehicle uninsured against third party risks

Failure to report a disqualification

4.11 It may be that by the time the Council becomes aware of a disqualification, the

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period has passed and the driver is able to drive again. By being dishonest the intentions of the policy have been evaded.

4.12 In such circumstances the failure to report such a disqualification would normally result in the driver licence being suspended or revoked. The period of suspension or revocation would not normally be less than would have been effective if the disqualification had been properly reported to the Council.

4.13 A licence would not normally be granted or a suspension lifted until the completion of a 'driving life skills' training with a nationally recognised and accredited driving assessment programme. **(our course details?)**

4.14 Where false declarations have been made at the time of application or re renewal these will be considered under the 'fit and proper' person assessment.

Immediate Suspension or revocation

4.15 The Council will immediately suspend or revoke a licence if it considers it necessary to do so in the interests of public safety.

Police Bail

4.16 The release of a driver on police bail for an alleged offence is likely to call into question whether the driver is a fit and proper person to hold such a licence and the Council will carry out an investigation as it would in the case of a conviction.

Police intelligence

4.17 Any applicant or licence holder who in the view of the Police may be a threat to the public, can expect the Council to carry out a full investigation. This intelligence may be provided by the police or other agencies and may include circumstantial evidence.

Right of Appeal

5.1 Any decision made by an officer of the Council can be appealed to the Licensing Committee

5.2 Anyone appearing before the Licensing Committee has a right to appeal its decision to the Magistrates Court.

5.3 Any such appeal must be made in writing and lodged with the Clerk of the Court within 21 days from the date of the decision/notification of the decision.

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5.4 The address for appeals in this area is - Clerk of the Court, HMCS – Essex Magistrates' Courts, Osprey House, Hedgerows Business Park, Colchester Road, Springfield, Chelmsford, Essex, CM2 5PF.