

REGULATORY COMMITTEE AGENDA

Tuesday, 15 November 2016 at 1.30 pm in the Bridges Room - Civic Centre

From the Acting Chief Executive, Mike Barker

Item Business

1 Apologies

2 Minutes (Pages 3 - 4)

The Committee is asked to approve the minutes of the last meeting.

3 Appeals and Prosecutions (Pages 5 - 6)

Report of the Acting Chief Executive.

4 Exclusion of the Press and Public

The Committee may wish to exclude the press and public from the meeting during consideration of the following items on the grounds indicated:-

Item No	Paragraphs of Schedule 12A to the Local Government Act 1972
5	7
6	7
7	7

5 Summary of Decisions from Last Committee (Pages 7 - 22)

Report of Acting Chief Executive

6 New Application for Vehicle Over 3 Years Old to be Licensed (Pages 23 - 28)

Report of the Strategic Director, Communities and Environment

7 Hackney Carriage and Private Hire Licensing Issues (Pages 29 - 80)

Report of the Strategic Director, Communities and Environment

1.	Application for Private Hire Driver Licence	RC/29/16
2.	Application for a Private Hire Driver Licence	RC/30/16
3.	Grant of Private Hire Driver Licence	RC/31/16
4.	Application for Dual (Hackney Carriage and Private Hire Driver Licence)	RC/32/16
5.	Application for Grant of a Private Hire Driver Licence	RC/33/16

6. Application for Grant of a Private Hire Driver
Licence

RC/34/16

GATESHEAD METROPOLITAN BOROUGH COUNCIL

REGULATORY COMMITTEE MEETING

Tuesday, 18 October 2016

PRESENT: Councillor K Dodds (Chair)

Councillor(s): W Dick, C Bradley, D Davidson, J Kielty,
R Mullen, B Oliphant, M Ord, A Thompson and
N Weatherley

APOLOGIES: Councillor(s): M Charlton, D Duggan, B Goldsworthy and
J Graham

RC89 APOLOGIES

RC90 MINUTES

RESOLVED - That the minutes of the last meeting be approved as a correct record.

RC91 APPEALS AND PROSECUTIONS

RESOLVED - That the licensing related appeals and prosecutions during the period
9 February 2016 to 17 October 2016 be noted.

RC92 LICENCES, PERMITS AND REGISTRATIONS ISSUED

RESOLVED - That the taxi and private hire licences issued under delegated powers
as at 1 October 2016 be noted.

RC93 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED - That the press and public be excluded from the meeting during the
consideration of the remaining business in accordance with the
indicated paragraph of Schedule 12A of the Local Government Act of
1972.

RC94 SUMMARY OF DECISIONS FROM LAST COMMITTEE

RESOLVED - That the summary of decisions from last committee be noted.

RC95

HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING ISSUES (PARAGRAPH 7)

RESOLVED -

- i) The Committee remained satisfied that the applicant (RC/25/16) remained a fit and proper person to hold a dual (Hackney Carriage and Private Hire) Licence; but that he be reminded of the need to comply with both speed limits and the conditions of his licence.
- ii) The Committee were advised that application RC/26/16 has been withdrawn by the applicant.
- iii) The Committee were not satisfied that applicant (RC/27/16) was a fit and proper person to hold a Hackney Carriage or Private Hire Driver Licence at this time; and as such the application be refused.
- iv) The Committee remained satisfied that the applicant (RC/28/16) remained a fit and proper person to hold a dual (Hackney Carriage and Private Hire) Licence; but that he be reminded of the need to comply with speed limits.

Chair.....

TITLE OF REPORT - **Appeals and Prosecutions**

REPORT OF - **Mike Barker, Acting Chief Executive**

The Committee is requested to consider the attached report on licensing related appeals and prosecutions during the period 18 to 31 October 2016.

Appeals against Committee decisions

Appellant	Court	Date	Decision being appealed	Court's decision
Trevor Richardson	Gateshead Magistrates' Court	30 November 2016	Revocation of Dual Licence (with immediate effect)	Preliminary hearing to take place on whether the Court has jurisdiction to hear the appeal – decision pending
Basharat Khan	Gateshead Magistrates' Court	14 November 2016	Refusal to grant Private Hire Driver licence	Directions hearing on 31 October 2016 adjourned at the request of appellant's solicitor – decision pending
Maurice Pilcher	Gateshead Magistrates' Court	14 November 2016	Refusal to grant Dual (Hackney Carriage and Private Hire) Driver licence	Directions hearing on 31 October 2016 adjourned at the request of appellant's solicitor – decision pending

Prosecutions

Defendant	Court	Date	Offence	Result
n/a				

Appeals against Court decisions

Defendant	Court	Date	Offence	Result
n/a				

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By virtue of paragraph(s) 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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TITLE OF REPORT - **New Application for Vehicle Over 3 Years Old to be Licensed**
REPORT OF - **Paul Dowling, Strategic Director, Communities and Environment**

It is the Council's policy that when a vehicle is first registered with Gateshead Council as a Private Hire Vehicle or Hackney Carriage it shall be no more than three years old; and that the age of the vehicle will be determined as follows –

- (i) if not previously used on a road anywhere in the world: date of first registration with DVLA
- (ii) if previously used on a road anywhere in the world (e.g. an imported vehicle): the date of manufacture.

This supports the Council's Climate Change Strategy, which states that one of its priorities is the provision of high quality green transport options and the promotion of their use; including by "Seek[ing] to increase levels of investment in public transport" (priority 4 key action 21 - <http://www.gateshead.gov.uk/DocumentLibrary/Environment/Strategies/ClimateChangeBooklet2010.pdf>).

The Council's Constitution states that the Regulatory Committee may to grant licences for Hackney Carriages and Private Hire Vehicles where the application does not meet the Council's standard conditions, but having regard to all relevant information, it is determined that the individual circumstances justify deviation from policy.

The Committee is requested to consider the below report on an application for a vehicle over the age of three years to be licensed as a Private Hire Vehicle.

Vehicle to be Considered:

Applicant	Vehicle Make and Model	Registration Mark	MOT Supplied	Date and Time of Vehicle Test	Vehicle Test Result	PHV/HC	Any other information
Mr Mark Greener	Skoda Rapid	YT13 LKE	Yes	17 October 2016	1 Point - Exceptional Condition	PHV	Saloon Mileage as of 18 October 2016, 25981

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Comparison Chart

2013 Skoda Rapid Elegance Greentech 1.6 TDI CR	2014 Skoda Rapid Elegance Greentech 1.6 TDI CR	2015 Skoda Rapid Elegance Greentech 1.6 TDI CR	2016 Skoda Rapid Elegance Greentech 1.6 TDI CR
Vehicle Details			
Engine Capacity: 1598cc	Engine Capacity: 1598cc	Engine Capacity: 1598cc	Engine Capacity: 1598cc
Fuel Type: Diesel	Fuel Type: Diesel	Fuel Type: Diesel	Fuel Type: Diesel
CO2 Emissions (g/km): 114	CO2 Emissions (g/km): 106	CO2 Emissions (g/km): 106	CO2 Emissions (g/km): 106
Vehicle Tax Band: C (£30.00)	Vehicle Tax Band: B (£20.00)	Vehicle Tax Band: B (£20.00)	Vehicle Tax Band: B (£20.00)
Euro Standard: 5	Euro Standard: 6	Euro Standard: 6	Euro Standard: 6
Euro NCAP Rating: 5 Stars	Euro NCAP Rating: 5 Stars	Euro NCAP Rating: 5 Stars	Euro NCAP Rating: 5 Stars
Fuel Consumption			
Urban: 57.6 MPG	Urban: 57.6 MPG	Urban: 57.6 MPG	Urban: 70.6 MPG
Extra Urban: 83.1 MPG	Extra Urban: 80.7 MPG	Extra Urban: 80.7 MPG	Extra Urban: 80.7 MPG
Combined: 70.6 MPG	Combined: 70.6 MPG	Combined: 70.6 MPG	Combined: 70.6 MPG

Data sourced from www.gov.uk/checktartax www.autotrader.co.uk
www.euroncap.com.

“It should be noted that as the fuel consumption figures quoted are obtained under specific test conditions, they may not be achieved under ‘real world’ driving conditions. However, the figures serve as a means of comparing models of a similar type.”

Sourced from: https://www.theaa.com/motoring_advice/fuels-and-environment/euro-emissions-standards.html

Euro 5

September 2009 (January 2011)

Euro 5 further tightened the limits on particulate emissions from diesel engines and all diesel cars needed particulate filters to meet the new requirements. There was some tightening of NOx limits too (28% reduction compared to Euro 4) as well as, for the first time, a particulates limit for petrol engines - applicable to direct injection engines only.

Addressing the effects of very fine particle emissions, Euro 5 introduced a limit on particle numbers for diesel engines in addition to the particle weight limit. This applied to new type approvals from September 2011 and to all new diesel cars from January 2013.

Euro 5 emission limits (diesel):

- **CO** - 0.50 g/km
- **HC+ NOx** - 0.23 g/km
- **NOx** - 0.18 g/km
- **PM** (Particulate matter) - 0.005 g/km
- **PM** (Particulate matter) - 6.0×10^{11} /km

Euro 6

September 2014 (September 2015)

The Euro 6 standard imposes a further, significant reduction in NOx emissions from diesel engines (a 67% reduction compared to Euro 5) and establishes similar standards for petrol and diesel.

Exhaust Gas Recirculation (EGR) - replacing some of the intake air (containing 80% nitrogen) with recycled exhaust gas - reduces the amount of nitrogen available to be

oxidised to NO_x during combustion but further exhaust after treatment may be required in addition to the Diesel Particulate Filters required to meet Euro 5.

Euro 6 diesel cars may also be fitted with:

- A NO_x adsorber (Lean NO_x Trap) which stores NO_x and reduces it to Nitrogen over a catalyst
- Selective Catalytic Reduction (SCR) which uses an additive (Diesel Exhaust Fluid (DEF)/AdBlue) containing urea injected into the exhaust to convert NO_x into Nitrogen and water.
- The use of Cerium, a fluid injected into the fuel tank each time the vehicle is refuelled which assists the DPF regeneration by lowering the temperature needed for regeneration.

Euro 6 emission limits (petrol):

- **CO** - 1.0 g/km
- **HC** - 0.10 g/km
- **NO_x** - 0.06 g/km
- **PM** - 0.005 g/km (Direct Injection only)
- **PM** - 6.0×10^{-11} /km (Direct Injection only)

Euro 6 emission limits (diesel):

- **CO** - 0.50 g/km
- **HC+ NO_x** - 0.17 g/km
- **NO_x** - 0.08 g/km
- **PM** - 0.005 g/km
- **PM** - 6.0×10^{-11} /km

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**TO: CHAIR AND MEMBERS OF THE
REGULATORY COMMITTEE
FOR 15 NOVEMBER 2016**

REF NO: RC/29/16

ITEM FOR DECISION

HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCES

**NOT FOR PUBLICATION BY VIRTUE
OF PARAGRAPH 7 OF PART 1 OF
SCHEDULE 12A OF THE LOCAL
GOVERNMENT ACT 1972**

APPLICANT: CHRISTOPHER WAYNE FOX

DATE OF BIRTH: 9 NOVEMBER 1982

ADDRESS: 41 BELLOC AVENUE, SOUTH SHIELDS, NE34 9HT

PURPOSE OF REPORT: APPLICATION FOR A PRIVATE HIRE DRIVER LICENCE

DATE OF APPLICATION: 12 JULY 2016

DETAILS OF PREVIOUS CONVICTIONS/CAUTIONS/FIXED PENALTY NOTICES

DATE OF CONVICTION/CAUTION/FPN	OFFENCE	FINE/SENTENCE
1. 3 August 2013	Driving whilst using mobile phone	3 points, £60 fine
2. 13 April 2006	Breach of community rehabilitation order on 8 November 2005	3 months curfew requirement with electronic tag.
3. 8 November 2005	No insurance X 3 Failed to produce driving licence X 3 No MOT X3 Dangerous motor vehicle Failure to maintain motor vehicle No petrol cap Failure to maintain windscreen Alleged failure to perform work on 28.1.06 and 26.02.06 or provide a reasonable explanation for his absence	12 month Community Order - 150 hours unpaid work

INFORMATION

Background

This is an application for the grant of a private hire driver licence.

Mr Fox appears before Members in relation to the offences as detailed on page 2 of this report.

Pre-Committee Inquiries

On 13 September 2016 Mr Fox attended a meeting with a Licensing Officer where he stated that there were no other outstanding matters that the Regulatory Committee should be aware of when making their decision. Mr Fox confirmed that to the best of his knowledge the information he has provided is correct and that he has no further convictions, cautions, fixed penalty notices or pending prosecutions.

Mr Fox did however advise that earlier in 2016 he was caught driving at 68mph in a 60mph limit and has been offered the opportunity to attend a speed awareness course but had not yet booked the course.

On 18 October 2016, Mr Fox attended the Civic Centre, Gateshead where his application for a Private Hire Driver Licence was due to be heard. However, due to Mr Fox stating to the Licensing Officer that he had not received a copy of his report, and having then seen the report, disputed a number of issues contained, Mr Fox's hearing was adjourned.

On 19 October 2016, the Licensing Officer contacted Mr Fox regarding him not receiving his Committee report. Mr Fox stated to the Licensing Officer that he had received the report that morning, as it must have been wedged in the letter box. The Licensing Officer confirmed to Mr Fox that the Regulatory Committee report was actually delivered to his home on Tuesday 11 October 2016. Mr Fox also denied confirming to a Licensing Officer in a telephone conversation on 17 October that he had received a copy of his report.

Mr Fox then confirmed to the Licensing Officer that he has been stopped by Police whilst driving, but he has never been stopped by Police for the driving offences contained in this report.

Details of Offences

Offence 1 : Driving using a mobile phone (3 August 2013)

Mr Fox advised that he was stopped by the police whilst driving on the A1231 in Sunderland using his mobile phone.

Offence 2 : Breach of community rehabilitation order (13 April 2006); &

Offence 3 : No insurance, MOT, etc (8 November 2005)

At his meeting with the Licensing Officer on 13 September 2016 Mr Fox stated that he does not recall the circumstances leading up to his conviction for this offence, but seemed to recall that someone was using his identity when they were stopped by Police

and he was convicted.

Further enquiries were carried out by the Licensing Section and although Northumbria Police confirmed the conviction, they had no information on their system stating that someone had used Mr Fox's identity.

Following this information, Mr Fox was again contacted by the Licensing Officer and he was advised that he would be required to provide further information regarding this conviction to allow the Committee to determine his application.

On 22 September 2016, Mr Fox supplied the Council with a memorandum of conviction supplied by South Tyneside Magistrates Court dated 19 April 2006. The memorandum contained the following information:-

At South Tyneside, failed to comply with Community Order made by South Tyneside Magistrates Court on 8.11.05 for 12 months, for the original offences of no insurance X 3, failed to produce driving licence X 3, no MOT X3, dangerous motor vehicle, failure to maintain windscreen, alleged failure to perform work on 28.1.06 and 26.02.06 or provide a reasonable explanation for his absence.

The sentence issued to Mr Fox for these offences was that he was required to carry out 150 hours unpaid work over a period of 12 months, however, it appears that Mr Fox failed to comply with this sentence, and this was confirmed by Mr Fox, who stated to the Licensing Officer at their meeting that he was working at the time and was unable to comply with the requirements of this sentence.

Mr Fox stated that because of this, the Magistrates substituted the Community Order for a tagging order which required him to be tagged and to remain indoors between the hours of 20.30pm and 06.30am, between Monday, Tuesday and Thursday to Sunday. He stated that the tag was removed on a Wednesday to allow him to attend work.

During the discussions with the Licensing Officer, Mr Fox stated that he does now recall the incidents above and that he had been stopped by Police whilst driving his vehicle on a number of occasions, and that he did appear at South Tyneside Magistrates' Court, and that the Court memorandum is correct. Subsequently Mr Fox has stated that he has been stopped by Police whilst driving, but he has never been stopped by Police for the driving offences contained in this report.

GATESHEAD COUNCIL'S POLICY ON THE RELEVANCE OF CRIMINAL CONDUCT AND COMPLAINTS AGAINST LICENCE HOLDERS

1.2 Objectives

In setting out its policy, Gateshead Council seeks to promote the following objectives:

- The protection of public health and safety;
- The establishment of a professional and respected hackney carriage and private hire trade
- Access to an efficient and effective public transport service;
- The protection of the environment;

- Improve standards of service and the visibility of hackney carriages/private hire vehicles in support of the regeneration of Gateshead.

1.4 Status

In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out above.

Notwithstanding the existence of this policy, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Authority to depart substantially from its policy, clear and compelling reasons will be given for doing so. The purpose of this document is to formulate guidelines which detail the Council's current stance on the relevance of criminal conduct in respect of applications for the grant of new licences, and the renewal of existing hackney carriage and private hire vehicle driver's, operator's and proprietor's licences.

The objective of the licensing regime is to ensure that, so far as possible, those licensed to drive hackney carriages and 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, and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

1.6 Suitability

The Local Government (Miscellaneous Provisions) Act 1976 deals with the issue of driver suitability:

"...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a **fit and proper person** to hold a driver's licence."

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

"...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds –

- 1) that he/she has, since the grant of the licence,
 - i) been convicted of an offence involving dishonesty, indecency or violence, or
 - ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or Part of this Act.
 or
- 2) any other reasonable cause."

Therefore the wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is fit and proper – the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.

1.7 Criminal conduct

The Regulatory Committee are required to look at any relevant indicators that may affect a person's suitability to hold a hackney carriage/private hire driver's licence, and to consider the possible implications of granting such a licence to that person. If a person has been involved in criminal activity, this may be relevant to the Regulatory Committee's considerations. Convictions, formal cautions, fixed penalties, speeding offences, and the imposition of a fixed penalty in place of a prosecution under any

enactment may be relevant indicators of a person's suitability to hold a licence.

1.8 Patterns

A series of incidents of criminal conduct over a period of time is more likely to give cause for concern than an isolated incident. A serious view will be taken when applicants show a pattern of incidents. If for example, the applicant has received three or more convictions for violent action, then, serious consideration should be made as to the suitability of that person holding a licence.

1.9 Periods Free from Conviction

Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely.

Although the Act does not prevent judicial authorities (inclusive of the Licensing Authority) from taking spent convictions into account, such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a fit and proper person to hold a licence.

The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.

All criminal conduct should be disclosed. Greater or less weight will be attached to each incident depending on –

- The nature of the offence;
- The penalty imposed;
- The length of time since the offence or conviction (in which case the 1974 Act may be relevant as above); and
- Any relevant circumstances (including in mitigation).

Applicants may be asked to attend an interview with a Licensing Officer and/or a hearing before the Regulatory Committee to provide this information.

1.10 A "Fit and Proper Person"

Whether someone is a "fit and proper person" to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property.

Some areas give rise to particular concern, including –

- **A good and safe driver** – Passengers paying for a transport service rely on their driver to get them to their destination safely. Taxi and private hire drivers are expected to be professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence.

1.11 Protecting the Public

The over-riding consideration for the members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked :

"Would I allow my daughter or son, granddaughter or grandson, spouse, mother or

father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?"

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant/licence holder to satisfy the Regulatory Committee.

Compliance with Conditions and requirements of Licensing Authority

The Regulatory Committee may take into account a person's history whilst holding a licence, from this or any other authority. The Regulatory Committee may take into account, in deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as the record of complaints about them, also their compliance with Licence conditions and their willingness to co-operate with the reasonable requests of Licensing Officers.

3. Driving Offences – New Applicants

If an applicant has committed traffic offences this should not necessarily prevent them from proceeding with an application. However, the number, type and frequency of offences will be taken into account. In some cases it may be appropriate to issue a licence together with a strong warning as to future driving conduct. If a significant history is disclosed, an application may be refused.

Appendix 1.0 – minor traffic offences

1.1 Driving whilst causing or is likely to cause danger by reason of use of unsuitable vehicle or using vehicle with parts or accessories in an dangerous condition

1.13 Using a vehicle without a current MOT certificate

Appendix 1.1 – major traffic offences

2.8 Using a hand held mobile telephone whilst driving

4. Motor insurance offences

The Council takes a serious view of motor insurance offences. An isolated incident in the past should not necessarily bar a new applicant from being issued a licence, but they may be required to attend a Regulatory Committee hearing.

More than one conviction or caution for these offences should raise serious doubts as to an applicant's suitability to hold a private hire licence.

13. Conclusion

Any applicant having a previous or current conviction should not necessarily be prevented from obtaining a hackney carriage or private hire licence. However, there are certain offences that are considered so serious that they will usually prevent a person obtaining a licence. It is this Council's policy to consider the safety, protection and well being of the general public by ensuring all licensed drivers are in good health, are safe and competent drivers and are able to maintain their vehicles to an acceptable standard.

A person who has committed an offence and who is made to wait for a rehabilitation period to lapse prior to their application being accepted, is more likely to value their licence and act accordingly.

The Regulatory Committee should bear in mind that the purpose of the actions it takes should not be to punish or financially penalise licence holders, but rather to ensure public safety.

It is hoped that applicants and licence holders appreciate that the Regulatory Committee's primary aim is to ensure public safety. By following these guidelines, the Regulatory Committee is seeking to maintain the high standard of quality of hackney carriage and private hire drivers, operators and proprietors in the Borough, which in turn maintains the good reputation of the taxi industry in Gateshead, and the high quality of service to the travelling public.

Any applicant refused a licence on the grounds that the Regulatory Committee is not satisfied he/she is a fit and proper person to hold such a licence, or who has had their licence suspended, revoked or had a condition attached with which they disagree has a right of appeal by way of written complaint, to the magistrates' court within 21 days of the notice of decision.

**GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS :
DEPARTMENT FOR TRANSPORT CIRCULAR 2/92
HOME OFFICE CIRCULAR 13/92**

GENERAL POLICY

1. **Each case will be decided on its merits.**

3. The following examples afford a general guide on the action to be taken where convictions are admitted.

(a) Minor traffic offences

Convictions for minor traffic offences eg 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 HV licence may be granted after its restoration but a warning should be issued as to future conduct. The use of a mobile telephone whilst driving is classed as a major offence in the Council's Policy on the Relevance of Criminal Conduct and Complaints against Licence Holders Policy Relating to the Relevance of Criminal Conduct

FOR DECISION

The Regulatory Committee may:

The Regulatory Committee may:-

- a) Refuse the Application
- b) Grant the Licence for a period of 1, 2 or 3 years
- c) Add a condition to the private hire driver Licence
- d) Grant the licence with a written warning as to future conduct
- e) Adjourn the matter for further enquiries if applicable

The Legal Officer has advised that in deciding whether or not the Committee are satisfied that the Applicant is a fit and proper person to hold a licence, they should only have regard to such factors as are relevant to ensuring public safety, and as such cannot have regard to the impact that their decision may have on the Applicant's

livelihood.

**DATE OF COMMITTEE: 15 NOVEMBER
2016**

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**TO: CHAIR AND MEMBERS OF THE
REGULATORY COMMITTEE
FOR 15 NOVEMBER 2016**

REF NO: RC/30/16

ITEM FOR DECISION

HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCES

**NOT FOR PUBLICATION BY VIRTUE
OF PARAGRAPH 7 OF PART 1 OF
SCHEDULE 12A OF THE LOCAL
GOVERNMENT ACT 1972**

APPLICANT: STEPHEN STOCKMAN

DATE OF BIRTH: 25 MAY 1979

ADDRESS: 105 SYDNEY COURT, GATESHEAD, NE8 2EH

PURPOSE OF REPORT: APPLICATION FOR A PRIVATE HIRE DRIVER LICENCE

DATE OF APPLICATION: 2 AUGUST 2016

**PROPOSED PRIVATE
HIRE OPERATOR:** DEAN TAXI LTD

DETAILS OF PREVIOUS CONVICTIONS/CAUTIONS/FIXED PENALTY NOTICES

DATE OF CONVICTION/CAUTION/ FPN	OFFENCE	FINE/SENTENCE
1. 4 September 2015	Harassment – Breach of Restraining Order	Gateshead Magistrates' Court, £170 fine, £85 costs, £20 victim surcharge, Restraining Order to continue.

INFORMATION

Background

This is an application for the grant of a private hire driver licence. Mr Stockman appears before Members in relation to 1 offence as detailed on page 2, of this report.

Mr Stockman previously held a private hire drivers licence with Gateshead from August 2007 to November 2012. He has stated that he left the trade due to another job opportunity. During this time there were no complaints or condition breaches.

Pre-Committee Inquiries

On 5 October 2016 Mr Stockman attended a meeting with a Licensing Officer where he stated there were no other outstanding matters that the Regulatory Committee should be aware of when making their decision. Mr Stockman confirmed that the information he has provided is correct and that he has no further convictions, cautions, fixed penalty notices or pending prosecutions.

Details of Offences

Offence 1: Breach of Restraining Order

Mr Stockman has provided a letter from his Solicitor which sets out in detail the nature of the matter which resulted in his conviction.

The letter is attached to the report for reference as Exhibit GC/1

In summary, that matter arose as a result of text messages sent by Mr Stockman to his ex-partner on 7th and 21st April 2015. The prosecution accepted that the text messages were not threatening, insulting or abusive. Rather that they were unnecessary and as such amounted to a breach of the Restraining Order. The Order did permit contact with Mr Stockman's former partner but this was limited to matters connected with child contact.

Mr Stockman pleaded guilty to the breach and was fined £170 with costs of £85 and a victim surcharge of £20, the Order was granted for a further six months.

GATESHEAD COUNCIL'S POLICY ON THE RELEVANCE OF CRIMINAL CONDUCT AND COMPLAINTS AGAINST LICENCE HOLDERS

1.2 Objectives

In setting out its policy, Gateshead Council seeks to promote the following objectives:

- The protection of public health and safety;
- The establishment of a professional and respected hackney carriage and private hire trade
- Access to an efficient and effective public transport service;

- The protection of the environment;
- Improve standards of service and the visibility of hackney carriages/private hire vehicles in support of the regeneration of Gateshead.

1.4 Status

In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out above.

Notwithstanding the existence of this policy, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Authority to depart substantially from its policy, clear and compelling reasons will be given for doing so. The purpose of this document is to formulate guidelines which detail the Council's current stance on the relevance of criminal conduct in respect of applications for the grant of new licences, and the renewal of existing hackney carriage and private hire vehicle driver's, operator's and proprietor's licences.

The objective of the licensing regime is to ensure that, so far as possible, those licensed to drive hackney carriages and 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, and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

1.6 Suitability

The Local Government (Miscellaneous Provisions) Act 1976 deals with the issue of driver suitability:

"...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a **fit and proper person** to hold a driver's licence."

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

"...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds –

- 1) that he/she has, since the grant of the licence,
 - i) been convicted of an offence involving dishonesty, indecency or violence, or
 - ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or Part of this Act.
 or
- 2) any other reasonable cause."

Therefore the wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is fit and proper – the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.

1.7 Criminal conduct

The Regulatory Committee are required to look at any relevant indicators that may affect a person's suitability to hold a hackney carriage/private hire driver's licence, and to consider the possible implications of granting such a licence to that person. If a person has been involved in criminal activity, this may be relevant to the Regulatory Committee's considerations. Convictions, formal cautions, fixed penalties, speeding

offences, and the imposition of a fixed penalty in place of a prosecution under any enactment may be relevant indicators of a person's suitability to hold a licence.

1.9 Periods Free from Conviction

Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely.

Although the Act does not prevent judicial authorities (inclusive of the Licensing Authority) from taking spent convictions into account, such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a fit and proper person to hold a licence.

The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.

All criminal conduct should be disclosed. Greater or less weight will be attached to each incident depending on –

- The nature of the offence;
- The penalty imposed;
- The length of time since the offence or conviction (in which case the 1974 Act may be relevant as above); and
- Any relevant circumstances (including in mitigation).

Applicants may be asked to attend an interview with a Licensing Officer and/or a hearing before the Regulatory Committee to provide this information.

1.10 A “Fit and Proper Person”

Whether someone is a “fit and proper person” to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property.

Some areas give rise to particular concern, including –

- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands.

1.11 Protecting the Public

The over-riding consideration for the members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked :

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant/licence holder to satisfy the Regulatory Committee.

8. Violence

(The Policy does not make any specific reference to a conviction for a breach of a Restraining Order. As such Officers have considered is under the broad heading of a Violence Offence as such the following is relevant.)

As hackney carriage and private hire drivers maintain close contact with the public, any previous convictions and/or cautions for violence will be taken seriously by the Regulatory Committee.

13. Conclusion

Any applicant having a previous or current conviction should not necessarily be prevented from obtaining a hackney carriage or private hire licence. However, there are certain offences that are considered so serious that they will usually prevent a person obtaining a licence. It is this Council's policy to consider the safety, protection and well being of the general public by ensuring all licensed drivers are in good health, are safe and competent drivers and are able to maintain their vehicles to an acceptable standard.

A person who has committed an offence and who is made to wait for a rehabilitation period to lapse prior to their application being accepted, is more likely to value their licence and act accordingly.

The Regulatory Committee should bear in mind that the purpose of the actions it takes should not be to punish or financially penalise licence holders, but rather to ensure public safety.

It is hoped that applicants and licence holders appreciate that the Regulatory Committee's primary aim is to ensure public safety. By following these guidelines, the Regulatory Committee is seeking to maintain the high standard of quality of hackney carriage and private hire drivers, operators and proprietors in the Borough, which in turn maintains the good reputation of the taxi industry in Gateshead, and the high quality of service to the travelling public.

Any applicant refused a licence on the grounds that the Regulatory Committee is not satisfied he/she is a fit and proper person to hold such a licence, or who has had their licence suspended, revoked or had a condition attached with which they disagree has a right of appeal by way of written complaint, to the magistrates' court within 21 days of the notice of decision.

**GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS :
DEPARTMENT FOR TRANSPORT CIRCULAR 2/92
HOME OFFICE CIRCULAR 13/92**

GENERAL POLICY

1. Each case will be decided on its merits.

(f) Violence

As hackney carriage and PHV 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 three years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

FOR DECISION

The Regulatory Committee may:-

- a) Issue a Licence for up to 3 years
- b) Issue the Licence with a written warning as to future conduct
- c) Add conditions to the Licence
- d) Adjourn the hearing if it deems further inquiries are necessary
- e) Refuse the application.

The Legal Officer has advised that in deciding whether the applicant is to be issued with a licence, they should only have regard to such factors as are relevant to ensuring public safety, and as such cannot have regard to the impact that their decision may have on the Licence Holder's livelihood.

DATE OF COMMITTEE: 15 NOVEMBER 2016

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under the style of

LAMBERT TAYLOR & GREGORY

SOLICITORS

COMMISSIONERS

Partners:

A. P. WELDON LL.B (HONS.)
T. A. W. GREGORY B.A. (HONS.)*

Solicitors:

L. CLARK LL.B (HONS.)
P. HANRATTY B.A. (HONS)
G. SMITH LL.B (HONS)
D. PEEL LL.B (HONS.)
L. GOODSON B.A. (Joint Hons), G.D.L.
A. ROBERTSON LL.B (HONS)

Consultants (Non Practising):

K. J. G. WELDON
R. L. SAVAGE B.A. M.LITT

YOUR REF

OUR REF

TG/KW/14387.2

Tim Gregory

9 WALKER TERRACE
GATESHEAD
TYNE & WEAR
NE8 1EB

DX 60300 GATESHEAD

TEL: 0191 4770616

FAX: 0191 4900347

EMAIL: enquiries@lambert-taylor-gregory.co.uk

9 September 2015

Mr S Stockman
105 Sydney Court
Gateshead
Tyne and Wear

Dear Stephen

RE: Gateshead Magistrates Court
9th September 2015

I write further in this matter and write further to your attendance firstly on the 4th of September and again back at Court on the 9th of September when you initially appeared for trial in relation to breach of a restraining order. The injured party Kelly Gowland turned up and wanted to proceed with the case but we were able to resolve matters with you pleading guilty but on a limited basis. That basis of plea acknowledged the fact that there had been no threatening, insulting or abusive texts and that some of the texts were justified as they were dealing with the question of contact and some of them were reasonable in that you were both discussing every day domestic issues. However, you did accept that on some occasions particularly on the 7th of April and the 21st of April you sent texts that were not necessary and the prosecution accepted the basis of that plea.

At Court on the 9th I was able to persuade the Court to see this as falling into the bottom end of the range in the lowest category of offending however Courts do take breaches of restraining orders seriously. I had asked the Court to consider sentencing you outside of the guidelines to allow you to be a rehabilitated person more quickly however the Court would not go that far and instead fined you but as I say this has to be seen as a fairly reasonable outcome. The Court did accept that there had been no threat and that the discussions were in the main of a domestic nature however they fined you £170.00, ordered you to pay prosecution costs of £85.00 and a victim surcharge of £20.00 which comes to a total of £275.00. You have agreed to repay this at the rate of £40.00 per calendar month.

Again though I asked the Court to consider that a restraining order was not necessary or appropriate the Court did make one largely I think on the wishes of Miss Gowland however they have limited it to six months only and it provides for you to not to have any contact at all with Kerry Gowland save for the purposes of child contact. There is of course every risk that you are being set up to fail again and all I can say is that I must urge you to not do anything that puts you at risk of further arrest and charge. The Court will treat things more seriously next time and of course it will only have a further adverse effect on your ability to continue in your line of work.

Also at 4 Middle Street Corbridge NE45 5AT
Tel. 01434 632505 Fax. 01434 633220

Email: corbridge@lambert-taylor-gregory.co.uk

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* Member of the Law Society Family Panel

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Criminal Defence Service

Community Legal Service



Therefore my advice is that you be strict and ensure that you limit contact only to text messages where there is evidence as to what you have said and to ensure that it relates to just matters of contact. I also enclose a typed copy of that basis of plea along with my handwritten version just in case it comes in handy if and when you have to ever account to your licensing body following this conviction. I do think there is every chance that anybody looking at it will see it for what it is and nothing more serious than that.

In terms of funding you had the benefit of a legal aid order and there will be no costs for you to pay in relation to our representation and enclose a letter which explains our firms file closing procedures.

Please contact me if you have any further questions about your case and how it is funded and please contact our David Peel in the Family Department should you want to take some advice in relation to financial matters.

Yours sincerely
LAMBERT TAYLOR & GREGORY


T.A.W. Gregory

GATESHEAD MAGISTRATES COURT

REGINA

-v-

STEPHEN STOCKMAN

BASIS OF PLEA

The Defendant pleads guilty to breach of a restraining order on the basis that:

1. The order was a 3 month order to run from the 20th of February 2015. To the 19th of May 2015.
2. The order provided for contact in relation to issues involving the parties children.
3. The injured party initiated that communication dealing with other domestic issues such as financial issues, handing over the Defendant's passport and Argos card; offering to drop off items of furniture to allow the Defendant to furnish his new property and wanting to meet the Defendant in order to view that property.
4. The Defendant contends that the majority of his admitted text messages were reasonable and in response to messages from the IP.
5. The Defendant admits by his guilty plea that some texts and in particular texts on the 7th of April 2015 and the 21st of April 2015 when in particular he discovered that the IP had formed a new relationship were reasonable or necessary.
6. None of his or indeed any of the text messages were threatening, insulting or abusive.

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**TO: CHAIR AND MEMBERS OF THE
REGULATORY COMMITTEE
FOR 15 NOVEMBER 2016**

REF NO: RC/31/16

ITEM FOR DECISION

HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCES

**NOT FOR PUBLICATION BY VIRTUE
OF PARAGRAPH 7 OF PART 1 OF
SCHEDULE 12A OF THE LOCAL
GOVERNMENT ACT 1972**

APPLICANT:	NICHOLAS DAVID BRYANT
DATE OF BIRTH:	21 MARCH 1990
ADDRESS:	195 KINGSWAY, SUNNISIDE, GATESHEAD, NE16 5XY
PURPOSE OF REPORT:	GRANT OF PRIVATE HIRE DRIVER LICENCE
DATE OF PREVIOUS APPLICATION:	21 OCTOBER 2015
NAME OF CURRENT PRIVATE HIRE OPERATOR:	DEAN TAXIS LIMITED

DETAILS OF PREVIOUS CONVICTIONS/CAUTIONS/FIXED PENALTY NOTICES

DATE OF CONVICTION/CAUTION/ FPN	OFFENCE	FINE/SENTENCE
1. 3 November 2016	Knowingly or recklessly making a false statement or omitting a material particular in connection with the grant of a Private Hire Drivers Licence	Caution, Gateshead Council
2. 2 December 2012	Destroy or damage property (value of damage £5000 or less) on 2 December 2012	Caution, Northumbria Police

INFORMATION

Background

Mr Bryant appears before Members in relation to 2 offence as detailed on page 2 of this report. Records show that Mr Bryant was granted a private hire driver licence with Gateshead Council on 26 October 2012.

As part of the application process, Mr Bryant was required to produce an Enhanced Disclosure and Barring Service Certificate (DBS formerly CRB). At the time of submitting his DBS to the Council (dated 22 October 2012) there were no convictions or cautions recorded against Mr Bryant.

Although Mr Bryant was required to apply to renew his private hire driver licence every 12 months, Council Policy in 2012 only required a hackney carriage or private hire driver to submit a new enhanced DBS certificate every 3 years whilst that driver remained licensed with Gateshead Council.

On 21 October 2013, Mr Bryant submitted to the Council an application to renew his private hire driver licence. Section 5 of the application form states that if an applicant has been convicted (including a caution or have accepted a fixed penalty) for any offence since they submitted an application for the licence they currently hold, they are required to insert details in respect of each offence. They will then be required to complete a Criminal Records Check for which will give Gateshead Council access to any police record they may have.

The application form also states that they must disclose all convictions, including cautions and accepted fixed penalties for any offence since they last submitted an application for a driver licence. They are also required to insert details in respect of each offence and failure to comply with this request may result in legal action and their application being deemed to be incomplete.

In the section of the application form where it asks whether they have ever been convicted or cautioned of a criminal or road traffic offence since the date of their last application, Mr Bryant on his application form stated no. Mr Bryant had also signed and dated the statutory declaration included on the application form declaring that to the best of his knowledge and belief the information provided on his form is true, accurate and complete. Mr Bryant was then issued with a private hire driver licence from 26 October 2013 to 25 October 2014.

On 24 October 2014, Mr Bryant submitted a further application to renew his private hire driver licence. Again on the application form in relation to convictions and cautions, this section was left blank. Mr Bryant also signed a Statutory Declaration as part of his application. Mr Bryant was then issued with a private hire driver licence from 26 October 2014 to 25 October 2015.

On 21 October 2015, Mr Bryant submitted an application to the Council for the renewal of his private hire driver licence. On this occasion, and as part of the application process, Mr Bryant was required to submit an application for an enhanced Disclosure and Barring Scheme Certificate, (DBS). Mr Bryant stated on his renewal application form that since the date of his last application he had no convictions, cautions, reprimands or warnings. By stating on his current application and subsequent application forms that he has no convictions or cautions that the Council are unaware of,

Mr Bryant was issued with a private hire driver licence from 26 October 2015 until 25 October 2016.

At this time, Mr Bryant's DBS application form was forwarded to the Council's Safeguarding Team, and was subsequently sent to the Disclosure and Barring Service.

On 2 September 2016, following routine checks carried out by the Licensing Section, it was observed that Mr Bryant's DBS Certificate which was sent to him in November 2015 had not been produced to the Licensing Section.

Changes to the DBS Policy in 2014 means that the Council no longer receive a copy of an applicant's DBS Certificate, and applicants are advised on their application form that it is their responsibility to produce this certificate to the Council.

On 2 September 2016 the Licensing Officer contacted Mr Bryant and he stated to the Licensing Officer that he had previously produced this document to the Council. On checking the Council's records, it was found that there was no evidence of Mr Bryant having produced his DBS certificate to the Council. During his conversation with the Licensing Officer, Mr Bryant stated that he no longer had the certificate in his possession and was therefore unable to produce it to the Council.

During a further conversation with the Licensing Officer on 2 September 2016 Mr Bryant stated that in February 2016 he attended the Licensing Section reception and again produced his DBS Certificate. Mr Bryant stated that at this time his original DBS certificate was taken from him and retained by the Licensing Section.

Information provided by Licensing Administration have stated that Mr Bryant did attend the licensing reception in February 2016, and enquired about how he could obtain a copy of his DBS certificate as he stated that he may have misplaced his current one.

Mr Bryant was provided with a reference and contact number for the Disclosure and Barring Service and was advised that if he has lost his certificate, he would need to contact the DBS and obtain a further copy. Mr Bryant was also advised by the licensing administration team that depending on the length of time his DBS had been lost he may need to pay for a replacement.

On being advised of this Mr Bryant stated to the licensing administration that he would have another look for it.

Following Mr Bryant's telephone conversation with the Licensing Officer on 2 September 2016, a criminal disclosure check was requested from Northumbria Police. Information provided by Northumbria Police showed had been arrested and charged with an Offence since the time the Council had sight of his DBS Certificate in 2012.

Following this information, Mr Bryant was contacted again by the Licensing Officer where he stated that the reason he failed to notify the Council of this offence was that he didn't realise he had received a Police Caution. However Mr Bryant would have been aware of this as it was stated on the DBS certificate sent to him in November 2015.

On 2 September 2016, and in light of the information that was provided by Northumbria Police in relation to Mr Bryant's Police Caution, and the Council's concern in relation to Mr Bryant's honesty and trustworthiness, the Council were no longer satisfied that Mr Bryant remained a fit and proper person to continue to hold a private hire driver licence and his licence was immediately suspended until such time as an up to date DBS

certificate was provided.

On 7 September 2016, Mr Bryant attended the Civic Centre where he was interviewed under PACE (Police and Criminal Evidence) Act in relation to him failing to notify the Council of his Police Caution, his failure to declare this caution on any of his application forms. In this interview, Mr Bryant also gave an account of the circumstances leading to him receiving the Police Caution which involved damaging a fence in connection with a neighbour dispute (this has subsequently been found to be untrue).

Mr Bryant produced the certificate dated 19 November 2015 which he had claimed to have misplaced 2 September 2016. The certificate shows the Caution which was received on 2012.

At this interview, Mr Bryant stated that following his arrest and his subsequent attendance at Gateshead Police Station where he was issued with a Police Caution, at no time did he sign anything in relation to the Police Caution.

On completion of the PACE interview with Mr Bryant, and following further enquiries to Northumbria Police, the Licensing Section received a copy of the Police Caution which was issued to Mr Bryant. On this Police Caution, it states the person signing the Caution has had the contents of the form read to them and that they understand that their signature confirms that they understand the consequences of the simple caution being issued to them.

The form is dated 2 December 2012 and is signed by Mr Bryant.

On 23 September 2016 Mr Bryant again attended the Civic Centre, Gateshead, and was interviewed under PACE. During this interview, Mr Bryant was shown a copy of the police Caution which was issued to him on 2 December 2012. Mr Bryant confirmed that the signature on the Caution was his, however he did re iterate that he does not remember signing any document. In relation to the offence for which he was cautioned, Mr Bryant stated that after speaking to his Father, he confirmed that the offence related to him smashing a window and not damaging a fence as he previously explained.

On the same day, Mr Bryant again attended the Civic Centre, and produced a current DBS certificate, dated 19 September 2016. The disclosure certificate highlighted the caution which Mr Bryant received in December 2012. As this was the only conviction disclosed on his certificate, and the Council were aware of it, Mr Bryant's dual driver licence was returned to him.

Pre-Committee Inquiries

Mr Bryant met with Licensing Officers on 19 September 2016 and confirmed that there were no other outstanding matters that the Regulatory Committee should be aware of when making their decision. Mr Bryant confirmed that the information he has provided was correct and that he had no further convictions, cautions, fixed penalty notices or pending prosecutions. There is no record of any previous complaints being made against Mr Bryant whilst licensed as a private hire driver.

Details of Offences

Offence 1: Knowingly or recklessly making a false statement or omitting a material particular in connection with the grant of a Private Hire Drivers Licence

Mr Bryant made an application to renew his Licence on 21 October 2013. At this point Mr Bryant was asked to declare whether he had received any Cautions or Convictions since his previous application he indicated 'no'. This was incorrect as he had received a Caution on 2 December 2012. Whilst Mr Bryant stated he was unaware he had received a Caution the Council have received a copy of it which was clearly signed by Mr Bryant.

Mr Bryant accepted a Caution in respect of this Offence on 3 November 2016.

Offence 2: Destroy or damage to property (value of damage £5000 or less)

Mr Bryant stated that the incident occurred during a heated argument between him, his father and their next door neighbours in which a fence post was damaged. He stated that his neighbours contacted the Police and he was arrested. He stated that he was taken to a Police Station where he was interviewed, and then released. Mr Bryant stated that he was unaware that he was issued with a Police Caution.

Northumbria Police have stated that Mr Bryant received a Police Caution for the above offence. However, the details of the offence recorded on the Police Caution signed by Mr Bryant states that the offence of criminal damage was caused by Mr Bryant punching a window and breaking the same without lawful authority or reasonable excuse.

GATESHEAD COUNCIL'S POLICY ON THE RELEVANCE OF CRIMINAL CONDUCT AND COMPLAINTS AGAINST LICENCE HOLDERS

1.2 Objectives

In setting out its policy, Gateshead Council seeks to promote the following objectives:

- The protection of public health and safety;
- The establishment of a professional and respected hackney carriage and private hire trade
- Access to an efficient and effective public transport service;
- The protection of the environment;
- Improve standards of service and the visibility of hackney carriages/private hire vehicles in support of the regeneration of Gateshead.

1.4 Status

In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out above.

Notwithstanding the existence of this policy, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Authority to depart substantially from its policy, clear and compelling reasons will be given for doing so. The purpose of this document is to formulate guidelines which detail the Council's current

stance on the relevance of criminal conduct in respect of applications for the grant of new licences, and the renewal of existing hackney carriage and private hire vehicle driver's, operator's and proprietor's licences.

The objective of the licensing regime is to ensure that, so far as possible, those licensed to drive hackney carriages and 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, and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

1.6 Suitability

The Local Government (Miscellaneous Provisions) Act 1976 deals with the issue of driver suitability:

"...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a **fit and proper person** to hold a driver's licence."

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

"...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds –

- 1) that he/she has, since the grant of the licence,
 - i) been convicted of an offence involving dishonesty, indecency or violence, or
 - ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or Part of this Act.
- or

2) any other reasonable cause."

Therefore the wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is fit and proper – the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.

1.7 Criminal conduct

The Regulatory Committee are required to look at any relevant indicators that may affect a person's suitability to hold a hackney carriage/private hire driver's licence, and to consider the possible implications of granting such a licence to that person. If a person has been involved in criminal activity, this may be relevant to the Regulatory Committee's considerations. Convictions, formal cautions, fixed penalties, speeding offences, and the imposition of a fixed penalty in place of a prosecution under any enactment may be relevant indicators of a person's suitability to hold a licence.

1.9 Periods Free from Conviction

Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely.

Although the Act does not prevent judicial authorities (inclusive of the Licensing Authority) from taking spent convictions into account, such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a fit and proper person to hold a licence.

The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.

All criminal conduct should be disclosed. Greater or less weight will be attached to each incident depending on –

- The nature of the offence;
- The penalty imposed;
- The length of time since the offence or conviction (in which case the 1974 Act may be relevant as above); and
- Any relevant circumstances (including in mitigation).

Applicants may be asked to attend an interview with a Licensing Officer and/or a hearing before the Regulatory Committee to provide this information.

1.10 A “Fit and Proper Person”

Whether someone is a “fit and proper person” to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property.

Some areas give rise to particular concern, including –

- **Honesty and trustworthiness** – drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust. For example, any passenger would expect to be charged the correct fare for a journey and then be given the correct change; they would also expect a driver to hand in any article left by a passenger in a vehicle; and also to maintain confidentiality between driver and passenger.
- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands.
- **A good and safe driver** – Passengers paying for a transport service rely on their driver to get them to their destination safely. Taxi and private hire drivers are expected to be professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence.

1.11 Protecting the Public

The over-riding consideration for the members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked :

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant/licence holder to satisfy the Regulatory Committee.

Violence

As hackney carriage and private hire drivers maintain close contact with the public, any previous convictions and/or cautions for violence will be taken seriously by the Regulatory Committee.

An application should be refused or existing licence revoked where the applicant has a conviction for one of the following offences and where a conviction is less than 5 years prior to the date of application:

- Assault occasioning actual bodily harm
- Common assault
- Criminal damage with a value of £500 or more

Compliance with Conditions and requirements of Licensing Authority

The Regulatory Committee may take into account a person's history whilst holding a licence, from this or any other authority. The Regulatory Committee may take into account, in deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as the record of complaints about them, also their compliance with Licence conditions and their willingness to co-operate with the reasonable requests of Licensing Officers.

13. Conclusion

Any applicant having a previous or current conviction should not necessarily be prevented from obtaining a hackney carriage or private hire licence. However, there are certain offences that are considered so serious that they will usually prevent a person obtaining a licence. It is this Council's policy to consider the safety, protection and well being of the general public by ensuring all licensed drivers are in good health, are safe and competent drivers and are able to maintain their vehicles to an acceptable standard.

A person who has committed an offence and who is made to wait for a rehabilitation period to lapse prior to their application being accepted, is more likely to value their licence and act accordingly.

The Regulatory Committee should bear in mind that the purpose of the actions it takes should not be to punish or financially penalise licence holders, but rather to ensure public safety.

It is hoped that applicants and licence holders appreciate that the Regulatory Committee's primary aim is to ensure public safety. By following these guidelines, the Regulatory Committee is seeking to maintain the high standard of quality of hackney carriage and private hire drivers, operators and proprietors in the Borough, which in turn maintains the good reputation of the taxi industry in Gateshead, and the high quality of

service to the travelling public.

Any applicant refused a licence on the grounds that the Regulatory Committee is not satisfied he/she is a fit and proper person to hold such a licence, or who has had their licence suspended, revoked or had a condition attached with which they disagree has a right of appeal by way of written complaint, to the magistrates' court within 21 days of the notice of decision.

**GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS :
DEPARTMENT FOR TRANSPORT CIRCULAR 2/92
HOME OFFICE CIRCULAR 13/92**

GENERAL POLICY

1. Each case will be decided on its merits.

The following examples afford a general guide on the action to be taken where convictions are admitted.

Violence

As hackney carriage and PHV 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 three years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

Dishonesty

Hackney carriage and PHV drivers are expected to be persons of trust. The widespread practice of delivering 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.

FOR DECISION

The Regulatory Committee may:-

- a) Grant the Licence for up to 1 year
- b) Issue a written warning
- c) Add conditions to the Licence
- d) Adjourn the hearing if it deems further inquiries are necessary
- e) Refuse the Licence.

The Legal Officer has advised that in deciding whether the applicant is to be issued with a licence, they should only have regard to such factors as are relevant to ensuring public safety, and as such cannot have regard to the impact that their decision may have on the Licence Holder's livelihood.

DATE OF COMMITTEE: 15 NOVEMBER 2016

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**TO: CHAIR AND MEMBERS OF THE
REGULATORY COMMITTEE
FOR 15 NOVEMBER 2016**

REF NO: RC/32/16

ITEM FOR DECISION

HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCES

**NOT FOR PUBLICATION BY VIRTUE
OF PARAGRAPH 7 OF PART 1 OF
SCHEDULE 12A OF THE LOCAL
GOVERNMENT ACT 1972**

APPLICANT:	GLENN THOMAS SKELTON
DATE OF BIRTH:	22 JULY 1978
ADDRESS:	17 THURSBY GARDENS, GATESHEAD, NE9 6NL
PURPOSE OF REPORT:	APPLICATION FOR DUAL (HACKNEY CARRIAGE AND PRIVATE) HIRE DRIVER LICENCE
DATE OF APPLICATION:	20 JULY 2016
PROPOSED PRIVATE HIRE OPERATOR:	CENTRAL TAXIS (GATESHEAD) LIMITED

DETAILS OF PREVIOUS CONVICTIONS/CAUTIONS/FIXED PENALTY NOTICES

DATE OF CONVICTION/CAUTION/FPN	OFFENCE	FINE/SENTENCE
1. 25 July 2016	1. Possess goods with false trade mark for sale or hire	South Northumberland Magistrates' Court, £450 fine, £200 costs, £45 victim surcharge, forfeiture and destruction of all goods, clothes, shoes, perfume and note books.
	2. Possess goods with false trade mark for sale or hire	No separate penalty
	3. Possess goods with false trade mark for sale or hire	No separate penalty
	4. Possess goods with false trade mark for sale or hire	No separate penalty
2. 1 August 2014	1. Battery	Durham Constabulary, Caution
3. 27 June 2014	1. Destroy or damage to property (value of damage £500 or less)	Northumbria Police, Caution
4. 30 October 1997	1. Using threatening, abusive, insulting words or behaviour with intention to cause fear or provocation of violence	Gateshead District Magistrates, Community Service order 80 hours consecutive to sent imposed Newcastle MC 02.12.1996
	2. Dangerous driving	Community Service Order 80 hours concurrent, disqualification from driving 12 months and until extended test passed
	3. Driving otherwise in	No separate penalty,

	accordance with a licence	Driving Licence endorsed
	4. No insurance	Fine £50, £80 costs, Driving licence endorsed 6 points
	5. Driving a motor vehicle with excess alcohol	Fine £100, Disqualification from driving 12 months
5. 3 July 1997	1. Breach of Community Service Order	Gateshead District Magistrates, Fine £20
	2. Going equipped for stealing	Forfeiture/confiscation and destruction of bolt cutters and hacksaw
	3. Handling stolen goods (receiving)	Community Service Order 100 hour, resulting from original conviction of 09/07/96
	4. Breach of conditional discharge	Order revoked
	5. Breach of Community Service Order	Fine £20
6. 2 December 1996	1. Going equipped for stealing	Newcastle upon Tyne District Magistrates, Community Service Order 100 hours, Costs £30, Forfeiture/confiscation and destruction of bolt cutters and hacksaw
	2. Handling stolen goods (receiving)	Community Service Order 100 hours resulting from original conviction of 09/07/96
	3. Breach of conditional discharge	Order revoked
7. 9 July 1996	1. Handling stolen goods	Gateshead District Juvenile Conditional discharge 12 months
8. 22 May 1996	1. Robbery	Gateshead District Juvenile, Community

Service Order 100 hours,
Compensation £25, Costs
£25

2. Handling stolen goods
(undertaking to, or assisting
in retention, removal,
disposal or realisation)

Community Service Order
100 hours concurrent

9. 2 January 1996

1. Burglary and theft non-
dwelling

Gateshead District
Juvenile, Probation Order
12 months

2. Being drunk and disorderly

Probation Order 12
months

3. Theft

Probation Order 12
months

10. 19 July 1995

1. Resisting constable

Gateshead District
Juvenile, Fine £30

2. Theft

Fine £50, Costs £30

11. 11 October 1994

1. Criminal damage

Gateshead District
Magistrates, Conditional
discharge 12 months,
Costs £20

INFORMATION

Background

This is an application for the grant of a dual (hackney carriage and private hire) driver licence. Mr Skelton appears before Members in relation to 11 offences as detailed on pages 2, 3 and 4 of this report.

Pre-Committee Inquiries

On 12 October 2016 Mr Skelton attended a meeting with a Licensing Officer where he stated there were no other outstanding matters that the Regulatory Committee should be aware of when making their decision. Mr Skelton confirmed that the information he has provided is correct and that he has no further convictions, cautions, fixed penalty notices or pending prosecutions.

Northumbria Police have been contacted in relation to offences 3-11 and have stated that if any further information was relevant it would have been disclosed on the DBS certificate.

Details of Offences

Offence 1: Possess goods with false trade mark for sale or hire

Mr Skelton stated that a friend had been using his Facebook account, with his permission, for some time to sell counterfeit goods. Mr Skelton went on to say that this friend then asked him to store some of these counterfeit goods at his home address. These goods had been there for about 2 days when Officer from Trading Standards attended the address. Mr Skelton refused to name who the friend was.

Mr Skelton stated that he is paying the fine for the conviction at the rate of £100 per month and at the time he met with the Licensing Officer he stated he had paid £200.

Offence 2: Battery

Mr Skelton was in a dispute with his girlfriend and she alleged that he had hit her.

Offence 3: Destroy or damage to property (value of damage £500 or less)

Mr Skelton stated that whilst at a friend's house a fight broke out between himself and another male. It was during the course of this fight that damage was caused to a television set and a table.

Offence 4: Using threatening, abusive, insulting words or behaviour with intention to cause fear of provocation of violence, dangerous driving, driving otherwise in accordance with a licence, no insurance and driving a motor vehicle with excess alcohol

Mr Skelton stated that he has no recollection of using threatening, abusive, insulting words or behaviour with intention to cause fear of provocation of violence. However he does recall that he had been driving his motorcycle and at that time he did not have a driving licence or insurance and was drunk. He explained that he was trying to avoid being

stopped by the Police and in order to do so had been driving dangerously.

Offence 5: Breach of Community Service Order, going equipped for stealing and handling stolen goods

Mr Skelton stated that he had failed to attend unpaid work a couple of times.

Offence 6: Going equipped for stealing, handling stolen goods and breach of a conditional discharge

Mr Skelton had no recollection of these offences.

Offence 7: Handling stolen goods

Mr Skelton had no recollection of this offence

Offence 8: Robbery and handling stolen goods

Mr Skelton stated that he was drunk and after a fight with his girlfriend he had gone to the petrol station on Durham Road, Gateshead. He approached the counter, which at the time of night was secure and therefore he was on the outside of the building and speaking to the cashier through the night pay hatch. Mr Skelton stated that he had his hand under his clothing but intimated that he had a gun. He demanded money. The cashier activated the attack alarm and Mr Skelton was confronted by armed police officers. Mr Skelton stated that it was a joke.

Mr Skelton had no recollection about the handling stolen goods offence.

Offence 9: Burglary and theft (non-dwelling), being drunk and disorderly and theft

Mr Skelton's only recollection of these offences is that the burglary and theft offence could have been for a time when he broke into a garden shed.

Offence 10: Resisting constable and theft

Mr Skelton had no recollection of these offences.

Offence 11: Criminal damage

Mr Skelton had no recollection of this offence.

GATESHEAD COUNCIL'S POLICY ON THE RELEVANCE OF CRIMINAL CONDUCT AND COMPLAINTS AGAINST LICENCE HOLDERS

1.2 Objectives

In setting out its policy, Gateshead Council seeks to promote the following objectives:

- The protection of public health and safety;
- The establishment of a professional and respected hackney carriage and private hire trade
- Access to an efficient and effective public transport service;

- The protection of the environment;
- Improve standards of service and the visibility of hackney carriages/private hire vehicles in support of the regeneration of Gateshead.

1.4 Status

In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document and the objectives set out above.

Notwithstanding the existence of this policy, each application or enforcement measure will be considered on its own merits. Where it is necessary for the Authority to depart substantially from its policy, clear and compelling reasons will be given for doing so. The purpose of this document is to formulate guidelines which detail the Council's current stance on the relevance of criminal conduct in respect of applications for the grant of new licences, and the renewal of existing hackney carriage and private hire vehicle driver's, operator's and proprietor's licences.

The objective of the licensing regime is to ensure that, so far as possible, those licensed to drive hackney carriages and 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, and honest; and that they are persons who would not take advantage of their position to abuse, assault or defraud customers.

1.6 Suitability

The Local Government (Miscellaneous Provisions) Act 1976 deals with the issue of driver suitability:

"...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a **fit and proper person** to hold a driver's licence."

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

"...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds –

- 1) that he/she has, since the grant of the licence,
 - i) been convicted of an offence involving dishonesty, indecency or violence, or
 - ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or Part of this Act.
 or
- 2) any other reasonable cause."

Therefore the wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is fit and proper – the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.

1.7 Criminal conduct

The Regulatory Committee are required to look at any relevant indicators that may affect a person's suitability to hold a hackney carriage/private hire driver's licence, and to consider the possible implications of granting such a licence to that person. If a person has been involved in criminal activity, this may be relevant to the Regulatory

Committee's considerations. Convictions, formal cautions, fixed penalties, speeding offences, and the imposition of a fixed penalty in place of a prosecution under any enactment may be relevant indicators of a person's suitability to hold a licence.

1.8 Patterns

A series of incidents of criminal conduct over a period of time is more likely to give cause for concern than an isolated incident. A serious view will be taken when applicants show a pattern of incidents. If for example, the applicant has received three or more convictions for violent action, then, serious consideration should be made as to the suitability of that person holding a licence.

1.9 Periods Free from Conviction

Under the 1974 Act, criminal convictions can become spent after a certain period of time, and once spent, for many purposes, can be disregarded completely.

Although the Act does not prevent judicial authorities (inclusive of the Licensing Authority) from taking spent convictions into account, such convictions are only admissible in so far as they are relevant to the issue as to whether the applicant is a fit and proper person to hold a licence.

The determination as to whether certain convictions are spent, therefore, may be a relevant exercise.

All criminal conduct should be disclosed. Greater or less weight will be attached to each incident depending on –

- The nature of the offence;
- The penalty imposed;
- The length of time since the offence or conviction (in which case the 1974 Act may be relevant as above); and
- Any relevant circumstances (including in mitigation).

Applicants may be asked to attend an interview with a Licensing Officer and/or a hearing before the Regulatory Committee to provide this information.

1.10 A "Fit and Proper Person"

Whether someone is a "fit and proper person" to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property.

Some areas give rise to particular concern, including –

- **Honesty and trustworthiness** – drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust. For example, any passenger would expect to be charged the correct fare for a journey and then be given the

correct change; they would also expect a driver to hand in any article left by a passenger in a vehicle; and also to maintain confidentiality between driver and passenger.

- **Not abusive** – drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands.
- **A good and safe driver** – Passengers paying for a transport service rely on their driver to get them to their destination safely. Taxi and private hire drivers are expected to be professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence.

1.11 Protecting the Public

The over-riding consideration for the members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked :

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any other person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant/licence holder to satisfy the Regulatory Committee.

Violence

As hackney carriage and private hire drivers maintain close contact with the public, any previous convictions and/or cautions for violence will be taken seriously by the Regulatory Committee.

An application should be refused or existing licence revoked where the applicant has a conviction for one of the following offences and where the conviction is less than 8 years prior to the date of application:

- Robbery
- s.4 Public Order Act 1986 offence (fear or provocation of violence)
- s.4 Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Unlawful wounding or causing grievous bodily harm
- Unlawful wounding or causing grievous bodily harm with intent

An application should be refused or existing licence revoked where the applicant has a conviction for one of the following offences and where a conviction is less than 5 years prior to the date of application:

- Assault occasioning actual bodily harm
- Common assault
- Criminal damage with a value of £500 or more

If an applicant or existing licence holder has committed two or more violence related

offences, the licence should normally be revoked or refused.

Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public, for example, by demanding more than the legal fare or giving incorrect change. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by them retaining any lost property left in their vehicle.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. For these reasons a serious view is taken of any convictions involving dishonesty.

A new application will normally be refused or an existing licence revoked where a person has a conviction for an offence of:

- Theft
- Burglary
- Fraud
- Benefit fraud
- Handling or receiving stolen goods
- Forgery
- Conspiracy to defraud
- Obtaining money or property by deception
- Other deception

Compliance with Conditions and requirements of Licensing Authority

The Regulatory Committee may take into account a person’s history whilst holding a licence, from this or any other authority. The Regulatory Committee may take into account, in deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as the record of complaints about them, also their compliance with Licence conditions and their willingness to co-operate with the reasonable requests of Licensing Officers.

13. Conclusion

Any applicant having a previous or current conviction should not necessarily be prevented from obtaining a hackney carriage or private hire licence. However, there are certain offences that are considered so serious that they will usually prevent a person obtaining a licence. It is this Council’s policy to consider the safety, protection and well being of the general public by ensuring all licensed drivers are in good health, are safe and competent drivers and are able to maintain their vehicles to an acceptable standard.

A person who has committed an offence and who is made to wait for a rehabilitation period to lapse prior to their application being accepted, is more likely to value their licence and act accordingly.

The Regulatory Committee should bear in mind that the purpose of the actions it takes should not be to punish or financially penalise licence holders, but rather to ensure public safety.

It is hoped that applicants and licence holders appreciate that the Regulatory Committee’s primary aim is to ensure public safety. By following these guidelines, the

Regulatory Committee is seeking to maintain the high standard of quality of hackney carriage and private hire drivers, operators and proprietors in the Borough, which in turn maintains the good reputation of the taxi industry in Gateshead, and the high quality of service to the travelling public.

Any applicant refused a licence on the grounds that the Regulatory Committee is not satisfied he/she is a fit and proper person to hold such a licence, or who has had their licence suspended, revoked or had a condition attached with which they disagree has a right of appeal by way of written complaint, to the magistrates' court within 21 days of the notice of decision.

**GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS :
DEPARTMENT FOR TRANSPORT CIRCULAR 2/92
HOME OFFICE CIRCULAR 13/92**

GENERAL POLICY

1. Each case will be decided on its merits.

The following examples afford a general guide on the action to be taken where convictions are admitted.

Violence

As hackney carriage and PHV 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 three years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

Dishonesty

Hackney Carriage and Private Hire drivers are expected to be persons of trust. The widespread practice of delivering 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.

FOR DECISION

The Regulatory Committee may:

The Regulatory Committee may;-

- a) Refuse the Application
- b) Grant the Licence for a period of 1, 2 or 3 years
- c) Add a condition to the private hire driver Licence
- d) Grant the licence with a written warning as to future conduct
- e) Adjourn the matter for further enquiries if applicable

The Legal Officer has advised that in deciding whether or not the Committee are satisfied that the Applicant is a fit and proper person to continue to hold a licence, they should only have regard to such factors as are relevant to ensuring public safety, and as such cannot have regard to the impact that their decision may have on the Applicant's livelihood.

**DATE OF COMMITTEE: 15 NOVEMBER
2016**

**TO: CHAIR AND MEMBERS OF THE
REGULATORY COMMITTEE
FOR 15 NOVEMBER 2016**

REF NO: RC/33/16

ITEM FOR DECISION

HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCES

**NOT FOR PUBLICATION BY VIRTUE
OF PARAGRAPH 7 OF PART 1 OF
SCHEDULE 12A OF THE LOCAL
GOVERNMENT ACT 1972**

APPLICANT:	MR DAVID BOYD
DATE OF BIRTH:	18 DECEMBER 1966
ADDRESS:	7 NORTHVIEW, WREKENTON, GATESHEAD, NE9 7UT
PURPOSE OF REPORT:	APPLICATION FOR GRANT OF A PRIVATE HIRE DRIVER LICENCE
DATE OF APPLICATION:	28 SEPTEMBER 2016
PROSPED OPERATOR:	TBC

DETAILS OF PREVIOUS COMPLAINTS/CONVICTIONS/CAUTIONS

DATE CONVICTION/CAUTION/ FPN	OFFENCE	FINE/SENTENCE
1. 19 March 1985	Criminal damage,	2 year conditional discharge, £10 costs, £95 compensation, Gateshead District Magistrates' Court
2. 12 May 1982	Theft of vehicle	£20 fine, £66 compensation, £5 costs, driving licence endorsed. Gateshead District Juvenile Court

INFORMATION

Background

This is an application for a Private Hire Driver licence. The Applicant appears before Members in relation to 2 offences detailed on page 2 of this report.

Pre-Committee Inquiries

The Applicant will be meeting with Licensing Officers to discuss the circumstances surrounding the above offences, and supplementary information will be provided to the Regulatory Committee prior to this hearing to assist them in determining this application.

Offence 1, Criminal damage (19 March 1985)

Further details of this offence will be provided in due course.

Offence 2, Theft of vehicle (12 May 1982)

Further details of this offence will be provided in due course.

Relevant extracts from Gateshead Council Policy

Suitability

The Local Government (Miscellaneous Provisions) Act 1976 deals with the issue of driver suitability:

“...Council shall not grant a licence to drive a (Private Hire/Hackney Carriage Vehicle) unless they are satisfied that the person is a fit and proper person to hold a driver’s licence.”

Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states:

“...the district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds –

- 1) that he / she has, since the grant of the licence,
 - i) been convicted of an offence involving dishonesty, indecency or violence; or
 - ii) been convicted of an offence under or has failed to comply with the provisions of the Town Police Clauses Act 1847 or Part of this Act

or

- 2) any other reasonable cause.”

Therefore the wording of the legislation makes it clear that the Council may grant a licence ONLY if it is satisfied that the person is fit and proper – the onus is on the applicant to prove this, NOT the Council to demonstrate that they are not.

A “Fit and Proper Person”

Whether someone is a “fit and proper person” to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind for example, elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property.

Some areas give rise to particular concern, including -

Honesty and trustworthiness – drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust.

Dishonesty

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public, for example, by demanding more than the legal fare or giving incorrect change. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by them retaining any lost property left in their vehicle.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. For these reasons a serious view is taken of any convictions involving dishonesty.

A new application will normally be refused or an existing licence revoked where a person has a conviction for an offence of:

- Theft

Violence

As hackney carriage and private hire drivers maintain close contact with the public, any previous convictions and/or cautions for violence will be taken seriously by the Regulatory Committee.

An application should be refused or existing licence revoked where the applicant has a conviction for one of the following offences and where a conviction is less than 5 years prior to the date of application:

- Assault occasioning actual bodily harm
- Common assault
- Criminal damage with a value of £500 or more

Relevant extracts from the Home Office Guidelines

Dishonesty

Hackney Carriage and Private Hire drivers are expected to be persons of trust. The widespread practice of delivering 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.

Violence

As hackney carriage and PHV 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 three years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

FOR DECISION

The Regulatory Committee may:

The Regulatory Committee may;-

- a) Refuse the Application
- b) Grant the Licence for a period of 1, 2 or 3 years
- c) Add a condition to the private hire driver Licence
- d) Grant the licence for a period of 1,2 or 3 years with a written warning as to future conduct
- e) Adjourn the matter for further enquiries if applicable

Legal Officer's advice

The Legal Officer has advised that in deciding whether or not the Committee are satisfied that the Applicant is a fit and proper person to hold a licence, they should only have regard to such factors as are relevant to ensuring public safety, and as such cannot have regard to the impact that their decision may have on the Applicant's livelihood. .

DATE OF COMMITTEE: 15 NOVEMBER 2016