

**GATESHEAD COUNCIL  
REGULATORY COMMITTEE**

**SUMMARY OF DECISION**

**Name of Licensee:** Basharat Khan

**Address:** 34 Saltwell View Gateshead NE8 4NT

**For Determination :** Review of Dual (Hackney Carriage & Private Hire) Driver Licence

**Date of Hearing:** 6 September 2016

**Reason for hearing**

Mr Khan appeared before the Council's Regulatory Committee on 6 September 2016 to consider whether he remained a 'fit and proper' person to be licensed as a Hackney Carriage and/or Private Hire Driver by this Council.

Mr Khan's fitness and propriety was called into question by his pattern of motoring related offences, breach of licence condition and dishonest conduct as set out in the Licensing Officer's report to the Committee.

**The Committee decided as follows :**

- (1) To revoke Mr Khan's Dual (Hackney Carriage & Private Hire) Driver licence; and
- (2) That the revocation of Mr Khan's licence shall have immediate effect.

**Reasons for decision**

Prior to the hearing, the Committee read the Licensing Officer's report referred to above.

Mr Khan attended the hearing and was accompanied by trainee solicitor Mr Clark of Messrs Lambert Taylor & Gregory.

Mr Khan confirmed that he had received the report prior to the hearing, that he had read and understood it, and that the information contained was accurate and complete in respect of his conduct relevant to the Committee's determination.

The Committee heard representations from Messrs Khan and Clark as set out below.

The Committee considered the Home Office / Department For Transport guidance and the Council's own policy in respect of the factors to be taken into account when determining whether a person is 'fit and proper' to hold a Hackney Carriage and/or Private Hire Driver licence, and noted in particular –

- the Home Office / Department For Transport Guidance states –
  - “Every case will be decided on its own merits”
  - “The overriding consideration should be the protection of the public”
  - “Convictions for minor traffic offences, e.g. 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 PHV licence may be granted after its restoration but a warning should be given as to future conduct. An isolated conviction for reckless driving or driving without due care and attention, etc, should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed”
  - “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”; and
- Gateshead Council's own Policy on the Relevance of Criminal Conduct states –
  - “The Regulatory Committee are required to look at any relevant indicators that may affect a person's suitability to hold a licence, and to consider the possible implications of granting such a licence to that person”
  - “‘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; and

- 'A good and safe driver' – passengers paying for a transport service should 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'
- "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 cooperate with the reasonable requests of licensing officers"
- "Driving offences – existing licence holders – Private hire and hackney carriage drivers are considered professional drivers and must be aware of the safety of their passengers and the safety of their vehicles at all times. Any traffic offences may show a lack of responsibility whilst driving either due to the maintenance and safety of their vehicle or in the manner of their driving. The Regulatory Committee should consider what weight to apply to any mitigating factors.
- "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 offences involving dishonesty. A new application will normally be refused or an existing licence revoked where a person has committed [a dishonesty related] offence"
- "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"
- "Once a licence has been granted – if a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence. A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning

with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that this is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver”

- “Protecting the public’ – Licensed drivers play a vital role in helping to ensure that vulnerable people are kept safe. ‘Vulnerability’ in this context includes lone, drunk, disabled and foreign passengers as well as children. Passengers place their trust in the drivers of licensed taxis. Where that trust is abused, the consequences can be very serious and wide ranging.”
- “The overriding 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 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.”

The Committee had due regard to the following matters:

### Legislation

The Committee had regard to the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976, as follows –

- Section 51(1)(a) : “Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver’s licence : Provided that a district council shall not grant a licence— unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”; and
- Section 59(1)(a) : “Notwithstanding anything in the Act of 1847, a district council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”
- Section 61(1)(b) : “Notwithstanding anything in the Act of 1847 or this Part of this Act, a district council may suspend or revoke ... the licence of a driver of a hackney carriage or a private hire vehicle on ... any ... reasonable cause”
- Section 61(2A) : “Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end

of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section”

- Section 61 (2B) : “If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver”

The Committee also had regard to the Applicant’s right to a fair hearing pursuant to the Human Rights Act 1998.

### Individual circumstances

The Committee had regard to the information contained in the Licensing Officer’s Report dated 26 August 2016.

Mr Khan and his representative accepted that he had committed a number of speeding offences including two incidents where the speed was grossly in excess of the limit, but referred to the fact that the Council’s policy defines speeding offences as ‘minor’ to suggest that little weight should be attached to any concern they cause as to whether he is a good and safe driver.

Mr Khan stated that he was not driving a licensed vehicle on any of the occasions where he was caught speeding.

Mr Khan’s representative stated that there was nothing to suggest that Mr Khan had been driving dangerously or erratically whilst speeding. Mr Khan stated that his most recent speeding offence occurred in December 2015 during the Christmas period when the road was relatively quiet and the conditions were dry. He accepted, however, that driving at 40mph above the speed limit even in such conditions cannot be considered safe. Mr Khan stated that he was in a vehicle he was not familiar with and was not aware how fast he was driving. Mr Khan said that he has probably driven a further 10,000 miles on the same stretch of road since the incident and has not been caught speeding since, and invited the Committee to accept that he is now a good and safe driver.

Mr Khan was also asked to clarify the comments he made to the Court when he made a plea of exceptional hardship in order to avoid being disqualified from driving.

Mr Khan accepted that he has informed the Court that he is the only person that can test drive vehicles on behalf of his company, Webuyyourtaxi.com Ltd, and that if he was disqualified from driving then he would have to close the business resulting in several redundancies and his family being made homeless.

However, when Mr Khan was reminded that the other director and shareholder of the company, Mr Trevor Robinson, is also licensed as a Hackney Carriage and Private Hire Driver by Gateshead Council, Mr Khan accepted that he is not the only person who can or in fact does test drive vehicles on behalf of the company.

Mr Khan stated that what he meant by saying that he is ‘the only person who can test drive vehicles’ was that he is ‘better at test driving vehicles than Mr Robinson’, and that ‘nine times out of ten’ Mr Khan carries out the test drives.

The Committee were mindful that holding a Hackney Carriage and/or Private Hire Driver licence is a privilege and not a right, and that under the Local Government (Miscellaneous Provisions) Act 1976 as above, licensing authorities *must not* permit a person to be licensed unless they are *satisfied* that the person is fit and proper to hold that licence, so where on the balance of probabilities there is doubt as to a person's ability to properly provide those services they must not be licensed.

Having regard to the individual circumstances, the Committee found that they were no longer satisfied that Mr Khan is a fit and proper person to be licensed as either a Hackney Carriage and Private Hire Driver by this Council.

The Committee considered that Mr Khan's driving offences demonstrate that he is not a good and safe driver and that the pattern of offending shows an increasing disregard for the safety of himself and other road users. The Committee noted that Mr Khan has not been convicted of any further speeding offences since May 2016, but did not consider the passage of time to be sufficient to demonstrate a change of character.

The Committee also considered that Mr Khan had wilfully misled the Court in order to avoid a driving disqualification.

The Committee considered that Mr Khan had also attempted to mislead the Council, having maintained that he was the only person who could test drive vehicles on behalf of his company when he knew this to be false and misleading.

In the circumstances, the Committee found that it was no longer satisfied that Mr Khan is a suitably honest and trustworthy person in order to continue to hold a licence, and that his 'dual' Hackney Carriage and Private Hire Driver licence should be revoked.

The Committee found that its concern regarding Mr Khan's driving conduct and honesty were so serious that the interests of public safety require the revocation to take immediate effect.

The Committee noted that in reaching their decision they only had regard to such factors as are relevant to ensuring public safety and not by the impact that their decision may have on the individual's personal circumstances or livelihood.

### **Right of appeal**

If Mr Khan is aggrieved by the Committee's decision he has the right to appeal to Gateshead Magistrates' Court within 21 days of the decision. As Mr Khan was in attendance at the hearing and was duly notified of the decision at that time, any such appeal should be brought within 21 days of the hearing date.

Gary Callum  
Licensing Officer  
Development, Public Protection & Transport Strategy  
7 September 2016