

**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**NOT FOR PUBLICATION BY VIRTUE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**