

**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**NOT FOR PUBLICATION BY VIRTUE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