

**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**NOT FOR PUBLICATION BY VIRTUE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