

**TO: CHAIR AND MEMBERS OF THE
REGULATORY COMMITTEE
FOR 31 JANUARY 2017**

REF NO: RC/01/17

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**NOT FOR PUBLICATION BY VIRTUE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:	JOHN FORSTER
DATE OF BIRTH:	13 MARCH 1982
ADDRESS:	2 THORNHILL GARDENS, BURNOPFIELD, NEWCASTLE UPON TYNE, NE16 6JP
PURPOSE OF REPORT:	APPLICATION FOR A DUAL (HACKNEY CARRIAGE AND PRIVATE HIRE) DRIVER LICENCE
DATE OF APPLICATION	19 OCTOBER 2016

DETAILS OF PREVIOUS CONVICTIONS/CAUTIONS/FIXED PENALTY NOTICES

DATE OF CONVICTION/CAUTION/ FPN	OFFENCE	FINE/SENTENCE
1. 8 November 2015	Speeding	3 penalty points, £100 fine
2. 26 July 2014	Battery	Caution, Northumbria Police
3. 24 April 2013	Speeding	4 penalty points, £350 fine

INFORMATION

Background

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

Pre-Committee Inquiries

On 2 December 2016 Mr Forster attended a meeting with Licensing Assistant Paul Harris where Mr Forster 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 Forster has stated that he has been licensed with Newcastle City Council as a private hire driver for just over 1 year, and he has confirmed that his application was granted by Newcastle City Council's Licensing Committee following a hearing.

Newcastle City Council has confirmed that Mr Forster's application was granted by the Licensing Committee together with a warning on 2 November 2015. They are not aware of any complaints about Mr Forster. However they have advised that when Mr Foster applied to the authority to renew his licence on 7 October 2016 he declared he had no further offences and as such the licence was duly renewed via delegated powers. As such, according to their records, Mr Forster failed to declare that he had received 3 points for the speeding offence dated 8 November 2015 and is now to be referred back to their Committee for a review of his licence.

In addition during initial pre-committee enquiries with Officers Mr Forster failed to mention offence 3. He was asked to attend the Civic Centre on 16 January 2017 to discuss this matter.

Details of Offences

Offence 1: Speeding (November 2015)

Mr Forster stated that he was driving his private hire vehicle licensed with Newcastle City Council, south on the A1 when he was caught by an average speed camera travelling at 46mph in a 40mph zone. He stated that he received the speeding notification through the post.

Offence 2: Battery (July 2014)

Mr Forster stated that the incident occurred whilst he and his partner were temporarily apart. He stated that at the time of the incident his partner had custody of their 4 year old son. Mr Forster stated that he had attended his partners address as he had a prior appointment to collect his son. He stated that at the time of the visit his partner refused to allow him to take his son. He stated that an argument ensued and during the course of the argument, Mr Forster took hold of his son and began leaving the house. He stated that his partner followed him and Mr Forster kicked her in the thigh.

He stated that police were called but Mr Forster had already left the scene. He stated that he was contacted by Police and he later presented himself at the Police Station where he was cautioned for the offence.

At his meeting with Paul Harris, Mr Forster stated that he wished to add that he had only kicked out in frustration, and that he and his partner are now back together.

Northumbria Police have stated that they have checked their records and Mr Forster's version of events is correct

Offence 3: Speeding (April 2013)

Mr Forster stated at the time he was driving a hire car that had been supplied by engineering company that he was working for. He was driving on an A class road in Kirkcudbright where the speed limit was 60mph. A police hand held speed camera recorded his speed at 80 mph.

Police Scotland have been contacted about this matter and we are awaiting their formal response.

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 – **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.
- **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.

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.

1.14 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.

8. 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:

- Common assault

The Legal Officer has advised that in accordance with section 39 of the Criminal Justice Act 1988 the offence of 'battery' is treated the same as the offence of 'common assault'. An 'assault' is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force. A 'battery' is committed when a person intentionally and recklessly applies unlawful force to another.

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.

- 2 A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.
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 PHV licence may be granted after its restoration but a warning should be issued as to future conduct.

(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:

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 part of the 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: 31 JANUARY 2017