

Cheltenham Borough Council

Licensing Committee – 12 October 2016

Review of a Hackney Carriage Driver's Licence

Mr Mohammed Shahin Ahmed - HCD104

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

- 1.1 Mr Mohammed Shahin Ahmed holds Hackney Carriage driver's licence HCD104.
- 1.2 On Monday 19 September 2016 officers received information that Mr Ahmed was convicted of a fraud related offence earlier in the month. The details of the conviction are outlined in the enclosed background papers.
- 1.3 Mr Ahmed failed to notify the council of his conviction in accordance with the Council's requirements.
- 1.4 **The Committee can decide that:**
- 1.4.1 **Mr Ahmed's Hackney Carriage driver's licence be continued with no further action, because the Committee is satisfied that he is a fit and proper person to hold such a licence; or**
- 1.4.2 **Mr Ahmed's Hackney Carriage driver's licence be revoked as the Committee considers him not to be a fit and proper person to hold such licence.**
- 1.4.3 **Subject to recommendation 1.4.2 above, Mr Ahmed's Hackney Carriage driver's licence be revoked with immediate effect if the Committee considers this to be necessary in the interest of public safety.**

1.5 Implications

- 1.5.2 Legal There is a right of appeal against a decision to revoke a licence which, in the first instance, is to the Magistrates' Court.

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2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).
- 2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.

The question for the committee is therefore whether, given the nature of the convictions, the applicant is a fit and proper person to hold a licence.

3. Policy Considerations

Appendix J - Relevance of Convictions, Cautions and Fixed Penalty Notices in Relation to the Licensing of Drivers and Operators

3.1 General Policy

Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

Hackney carriage and private hire drivers are listed occupations under the Rehabilitation of Offenders Act 1974. This means that an applicant must disclose ALL convictions when applying for the grant of a licence. The Council may take into account anything they consider relevant to the determination of the application.

When the relevant required information has been returned, the application will be considered in the light of the information provided. The information will be used to ascertain whether the information given on the original application form was correctly and truthfully provided. It is therefore necessary to ensure that details of ALL convictions and cautions are provided at the initial stage.

A serious view will be taken of any application which seeks to conceal any caution or conviction in order to obtain a Licence. This is a criminal offence and, as such, may lead, not only to consideration of the applicant as not being a “fit and proper person”, but criminal proceedings.

In the event that there are no relevant convictions, cautions or fixed penalties held, the applicant will be considered to be a “fit and proper person” and the matter will be determined by the issue of the licence [subject to the successful completion of all other assessments].

Applications where convictions, cautions or fixed penalties are held will be considered by a Licensing Officer who, having regard to this policy may refer the application to a Licensing Committee for determination. This will result in either the determination of the applicant as a “fit and proper person”, indicated by the issue of a licence, or the application being refused. In these circumstances, the applicant has the right of appeal to the Magistrates’ Court, such appeal to be lodged within 21 days of the decision being notified.

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

3.2 Fit and Proper Person

There is no absolute definition as to what constitutes a “fit and proper person”. However, considering the range of passengers that a driver may carry, for example, elderly people, unaccompanied children, people with disabilities, those who have had too much to drink, lone women and foreign visitors, the Council will want to have confidence that such people would be able to rely on the driver.

Some important areas that will be considered by the Council are:

- a) Honesty and trustworthiness – licensed drivers and operators 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. For example, any passenger would expect to be charged the correct fare for a journey and then 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 fare.
- b) Courtesy - taxi 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. A driver will not be expected to have any convictions or cautions for offences of a violent or threatening nature.
- c) Consistently good and safe driving - those paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence.
- d) Good knowledge of the area that they are working in.
- e) Good physical and mental health.
- f) Ability to read, speak and understand English, together with a working knowledge of arithmetic in giving the correct change, etc.

3.3 Offences of Dishonesty

The Council’s policy relating specifically to offences of dishonesty for existing licensed drivers states:

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 by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty.

An existing licence holder who is convicted of one or more of the following offences, is likely to have their licence revoked.

- a. Theft
- b. Burglary
- c. Fraud
- d. Benefit fraud
- e. Handling or receiving stolen goods
- f. Forgery
- g. Conspiracy to defraud

- h. Obtaining money or property by deception
- i. Other deception

3.4 Part 1 – Driver Licences

Convictions / cautions / fixed penalty notices

Licence holders must notify the Council in writing within 7 days if he or she is convicted or cautioned for an offence or receives a fixed penalty notice.

4. Licensing Comments

- 4.1 The Committee is under a statutory obligation to ensure that persons licensed as Hackney Carriage drivers are, and remain, fit and proper people.
- 4.2 In the case of Mr Ahmed's driver's licence, it is therefore necessary for the Committee to consider what action is necessary to ensure the Council complies with this duty.
- 4.3 It is the Council's policy that all licensed drivers must notify the Council in writing within 7 days if they have, amongst other things, been convicted of any offence.
- 4.4 Mr Ahmed failed to notify the Council of the conviction.
- 4.5 Mr Ahmed should be fully aware of the policy requirement to notify the Council because he correctly answered the question about the notification period when he took his local knowledge test in 2013.
- 4.6 Mr Ahmed has been sent a copy of this report and invited to attend this meeting to answer Members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

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