

Cheltenham Borough Council

Licensing Committee – 6 December 2017

Renewal of Hackney Carriage Driver's Licence

Mr Paul Bacon - HCD735

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Paul Bacon for a renewal of a Hackney Carriage driver's licence.
- 1.2 Mr Paul Bacon's certificate from the Disclosure and Barring Service (DBS) shows a caution. The details of this are contained in the enclosed background papers.
- 1.3 Mr Bacon did not disclose the caution on his renewal application form.
- 1.4 In light of this the Licensing Manager has taken the view that Members of Committee should be aware of the caution because of the need to ensure that he remains a fit and proper person to hold a licence.

1.5 The Committee can:

- 1.5.1 **Grant Mr Bacon's application to renew a Hackney Carriage driver's licence with no further action taken because the Committee considers him to be a fit and proper person, or**
- 1.5.2 **Revoke Mr Bacon's Hackney Carriage driver's licence because the Committee considers him to no longer be a fit and proper person.**

1.6 Implications

- 1.6.1 Legal There is a right of appeal against a refusal to renew 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 Driver's licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

3.1 Driver Renewal Applications

If details of new convictions, cautions, fixed penalty notices or charges are received during the renewal process, the application will be dealt with on its merits according to the policy on the relevance of convictions (Appendix J).

Failure to disclose or declare any previous convictions, cautions, fixed penalty notices or pending charges maybe construed as an attempt to deceive and appropriate and proportionate action will be taken. It is an offence to knowingly or recklessly make a false statement or to omit information required by the Council by virtue of s.57 Local Government (Miscellaneous Provisions) Act 1976. (Page 11)

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

The licensing authority must be satisfied that all those who are licensed to drive hackney carriages and / or private hire vehicles, and those who are licensed to operate under a private hire operator's licence, are fit and proper persons. This general policy relates to the Council's assessment of the suitability of an applicant to be licensed, in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver or operator's licence has received a relevant conviction, caution or fixed penalty.

Additionally, it will be referred to where a relevant conviction, caution or fixed penalty has been received during the period of a driver or operator's licence and used to help inform any decision as to the licence-holder's continuing fitness to hold a licence.

These guidelines shall apply to all new applicants for, and all existing holders of, hackney carriage / private hire drivers licences and private hire operators licences.

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.

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.

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

3.2 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.

3.3 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

3.4 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.

3.5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behavior which will be taken into account.

3.6 **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 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 cautioned for an offence.
- 4.3 Mr Bacon failed to notify the council of the caution.
- 4.4 Mr Bacon failed to disclose to the council on the renewal application form that he received a caution. Question 4 of the application form explicitly asks if the licence holder has, since their last renewal, been cautioned by the police. Mr Bacon indicated that he has not.
- 4.5 Mr Bacon also indicated in his written response that he was surprised to have a caution registered on his DBS and that the police have indicated to him that "there would be no further action" hence why he claims he did not indicate the caution on his application form.
- 4.6 Members are to note however that in order for the police to issue a formal caution, the offender has to *admit an offence and agree to be cautioned*. A caution cannot be issued if the offender does not comply with the two conditions above.
- 4.7 Members are to note that it is an offence to knowingly or recklessly make a false statement or to omit information required by the council by virtue of s.57 Local Government (Miscellaneous Provisions) Act 1976.
- 4.8 The Committee must be satisfied that Mr Bacon is a fit and proper person before agreeing to the grant of a licence.
- 4.9 Mr Paul Bacon has been sent a copy of this report and invited to attend this meeting to speak in support of his application and 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

Report Author

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