

Cheltenham Borough Council

Licensing Sub-Committee – 16th December 2022

Review of a Hackney Carriage Driver's Licence

Mr Malcolm John Rogers - HCD194

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

- 1.1 Mr Malcolm Rogers holds Hackney Carriage Driver's licence number HCD194 and has been licensed since at least 2001 (being as far back as the council's records exist).
- 1.2 On 20 October 2020 the licensing team received a complaint concerning Mr Rogers' behaviour. There are now 10 complaints recorded against Mr Rogers between 2008 and 2018.
- 1.3 The following documents are included as background papers:-
- Appendix 1 – Summary of the complaint provided by one of the council's Licensing Enforcement Officer –Sarah Hughes
 - Appendix 2 - Statement of complainant
 - Appendix 3 – Statement of driver
 - Appendix 4 – Complaint history against Mr Rogers
 - Appendix 5 – Images taken by complainant
 - Appendix 6 – Praise received about Mr Rogers
 - Appendix 7 – Email from a member of the public who states they witnessed the incident
- 1.4 In light of the complaints and the information provided, the matter is being referred to the licensing sub-committee to allow Members the opportunity to consider whether Mr Rogers is a fit and proper person to hold a hackney carriage driver's licence.
- 1.5 **The sub-committee can:**
- 1.5.1 **Determine to take no action if Members consider Mr Rogers to be a fit and proper person to hold a licence; or**
- 1.5.2 **Take such of the following steps as the sub-committee considers appropriate:**
- (a) Give a written warning
 - (b) Suspend the licence (please refer to paragraph 4.5 in relation to this option)
 - (c) Revoke the licence
- 1.5.3 **Subject to 1.5.2(c) Members should consider whether such revocation should take immediate effect in the interests of public safety.**
- 1.6 **Implications**

- 1.6.1 Legal There is a right of appeal against the revocation or suspension of a Hackney Carriage Driver's licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@tewkesbury.gov.uk
Tel no: 01684 272015

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. The safety of the public is the paramount concern.

3. Policy Considerations

The information below highlights the council's stated policy on certain matters for information and guidance.

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

- 3.1 *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.*
- 3.2 *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.*
- 3.3 *These guidelines shall apply to all new applicants for, and all existing holders of, hackney carriage / private hire driver's licences and private hire operator's licences.*

General Policy

- 3.4 *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.*
- 3.5 *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.*
- 3.6 *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.*

- 3.7 *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.*
- 3.8 *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.*
- 3.9 *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.*

Non-conviction information

- 3.10 *The Council will also take into account situations and circumstances that have not led to a conviction. This will include acquittals, circumstances in which convictions were quashed due to misdirection to the jury, circumstances where the decision was taken not to prosecute, situations where the person has been arrested and bailed but not yet charged, and complaints from the public. In considering the most appropriate action to take in relation to non-conviction information (or a complaint), the credibility of both the witness / complainant and the licence holder will be taken into account.*
- 3.11 *If an applicant has been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application or, in the case of an existing licence holder, a suspension or revocation of their licence. Such offences would include violent and / or sexual offences.*
- 3.12 *In assessing the action to take, the safety of the travelling public must be the paramount concern.*

Outstanding Charges or Summonses - Existing Licence Holders

- 3.13 *If an existing licence holder is the subject of an outstanding charge or summons, consideration will be given whether to suspend or revoke their licence until the matter is resolved. Consideration will be given to the:*
- *Seriousness and relevance of the offence;*
 - *When the alleged offence(s) were committed;*
 - *Compliance and complaints history of the licence holder;*
 - *Circumstances of the individual concerned;*
 - *Any other relevant matters.*

Convictions / cautions / fixed penalty notices / criminal investigations

- 3.14 *Licence holders must notify the council in writing within 7 days if he or she is convicted or cautioned for an offence, receives a fixed penalty notice or is the subject of a criminal investigation.*

4. Statutory Taxi & Private Hire Guidance

- 4.1 The Department for Transport's statutory guidance for licensing authorities was published in July 2021 and places a statutory duty on licensing authorities who “must have regard” to it when exercising their licensing functions.

4.2 The DfT standards have been set directly to address the safeguarding of the public and the potential impact of failings in this area, therefore the “importance of thoroughly considering these standards cannot be overstated.”

4.3 **Fit and proper test**

The statutory guidance defines “fit and proper” as:

“Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?”

4.4 The statutory guidance goes on to say at paragraphs 5.13 and 5.14:

4.5 If, on the balance of probabilities, the answer to the question is ‘no’, the individual should not hold a licence.

4.6 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. **This means that an applicant or licensee should not be ‘given the benefit of doubt’. If the committee or delegated officer is only “50/50” as to whether the applicant or licensee is ‘fit and proper’, they should not hold a licence.** The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction. [Emphasis added]

5. **Licensing Comments**

5.1 The licensing committee must have regard to the statutory guidance and the provisions of its own policy when coming to a determination of this application for a review.

5.2 The committee is under a statutory obligation to ensure that persons licensed as hackney carriage drivers are, and remain, fit and proper people.

5.3 The licensing committee will note from the authority’s licensing policy that the committee can act in relation to circumstances where a licence holder has not been convicted of an offence. Under these circumstances, Member’s attention is drawn to the following policy provisions:-

Where an existing licence holder is the subject of an outstanding charge or summons, consideration will be given whether to suspend or revoke their licence until the matter is resolved.

If an applicant has been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration should be given to refusing the application or, in the case of an existing licence holder, a suspension or revocation of their licence. Such offences would include violent and / or sexual offences.

The driver has been sent a copy of this report and invited to attend this meeting to speak in support of his case and to answer members' questions or to be represented. In considering the case on its own merits Members should have regard to the adopted Probity Guide.

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 be expected to not 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.

3.4 Extracts from Cheltenham Borough Council's Code of Good Conduct for Licensed Drivers

The Council has adopted the following Code of Good Conduct, which should be read in conjunction with the other statutory and policy requirements set out in this document.

Licence holders shall:-

- a) Always be polite and courteous to all members of the public, avoiding the use of bad language, even when provoked . . .
- m) Drive with care and due consideration for other road users and pedestrians

The full policy and the code of good conduct for licensed drivers are available at www.cheltenham.gov.uk/licensing.

4. Licensing Comments

- 4.1 The council is under a **statutory obligation** to ensure that persons licensed as hackney carriage drivers are fit and proper people.
- 4.2 This case presents 2 entirely different and conflicting versions of the incident, from the complainant and the driver. It would be quite normal for there to be variations between such accounts, but not usually to the extent presented in those accounts. Members must pay a great deal of attention to this element of the case. Members must ultimately come to a determination on whether Mr Rogers is telling the truth or whether the complainant is doing so. Members will of course never know the real

truth of the incident, but they must come a view on who they believe is more likely than not to be telling the truth.

- 4.3 In coming to such a conclusion, they must be thorough and inquisitive in their questioning.
- 4.4 It is interesting to note that a member of the public has given up a great deal of time to make this complaint and been very detailed in their statement. It is difficult to see why a person would do that, without any genuine grievance against the driver, and particularly as they have signed a section 9 statement in giving their evidence.
- 4.5 On the flip side of that argument, we have received an email giving praise against this driver (Appendix 6) and one suggesting that there was a witness to the incident (Appendix 7). Members must give full and proper attention to these communications, but as with any evidence they must consider it and weight it accordingly in considering this case. The person referred to in Appendix 7 described themselves as 'friend of family member' and they have been asked for section 9 statement, and they have not yet confirmed if they will do so.
- 4.6 The council's policy is clear that drivers licensed by the council are expected to be careful and considerate drivers who are polite and courteous to all members of the public, regardless of provocation.
- 4.7 Members are advised that Mr Rogers has not been convicted or cautioned for any offence. It is for the sub-committee to consider the details of the complaints and the information provided by Mr Rogers and others, to weigh up whether he is a safe and suitable person to be licensed.
- 4.8 Members are advised that whilst the council's policy gives the sub-committee the option of suspending a licence, this should not be used as a punitive measure. The option of suspending a driver's licence should only be used as a corrective measure where Members feel that a driver is not currently a fit and proper person to hold a licence, but that he or she will become fit and proper in due course. Members may employ a suspension in conjunction with a training requirement (or similar and related requirements). This could be valid if they have concerns that a driver may currently be more likely than not to act in a way that is not conducive to being considered as 'fit and proper' in certain situations, but where they believe the likelihood of such actions arising or being triggered could be mitigated to a satisfactory extent through education and support for the driver concerned. This approach also allows Members to respond appropriately to cases where corrective steps are considered as required because they believe that specific remedial action will mitigate any potential risk to the public.
- 4.9 However, it must be noted that such an approach in respect of suspension cannot be used where Members believe that a driver is not 'fit and proper' and where they may *hope* this can be remedied, but do not *believe* on the balance of probability that this *will* be remedied.
- 4.10 Members must be assured of the honesty and integrity of the driver subject to this complaint, and must ensure that they give him an opportunity to address the wide variation in accounts given to the Authority in respect of this complaint.
- 4.11 Finally, Members must ask themselves why the driver concerned has been the subject of such a disproportionately high number of recorded complaints over time. It would be quite fair and reasonable to 'filter' out some complaints where they were historic allegations or seemed out of character and a lesser period of time had passed. However, that does not seem appropriate in this case as there does seem a pattern of behavior for the driver highlighted through these complaints. It would be reasonable to surmise that on occasion a small number of complaints could be made against a driver with no genuine foundation, and simply made out of spite. However, such a relatively high number of complaints with similar issues highlighted must be of concern to the Authority, as that seems more likely to not be the case and that the driver's actions were more likely than not to have been inappropriate on occasion(s).

4.12 Mr Rogers has been sent a copy of this report and invited to attend the meeting, to address the sub-committee and to answer Members' questions.

4.13 In considering the case on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Report Author

Contact officer: Jason Kirkwood
Team Leader Licensing
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 262626