

At a meeting of the Licensing Regulatory Panel held in Council Chamber - Allerdale House, Workington on Tuesday 14 August 2018 at 10.00 am

Members

Councillor Ron Munby (Chair)
Councillor Stephen Stoddart
Councillor Martin Wood

Councillor Janice Wood

An apology for absence was received from Councillor Malcolm Grainger

Staff Present

B Carlin, D Fletcher and G Roach

130. Election of Chair

Councillor R Munby was elected Chair for the ensuing meeting.

131. Declaration of Interests

None declared.

132. Questions

None received.

The Chairman moved :-

“That under Section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they may involve the likely disclosure of exempt information as defined in paragraph 1 of part 1 of Schedule 12A of the Act.”

133. To consider an application for a Hackney Carriage Driver Licence

The Licensing and Compliance Officer submitted a report for the Licensing Regulatory Panel to consider whether a person who had made an application for the grant of a Hackney Carriage Driver Licence was a fit and proper person to hold such a licence.

The applicant was invited into the meeting.

The Licensing and Compliance Officer provided the Panel with details on the application.

The applicant had provided the following as part of the application:

- Disclosure and Barring Service (DBS) Certificate – the certificate revealed information relevant to the application;

- DVLA driving licence – the licence contained various endorsements;
- A completed doctor's medical form showing him fit to drive a hackney carriage;
- Relevant documentation to prove his right to work in the UK in line with the Immigration Act 2016.

The Licensing and Compliance Officer set out the key points for consideration as follows:

The Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence set out:

'Consideration of Disclosed Criminal History

16. . . . if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look into:
- 16.1 how relevant the offence(s) are to the licence being applied for.
 - 16.2 how serious the offence(s) were.
 - 16.3 when the offence(s) were committed.
 - 16.4 the date of conviction.
 - 16.5 circumstances of the individual concerned
 - 16.6 sentence imposed by the court.
 - 16.7 whether they form part of a pattern of offending.
 - 16.8 any other character check considered reasonable (e.g. personal references)
 - 16.9 any other factors that might be relevant.'

'36. Minor Traffic Offences

. . .

- 36.2 'If an applicant has 8 or more current penalty points on their DVLA driving licence the application will be considered by the Licensing Panel to determine his/her suitability'

'37. Serious Road Traffic Offences

- 37.1 'A serious view will be taken of serious road traffic offences. An isolated incident in the past will not necessarily stop a Private Hire or Hackney Carriage driver licence being granted provided he/she has been free of conviction for 3 years, however strict warning should be given as to future behaviour.'

The Licensing and Compliance Officer recommended that the licence be refused on the grounds that the applicant was not a fit and proper person to hold a licence under section 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976. The information revealed on the applicant's driving

license showed a serious road traffic offence was committed in 2015. The applicant had also committed a minor traffic offence which was still within the 3 year period.

The applicant gave representation on his application.

The applicant and the Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Licensing Panel considered the application, officer's report, representations made by the applicant and advice from officers. The Panel also considered all relevant legislation and the Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence.

Councillor M Wood moved that the application for a hackney carriage driver licence be refused, as per the officer's recommendation. This was seconded by Councillor S Stoddart.

A vote was taken on the motion. The vote in favour of refusing the licence was unanimous.

The motion in favour of refusing the licence was carried.

The applicant and the Licensing and Compliance Officer returned to the meeting.

The applicant was informed of the Panel's decision and its reasons.

The applicant was informed that, if aggrieved by the decision of the Council, he had a right of appeal to a magistrates' court within 21 days of receiving written notification of the decision.

Decision/Reasons

To refuse to grant the Hackney Carriage Driver Licence.

The application had come before the Licensing Panel as per the Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence. The Policy states that an application must be referred to the Panel where an applicant had relevant convictions.

The Panel's overriding objectives were to protect the safety of the public and had considered the fact that the applicant had a history of driving offences and other motoring offences.

In making its decision, the Panel listened to the applicant's representations and sought to balance his interests against the overriding objective to protect the safety of the public.

Resolved

That the application for a Hackney Carriage Driver Licence be refused.

The Panel agreed:

That agenda item 7 be considered next.

134. To consider an application for a Hackney Carriage Driver Licence

The Licensing and Compliance Officer submitted a report for the Licensing Regulatory Panel to consider whether a person who had made an application for the grant of a Hackney Carriage Driver Licence was a fit and proper person to hold such a licence.

The applicant was invited into the meeting.

The Licensing and Compliance Officer provided the Panel with details on the application.

The applicant had provided the following as part of the application:

- Disclosure and Barring Service (DBS) Certificate – the certificate revealed information relevant to the application;
- DVLA driving licence – the licence did not contain any endorsements;
- At the time of the application and the meeting, he had not provided a completed doctor's medical form showing him fit to drive a hackney carriage or any relevant documentation to prove his right to work in the UK in line with the Immigration Act 2016.

The Licensing and Compliance Officer set out the key points for consideration as follows:

The Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence set out:

Paragraph 27 'if an applicant has, on more than one occasion, 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. Such offences would include violent offences and sex offences'

Paragraph 28 states that in assessing the action to take, the safety of the travelling public must be the paramount concern.

The Licensing and Compliance Officer recommended that the licence be refused on the grounds that the applicant was not a fit and proper person to hold a licence under section 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976. The information revealed on the applicant's DBS

Certificate showed that an indecency offence occurred on 25 December 2015. The incident occurred whilst the applicant was acting in the capacity of a hackney carriage driver. Although no further police action was taken due to insufficient evidence, the detail provided to the Council at the time was sufficient to revoke the applicant's licence at the time.

The applicant gave representation on his application.

The applicant and the Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Licensing Panel considered the application, officer's report, representations made by the applicant and advice from officers. The Panel also considered character references presented on the day of the meeting.

In addition, the Panel had considered all relevant legislation, the Council's policy on the relevance of criminal convictions and the guidance issued by the Institute of Licensing dated April 2018 on determining the suitability of applicants and licensees in the hackney and private hire trades.

Councillor M Wood moved that the application for a hackney carriage driver licence be refused, as per the officer's recommendation. This was seconded by Councillor S Stoddart.

A vote was taken on the motion. The vote in favour of refusing the licence was unanimous.

The motion in favour of refusing the licence was carried.

The applicant and the Licensing and Compliance Officer returned to the meeting.

The applicant was informed of the Panel's decision and its reasons.

The applicant was informed that, if aggrieved by the decision of the Council, he had a right of appeal to a magistrates' court within 21 days of receiving written notification of the decision.

Decision/Reasons

To refuse to grant the Hackney Carriage Driver Licence.

The application had come before the Licensing Panel as per the Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence.

Whilst the applicant's DBS certificate showed no conviction information, it did contain relevant disclosure information. The Panel noted the applicant was arrested in December 2015 in connection with an alleged serious sexual offence and that his previous licence was revoked by the Council following receipt of that disclosure information.

The Panel noted that no charges were brought against the applicant. However, in line with the April 2018 guidance issued by the Institute of Licensing, the Panel was entitled to take in to account all matters concerning an applicant and could take into account matters which had not resulted in a criminal conviction, including where there had been a decision not to prosecute.

The Panel noted that the incident from 2015 occurred while the applicant was operating in his capacity as a taxi driver and involved a vulnerable person. This was considered to be an aggravating factor and contributed to the Panel finding the applicant not to be a fit and proper person to hold a driver's licence.

In making its decision, the Panel listened to the applicant's representations and considered the content of character references submitted on the day of the meeting, noted his comments and the fact he appeared remorseful and sought to balance his interests against the overriding objective to protect the safety of the public.

Resolved

That the application for a Hackney Carriage Driver Licence be refused.

135. To consider an application for a Hackney Carriage Driver Licence

The Licensing and Compliance Officer submitted a report for the Licensing Regulatory Panel to consider whether a person who had made an application for the grant of a Hackney Carriage Driver Licence was a fit and proper person to hold such a licence.

The applicant and his accompanying support were invited into the meeting.

The Licensing and Compliance Officer provided the Panel with details on the application.

The applicant had provided the following as part of the application:

- Disclosure and Barring Service (DBS) Certificate - the certificate revealed information relevant to the application;
- DVLA driving licence – the licence did not contain any endorsements;
- At the time of the meeting the applicant had not provided a completed medical form or any documents to prove his right to work in the UK.

The Licensing and Compliance Officer set out the key points for consideration as follows:

The Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence set out:

'Consideration of Disclosed Criminal History

16. . . . if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look into:
- 16.1 how relevant the offence(s) are to the licence being applied for.
 - 16.2 how serious the offence(s) were.
 - 16.3 when the offence(s) were committed.
 - 16.4 the date of conviction.
 - 16.5 circumstances of the individual concerned
 - 16.6 sentence imposed by the court.
 - 16.7 whether they form part of a pattern of offending.
 - 16.8 any other character check considered reasonable (e.g. personal references)
 - 16.9 any other factors that might be relevant.'

Paragraph 41 'as Hackney Carriage and Private Hire vehicle drivers often carry unaccompanied passengers including schoolchildren and vulnerable adults, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period of at least 3 years free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.'

The Licensing and Compliance Officer recommended that the licence be refused on the grounds that the applicant was not a fit and proper person to hold a licence under section 59(1)(a) of the Local Government (Miscellaneous Provision) Act 1976. The information revealed on the applicant's DBS Certificate showed disclosure relating to an indecency offence. Although the applicant had been free of conviction for three years, as per section 40 of the Policy, the information revealed on the DBS Certificate showed that the applicant was performing a taxi driver role at the time of the offence which led to his conviction.

The applicant gave representation on his application.

The applicant, his accompanying support and the Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Licensing Panel considered the application, officer's report, representations made by the applicant and character references presented on the day of the meeting and advice from officers.

In addition, the Panel considered all relevant legislation, the Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence and the guidance issued by the Institute of Licensing dated April 2018 on determining the suitability of applicants and licensees in the hackney and private hire trades.

Councillor S Stoddart moved that the application for a driver's licence be refused, as per the officer's recommendation. This was seconded by Councillor M Wood.

A vote was taken; the vote in favour of refusing the licence was unanimous.

The motion in favour of refusing the licence was carried.

The applicant, his accompanying support and the Licensing and Compliance Officer returned to the meeting.

The applicant was informed of the Panel's decision and its reasons.

The applicant was informed that, if aggrieved by the decision of the Council, he had a right of appeal to a magistrates' court within 21 days of receiving written notification of the decision.

Decision/Reasons

To refuse to grant the Hackney Carriage Driver Licence.

The application had come before the Licensing Panel in accordance with the Council's policy on the relevance of criminal convictions. The policy states that an application must be referred to the panel where an applicant had convictions relating to indecency.

The applicant's DBS Certificate revealed a conviction in 2003 for a serious indecency offence involving a vulnerable person and other relevant disclosure information. The Panel noted that the incident occurred while the applicant was operating in his capacity as a taxi driver and involved a vulnerable person. This had been considered as an aggravating factor and contributed to the Panel finding the applicant not to be a fit and proper person to hold a drivers licence.

In making its decision, the Panel sought to balance the applicant's interests against the overriding objective to protect the safety of the public. They listened to the applicant's representations and considered the character references provided at the meeting, as well as the evidence that he held a hackney carriage drivers licence in another authority. They noted his comments that 15 years had passed since the offence and the fact he appeared remorseful.

Resolved

That the application for a Hackney Carriage Driver Licence be refused.

The meeting closed at 11.55 am