

Report to Regulatory Panel

Agenda
Item:

A.1

Meeting Date: 30th July 2014
Portfolio: Finance, Governance and Resources
Key Decision: Not Applicable:
Within Policy and Budget Framework
Public / Private Public

Title: DAVID JOHN HICKIE - DISCLOSURE OF POLICE CAUTION
Report of: DIRECTOR OF GOVERNANCE
Report Number: GD32/14

Purpose / Summary:

David John Hickie obtained his first Hackney Carriage Driver licence with this Council on 27 June 2014.

On 30th June 2014 he was arrested for criminal damage and possession of a Class B drug. He accepted a Police caution for these offences and reported them to Licensing on 3rd July 2014.

Recommendations:

To reach a decision on Mr Hickie's fitness to be a licensed driver from the options available, after hearing evidence from the Police and any response from Mr Hickie. This is in accordance with Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

To the Chairman & Members of the Regulatory Panel on 30th July 2014

NAME Mr David John Hickie

ADDRESS Petteril Street, Carlisle

AGE 51

1. BACKGROUND

- 1.1 Mr Hickie became a licensed hackney driver with this Council on 27th June 2014. His Driving Licence showed no convictions and his DBS (Criminal Disclosure) was clear. His medical form was signed by Grosvenor House Surgery as 'fit' to drive using Group 2 standards, issued by the Drivers Medical Unit, DVLA, Swansea.
- 1.2 On Thursday 3rd July he reported to the licensing office that he had received a Police Caution for criminal damage and possession of a Class B drug (Cannabis). Mr Hickie explained to the Licensing Officer that he had 'done a silly thing on the Sunday night after he had had a drink'. He explained he had been plagued for years by people parking in front of his garage and blocking his access. On the previous Sunday evening, he was frustrated that someone had done this and had spray painted the vehicle. He completed the disclosure form and the Licensing Officer informed him that we would investigate the incident with the Police before deciding what course of action to take **(Appendix A)**
- 1.3 On 16th July the arresting officer PC Prangnell, forwarded his statement of the event to licensing **(Appendix B)**. This statement outlines the investigation into a criminal damage offence, which resulted in a search being made of Mr Hickie's house where a Class B drug was found. The officer described Mr Hickie as 'immediately belligerent, arrogant and aggressive'. He appeared to be heavily intoxicated and as a result of his conduct was arrested and handcuffed. When being booked into custody he was asked if he was dependent on alcohol to which he responded to the effect that it was a ridiculous question to ask an alcoholic. He was interviewed later that day and admitted he had consumed half a bottle of vodka that morning as well as causing damage to his neighbour's car and being in possession of cannabis for his own use.
- 1.4 Further enquires by the officer revealed that Mr Hickie had surrendered a shotgun certificate in 2013 following an incident at his house where weapons were lying

around the house and not secured, while Mr Hickie was found to be heavily intoxicated.

- 1.4 On 16th July the licensing officer spoke to Mr Hickie at the Civic Centre regarding the content of the Police Officer's statement. Mr Hickie commented that the Officer had taken a dislike to him and ended up searching his house even when he had openly admitted the offence and the paint spray had been found in the hall. The search included making him open the locked gun cabinet that Mr Hickie has.

Mr Hickie was asked about his alcohol consumption and he said that he hadn't started working yet. He said his remark to the custody officer about being an alcoholic was to 'P*** him off' as he was annoyed at being arrested.

- 1.5 A check was made of Mr Hickie's medical form/questionnaire that was completed by his doctor. When asked the question 'please give number of alcohol units taken each week' the answer given was 20 units per week.
- 1.6 Mr Hickie was then advised that the matter would be referred to the Regulatory Panel for a decision.

2 LEGISLATION

- 2.1 Section 61(1) of the Local Government Miscellaneous Provisions Act 1976 states that a District Council may suspend or revoke a Hackney Carriage Driver Licence on a number of grounds.

Section 61(1)(b) gives the grounds of "any other reasonable cause" **(Appendix C)**

- 2.2 Department of Transport Circular 2/92 and Home Office Circular 13/92 give guidance on the disclosure of criminal records. This has been adopted by the Council for guidance of the Panel. The Circular gives guidance on the relevance of convictions based on the criteria used by the Metropolitan police, the relevant extract is attached **(Appendix D)**

3 LICENSING COMMENTS

- 3.1 Mr Hickie does not have any previous convictions, however he accepted a Police caution for criminal damage to a motor vehicle and possession of cannabis as an alternative to being charged.

- 3.2 Members will note from Appendix D, (d) Drugs, that a period of at least 3 years free of convictions should elapse before an application is entertained.
- 3.3 Whilst Mr Hickie does not have any convictions for drunkenness, there are concerns as to whether he has a dependency on alcohol. The reasons are: the surrender of his shotgun certificate in 2013, the evidence of the Police Officer who arrested him recently and Mr Hickie's own admission to the custody officer.

1 OPTIONS

It is recommended that after hearing the evidence and any representations today, that members reach a decision in line with the options available:

- Take no further action
- Issue a warning letter
- Require Mr Hickie to undertake a Special Medical Examination in accordance with Dept for Transport Circular 2/92 Annex D (c)(i). If this examination reveals that Mr Hickie is not dependent on alcohol and his Hackney Carriage Drivers Licence has been suspended, the Licensing Manager is granted delegated powers to reinstate his licence.
- Suspend Mr Hickie's Hackney Carriage Drivers Licence for a period of time.
- Revoke his Hackney Carriage Drivers Licence.

Contact Officer: Mrs S Stashkiw

Ext: 7029

**Appendices
attached to report:**

A - Disclosure of Police Caution

B - Police witness statement

C - Sec 61 Local Government (Misc. Provisions) Act 1976

**D- Department of Transport Circular 2/92 and Home Office
Circular 13/92**

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's - n/a

Deputy Chief Executive – n/a

Economic Development –	n/a
Governance –	included within the report
Local Environment –	n/a
Resources -	n/a



Form I

CARLISLE CITY COUNCIL

DISCLOSURE OF ADDITIONAL CONVICTIONI DAVID JOHN HICKSof PETERIL STREET CARLISLE

Date of Birth

being a licensed Hackney Carriage/Private Hire Driver with Carlisle City Council, have been convicted of an additional offence or offences that I have not previously declared to the Council. This/these offences are disclosed below. This List includes any penalty imposed upon me other than by a Court but as a result of any legal process.

I understand that under the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002, ALL convictions must be disclosed upon renewal.

Date of Offence	Date of Conviction	Offence	Court at which convicted	Sentence or Order of the Court or Fixed Penalty Notice
30 JUNE 2014	ACCEPTED POLICE CAUTION 30 JUNE 14	CRIMINAL DAMAGE POSSESSION OF CLASS B DRUGS	ACCEPTED POLICE CAUTION	TO PAY FOR DAMAGE TO CAR

Circumstances A CAR WAS PARKED ACROSS MY GARAGE FROM THE 29 OF JUNE TO THE 30 OF JUNE. AFTER LIVING AT THE ABOVE ADDRESS FOR 28 YEARS AND HAVING PEOPLE BLOCK MY GARAGE CONSTANTLY I AM AFRAID I LOST MY TEMPER AND SPRAY PAINTED THE WINDSCREEN, AND WAS CHARGED I ACCEPTED THE CAUTION AND AGREED TO PAY FOR THE DAMAGE.

I agree that this conviction and/or penalty and my history as a licensed driver may be disclosed at the public hearing of Carlisle City Council Regulatory Panel, or any subsequent hearing held in any Court or Tribunal

Signature of Licence Holder

3 JULY 2014

Date

WITNESS STATEMENT

CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

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Statement of: _____

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Police Constable

This statement (consisting of two page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: _____ Date: 16th July 2014Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am Police Constable 1343 of the Cumbria Constabulary stationed at Carlisle Police station.

I am making this statement for the benefit of the taxi licensing committee in relation to a David Hickie of 47 Petteril Street, Carlisle. I had cause to arrest Hickie on the 30th June 2014 for the offence of criminal damage to a neighbour's car. The circumstances surrounding this offence were that he took exception to a neighbour inadvertently blocking access to his garage door during the night. He responded by spray painting the majority of the vehicle with car primer, causing extensive damage.

He was arrested from his house at 0915 hours. He opened the door to me in his underwear and was immediately belligerent, arrogant and aggressive. He openly admitted to causing the damage to his neighbour's car, stating that it had been illegally parked. He appeared to think that this was an entirely rational response to take. His judgement appeared to be significantly impaired by his heavy intoxication, not only from alcohol but from smoking cannabis that was found in the living room during a subsequent search of his house. He refused or failed to cooperate with all reasonable requests and ultimately had to be removed from his house in handcuffs still wearing just his underwear.

From searching the house for the spray paint (which was located in the hallway) he appeared to be the sole occupant of the house; I observed in the rear yard an unusually large number of alcohol bottles suggesting significant alcohol consumption. Of further concern was a black handgun lying

Signature: _____ Signature witnessed by: _____

Continuation of Statement

in open view on the kitchen worktop. It later transpired to be an air pistol but due to locating this item further checks at the house established that he had previously been a shotgun certificate holder until 2013, when his firearms were surrendered following an incident when he was found by a relative heavily intoxicated with the weapons lying about the house and not secured in the gun safe as they should always be.

At Carlisle Custody Suite when he was being booked in, he was asked the standard risk assessment questions by the Custody Sergeant, as is every detained person. Of note were his responses to the question as to whether he had consumed any alcohol in the last twenty-four hours. He replied that he had consumed half a bottle of Vodka already this morning. He was also asked if he considered himself to be dependent on drugs or alcohol. He seemed to find this a pointless question and responded to the effect that it was ridiculous to ask an alcoholic if they were dependant on alcohol. It was very clear that he considered himself to be an alcoholic.

His intoxication was sufficient for it to take until after 1500 hours that day before he was even fit to be interviewed. During interview he admitted that he had caused the damage to his neighbour's car and further admitted that the cannabis in the house was his, for him to smoke. He received a criminal caution for the damage, on the proviso that the paid the neighbour's insurance claim excess of £100. He received a caution for the possession of cannabis.

I must admit to being horrified to discover that Hickie is a taxi driver. I really cannot think of a worse person to be entrusted by the public to transport them safely.

Signature: _____ Signature witnessed by: _____

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Local Government (Miscellaneous Provisions) Act 1976. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)



Local Government (Miscellaneous Provisions) Act 1976

1976 CHAPTER 57

PART II

HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

61 Suspension and revocation of drivers' licences.

- (1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—
 - (a) that he 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 Act of 1847 or of this Part of this Act; or
 - (b) any other reasonable cause.
 - (2)
 - (a) Where a district council suspend, revoke or refuse to renew any licence under this section they shall give to the driver notice of the grounds on which the licence has been suspended or revoked or on which they have refused to renew such licence within fourteen days of such suspension, revocation or refusal and the driver shall on demand return to the district council the driver's badge issued to him in accordance with section 54 of this Act.
 - (b) If any person without reasonable excuse contravenes the provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding [^{F1}level 1 on the standard scale].
- [^{F2}(2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.

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(2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.]

(3) Any driver aggrieved by a decision of a district council under [F³subsection (1) of] this section may appeal to a magistrates' court.

Annotations:

Amendments (Textual)

- F1** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46
- F2** S. 61(2A)(2B) inserted (16.3.2007) by Road Safety Act 2006 (c. 49), ss. 52(2), 61; S.I. 2007/466, art. 2
- F3** Words in s. 61(3) inserted (16.3.2007) by Road Safety Act 2006 (c. 49), ss. 52(3), 61; S.I. 2007/466, art. 2

Modifications etc. (not altering text)

- C1** S. 61: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 1 Table B4

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 61 modified by S.I. 2009/2863 reg. 4 Table

Commencement Orders yet to be applied to the Local Government (Miscellaneous Provisions) Act 1976:

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2007/466 art. 2(b) commences (2006 c. 49)
- S.I. 2007/1897 art. 2 commences (2005 c. 9)
- S.I. 2009/3318 art. 2-4 commences (2009 c. 20)
- S.I. 2011/2329 art. 3 commences (2011 c. 5)
- S.I. 2011/3019 art. 3 Sch. 1 commences (2011 c. 13)



DISCLOSURE OF CRIMINAL RECORDS: APPLICANTS FOR HACKNEY CARRIAGE & PRIVATE HIRE VEHICLE DRIVERS' LICENCES

Department of Transport Circular 2/92

and

Home Office Circular 13/92

ANNEX D

It is recommended that local authorities adopt their own guidelines relating to the relevance of convictions for use in determining applications for hackney carriage and private hire vehicle (PHV) drivers' licences. The following is an example only and is based on criteria used by the Metropolitan Police.

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

GENERAL POLICY

1. Each case will be decided on its own merits.
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.

(c) Drunkenness

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence application is considered.

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.