

# Report to Regulatory Panel

Meeting Date: 23<sup>rd</sup> November 2022  
 Portfolio: Finance, Governance and Resources  
 Key Decision: No  
 Within Policy and Budget Framework No  
 Public / Private Public

Title: PRIVATE HIRE DRIVER – MOTORING CONVICTIONS  
 Report of: Licensing Officer  
 Report Number: GD.68/22

## Purpose / Summary:

Mike James is a Licensed Private Hire Driver. During an annual check of Mr James DVLA driving licence, it was found that it was endorsed with three motoring convictions that had not been declared to the Licensing Team. This matter is referred to the Regulatory Panel to consider.

## Recommendation: -

To reach a decision from the options available, after hearing the evidence and the response from Ms James in accordance with Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Enforcement Policy.

## Tracking

Executive:	N/A
Scrutiny:	N/A
Council:	N/A

## **1. LICENSING BACKGROUND**

- 1.1. Mike James has held a Private Hire Driver Licence (PD124) since 18<sup>th</sup> December 2020 (**Appendix 1**).
- 1.2. Mr James original application to become a Private Hire Driver was heard before the Regulatory Panel on the 16<sup>th</sup> December 2020 due to him having a conviction for Health and Safety Offences. He also at that point had 3 points on his DVLA Driver Licence for a speeding conviction in February 2018. The panel determined that his application be granted.

## **2. ISSUES TO BE CONSIDERED**

- 2.1. On 8<sup>th</sup> October 2022 it was brought to the attention of the Licensing Authority that when undertaking a routine driving licence check using First Advantage, three endorsements for speeding had been identified but these had not been declared to the Licencing Authority within the specified 7 days as set out in the terms and conditions attached to his Private Hire Driver Licence.
- 2.2. The information we received is as follows: -
  1. 31<sup>st</sup> October 2021– Speeding 50 – Exceeding speed limit on a motorway - 3 points
  2. 7<sup>th</sup> February 2022 - Speeding 50 – Exceeding speed limit on a motorway – 3 points
  3. 16<sup>th</sup> April 2022 - Speeding 10 – Exceeding goods vehicle speed limits – 3 points
- 2.3. Mike James was interviewed by the Licensing Manager and Licensing Officer on 04<sup>th</sup> November 2022 at the Civic Centre, Carlisle. Mr James admitted that he had failed to notify the Licencing Authority and said he had failed to read the “small print” of the terms and conditions which is No.16 of the Terms and Conditions.  
**(Appendix 2)**
- 2.4. Mr James stated that he had told his operator that he had received the points on his licence for at least two of the endorsements and she had advised him to let the Licencing Authority know but he had admitted that he hadn't.
- 2.5. Mr James was asked to expand on the circumstances of the speeding endorsements, and he said he had only gone over the speed limit slightly and could not recollect the third endorsement for exceeding good vehicle speed limit. He said he would contact the DVLA and obtain more information and email it through to the licensing officer. At the time of writing the report the information was not available but Mr James will be able to update Panel Members at the meeting.

- 2.6. Mr James has stated that no passengers were being conveyed in the vehicle at the time of the two offences on the motorway, he said he had dropped his passengers off.
- 2.7. Officers were concerned about Mr James conduct at the interview, he stated that it thought it was “ridiculous” that he had to come to the Civic Centre and at the termination of the interview he opened the interview door in an aggressive manner causing the door to slam against the wall.
- 2.8. Mr. James was advised by the Licencing Manager the Penalty Points Scheme and that the endorsement on his licence would incur 6 penalty points for *Failure to notify the Council in writing, of any motoring or criminal convictions within 21 days or convictions or cautions during period of current licence*. He would also incur 4 penalty points for each speeding endorsement. This would be 18 in total.

### 3. PENALTY POINTS

- 3.1. The Council’s Hackney Carriage and Private Hire Licensing Policy 2022-2027 details the Authority’s Enforcement arrangements. A Penalty Points System is in place to work in conjunction with other enforcements options. The purpose of the scheme is to record misdemeanours and to act as a record of drivers, vehicle proprietors and operator’s behaviour and conduct so as to ascertain whether they are a fit and proper person.
- 3.2. Penalty points remain on the licensee’s record for two years on a roll forward basis and where 12 or more penalty points have been recorded in any 24-month period the matter will be referred to the Regulatory Panel for consideration on the fitness and propriety of a license holder.
- 3.3. The conduct of Ms James detailed in this report falls under several misconducts amounting to more that 12 points and therefore directly referred to the Regulatory Panel to consider.

### 4. LEGAL COMMENTS & LEGISLATION

- 4.1. Section 51 of the 1976 Act provides that a Licensing Authority shall not grant a Private Hire Driver’s Licence unless it is satisfied that the applicant is a fit and proper person to hold such a licence.
- 4.2. Section 61(1)(b) enables the Panel to take action in respect of a Driver on a number of grounds, notwithstanding that no criminal proceedings have been brought, if they consider that circumstances exist which mean that the driver is not, or is no longer, a fit and proper person to hold a driving licence. Section 61 (1)(b) gives the ground of ‘**for any other reasonable cause**’ **Appendix 3**.
- 4.3. While there is no statutory definition of ‘fit and proper person’, the Courts have given helpful guidance over the years and it is established that the objectives of the

licensing regime are intended to ensure that licensed drivers are “suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience; sober, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers” (*McCool –v- Rushcliffe Borough Council*).

4.4. Mr James did not disclose the above speeding convictions in accordance with the terms of his licence. Having heard Mr James and established the facts, Members need to consider whether Mr James is, in light of these facts, a fit and proper person to continue to hold his licence. If not, it should be revoked. If the misconduct is not, however, enough to lead to that conclusion, the Panel may consider whether a suspension or other lesser sanction is appropriate.

## **5. OPTIONS**

5.1. It is recommended that after hearing the evidence and any representations from Mr James, members reach a decision in line with the options available.

- Allow the 18 Penalty Points to remain on Mr James record for a period of 2 years and take no further action against him
- To suspend Mr James’ Private Hire Driver’s licence for a period of time.
- To revoke Mr James Private Hire Driver’s licence.

**Contact Officer: Amanda Bailey**

**Ext: 7023**

**Appendices  
attached to report:**

1. Private Hire Driver Licence PD124
2. Private Hire Driver Terms and Conditions dated 01/04/16
3. Section 61 Local Government (Misc. Provisions) Act 1976

**Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:**

- Report to Regulatory Panel 16/12/20 GD62/20

**CORPORATE IMPLICATIONS:**

**LEGAL – contained within report**

**FINANCE – None**

**EQUALITY – None**

**INFORMATION GOVERNANCE – No Information Governance implications**

City of



Carlisle

Private Hire Driver Licence

PD124

Licence Holder:

**Michael JAMES**



Date of birth

**Licence Validity**

Valid from **18 Dec 2020** to **17 Dec 2023**

**IMPORTANT NOTES**

- **Carlisle City Council** hereby license the person named above to drive licensed private hire vehicles.
- **This licence is subject to** the provisions of the Town Police Clauses Act 1847, the bylaws made thereunder, the Local Government (Miscellaneous Provisions) Act 1976 and the Conditions attached to the licence made under it, the Transport Act 1985 and any other relevant Acts.
- **The possession of this document** does not guarantee that the licence is in force. Its validity may be established by reference to the Council's Licensing Office.
- **This licence is not transferable**

**Conditions applicable to this licence are attached.**

Licensing Manager

Dated: **17/12/2020**

**CITY OF CARLISLE**  
**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**  
**TERMS AND CONDITIONS ATTACHED TO**  
**PRIVATE HIRE VEHICLE DRIVER'S LICENCES**

The holder of a private hire vehicle driver's licence (hereinafter called the driver) shall observe and perform all the following terms and conditions which shall be attached to and form part of his private hire vehicle driver's licence.

1. This Licence is personal to the driver named herein and the driver may not in any circumstances assign it or in any way part with the benefit thereof to any other person.
2. The driver shall at all times when acting as a driver of a private hire vehicle wear or display the driver's current year identity card issued by the Council in such a position and manner as to be plainly and distinctly visible.
3. The driver's identity card issued by the Council remains the property of the Council and shall be returned to the Council by the driver or a person appointed by him within seven days of the date of the suspension or revocation of or refusal or failure to renew this Licence.
4. The driver shall not, at any time whilst driving or in charge of a vehicle licensed for private hire :-
  - (a) station his vehicle on any place provided as a stand for hackney carriage vehicles or which is marked out as a bus stop or loading bay or on any length of highway during times when a prohibition on loading and unloading is in operation.
  - (b) station his vehicle for hire or ply for hire or solicit any person to hire or to be carried for hire or reward on any road or in any public place or in any place readily accessible and visible from a road;
  - (c) cause or procure any person to tout or solicit on a road or other public place any person to hire or be carried for hire in any private hire vehicle or offer that vehicle for immediate hire while the driver or that vehicle is on a road or other public place; or
  - (d) accept an offer for the hire of the vehicle whilst the driver of that vehicle is on a road or other public place except where such offer is first communicated to the driver by or on behalf of the licensed Operator for that vehicle by use of a telephone or by a two way radio system (other than C.B. radio) fitted to that vehicle.
  - (e) station the vehicle on a public highway in such a manner so that it is double parked or otherwise obstructing the free flow of traffic and this condition shall apply at all times and including whilst and before and after the hirer is boarding or alighting from the vehicle;
  - (f) station the vehicle so as to obstruct the exit or fire exits of any place licensed for regulated entertainment or to station the vehicle in such a way that a condition attached to the premises licence as to access for emergency vehicles cannot be complied with.

5. (1) The driver shall not permit or cause or suffer to be carried in any vehicle licensed for private hire a greater number of persons than that specified in the licence for that vehicle the seating arrangements must be as provided in the licence.
  - (2) The driver shall not allow there to be conveyed in the front of a private hire vehicle beside him:-
    - (a) any child below the age of ten years; or
    - (b) more than one person.unless the vehicle has been specifically designed to provide more than one passenger seat in the front, in which case the above rules apply to each seat.
  - (3) The driver shall not without the consent of the hirer of a vehicle convey or permit to be conveyed any other person in that vehicle.
6. The driver shall not demand from any hirer of a private hire vehicle a fare in excess of any previously agreed for that hiring between the hirer and the operator or, if the vehicle is fitted with a taximeter and there has been no previous agreement as to the fare, the fare shown on the face of the taximeter.
7. The driver of a private hire vehicle fitted with a taximeter shall not cause the fare recorded thereon to be cancelled or concealed until the hirer has had a reasonable opportunity of examining it and has paid the fare.
8. The driver if he is not the Proprietor of the vehicle shall report to the Proprietor of any vehicle licensed for private hire as soon as practicable and in any case within 24 hours of its occurrence details of any accident in which such vehicle is involved.
9. The driver of a private hire vehicle which has been hired to be in attendance at an appropriate time and place shall unless delayed or prevented by some sufficient cause punctually attend at the appointed time and place.
10. The driver shall when requested by the hirer convey a reasonable quantity of luggage and afford reasonable assistance in loading and unloading, including assistance in removing to and from the entrance of any house or other place where he collects or sets down his passengers. He should also provide all reasonable assistance with wheelchair users, disabled, elderly and vulnerable passengers. Provided that the drivers shall not accept a hiring if the hirer abandons a shopping trolley on a road or public place unless the driver first returns such a trolley to the store from which it was brought.
11. The driver shall not refuse to carry within the vehicle any household pets providing they are accompanied by an adult and providing such pets are suitably restrained or contained so as not to cause a nuisance or damage.
12. At the end of each hiring and before commencing any further hiring the driver shall search the vehicle for any property accidentally left by the immediately preceding hirer. It is the drivers legal obligation to try and reunite all lost property with the owner and shall as soon as practicable and in any case within 48 hours after the discovery of property, attempt to return it to the owner. Failing that and still within 48 hours, all

identifiable property shall be handed into the Police Station within the Council's area and a receipt obtained, which must be kept by the proprietor of the vehicle. Identifiable property can range from purses, bank cards, driving licences, mobile phones, laptops, cameras, i.e anything that can identify the owner.

ALL unidentifiable property shall be kept by the proprietor for a minimum of 28 days and a record kept of the description.

13. The driver shall at the request of any authorised officer of the Council or any police constable produce for inspection his Private Hire Driver's licence either forthwith or before the expiration of seven days beginning with the day following the date of the request:-

- (a) in the case of a request of an authorised officer of the Council at the offices of the Council's Licensing Section; or
- (b) in the case of a request of a police constable at any police station within the Council's area which is nominated by the driver when the request is made.

14. The driver shall:-

- (a) if requested by the hirer of a private hire vehicle provide him with a written receipt for the fare paid.
- (b) at all times be clean and respectable in his dress and person and behave in a civil and orderly manner.
- (c) take all reasonable steps to ensure the safety of passengers conveyed in, entering or alighting from the vehicle driven by him.
- (d) not without the express consent of the hirer drink or eat in the vehicle.
- (e) not without the express consent of the hirer play any radio or sound reproducing instrument or equipment in the vehicle other than for the purpose of sending or receiving messages in connection with the operation of the vehicle.
- (f) at no time cause or permit the noise emitted by any radio or other previously mentioned equipment in the vehicle which he is driving to be a source of nuisance or annoyance to any person, whether inside or outside the vehicle.
- (g) at all times when driving a private hire vehicle carry with him a copy of these conditions and shall make it available for inspection by the hirer or any other passenger on request.
- (h) at all times a Private Hire Driver should ensure that the vehicle lights are fully operative, the tyres are within the legal limits, the vehicle is clean and tidy and that it has a serviceable fire extinguisher and fully stocked first aid kit readily available.

15. This licence may be suspended, revoked not renewed or the holder may be required to undertake a Driving Standards Agency "Taxi/Private Hire" test by the Council:-

- (a) if the driver commits an offence or otherwise fails to comply with any of the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 including failure to comply with any part of these terms and conditions;



- (b) if the driver has been convicted of an offence involving dishonesty, indecency or violence;
  - (c) if the driver becomes disqualified from driving under any of the Road Traffic Acts in which case the licence shall be automatically revoked;
  - (d) on any other reasonable grounds;
16. The driver who as a result of any Court decision or other administrative or judicial process, is convicted, sentenced or receives any penalty in respect of any offence or other decision of the Court during the currency of this licence shall within 7 days inform the Council's Licensing Manager in writing of such decision. Such notification may not be delayed until the next application for renewal of the licence is due.
17. (a) The driver shall, every three years, submit an application to the Disclosure Barring Service (DBS) for an enhanced disclosure, via the Council, which is a registered body.  
(b) The driver shall produce a Certificate of Good Conduct from either their own Embassy or the Embassies of the Countries where there have been resident for 3 months or more within the last 5 years.
18. The driver shall every three years, produce to the Council a certificate signed by his registered medical practitioner, to the effect that he is fit to be the driver of a Private Hire Vehicle. He should come to this decision using Group 2 standards for vocational drivers as laid down in the current issue of "At a glance guide to the current medical standards of fitness to drive" issued by the Drivers Medical Unit, DVLAS, Swansea. In addition he shall if so required, whether or not such medical certificate has been produced, submit to an examination by a registered medical practitioner selected by the Council as to his fitness to be such a driver.
19. The Council may at any time add to delete or alter any of the foregoing conditions and upon notice thereof having been served upon the Driver such additions, deletions or alterations shall as from the date of such service be deemed to be incorporated herein.
20. Any notice required to be served by the Council under this Licence or under any of the provisions of the Local Government (Miscellaneous Provisions) Act 1976 shall be deemed to have been properly served if sent by them by prepaid post to or left at the last known address of the driver.
21. If the driver is permitted or employed to drive a private hire vehicle of which the operator is someone other than himself, he shall before commencing to drive that vehicle deposit his Private Hire Driver's Licence with that operator for retention by him until such time as the driver ceases to be permitted or employed to drive the vehicle or any other vehicle operated by that operator.
22. If during the currency of this Licence any of the particulars supplied in the driver's application shall change, details of the change shall be notified in writing to the Licensing Manager at The Civic Centre within seven days. Such notification may not be delayed until the next application for renewal of the licence is due.
23. In the interpretation of the conditions the masculine gender shall be deemed to include the feminine and the singular shall be deemed to include the plural.



# 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;

[<sup>F1</sup>(aa) that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty;]or

- (b) any other reasonable cause.

[<sup>F2</sup>(1A) Subsection (1)(aa) does not apply if—

- (a) in a case where the driver has been convicted of an immigration offence, the conviction is a spent conviction within the meaning of the Rehabilitation of Offenders Act 1974, or
- (b) in a case where the driver has been required to pay an immigration penalty—
  - (i) more than three years have elapsed since the date on which the penalty was imposed, and
  - (ii) the amount of the penalty has been paid in full.]

(2) (a)

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*Changes to legislation: There are currently no known outstanding effects for the Local Government (Miscellaneous Provisions) Act 1976, Section 61. (See end of Document for details)*

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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 [<sup>F3</sup>level 1 on the standard scale].

[<sup>F4</sup>(2ZA) The requirement in subsection (2)(a) to return a driver's badge does not apply in a case where section 62A applies (but see subsection (2) of that section).]

[<sup>F5</sup>(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.

(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 [<sup>F6</sup>subsection (1) of] this section may appeal to a magistrates' court.