

**Report of the Service Director Legal Services  
to the General Licensing Regulatory Board  
to be held on the 26 June 2019**

**DRIVER APPEAL'S UPDATE**

**1. Purpose of Report**

The purpose of this report, is to provide Members with an overview of the results given by the Magistrates Court following the appeal by Private Hire and Hackney Carriage Drivers to the decision of the General Licensing Regulatory Board.

**2. Background**

The following drivers appeared before the General Licensing Regulatory Board and had their applications refused following a report by Officers that raised concerns as to their suitability to hold a Private Hire and Hackney Carriage Drivers Licence.

**3. Current Position**

**Mr D** appeared at Barnsley Magistrates on the 21<sup>st</sup> March 2019 to appeal against the Council's decision to refuse him a Private Hire and Hackney Carriage Drivers Licence at GLRB on 27th November 2018.

The Magistrates heard from Mr D, (via an Interpreter) and our legal representative, Mr Impey. Mr Impey summed up, justifying the Councils decision, and ultimately submitting why the appeal must fail as the Council were not 'wrong' to have refused Mr D's application.

The Magistrates in reading out their decision explained that they were required to apply the Councils Policy and decide if the decision was 'wrong'. That the Council had to decide if Mr D were a fit and proper person; a person with whom we would trust our loved ones to travel with.

The Magistrates agreed that the Council applied policy correctly and they upheld the decision on the following grounds;

- Whilst Mr D confirmed that he had no criminal convictions recorded against him as a resident in his country of origin there was insufficient justification to warrant a deviation from the Council's Guideline Policy for Criminal Convictions in relation to migrant workers
- Mr D had a Caution for theft in April 2016 two weeks after coming into the UK.
- Mr D was dishonest in failing to declare on the Application Form that he had received a Caution for theft in 2016

The Magistrates found that the GLRB applied policy correctly and they refuse the appeal.

**Mr F** appeared at Barnsley Magistrates on the 11<sup>th</sup> April 2019 to appeal against the Council's decision to refuse him a Private Hire and Hackney Carriage Drivers Licence at GLRB.

The Magistrates considered the appeal and heard from Mr F and our legal representative, Mrs Khalifa. They heard that between 29 September 2013 and 17 July 2017 Mr F accumulated 10 Penalty Points on his DVLA drivers licence. As a result he attended the GLRB on the 3<sup>rd</sup> October 2017 due to concerns as to his suitability to retain his licences. On this occasion the Panel allowed him to retain his licences and issued him to undertake the DSA driving test, and gave a Written Warning as to his future conduct.

Mr F undertook the DSA test.

In February 2018 – less than 4 months after, Licensing Officers received information in relation to Mr F's conduct when transporting a vulnerable child and his escort. It was suggested he persistently used his mobile phone on a number of occasions. The Licensing Section revoked his licences with immediate effect and gave reasons, citing distraction whilst driving due to using his mobile phone on a number of occasions.

Mr F appealed the immediate revocation to the GRLB. The Panel upheld the decision after taking into account his history and new matters. No further appeal was made to the magistrates court against this decision.

On the 12 September 2018, Mr F submitted a new application for a HC&PH driver licence. The Council's Conviction policy at the time stated "following revocation/refusal reapplication will not normally be considered within 12 months". The policy changed in February 2019 to state "any reapplication will not be considered within 5 years".

A fresh application was made by Mr F and considered at the GLRB in October 2018. The Panel were not persuaded that Mr F was fit and proper and decided that coupled with Mr F's history and previous second chance, they were not persuaded to grant the application. Mr F appealed this decision to the Magistrates who after hearing the case of the Local Authority and that of Mr F upheld the decision and stated the following;

They did not consider the current convictions policy of 5 years as a bar to the hearing but it is a factor for consideration.

Mr F's voluntary work is highly commendable, the references provided show he is a valued volunteer.

Mr F further passed the Institute of Advanced Motoring Course.

The Magistrates considered the evidence that led to the Immediate Revocation. He was using his mobile phone. Mr F had not disputed this. The criminal penalty is very high for using mobile phones whilst driving. Had he have been prosecuted he would have been prosecuted on his DVLA licence. Mr F states he had not acknowledged his escorts comments to be anything more than banter, but he knew he was using his phone.

In this case the Magistrates considered whether Mr F is 'fit and proper':  
Taxi drivers are professional drivers and are responsible for the travelling public.

Using a mobile phone whilst driving is dangerous and this has been well publicised in the media.

The Magistrate stated, "I don't need to be satisfied that in Mr F's case, this happened regularly; only that it happened at all".

I am entirely satisfied Mr F is not a 'fit and proper' person and so the decision is to dismiss the appeal.

**4. Proposal**

Applicants who fail to meet the Council convictions policy will continue to be presented before GLRB for determination as the principal consideration is one of public safety.

**5. Background Papers**

Enforcement Officer Reports which contain exempt information are not available for public inspection

**6. Officer Contact**

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