

Cheltenham Borough Council

Licensing Committee – 7 February 2014

Review of Hackney Carriage Driver's Licence

Report of the Licensing & Business Support Team Leader

1. Executive Summary

- 1.1 Mr Keith Clements holds Hackney Carriage driver's licence (HCD803) which is due for renewal on 10 July 2014.
- 1.2 On the 2nd of January 2014 Cheltenham Borough Council was informed by Gloucestershire Constabulary that Mr Clements was found to be driving a licensed Hackney Carriage vehicle without insurance on the 31st of December 2013.
- 1.3 Subsequent to the 2nd of January 2014, further checks by Gloucestershire Constabulary revealed that Mr Clements was not entitled to drive a motor vehicle because his DVLA driver's licence was revoked in October 2013 for failing to submit his licence following 3 fixed penalty points being added to his licence.
- 1.4 Upon being notified of this, Mr Clements was invited to attend the Municipal Offices to provide an explanation. He failed to attend two arranged meetings (Tuesday 7 & Wednesday 8 January 2014) and failed to respond to attempts to contact him. As a consequence, in light of the above and other matters listed below (para. 2.2), his Hackney Carriage driver's licence was suspended with immediate effect on the basis that he was not considered a fit and proper person.
- 1.5 In accordance with the Council's constitutional arrangements, the matter is being referred to the Committee for consideration of whether to revoke the licence.

2. Recommendation

2.1 The Committee is recommended to resolve that:

- 2.1.1 **Mr Clements is not a fit and proper person to hold a Hackney Carriage driver's licence and as a consequence his licence will be revoked under section 61(1)(c) of the Local Government (Miscellaneous Provisions) Act 1976,**
- 2.1.2 **Subject to recommendation 2.1.1, his Hackney Carriage driver's licence be revoked with immediate effect in the interests of public safety under section 61(2B) of the Local Government (Miscellaneous Provisions) Act 1976; or**
- 2.1.3 **Mr Clements is a fit and proper person and that the suspension be lifted with no further action.**

3. Implications

Financial

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Legal

There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.

The Borough Council has the ability to suspend or revoke a private hire driver's licence with immediate effect if necessary in the interests of safety. There is a right of appeal against a suspension or revocation of a licence which, in the first instance, is to the Magistrates' Court

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2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

Suspension

- 2.2 As mentioned above, Mr Clements' licence was suspended on the 9th of January 2014. The following reasons were outlined in the letter to Mr Clements:

- In August 2013 your insurance to drive a vehicle was cancelled and you were notified of this in writing by J&M Insurance Services. J&M Insurance Services has confirmed to the Council on Wednesday, 8 January 2014 that you sought a new quote in September 2013 but that never resulted in a new insurance policy being issued. Since August 2013, the Council has not seen evidence to show you were in fact properly insured to drive a licensed Hackney Carriage vehicle from August 2013 to date despite being notified of this.
- In October 2013 your DVLA driver's licence was revoked following failure on your part to submit your DVLA licence to the DVLA following endorsements being added to it. You would have been advised that your licence would be revoked if you failed to submit your licence and again once that had happened.

Despite being advised that your entitlement to drive a vehicle had expired, you ignored the notification, continued to work as a hackney carriage driver and neglected to notify the Council.

- Your failure, without excuse, to attend the Municipal Offices on two occasions to provide explanation and clarification despite being given opportunity to do so.
- Your continued failure to respond to requests for you to make contact with the Council as a matter of urgency.
- On the 20th of April 2013 you were issued with 3 fixed penalty points for using a mobile device (CU80). You failed to declare these points to the Council as is required. The additional 3 points makes a total of 9 current fixed penalty points on your DVLA licence.
- The Council is also aware that you have been issued with an additional 6 points for driving a vehicle without insurance.
- The Council's responsibility to ensure that drivers licensed by it are, and continue to be, fit and proper people.

3. Policy Considerations

Code of Good Conduct

- 3.1 Paragraph 1.4 and the Council's "Code of Good Conduct" which the Council may take into consideration in any disciplinary matters.

Conduct, Discipline and Enforcement

- 3.2 Paragraph 4. Disciplinary or Referred Matters

"In accordance with the Council's constitution, the Committee is authorised to determine the appropriate disciplinary action (if any) to take against licences referred to it by the Assistant Director Operations and to determine any licensing application or any other matter concerning individual licences referred to it.

Appropriate disciplinary action can take a number of forms, for example:-

- a) Revocation of a licence;
- b) Refusal to renew a licence;
- c) Suspension of a licence;
- d) A warning letter expressing the Council's dissatisfaction with the Licensee's behaviour, whilst also advising that future conduct incompatible with that expected of a Licensee could lead to a suspension, refusal to renew or revocation;
- e) Additional conditions if considered reasonably necessary may be attached to a licence when it is renewed (note: conditions cannot be attached to a Taxi driver's licence).

The action to be taken in any particular case will depend on the seriousness of the conduct/conviction/medical condition concerned."

- 3.3 Paragraph 11. Driver Licences - s.61 LG(MP) Act 1976

"The Council may suspend or revoke or refuse to renew a driver's licence (Hackney Carriage or Private Hire) on any of the following grounds:

Since the grant of the licence, the licensee has:-

- a) been convicted of an offence involving dishonesty, indecency or violence; or
- b) been convicted of any offence under or has failed to comply with the provisions of the Acts; or
- c) any reasonable cause.

There is a right of appeal to the Magistrates' Court within 21 days."

Relevance of Convictions

- 3.4 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.5 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, caution or fixed penalty.
- 3.6 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.

- 3.7 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.
- 3.8 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern.

Minor Traffic Offences

- 3.9 Isolated convictions for minor traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature the applicant will normally be expected to show a period free of conviction of at least 6 months.
- 3.10 In particular, an application will normally be refused where the applicant has received 12 or more penalty points on his DVLA licence in the five years prior to the application being made (whether or not the applicant was convicted by a court for the offences for which the points were imposed) or where the applicant has more than one conviction for this type of offence within the last 6 months.

Hybrid Traffic Offences

- 3.11 Offences will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

4. Probity in Licensing

- 4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
- Be made on the individual merits of a case.
 - Have regard to all relevant national and local guidance.
 - Be made impartially and in good faith.
 - Be made by the body that receives all the relevant information and evidence.
 - Relate to the issue or question placed before the committee.
 - Be based only on consideration of relevant and material matters.
 - Be rational and reasoned.
 - Be made in a way that does not give rise to public suspicion or mistrust.
- 4.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.

- 4.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 4.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.
- 4.7 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Officer Comments

- 5.1 The Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence.
- 5.2 As set out in the Council's policy, the overriding consideration is the safety of the public.
- 5.3 Mr Clements was invited to attend an interview on Friday 24 January 2014 to provide an explanation but again failed to attend without excuse. For this reason, there are no accompanying interview notes.
- 5.4 **Insurance** – Members are to note that officers have confirmed with Mr Clements' last insurance company that they did notify him in writing of the fact that his insurance policy had been called.
- 5.5 **DVLA Licence** - Members are to note that officers have confirmed with the DVLA that Mr Clements' DVLA licence was revoked and that he was advised in writing of this.

Hackney Carriage drivers fall under the Notifiable Occupations Scheme and the Council was informed by Gloucestershire Constabulary as soon as the revocation of Mr Clements' DVLA licence came to light.

The Council would reasonably expect a licensed driver to notify the Council when their entitlement to drive a vehicle is revoked. As set out in the suspension letter, the Council does not consider there to be any reasonable explanation for a licensed driver to continue to work as a Hackney Carriage driver particularly when they were informed that they are no longer insured to do so and that they did not have a valid DVLA driver's licence.

- 5.6 The Council has the power to suspend or revoke a Hackney Carriage driver's licence for any reasonable cause. It further has the power to revoke the licence with immediate effect if it appears necessary in the interest of public safety.
- 5.7 Mr Keith Clements has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service records.

Contact Officer

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