

Cheltenham Borough Council

Licensing Committee – 3rd October 2014

Review of a Private Hire Driver's Licence

Mr Rowshan Ghanbary – PHD092

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

1.1 Mr Rowshan Ghanbary holds a Private Hire driver's licence PHD092 which is due for renewal on 15 March 2016.

1.2 Mr Ghanbary has convictions on his DVLA driving licence. The details of these are contained in the enclosed background papers.

1.3 In light of this the Licensing & Business Support Team Leader has taken the view that Members of Committee should be aware of the convictions because of:

1.3.1 The nature of the offence; and,

1.3.2 The need to ensure that Mr Ghanbary is judged to be a fit and proper person to hold a Private Hire driver's licence.

1.4 The Committee is recommended to resolve that:

1.4.1 Mr Ghanbary's Private Hire driver's licence be continued with no further action, because the Committee is satisfied that Mr Ghanbary is a fit and proper person to hold such a licence; or

1.4.2 Mr Ghanbary's Private Hire driver's licence be revoked as the Committee considers Mr Ghanbary not to be a fit and proper person to hold a Private Hire driver's licence.

1.5 Implications

1.5.1 Financial **Contact officer: Sarah Didcote**
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125

1.5.2 Legal There is a right of appeal against a decision to revoke a licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@tewkesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The Borough Council must be satisfied that the holder of a Private Hire licence is a fit and proper person to hold that licence (Section 51 Local Government (Miscellaneous Provisions) Act 1976).

2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.

2.3 The question for the committee is therefore whether, given the nature of the convictions, the applicant is a fit and proper person to hold a licence.

3. Policy Considerations

3.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 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.

3.6 HYBRID TRAFFIC OFFENCES

CU10 Using a vehicle with defective brakes

CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition

CU30 Using a vehicle with defective tyre(s)

CU40 Using a vehicle with defective steering

CU50 Causing or likely to cause danger by reason of load or passengers

CU80 Breach of requirements as to control of the vehicle, mobile telephone etc

SP10 Exceeding goods vehicle speed limit

SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)

SP30 Exceeding statutory speed limit on a public road

SP40 Exceeding passenger vehicle speed limit

SP50 Exceeding speed limit on a motorway

4. Licensing Comments

4.1 Mr Ghanbary has been a licensed Private Hire driver in Cheltenham since making his original application in March 2012.

4.2 Since the grant Mr Ghanbary's Private Hire driver's licence in March 2012, the Licensing Section have not received any complaints regarding Mr Ghanbary's driving ability.

4.3 Mr Ghanbary reported his first set of points from January in June of this year and then on the 1st September Mr Ghanbary came in to inform us of the other two sets of points he had received, at this point his licence was copied and placed on file.

4.4 On 9 September Mr Ghanbary was interviewed by Andy Fox and Sarah Hughes at this point we pointed out that one set of points was recorded by mistake on his DVLA licence as 28/3/2004. Officers asked if it was from 2004 and he replied it wasn't and was in fact 2014.

4.5 This mistake was verified by officers carrying out an online check.

- 4.6 If Members are minded to allow Mr Ghanbary's licence to continue, they have the option of adding a requirement that Mr Ghanbary must successfully pass the approved road safety driving assessment test within a period of 3 months from the date of the Committee's decision, and indeed Mr Ghanbary has offered to do this if required.
- 4.7 Mr Ghanbary 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.
- 4.8 The Committee must be satisfied that Mr Ghanbary is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

Background Papers

Service Records

Report Author

Contact officer: Andy Fox
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775004