

Cheltenham Borough Council

Licensing Committee – 5 December 2014

Review of Hackney Carriage Driver's Licence

Mr Mozir Choudhury - HCD404

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr Mozir Choudhury has held his Hackney Carriage driver's licence with Cheltenham Borough Council since 2008.
- 1.2 In October 2014 Mr Choudhury reported to the Licensing team that he had been convicted of a driving offence, details of which are shown on the attached background papers.
- 1.3 In light of this Members of the Committee should be aware of the conviction because of:
- 1.3.1 The nature of the offence; and
- 1.3.2 The need to ensure that Mr Choudhury is judged to be a fit and proper person to hold a Hackney Carriage driver's licence.
- 1.4 **The Committee is recommended to resolve that Mr Choudhury's Hackney Carriage driver's licence be:**
- 1.4.1 **permitted to continue with no further action taken because the Committee considers Mr Choudhury to be a fit and proper person to hold such a licence, or**
- 1.4.2 **revoked because the Committee considers Mr Choudhury to no longer be a fit and proper person to hold such a licence.**
- 1.4.3 **Subject to 1.4.2, if the Committee determines that Mr Choudhury's licence should be revoked as he is not a fit and proper person, the Committee may also consider whether that revocation should have immediate effect in the interests of public safety.**

1.5 Implications

1.5.1 Financial

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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.
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2. Background

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

Act 1976).

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 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.3 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.
- 3.4 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 and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

3.5 Major Traffic Offences

AC10 Failing to stop after an accident

AC20 Failing to give particulars or report an accident within 24 hours

AC30 Undefined accident offences

BA10 Driving while disqualified by order of court

BA20 Attempting to drive while disqualified by order of court

CD10 Driving without due care and attention

CD20 Driving without reasonable consideration for other road users

CD30 Driving without due care and attention or without reasonable consideration for other road users

CD40 Causing death through careless driving when unfit through drink

CD50 Causing death by careless driving when unfit through drugs

CD60 Causing death by careless driving with alcohol level above the limit

CD70 Causing death by careless driving then failing to supply a specimen for alcohol analysis

CD80 Causing death by careless, or inconsiderate, driving

CD90 Causing death by driving: unlicensed, disqualified or uninsured drivers

DD10 Causing serious injury by dangerous driving

DD40 Dangerous driving

DD60 Manslaughter or culpable homicide while driving a vehicle

DD80 Causing death by dangerous driving

DD90 Furious driving

DR10 Driving or attempting to drive with alcohol level above limit 63

DR20 Driving or attempting to drive while unfit through drink

DR30 Driving or attempting to drive then failing to supply a specimen for analysis

DR31 Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity

DR61 Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive

DR40 In charge of a vehicle while alcohol level above limit

DR50 In charge of a vehicle while unfit through drink

DR60 Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive

DR70 Failing to provide specimen for breath test

DR80 Driving or attempting to drive when unfit through drugs

DR90 In charge of a vehicle when unfit through drugs

IN 10 Using a vehicle uninsured against third party risks
 LC20 Driving otherwise than in accordance with a licence
 LC30 Driving after making a false declaration about fitness when applying for a licence
 LC40 Driving a vehicle having failed to notify a disability
 LC50 Driving after a licence has been revoked or refused on medical grounds
 MS50 Motor racing on the highway
 MS60 Offences not covered by other codes (including offences relating to breach of requirements as to control of vehicle)
 MS70 Driving with uncorrected defective eyesight
 MS80 Refusing to submit to an eyesight test
 MS90 Failure to give information as to identity of driver etc
 UT50 Aggravated taking of a vehicle
 Aiding, abetting, counselling or procuring offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)
 Causing or permitting offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)
 Inciting offences as coded above, but with 0 changed to 6 (e.g. IN16 becomes IN16)

3.6 Major Traffic Offences (see above for list of offences)

An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused.

More than one conviction for this type of offence within the last 5 years is likely to merit refusal.

4. Licensing Comments

- 4.1 Mr Choudhury was interviewed on 3 November 2014. The interview notes are included in the background papers.
- 4.2 If Members are minded to allow Mr Choudhury's licence to continue, they should be mindful that the Council's Policy states that major traffic offences "will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers". The Committee has the option of adding a requirement that Mr Choudhury must successfully pass the approved road safety driving assessment test within a period of 3 months from the date of the Committee's decision.
- 4.3 Members should be aware that the only other endorsement shown on Mr Choudhury's DVLA driving licence relates to a minor traffic offence that occurred in 2009. Details are shown on the background papers. Whilst these points have now expired Members can take the offence into account if they believe it to be relevant.
- 4.4 Mr Choudhury 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.
- 4.5 The Committee must be satisfied that Mr Choudhury 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

Convictions

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