

# Cheltenham Borough Council

## Licensing Committee – 10 April 2015

### 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 a 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 The matter was brought before the Licensing Committee on Friday 5th December 2014. After due consideration of the facts the Committee resolved that Mr Choudhury's Hackney Carriage driver's licence be permitted to continue, subject to the successful completion by Mr Choudhury of the approved road safety driving test within 3 months. Minutes of that meeting are included in the background papers provided to Members.
- 1.4 Mr Choudhury has provided evidence to the Licensing team that he undertook the approved road safety driving test with the Driver Vehicle Standards Agency (DVSA) on 03 March 2015 and failed that test. A copy of the test sheet and accompanying notes are included in the background papers.
- 1.5 The DVSA driving test report shows a total of 5 faults including 2 that are marked as serious. The 2 serious faults are in the categories Highway Code / Safety and Moving Off / Safety. The remaining 3 faults are in the categories Controlled Stop, Taxi Manoeuvre and Progress / Appropriate Speed.
- 1.6 For clarification, the notes provided by DVSA to Mr Choudhury show that an applicant will pass the assessment if they make fewer than 10 faults, unless one or more of those faults is classed as serious in which case the applicant will fail.
- 1.7 In light of this Members of the Committee should be aware of the conviction and subsequent failure of the DVSA driving test because of:
  - 1.8.1 The nature of the offence; and
  - 1.8.2 The need to ensure that Mr Choudhury is judged to be a fit and proper person to hold a Hackney Carriage driver's licence.
- 1.9 **The Committee is recommended to resolve that Mr Choudhury's Hackney Carriage driver's licence be:**
  - 1.9.1 **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**
  - 1.9.2 **Revoked because the Committee considers Mr Choudhury to no longer be a fit and proper person to hold such a licence.**

**1.9.3 Subject to 1.8.2, 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.**

## **1.10 Implications**

### 1.10.1 Financial

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### 1.10.2 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. 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.

## **5. Licensing Comments**

- 5.1 Mr Choudhury was interviewed on 3 November 2014 about the original conviction. The interview notes are included in the background papers.
- 5.2 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".
- 5.3 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, however Members will note that this option has already been exercised by the Committee and Mr Choudhury was unsuccessful in passing that test.
- 5.4 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.
- 5.5 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**

**Details of convictions**

**Minutes of the meeting of Cheltenham Borough Council's  
licensing committee of Friday 5<sup>th</sup> December 2014 (agenda item 6)**

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