

## Cheltenham Borough Council

### Licensing Committee – 4 March 2020

#### Renewal of a Hackney Carriage Driver's Licence

##### Mrs Judith Eloise Timur - HCD006

#### Report of the Licensing Team Leader

#### 1. Executive Summary and Recommendation

1.1 Mrs Judith Eloise Timur holds Hackney Carriage driver's licence HCD006, which was due for renewal on 29.12.2019.

1.2 Mrs Timur has a number of penalty points on her DVLA driving licence that she failed to notify the council of within the required timescales.

1.3 In light of the above, Mrs Timur's Hackney Carriage driver's licence is being referred to the Licensing Committee for a review to determine if she remains a fit and proper person to hold a Hackney Carriage driver's licence in light of the fact that:

1.3.1 She has 6 points on her DVLA driving licence; and

1.3.2 She failed to notify the council of these within the required timescales as outlined in the council's licensing policy.

#### 1.4 The Committee can;

1.4.1 Grant Mrs Timur's application for a Hackney Carriage driver's licence with no further action as she remains to be a fit and proper person; or

1.4.2 Grant Mrs Timur's application for a Hackney Carriage driver's licence as she remains to be a fit and proper person but that she be issued with a formal written warning; or

1.4.3 Refuse Mrs Timur's application for a Hackney Carriage driver's as she is no longer deemed to be a fit and proper person to hold a licence.

#### 1.5 Implications

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).

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- 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.

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

#### Duty to notify the council

- 3.1 There is a policy requirement for licence holders to notify the council under the circumstances listed below:

#### ***Convictions / cautions / fixed penalty notices / criminal investigations***

*Licence holders must notify the council in writing within 7 days if he or she is convicted or cautioned for an offence, receives a fixed penalty notice or is the subject of a criminal investigation. (page 7)*

#### Relevance of convictions

- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 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.
- 3.6 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.
- 3.7 **Motoring Convictions (Existing Licence Holders)**

Private hire and hackney carriage drivers are professional drivers and must be aware of the safety of their passengers and the safety of their vehicles at all times. Any traffic offences could show a lack of responsibility whilst driving either due to the maintenance and safety of their vehicles or in the manner of their driving.

Convictions for traffic offences may not automatically prevent a person from proceeding with a renewal of their licence, or from keeping their licence.

An existing licence holder who has 7 penalty points or more on his or her driving licence due to multiple offences, or 6 penalty points or more for one isolated offence, will be required to appear before the Licensing Committee to explain their convictions. The Committee then have the option to:

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- a. Take no further action
- b. Give a written warning
- c. Require the driver to pass a DSA private hire/hackney drivers test, at the driver's own expense, within 2 months of their decision
- d. Suspend the Licence upon conditions or for a period of time
- e. Revoke the licence.
- f. Refuse to renew the licence (if such an application is being considered)

#### **4. Licensing Comments**

- 4.1 The council is under a statutory duty to only license persons deemed to be fit and proper.
- 4.2 Due to the number of penalty points Mrs Timur has on her DVLA driving licence coupled with the fact that she failed to notify the council of these within the required timescales has called into question whether she remains a fit and proper person to hold a Hackney Carriage driver's licence.
- 4.3 This authority sets a high standard for licence holders and expect them to maintain the highest level of safe driving standards as outlined in the council's licensing policy.
- 4.4 Members are to note in 2013, when Mrs Timur was first licensed, her local knowledge test asked what a licence holder should do when convicted of a driving offence and she correctly stated that the council should be informed within 7 days. Through her experience as a Hackney Carriage driver therefore, she should have been aware of the requirement to report penalty points to the council.
- 4.5 Mrs Timur has been sent a copy of this report and invited to attend this meeting to speak in support of her 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.

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#### **Background Papers**

Service Records

#### **Report Author**

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