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Date: 22 August 2011

Please ask for: Ross Johnston, Democratic Support Officer
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LICENSING COMMITTEE (HACKNEY CARRIAGE)

Date: Thursday 1 September 2011

Time: 10am

Venue: Council House

Members:

Councillor Reynolds, Chair

Councillor Delbridge, Vice Chair

Councillors Bowie, Churchill, Haydon, Mrs Nicholson and Rennie.

Members are invited to attend the above meeting to consider the items of business overleaf.

Members and officers are requested to sign the attendance list at the meeting.

Please note that unless the chair of the meeting agrees, mobile phones should be switched off and speech, video and photographic equipment should not be used in meetings.

Barry Keel
Chief Executive

LICENSING COMMITTEE (HACKNEY CARRIAGE)

AGENDA

PART I – PUBLIC MEETING

1. APOLOGIES

To receive apologies for non-attendance submitted by Committee Members.

2. DECLARATIONS OF INTEREST

Members will be asked to make any declarations of interest in respect of items on this Agenda.

3. MINUTES

(Pages 1 - 8)

To confirm the minutes of the meeting held on 4 August 2011.

4. CHAIR'S URGENT BUSINESS

To receive reports on business which, in the opinion of the Chair, should be brought forward for urgent consideration.

5. APPEAL CASES

The Committee will be provided with the results of the judgement on appeal cases that went to Court.

6. LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - W R PHILP

(Pages 9 - 14)

The Director for Community Services will submit a report on a licensed private hire driver review of licence status.

7. LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - K S KAWKA

(Pages 15 - 20)

The Director for Community Services will submit a report on a licensed private hire driver review of licence status.

8. EXEMPT INFORMATION

To consider passing a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) 3 and 7 of Part I of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

PART II (PRIVATE MEETING)

AGENDA

MEMBERS OF THE PUBLIC TO NOTE

that under the law, the Panel is entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

9. LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - AGC (E3 AND E7) (Pages 21 - 26)

The Director for Community Services will submit a report on a licensed private hire driver review of licence status.

10. APPLICATION FOR THE GRANT OF A RESTRICTED PRIVATE HIRE DRIVER'S LICENCE AND A PRIVATE HIRE OPERATOR'S LICENCE - MBE (E3 AND E7) (Pages 27 - 32)

The Director for Community Services will submit report on the application for the grant of a restricted private hire driver's licence and a private hire operator's licence.

LUNCH 1PM - 2PM

11. APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - JWS (E3 AND E7) (Pages 33 - 38)

The Director for Community Services will submit a report on the application for the grant of a private hire driver's licence.

12. APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - IB (E3 AND E7) (Pages 39 - 44)

The Director for Community Services will submit a report on the application for the grant of a private hire driver's licence.

13. APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - SEM (E3 AND E7) (Pages 45 - 52)

The Director for Community Services will submit a report on the application for the grant of a private hire driver's licence.

Licensing Committee (Hackney Carriage)

Thursday 4 August 2011

PRESENT:

Councillor Reynolds, in the Chair (Minute Number 29 – 35)
 Councillor Delbridge, in the Chair (Minute Number 36 – 42)
 Councillor Delbridge, Vice Chair (Minute Number 29 – 35)
 Councillor Mrs Nicholson, Vice Chair (Minute Number 36 – 40)
 Councillor Churchill, Vice Chair (Minute Number 41 – 42)
 Councillors Bowie, Haydon and Rennie.

Also in attendance: Andrea Gilbert (Lawyer), James Hirst (Licensing Officer) and Ross Johnston (Democratic Support Officer).

The meeting started at 10.00 am and finished at 2.35 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

29. ANNOUNCEMENTS

Councillor Reynolds, Chair informed the committee that Mrs Nicholson had replaced Mrs Dolan as a member on the Licensing Committee (Hackney Carriage).

30. DECLARATIONS OF INTEREST

The following declarations of interest were made in accordance with the Code of Conduct in relation to items under discussion at this meeting –

Name	Subject	Reason	Interest
Councillor Churchill	Minute 34 –Licensed Private Hire Driver Review of Licence Status.	Knew of the driver.	Personal/Prejudicial
Councillor Bowie	Minute 41 – Application for the grant of a Private Hire Driver’s Licence.	Had previous dealings with the applicant.	Personal/Prejudicial

31. MINUTES

Agreed that the minutes of the meeting held on 7 July 2011 are confirmed as a correct record.

32. CHAIR’S URGENT BUSINESS

There were no items of Chair’s urgent business.

33. **APPEAL CASES**

The committee was informed that the two recent appeal cases against the committee's decisions for the revocation of a Hackney Carriage driver's licence and the refusal to grant a Private Hire Driver's Licence were both upheld by the Magistrates Court.

34. **LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - D CROITORU**

The committee having –

- (a) considered the report from the Director for Community Services;
- (b) heard from Mr Croitoru;
- (c) heard details of Mr Croitoru's conviction for driving without due care and attention;
- (d) taken into account that Mr Croitoru –
 - (i) notified the Licensing Department of his conviction but not within the time required;
 - (ii) sent a letter to the licensing office apologising for the failure to notify within time and advising that he was unaware of this condition of his licence;
 - (iii) stated that he was now aware of the seven day reporting condition and would not make this mistake again;
 - (iv) was very honest in his answers to questions put to him by members.

However, members were concerned that –

- (vi) these offences were committed while he was acting in his capacity as a taxi driver although he was not carrying any passengers at the time of the offences;
- (vii) he breached the conditions of his private hire driver's licence by not informing the Licensing Department of his offence in writing within the required seven days.

The decision of the Committee today is therefore that –

As a professional driver, Mr Croitoru's conviction for driving without due care and attention raised concerns for public safety which is a relevant consideration under the Council's licensing objective of safety and health of drivers and the public.

The Hackney Carriage and Private Hire Driver's Licensing Policy states that motoring offences are relevant offences for considering the suitability of a person to retain a licence.

Mr Croitoru notified the Licensing Department of his conviction but not within seven days as required by the terms and conditions of his private hire driver's licence.

Members agreed that they therefore consider it a proportionate decision to suspend Mr Croitoru's Private Hire Driver's Licence for one day.

(Councillor Churchill declared a personal and prejudicial interest and withdrew from the meeting during consideration of the above item).

35. **LICENSED HACKNEY CARRIAGE DRIVER REVIEW OF LICENCE STATUS - DJ EDE**

The committee having –

- (a) considered the report from the Director for Community Services;
- (b) heard from Mr Ede;
- (c) heard details of Mr Ede's conviction for speeding and failing to give information as to the identity of the driver;
- (d) heard from Mr Ede's representative Mr Hamilton;
- (e) taken into account that Mr Ede –
 - (i) appeared to have notified the Licensing Department of his December 2008 speeding conviction in the correct manner;
 - (ii) stated he was not receiving his post due to domestic issues;
 - (iii) had learnt by his mistakes and in his own words, had had a wake-up call.

Members also heard of several occasions when Mr Ede had acted as a Good Samaritan to the credit of his profession.

However, members were concerned that –

- (iv) he had been convicted of speeding in February 2009 and for failing to give information as to the identity of the driver in May 2009;
- (v) by his own admission he also committed a further speeding offence resulting in a conviction on 1 Dec 2008 although the three points awarded were not shown on his DVLA licence;
- (vi) these offences were possibly committed while he was acting in his

capacity as a taxi driver but he could not confirm or deny this;

- (vii) he breached the conditions of his private hire driver's licence by not informing the Licensing Department of his most recent two offences in writing within the required seven days;
- (viii) he currently had six penalty points on his licence.

The decision of the Committee today is therefore that –

Mr Ede's attitude towards controlling his speed and apparent disregard for the rules of the road raised concerns for public safety which is a relevant consideration under the Council's licensing objective of safety and health of drivers and the public.

The Hackney Carriage and Private Hire Driver's Licensing Policy states that motoring offences are relevant offences for considering the suitability of a person to retain a licence.

There is no record of Mr Ede notifying the Licensing Department of his two most recent convictions as required by the terms and conditions of his private hire driver's licence.

Mr Ede's fitness to drive a licensed vehicle has been called into question and members therefore agreed to suspend his licence for a total of four days. Members also require Mr Ede to hand in his VRQ certificate to the Licensing Department within seven days. Failure to do so will result in his attendance at the next available committee hearing to explain why he has not complied.

(Councillor Reynolds left the meeting at the end of this item and was not present for items 36 – 42.

It was agreed that Councillor Delbridge would step into the Chair for the remainder of the meeting with Councillor Mrs Nicholson stepping into the Vice-Chair)

36. **LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - V BANTA**

The committee having –

- (a) considered the report from the Director for Community Services;
- (b) heard from Mr Banta;
- (c) heard details of Mr Banta's conviction and fixed penalty notices;
- (d) taken into account that Mr Banta –
 - (i) stated he had taken steps to ensure he was a safer driver, including installing a hands free phone kit, a satellite navigation unit and generally taking a lot more care on the road.

However, members were concerned that –

- (ii) having only been granted a provisional private hire driver's licence in June 2008, he was convicted in February 2009 of contravening pedestrian crossing regulations with a stationary vehicle and then in May 2009 he was issued with a fixed penalty notice for using a mobile phone whilst driving a motor vehicle;
- (iii) both of these offences were committed during the probationary period of his licence;
- (iv) in addition he was issued with a further fixed penalty notice for speeding and received a further three penalty points;
- (v) he had now accrued a total of nine penalty points;
- (vi) one of these offences was committed while he was acting in his capacity as a taxi driver with a passenger on board;
- (vii) he breached the conditions of his private hire driver's licence by not informing the Licensing Department of any of these offences in writing within the required seven days.

The decision of the Committee today is therefore that –

These offences raise concerns in respect of public safety which is a relevant consideration under the Council's licensing objective of safety and health of drivers and the public.

The Hackney Carriage and Private Hire Drivers Licensing Policy states that motoring offences are relevant offences for considering the suitability of a person to retain a licence.

Members have agreed today to suspend Mr Banta's licence for six days in total. This comprises three days in respect of the offences and three days for failing to notify the Licensing Department of these offences in the correct manner.

Members also require Mr Banta to hand in his VRQ certificate within seven days. Failure to do so should result in him being called to attend at the next available Committee to explain why he has not complied.

37. **LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - M C EDDY**

The committee having –

- (a) considered the report from the Director for Community Services;
- (b) heard from Mr Eddy;
- (c) heard details of Mr Eddy's convictions for driving without due care and attention and speeding;

- (d) taken into account that Mr Eddy –
 - (i) notified the Licensing Department of his conviction within the correct time and was very honest in the replies that he gave to members questions.

However, members were concerned that –

- (ii) he had been convicted of driving without due care and attention;
- (iii) he had also received a previous conviction in respect of speeding and he also failed to inform the licensing department of that conviction and he received a suspension on his licence for two days in respect of that matter;
- (iv) at the moment he had 11 live penalty points on his licence;
- (v) the most recent offence was committed while he was acting in his capacity as a taxi driver and he had a passenger on board at the time.

The decision of the Committee today is therefore that –

As a professional driver Mr Eddy's standard of driving raises concerns for public safety which is a relevant consideration under the Council's licensing objective of safety and health of drivers and the public.

The Hackney Carriage and Private Hire Driver's Licensing Policy states that motoring offences are relevant offences for considering the suitability of a person to retain a licence.

Members agreed that they consider it a proportionate decision to give Mr Eddy a warning, that warning to lie on his file in the event of any future attendance at this Committee.

As the Licensing Committee (Hackney Carriage) shall have the discretion to direct a driver appearing before them to complete further training or retraining should the driver's suitability to retain a licence be called into question, members direct that Mr Eddy be required to obtain the Level 2 VRQ in Transporting Passengers by Taxi and Private Hire or equivalent within the next 12 months and attend at the Licensing Department when this has been attained. Should this qualification not be completed by 3 August 2012, he will be brought back before the Committee and all sanctions against his license will be considered. If Mr Eddy meets with any enrolment problems, he will be required to advise the Licensing Department at the earliest possible opportunity.

38. EXEMPT INFORMATION

Agreed that under Section 100(A)(2) and (4) of the Local Government Act 1972, the press and public are excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of confidential/exempt information as defined in paragraph 3 and 7 of Part 1 Schedule 12A of the (Local Government Access to Information) Act 1985, as amended by the Freedom of Information Act 2000.

39. **CONFIDENTIAL MINUTES (E3 AND E7)**

Agreed that the confidential minutes of the meeting held on 7 July 2011 are confirmed as a correct record.

40. **APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - MA (E3 AND E7)**

Due to MA's non attendance at Committee, Members agreed that her application for the grant of a Private Hire Driver's Licence is held on file until such time as she contacts the licensing department.

(Councillor Mrs Nicholson left the meeting at the end of this item and was not present for items 41 and 42.

It was agreed that Councillor Churchill would step into the Vice-Chair for the remainder of the meeting)

41. **APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - PJC (E3 AND E7)**

The committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from PJC.

Agreed to grant PJC's application for a Private Hire Driver's Licence. This licence is to be granted without the requirement to sit the Knowledge of Plymouth test, however it is subject to him obtaining a Group II medical report and Driving Standards test as he has not been operating as a taxi driver for some time.

As PJC stated he had already completed the VRQ qualification on Transporting Passengers by Taxi and Private Hire or its equivalent, he will be required to pass a copy of this certificate to the Licensing Department within seven days.

(Councillor Bowie declared a personal and prejudicial interest and withdrew from the meeting during consideration of the above item).

42. **APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - SPW (E3 AND E7)**

The committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from SPW.

Agreed to grant SPW's application for a Private Hire Driver's Licence. This licence is granted subject to him obtaining a Group II medical report and the Driving Standards test, however he will be exempt from the Knowledge of Plymouth test.

Subject: Licensed Private Hire Driver Review of Licence Status

Committee Licensing Committee (Hackney Carriage)

Date: 1 September 2011

Cabinet Member: Councillor Jordan

CMT Member: Director for Community Services

Author: George Curness, Taxi Licensing Officer

Contact: Tel: 01752 307964
e-mail george.curness@plymouth.gov.uk

Ref: ERS/LIC/GC/wrp

Key Decision: No

Part: 1

Executive Summary:

Mr. William Rutherford Philp is a licensed Private Hire vehicle driver, having been first granted a Private Hire driver's licence by the Council on the 25 May 2006. Mr Philp has continued to renew his Private Hire driver's, and this current licence is due to expire on the 24 May 2012.

On 27 July 2011 a letter was received from Mr Philp, giving details of a disqualification of his DVLA licence imposed by Plymouth Magistrates' Court on 22 July 2011

Mr Philp has been invited to attend this Licensing Committee in order that this matter may be considered.

Corporate Plan 2011 – 2014:

This report links to the delivery of the corporate priorities defined in the Corporate Improvement Plan. In particular:

Improving access across the City

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

Not applicable.

Other Implications: e.g. Section 17 of the Crime Disorder Act 1998, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

Members should be aware that Section 17 of the Crime Disorder Act 1998 put a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

Recommendations and Reasons for recommended action:

That Members of the Licensing Committee consider this report.

Alternative options considered and reasons for recommended action

None.

Background papers:

None.

Sign off:

Head of Fin		Head of Leg	SD/12.8.11/1256 3	Head of HR		Head of AM		Head of IT		Head of Strat. Procur.	
Originating CMF Member											

Report

1. Mr. William Rutherford Philp is a licensed Private Hire vehicle driver, having been first granted a Private Hire driver's licence by the Council on the 25 May 2006. Mr Philp has continued to renew his Private Hire driver's licence, and his current licence is due to expire on the 24 May 2012.
2. On 27 July 2011 a letter was received from Mr Philp, giving details of a disqualification of his DVLA licence imposed by Plymouth Magistrates' Court on 22 July 2011. A memorandum of conviction was subsequently obtained from Plymouth Magistrates' court on 2 August 2011, which revealed the information below:

On 22 July 2011 at Plymouth Magistrates' Court.

Convicted of driving a small passenger vehicle on 27 May 2011, namely a motor vehicle, registration number SA55CMX, on a road, namely Underlane, when the grooves of the tread pattern of a tyre fitted to the front nearside wheel of the vehicle were not of a depth of at least 1.6mm throughout a continuous band and round the entire outer circumference of the tyre. Contrary to regulation 27 (4) (d) and (f) of the Road Vehicles (Construction and Use) Regulations 1986, S.41A of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

Mr Philp was fined £60 and ordered to pay costs of £60 and a victim surcharge of £15, and his DVLA licence was endorsed with 3 penalty points.

Mr Philp was disqualified for holding or obtaining a driving licence for 6 months, due to repeat offending (totting)

An inspection of Mr Philp's DVLA licence reveals fixed penalty fines and three penalty points received on three previous occasions, one on 29 May 2009, for a contravention of special road regulations, and two on 16 March 2010 and 6 November 2010 for exceeding the speed limit on a public road.

Members are made aware that at the time of these offences Mr Philp was licensed as a Private Hire driver, the vehicle involved in the offence on 27 May 2011, SA55CMX, is licensed as a private hire vehicle, hired by Mr Philp.

3. The following background information regarding Mr Philp is included as Officers consider it to be relevant in respect to this case.

On 13 December 2009, during a routine patrol, Officers conducted a roadside vehicle inspection of Mr Philp's licensed Private Hire vehicle, plate number 1115, VRN V781DRN. An immediate prohibition notice was served as the nearside front tyre tread was below the legal limit, and the spare tyre was punctured. Mr Philp was the licence holder of this vehicle at the time of the inspection.

On 16 January 2010, during a routine patrol Officers conducted a roadside vehicle inspection of Mr Philp's licensed Private Hire vehicle, plate number 1115, VRN V781DRN. An immediate prohibition notice was served as the Offside stop lamp was not working, Mr Philp carried out an immediate roadside repair, and the prohibition was lifted.

This vehicle has been inspected on two other occasions, on 30 July 2008 and 25 October 2007, where no faults were found with the vehicle, although on the 25 October, there were no bulbs or fuses with the vehicle and therefore Mr Philip was given notice to rectify this

within 1 day.

4. The actions open to Members are those contained in Section 19(1) (b) of the Plymouth City Council Act 1975 which empowers the Council to suspend, revoke or refuse to renew the licence of a driver of a Hackney Carriage or Private Hire vehicle for any other reasonable cause.
5. Members are asked to consider whether Mr Philp is a “fit and proper” person in light of the above conviction and apparent breach of condition, and what, if any sanction, needs to be applied to his Private Hire driver licence.
6. In deciding whether Mr Philp is a “fit and proper” person, Members must have regard to the Council’s Hackney Carriage and Private Hire Licensing Policy. The relevant parts of which are detailed below:

General Policy

The Council’s Hackney Carriage and Private Hire licensing policy states that the Council will carry out its Hackney Carriage and Private Hire licensing function with a view to promoting stated objectives. Members must therefore ensure that they consider those objectives when forming a decision.

The Licensing objectives are as follows:

1. **Safety and health of drivers and the public.**
 - Consideration of history of convictions and cautions
 - Driver training, qualification and performance
 - Health and fitness to fulfil the role
 - Crime prevention measures
2. **Vehicle safety, comfort and access**
3. **To prevent crime and disorder and to protect consumers.**
 - Commitment to work with the police and licensing authorities
4. **To encourage environmental sustainability**

Chapter 2. – Conditions of Licence

Paragraph 12.3 - states that when considering whether someone is “fit and proper” the authority will consider amongst other things

- Relevant skills
- Knowledge
- Experience
- Qualifications
- Criminal record (as to relevance of offences see below)
- Previous history as a licence holder

Paragraph 18.2 - requires that in considering whether a person is “fit and proper” each case is considered on its own merits.

Chapter 4 – Enforcement Policy

Paragraph 8.1 - allows the Council to revoke any licence where it is satisfied that the licence holder is no longer, for example, “fit and proper” or a breach of a condition of licence has been established.

Paragraph 8.2 - requires that when considering revocation, the Committee will take into account all relevant facts and circumstances including licensing objectives, nature of the breach and any other information thought pertinent to the matter being considered.

Paragraph 10.2 - gives the Committee the discretion to direct a driver appearing before them to complete further training or retraining, should the drivers' suitability to retain a licence be called into question.

Guidance on the Relevance of Convictions

Paragraph 1 – states that the disclosure of a criminal record or other information will not automatically prevent any applicant from obtaining a licence, unless the council considers the conviction renders the applicant unsuitable. In making its decision the Council will consider the relevance of any offence, the seriousness of the offence, the length of time since the offence occurred and any pattern of offending behaviour.

Paragraph 2 - states that motoring convictions are relevant offences for considering the suitability of a person to hold or retain a licence, and includes disqualification from driving a motor vehicle at any time in the five years prior to applying for a licence, the time to run from the expiry of the disqualification.

Paragraph 8 – states that any driver who receives a conviction within their licence period will be referred to the Licensing Committee (Hackney Carriage) in order that the status of their licence may be reviewed. The above guidance will be followed in such cases.

7. Mr. Philp has been invited to attend this Licensing Committee in order that this matter may be considered.

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Subject: Licensed Private Hire Driver Review of Licence Status

Committee Licensing Committee (Hackney Carriage)

Date: 1 September 2011

Cabinet Member: Councillor Jordan

CMT Member: Director for Community Services

Author: George Curness, Licensing Officer (Taxis)

Contact: Tel: 01752 307964
e-mail george.curness@plymouth.gov.uk

Ref: ERS/LIC/GC/ksk

Key Decision: No

Part: 1

Executive Summary:

Mr. Krzysztof Slawomir Kawka is a licensed Private Hire driver, having been first granted a Private Hire driver's licence by this Council on the 20 July 2007. His current licence is due to expire on 19 July 2014.

On 20 July 2011 Mr. Kawka attended an appointment at the Civic Centre to renew his Private Hire driver's licence. During that appointment, it was noted that Mr. Kawka had received motoring convictions on his DVLA licence, which had not been reported in the correct manner.

Mr Kawka has been invited to attend this Licensing Committee in order that this matter may be considered.

Corporate Plan 2011 – 2014:

This report links to the delivery of the corporate priorities defined in the Corporate Improvement Plan. In particular:

Improving access across the City

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

Not applicable.

Other Implications: e.g. Section 17 of the Crime Disorder Act 1998, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

Members should be aware that Section 17 of the Crime Disorder Act 1998 put a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

Recommendations and Reasons for recommended action:

That Members of the Licensing Committee consider this report.

Alternative options considered and reasons for recommended action

None.

Background papers:

None.

Sign off:

Head of Fin		Head of Leg	SD/12.8.11/12564	Head of HR		Head of AM		Head of IT		Head of Strat. Procur.	
Originating CMF Member											

Report

1. Mr. Krzysztof Slawomir Kawka is a licensed Private Hire driver, having been first granted a Private Hire driver's licence by this Council on the 20 July 2007. His current licence is due to expire on 19 July 2014.
2. On 20 July 2011 Mr. Kawka attended an appointment at the Civic Centre to renew his Private Hire driver's licence. During that appointment, it was noted that Mr. Kawka had received motoring convictions on his DVLA licence, which had not been reported in the correct manner. A memorandum of conviction was subsequently obtained from Plymouth Magistrates' court on 2 August 2011, which revealed the information below:

On 7 January 2011 at Plymouth Magistrates' Court

Mr Kawka pleaded guilty to and was convicted of driving a mechanically propelled vehicle on 7 December 2010, namely a motor car VRM KL54 CLX, on Harwell St, junction of Hastings Terrace without due care and attention. Contrary to S.3 of the Road Traffic Act 1988, and Schedule 2 to the Road Traffic Offenders Act 1988.

Mr Kawka was fined £100, and ordered to pay £15 victim surcharge and £60 costs, his DVLA licence was endorsed with 5 penalty points.

Mr Kawka pleaded guilty to and was convicted of driving a motor vehicle on 7 December 2010, namely a Ford Mondeo VRM KL54CLX, on Hastings Terrace when he was using a handheld mobile phone/device. Contrary to regulation 110(1) of the Road Vehicles (Construction and Use) Regulations 1986, S.41D of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

There was no separate penalty on this offence. His DVLA licence was endorsed.

3. At the time of writing this report Mr Kawka has 8 current penalty points endorsed on his DVLA driving licence. Mr Kawka has 2 previous endorsements on his DVLA licence, for exceeding the statutory speed limit on a public road on 4 May 2008 and 31 August 2008, he received fixed penalty fines and 3 penalty points on each occasion. The offence on 4 May 2008 is no longer current and the offence on 31 August 2008 will no longer be current from 1 September 2011. Members are made aware that Mr Kawka was a licensed Private Hire driver at the time the above offences were committed. The vehicle KL54CLX is a licensed vehicle hired to Mr Kawka.
4. A standard condition of licence exists which requires all Private Hire drivers to notify the Council of any convictions received during their licence period. The conditions of licence are made by virtue of Section 9(2) of the Plymouth City Council Act 1975.

Condition 1(c) of the licence requires:-

*The licensed driver to notify the Council's Licensing Unit **in writing** of any conviction in a Court of Law in respect of any Motoring and/or Criminal offences following the grant of a licence, within 7 days.*

Mr. Kawka has breached this condition of licence, as there is no trace of him having complied with this condition in respect of the conviction on 7 January 2011.=

5. Members are made aware that on 11 February 2010, Mr Kawka appeared before Members, where they considered a report outlining Officers having concerns over Mr Kawka failing to adequately maintain his vehicle. At that time Members decided to take no further action against Mr Kawka, on condition that he completed the VRQ in driver training. Mr Kawka completed his course and was awarded an NVQ in Road Passenger Vehicle Driving in May 2011. A copy of the decision is attached at Appendix A.
6. Members are asked to consider whether Mr Kawka is a fit and proper person and whether any action should be taken against his Private Hire Driver's licence in light of the above motoring convictions and breach of his Private Hire Driver's licence conditions.
7. The actions open to Members are those contained in Section 19(1) (b) of the Plymouth City Council Act 1975 which empowers the Council to suspend, revoke or refuse to renew the licence of a driver of a Hackney Carriage or Private Hire vehicle for any other reasonable cause.
8. In reaching their decision, Members must have regard to the Council's Hackney Carriage and Private Hire Licensing Policy. The relevant parts of the Council's policy are detailed below:

General Policy

The Council's Hackney Carriage and Private Hire licensing policy states that the Council will carry out its Hackney Carriage and Private Hire licensing function with a view to promoting stated objectives. Members must therefore ensure that they consider those objectives when forming a decision.

The Licensing objectives are as follows:

1. **Safety and health of drivers and the public** – e.g.
 - Consideration of history of convictions and cautions
 - Driver training, qualification and performance
 - Health and Fitness to fulfil the role
 - Crime prevention measures
2. **Vehicle safety, comfort and access**
3. **To prevent crime and disorder and to protect consumers** – e.g.
 - Commitment to work with the police and licensing authorities
4. **To encourage environmental sustainability**

Chapter 2. – Conditions of Licence

Paragraph 12.3 states that when considering whether someone is “fit and proper” the authority will consider amongst other things

- Relevant skills
- Knowledge
- Experience
- Qualifications
- Criminal record (as to relevance of offences)
- Previous history as a licence holder

Paragraph 18.2 - requires that in considering whether a person is “fit and proper” each case is considered on its own merits.

Chapter 4 – Enforcement Policy

Paragraph 8.1 - allows the Council to revoke any licence where it is satisfied that the licence holder is no longer, for example, fit and proper or a breach of a condition of licence has been established.

Paragraph 8.2 - requires that when considering revocation, the Committee will take into account all relevant facts and circumstances including licensing objectives, nature of the breach and any other information thought pertinent to the matter being considered.

Paragraph 10.2 - gives the committee the discretion to direct a driver appearing before them to complete further training or retraining, should the drivers' suitability to retain a licence be called into question.

Guidance on the Relevance of Convictions

Paragraph 1 – states that a criminal record does not automatically prevent an applicant from obtaining a licence unless the Council considers the conviction renders the applicant unsuitable. In making its decision the Council will consider the relevance of any offence, the seriousness of the offence, the length of time since the offence occurred and any pattern of offending behaviour.

Paragraph 2 - states that a motoring conviction is a relevant offence for considering the suitability of a person to retain a licence.

Paragraph 6 – states that driving licence endorsements which include fixed penalties are highly relevant, although having an endorsement will not automatically preclude a person from holding a Licence.

Paragraph 8 – states that any driver who receives a conviction within their licence period will be referred to the Licensing Committee (Hackney Carriage) in order that the status of their licence may be reviewed. The above guidance will be followed in such cases.

9. Mr. Kawka has been invited to attend this Licensing Committee in order that this matter may be considered.

Appendix A

When calling or telephoning please ask for: Mark Small

My Ref: MS/LD comm.dec

Date: 12 February 2010

Dear Mr Kawka

Subject : Decision of the Licensing Committee

I write with reference to your appearance before the Licensing Committee yesterday, where Members of that Committee reviewed the status of your Private Hire driver's licence.

Members after having considered your explanation decided that no further action would be taken on this occasion, conditional upon the following course of action being taken by you:-

1. You must have satisfactorily completed the VRQ (or equivalent) driver training qualification within the 12 months of this decision, so this must be completed by 11 February 2011 at the latest and evidence supplied to the Licensing section.

Failure to comply with either of these conditions will necessitate a further review of the status of your Private Hire driver licence.

You have the right of appeal to the Magistrates Court against the decision of the Council by virtue of Section 19(3) of the Plymouth City Council Act 1975.

Such an appeal should be lodged at the Magistrates Court within 21 days, and should therefore be made by **08 March 2010**. Should you decide to appeal, you should take this letter with you to request an appeal hearing. The Magistrates Court may require a fee, which you will be required to pay, before they accept any application for appeal against the Council's decision.

I trust the above is self explanatory but if there are any points that you are unsure of, please do not hesitate to contact me for clarification.

Yours faithfully

MARK SMALL CertHE (Licensing Law)(B'ham) M.I.o.L.
Senior Licensing Officer
Public Protection Service

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