

CITY OF PLYMOUTH

Subject: Licensed Private Hire Driver Review of Driver Licence Status

Committee Licensing Committee (Hackney Carriage)

Date: 6 January 2011

Cabinet Member: Councillor Peter Brookshaw

CMT Member: Director for Community Services

Author: James Hirst – Taxi Licensing Officer

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Ref: ERS/LIC/JH/shk

Key Decision: No

Part: I

Executive Summary:

Mr. Samuel Henry Kendall is a Licensed Private Hire Driver, having first been granted a Private Hire driver's licence by the Council on the 11th March 2009. Mr. Kendall's present licence is due to expire on the 10th March 2011.

On the 09th November 2010, a road side inspection was carried out on the Private Hire vehicle driven by Mr. Kendall. Due to the safety faults identified, an immediate Prohibition Notice was served, removing the vehicle from undertaking any further licensed work until such time as the faults were rectified. This report highlights that Mr. Kendall has consistently failed to maintain his licensed vehicle to minimum safety standards that, as a result, compromises the safety of his passengers and other road users.

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

Corporate Plan 2010 – 2013 as amended by the four new priorities for the City and Council:

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 Community Safety, Health and Safety, Risk Management, Equalities Impact Assessment, etc.

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		Head of HR		Head of AM		Head of IT		Head of Strat. Procur.	
Originating CMF Member											

Report

1. Mr. Samuel Henry Kendall is a Licensed Private Hire Driver, having first been granted a Private Hire driver's licence by the Council on the 11th March 2009. Mr Kendall's present licence is due to expire on the 10th March 2011.
2. On the 09th November 2010, a road side inspection was carried out on a licensed Private Hire vehicle, a blue Vauxhall Vectra, registration number WR05 CYV, plate number 374. Due to the safety faults identified, an immediate Prohibition Notice was served, removing the vehicle from undertaking any further licensed work until such time as the defects were rectified. The details of this report are set out below:

On 09th November 2010 at 20:00hrs on Albert Road, Plymouth during a joint enforcement exercise with Devon & Cornwall Traffic Police.

The inspection revealed the front nearside tyre was worn to excess due to poor maintenance. Tread readings were taken with an MOT approved depth gauge, which gave the reading of 0.90mm on the outer part of the tread and 0.0mm on the inner part of the tread, legal limit being 1.6mm or above. The Enforcement Officer suspended the license of the Private Hire vehicle on the grounds of public safety and the licence plate was removed. A copy of the Suspension Notice is produced at the end of the report marked Appendix B.

Mr. Kendall presented the vehicle for inspection on the 10th November 2010, the front nearside tyre had been replaced with a tyre which was above the legal limit. The plate was then returned to Mr. Kendall and the suspension lifted.

3. Members are made aware that on the 11 February 2010, Mr. Kendall appeared before Members of the Licensing Committee where they considered the following matters:

On 22 August 2009, during a routine vehicle inspection while on foot patrol in Albert Rd at 14.16, Licensing Officers found Mr. Kendall's vehicle, plate number was 374 and the registration number R65CDA to have two defective front tyres, one of which had been worn to the steel cord on the inner edge. Officers issued an immediate Vehicle Prohibition Notice, which suspended the vehicle licence until the defects had been rectified.

On 13 December 2009, during a joint enforcement exercise with Devon and Cornwall Constabulary Traffic Police, on Albert Road at 20.45, a Licensing Officer found Mr. Kendall's vehicle, plate number was 374 and the registration number WR05CYV, to have two tyres worn to excess on the front, one of which was below 50% of the legal limit. The Licensing Officer issued an immediate Vehicle Prohibition Notice, which suspended the vehicle licence until the defects had been rectified.

Mr. Kendall was given an endorseable fixed penalty notice for a defective tyre by Police Officer 6336 at the same time. This means he received a fine of £60 and 3 penalty points on his DVLA licence.

In the Officers report of the 11th February 2010, Officers expressed concerns over Mr. Kendall's inability to adequately maintain the licensed vehicle in his possession particularly the tyres. Members at that time, decided to extend Mr. Kendall's probationary period for a further 12 months and, on the grounds of public safety, to suspend Mr Kendall's vehicle licence in accordance with S18(1) PCC Act 1975 until his vehicle had gone a full MOT and proof of the MOT was presented to the

Licensing Office. A copy of the minutes from the February 2010 Committee are attached as Appendix A.

This latest inspection and subsequent suspension of the vehicle is within the further 12 month probationary period, indicating a lack of regard for vehicle maintenance and Committee decisions.

A copy of the letter sent to Mr. Kendall advising him of the decision made by Members on the 2nd February 2010 is produced at the end of this report marked Appendix B.

4. Officers are concerned that Mr. Kendall has repeatedly failed to adequately maintain the vehicle in his possession, in particular the tyres and the adverse effects that this could have on public safety.
5. 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”.

In deciding whether Mr. Kendall 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 a driver 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, for example, no longer a “fit and proper” person 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 the licensing objectives, the 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 driver’s suitability to retain a licence be called into question.

6. Members are asked to consider whether Mr. Kendall is a “fit and proper” person in light of the above report, as officers remain concerned that the lack of vehicle maintenance falls way below the standards required to meet the Licensing Objectives in respect to the safety of the travelling public.
7. Mr. Kendall has been invited to attend this Licensing Committee in order that this matter may be considered.

Appendix A

The Committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from Mr Kendall;
- (iii) heard from Mr Kendall's representative;
- (iv) heard details of faults found on Mr Kendall's vehicles on two occasions;
- (v) taken into account that –
 - Mr Kendall claimed that he now took steps to inspect his vehicle prior to each use;
 - Mr Kendall's manager also stated that he inspected the vehicle prior to Mr Kendall commencing his shift;
 - the vehicle probation notices imposed previously had already led to a three day loss of income in addition to a fixed penalty fine of 60 pounds and three penalty points issued by the police.

Members expressed concerns that –

- (vi) Mr Kendall was unable to give clear answers to many of their questions;
- (vii) the long hours that Mr Kendall's representative stated that he worked could contribute to the lack of time that was spent on monitoring the safe condition of his vehicle, which could impact on public safety;
- (viii) the two incidents occurred within four months of each other and took place within Mr Kendall's first year of being licensed as a taxi driver. These serious incidents demonstrate a disregard for vehicle and therefore, public safety.

Resolved that due to concerns for public safety, to suspend Mr Kendall's vehicle licence in accordance with section 18 (1) Plymouth City Council 1975 until his vehicle has undergone a full MOT and proof of the MOT has been produced to the Licensing Office.

In view of the three days that his license has already effectively been suspended, Members decided not to order any further suspension period subject to 19 (1) (b) Plymouth City Council Act 1975, however, Mr Kendall's probationary period as a taxi driver would be extended for a further 12 months.

Appendix B

THIS NOTICE HAS IMMEDIATE EFFECT



Plymouth City Council Act 1975
Environmental Regulations Service – Licensing Section

Driver / Proprietor: * MR S. KENDALL

Address: [Redacted]

The following vehicle of which you are the driver / proprietor* was inspected pursuant to the provisions in section 26 of the Plymouth City Council Act 1975:

Plate no. 374 VRM: WR05 C/V

At (time): 20.00 hrs, on 09/11/10

At (place): ALBERT ROAD

And I am not satisfied as to:

1. Its fitness as a licensed vehicle by reason of the following defects:
 - (a) FILLS tyre - excess wear
 - (b) 0-0.90 1
 - (c)
 - (d)
 - (e)
 - (f)

2. The accuracy of its taximeter.

I therefore give you notice pursuant to section 26 of the Plymouth City Council Act 1975:

- (1) *That the above defects be rectified within days of the issue of this notice, and the vehicle presented to the issuing officer for further examination.
- (2) *That the vehicle / taximeter must be made available for further inspection at a council approved registered test station for further testing by an authorised vehicle examiner as to its fitness / accuracy.
- (3) *That the vehicle licence is **IMMEDIATELY SUSPENDED** (see Important Note 3 overleaf)

Signed: [Signature]
Issued by: [Signature]

For * Head of Environmental Regulations Service
* Chief Constable

IMPORTANT NOTES

- (1) If an unfit vehicle is used as a Hackney Carriage or Private Hire vehicle, the licence is liable to be SUSPENDED or REVOKED, and the driver may be prosecuted.
- (2) If the vehicle is not satisfactorily tested within **2 months** the vehicle licence shall be revoked by virtue of section 26 of the Plymouth City Council Act 1975, and that section 18 sub-sections 2 and 3 shall apply.

Appendix C



ENVIRONMENTAL SERVICES
Department of Community Services
Taxi Licensing section
Plymouth City Council
Civic Centre
Plymouth
PL1 2AA

Mr. S Kendall

Tel: 01752 307984
Fax: 01752 226314
Email: Taxi.licensing@plymouth.gov.uk
www.plymouth.gov.uk

When calling or telephoning please ask for: Mark Small

My Ref: MS/LD

Date: 12 February 2010

Dear Mr Kendall

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.

The Members having considered the information placed before them and after listening closely to your presentation and answers to their questions, resolved that your Private Hire driver's licence probationary period would be increased for a further period of 12 months after your next licence renewal. It was also decided to suspend the private Hire Vehicle Licence until such time as you submit the vehicle to a vehicle compliance test and produce evidence to the Licensing Section of the vehicle having passed that test, within the terms of Section 18(1)(c) of the Plymouth City Council Act 1975.

You have the right of appeal to the Magistrates Court against the decision of the Council by virtue of Section 18(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 appeal against the Council's decision.

Once your Private Hire Vehicle registered number WR05CYV, plate number 374 has passed the compliance test, please ensure that you submit the pass certificate to the Licensing Office as soon as possible afterwards to prevent further action being considered.

Yours faithfully

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