

CITY OF PLYMOUTH

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)

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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