

CITY OF PLYMOUTH

Subject: Licensed Private Hire Driver – Review of Licence Status
Committee Licensing Committee (Hackney Carriage)
Date: 1 December 2011
Cabinet Member: Councillor Jordan
CMT Member: Director for Community Services
Author: James Hirst – Licensing Officer (Taxis)
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Ref: ERS/LIC/JH/wad
Key Decision: No
Part: 1

Executive Summary:

Mrs Wendy Ann Dunn is a licensed Private Hire driver, having been first granted a Private Hire driver's licence by this Council on the 3 November 2004. Her current licence is due to expire on 20 November 2011.

On the 24 October 2011 Mrs Dunn was prosecuted by Plymouth City Council for smoking offences against the Health Act 2006. Officers are seeking a review of the status of the driver licence held by Mrs Dunn as they are concerned with her conduct towards her Conditions of Licence and repeated offending.

Mrs Dunn 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:

Members of the Licensing Committee consider this report.

Alternative options considered and reasons for recommended action

None.

Background papers:

Report to Licensing Committee (Hackney Carriage) 07 August 2008
ERS/LIC/MS/wad and minute number 46 of that Committee.

Sign off:

Fin		Leg	AZG/13229 /4.11.11	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member											

Report

1. Mrs Wendy Ann Dunn is a licensed Private Hire driver, having been first granted a Private Hire driver's licence by this Council on the 03 November 2004. Her current licence is due to expire on 20 November 2011.
2. On the 24 October 2011 Mrs Dunn was prosecuted by Plymouth City Council for smoking offences against the Health Act 2006.

Details of this conviction are given below:

On 24 October 2011 at Plymouth Magistrates Court:

Mrs Dunn was convicted of an offence of Smoking in a Smokefree place (a licensed Private Hire vehicle) contrary to S.7(2) of the Health Act 2006.

Mrs Dunn failed to attend Plymouth Magistrates Court and an application to prove the case in her absence was granted.

Fined £100 and ordered to pay £100 costs with a £15 victim surcharge.

3. The circumstances leading up to this conviction are given below:

On 6 April 2011, Mrs Dunn was issued with a verbal warning with regards to smoking in a licensed vehicle, that being a red Ford Mondeo with plate number 922 and registration LR55 RGY. Officers were concerned with the amount of, what was believed to be, cigarette ash present inside the vehicle. The verbal warning was recorded in the officers pocket note book.

On 4 May 2011, Mrs Dunn was witnessed by a licensing officer to be smoking a lit cigarette whilst driving up Royal Parade in a licensed Private Hire vehicle, that being a red Ford Mondeo with plate number 922.

On 06 May 2011, Mrs Dunn attended a pre-arranged appointment at the licensing desk. Mrs Dunn was cautioned and was offered the option of a fixed penalty notice to discharge the offence. Mrs Dunn accepted and a fixed penalty notice was issued.

On 23 May 2011, a reminder letter was sent to Mrs Dunn advising that she had failed to discharge the fixed penalty notice within the first 15 days. The letter informed Mrs Dunn that the opportunity to pay the fixed penalty notice at the reduced rate had now expired and the full amount was due on the 03 June 2011.

On 31 May 2011, a telephone call was made to the operator of Mrs Dunn. The telephone call was not related to the fixed penalty notice issued to Mrs Dunn however, Mrs Dunn was the duty controller at the time the call was made.

The officer took the opportunity to remind her that the fixed penalty notice was still outstanding and was informed of the consequences of not discharging the Fixed Penalty Notice.

On the 6 June 2011, Mrs Dunn had failed to discharge the fixed penalty notice as no payment had been received. Officers compiled a prosecution file which resulted in the case being dealt with on the 24 October 2011 at Plymouth Magistrates Court.

4. The following background information regarding Mrs Dunn has also been included as Officers consider it to be relevant in respect to this case.

On the 07 August 2008, Mrs Dunn appeared before Members of the Licensing Committee in respect to the following matters:

On 23 April 2008 at East Cornwall Magistrates Court:

Convicted for an offence of plying for hire without having a licence permitting the same, contrary to Section 45 of the Town Police Clauses Act 1847 and for not having motor vehicle insurance for that use of vehicle.

Fined a total of £700 (which was reduced from £850 due to a guilty plea), ordered to pay costs of £873.01 and pay a victim surcharge of £15.

DVLA driving licence was also endorsed with 8 penalty points.

5. At Court, Mrs Dunn pleaded and was granted exceptional hardship, to retain her DVLA licence. If the Magistrates had not been minded to grant exceptional hardship (which was granted given her personal circumstances) she would have been facing a period of driving disqualification under the totting up procedure due to 6 points previously endorsed on her licence.

Mrs Dunn was called to attend before Members on 7 August 2008. in respect of this offence Members, having considered the above conviction, decided to suspend Mrs Dunn for a period of 2 days.

6. An inspection of the DVLA licence held by Mrs Dunn reveals no current endorsements
7. In the last 12 months, Mrs Dunn has received 3 Vehicle Prohibition Notices due to defective tyres, the circumstances are as follows:

On 12 March 2011, during a routine vehicle inspection while on foot patrol in Albert Rd at 15.50hrs, Licensing Officers identified Mrs Dunn's vehicle, plate number 922 and registration LR55 RGY, to have a screw in the rear nearside tyre. Officers issued an immediate Vehicle Prohibition Notice, which suspended the vehicle licence until the defect had been rectified.

On 6 April 2011, during a routine vehicle inspection while on foot patrol in Albert Rd at 11.38hrs, Licensing Officers identified Mrs Dunn's vehicle, plate number 922 and registration LR55 RGY, to have a screw in the rear nearside tyre. Officers issued an immediate Vehicle Prohibition Notice, which suspended the vehicle licence until the defect had been rectified.

On 8 October 2011, during a joint enforcement exercise with Devon and Cornwall Constabulary Traffic Police, on Albert Road at 20.45, a Licensing Officer identified Mrs Dunn's vehicle, plate number 210 and registration WF54 HXJ, to have a worn rear nearside tyre. Tread readings taken with an MOT approved depth gauge, gave the reading 0.5mm on the inner part of the tread, the legal limit being 1.6mm or above. The Officers served an immediate Vehicle Prohibition notice which suspended the vehicle licence until the defect was rectified.

8. 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(b) of the licence requires:-

*The licensed driver shall notify the Council's Licensing Unit **in writing** of a change of office from which shelhe operates, within 7 days.*

Mrs Dunn has breached this condition of licence, as there is no trace of her having informed the Licensing Office, in writing, of her recent change in Operator. This information was only ascertained during a recent Police Operation in which Mrs Dunn's vehicle was subject to an inspection outside of her new Operators office.

Officers are now seeking a review of the status of the licence held by Mrs Dunn due to her repeated offending and apparent ongoing disregard for basic vehicle maintenance and the conditions of licence. I

9. 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, since the grant of a licence – for :- **“any other reasonable cause”**.

10. 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 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 offences and contravention of licensing laws or conditions are relevant offences for considering the suitability of a person to retain 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. Mrs Dunn has been invited to attend this Licensing Committee in order that this matter may be considered.