

PLYMOUTH CITY COUNCIL

Subject: Licensed Hackney Carriage Driver – Review of Driver Licence Status

Committee: Taxi Licensing Committee

Date: 28 March 2013

Cabinet Member: Councillor Coker

CMT Member: Anthony Payne (Director for Place)

Author: Steve Forshaw – Licensing Officer (Taxis)

Contact: Tel. 01752 304744
e-mail Steve. Forshaw @plymouth.gov.uk

Ref: ERS/LIC/SF/Fjm

Key Decision: No

Part: I

Purpose of the report:

For Members of the Committee to consider the review of the Hackney Carriage drivers licence held by Mr Francisco Javier MARTIN, having due regard for the information contained within the report, any representations made by Mr MARTIN and the Taxi Licensing Policy of the Council.

Corporate Plan 2012 - 2015:

This report links to the delivery of the City and Council priorities.
In particular: Provide value for Communities.

Implications for Medium Term Financial Plan and Resource Implications:

Including finance, human, IT and land

Not applicable.

Other Implications: e.g. Child Poverty, 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.

Equality and Diversity

Has an Equality Impact Assessment been undertaken - No

Recommendations and Reasons for recommended action:

That Member of the Licensing Committee consider this report.

Alternative options considered and rejected

None.

Published Work/Information

None

Background papers:

None

Sign off:

Fin		Leg	AZG/15.3.13/ 17087	Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the contents of the report? No													

Report

1. Mr Francisco Martin is a Hackney Carriage driver, first licensed by this Council as a Private Hire driver in April 2003. He transferred to Hackney Carriage on 3 June 2004, and has periodically renewed this licence until the present. His current licence is due to expire on 5 March 2013.
2. On about 15 January 2013, the taxi licensing office received a letter from Mr Martin giving notification that he had received a motoring conviction. The letter explains that he was going through an appeal process at Plymouth Crown Court on 4 January 2013 against the conviction for 'Totting up'. The fine of £50.00 previously imposed at Plymouth Magistrates Court was upheld and the suspension of his DVLA licence was waived as the court accepted his submission of exceptional hard ship.
3. A Court memo of convictions was requested and received on 17 January 2013 and the following facts are identified:

On 30 October 2012 at Plymouth Magistrates' Court,

Mr Martin was convicted for exceeding a 30 Mph speed limit on a restricted road. He was sentenced and ordered to pay a fine of £35.00 by 30 December 2012 and pay £15:00 victim surcharge. Defendant's guilty plea taken into account when imposing sentence.

Disqualified from driving for 6 months under S.35(1) of The Road Traffic Offenders Act 1988. Disqualified for holding or obtaining a licence for 6 months. Disqualification obligatory due to repeat offending. Licence or counterpart endorsed (3 penalty point determined). Defendant's guilty plea taken into account when imposing sentence. Exceptional hardship not found. Disqualification suspended pending appeal.

An appeal hearing against sentence was heard on 4 January 2013. It was ordered that the appeal against sentence be allowed and the sentence be varied as follows:

To pay a fine of £35.00, the defendants guilty plea taken into account when imposing a sentence.

No order to pay costs due to a lack of means.

To pay £15.00 towards the costs of the prosecution and to be paid to HMCTS – victim surcharge, Newport Gwent.

Licence endorsed; 3 penalty points. No disqualification under S. 35(1) of the Road Traffic Offenders Act 1988; mitigating circumstances.

4. On 4 March 2013, during the renewal process of his Hackney Carriage driver's licence it was noted that he had received motoring convictions. The details of the offence taken from the DVLA licence are,

Mr Martin was convicted of Exceeding the Statutory Speed Limit on a Public Road on 6 January 2012. Mr Martin had his DVLA counterpart endorsed with 3 penalty points by means of a fixed penalty.

On 22 January 2012 Mr Martin was convicted of Exceeding the Statutory Speed Limit on a Public Road. Mr Martin had his DVLA counterpart endorsed with 3 penalty points by means of a fixed penalty.

On 30 October 2012 at Plymouth Crown Court,

Mr Martin was convicted of Exceeding the Statutory Speed Limit on a Public Road on 18 April 2012 he was fined £35.00 and had his DVLA counterpart endorsed with 3 penalty points.

Mr Martin currently has 9 points on his DVLA driver's license.

At the time of the above conviction Mr Martin was licensed as a Hackney Carriage driver and as such, is governed by the Plymouth City Council Hackney Carriage Bye Laws for such drivers, which were made by virtue of Section 68 Town Police Clauses Act 1847.

5. Bye Law 11 states that

If a Hackney Carriage driver is convicted in a Court of Law of any Motoring Offence including fixed penalties, the driver shall notify the Council IN WRITING within 7 days of the conviction.

The Hackney Carriage Bye-Laws became effective on 14 July 2009 and were posted to all Hackney Carriage drivers, to remind them of their duties.

Mr Martin has breached this Bye-Law as he has failed to notify the Council as required.

6. Members are asked to consider whether Mr Martin is a 'fit and proper' person in light of the above conviction and possible breach of bye-law, and determine what, if any sanction, should be applied to his Hackney Carriage driver licence.
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 see below)
- Previous history as a licence holder

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 licensing objectives, nature of the breach and any other information thought pertinent to the matter being considered.

Paragraph 10.1 – States that a disciplinary hearing is for any matter concerning the breach of any licence condition or statutory regulation that may require a sanction being sought against any licence, and is determined by the Licensing Committee.

Paragraph 10.2 - Gives the Committee the discretion to direct a driver appearing 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 offences are relevant offences for considering the suitability of a person to hold or 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. Members are made aware that Mr Martin has not completed the qualification in Transporting Passengers by Taxi and Private Hire.
10. Mr Martin has been invited to attend this Licensing Committee in order that this matter may be considered.