

## AGENDA ITEM

### REGULATORY SUB COMMITTEE July 25th 2016

#### REPORT OF THE HEAD OF HUMAN RESOURCES AND DEVELOPMENT

#### TO ASSESS THE FITNESS OF A CURRENT HACKNEY CARRIAGE / PRIVATE HIRE LICENCED DRIVER

##### REASON FOR REPORT

1. This Council has a licenced driver who has on three occasions in the last 12 months failed to submit vehicle documentation in accordance with the Councils Hackney Carriage and Private Hire Licensing Policy. Further, on one occasion in the last 12 months the driver failed to present the Hackney Carriage for inspection as required under section (50)1 Local Government Miscellaneous provisions Act 1976.

##### RECOMMENDATIONS

1. That members take note of the information in the report and determine the appropriate action based on the options set out in section 5.9.

##### RELATIONSHIP TO CORPORATE PLAN

1. The licensing Authority has a responsibility to ensure Public Safety and ensure the licensing objectives are being met.

##### FINANCIAL, LEGAL AND RISK ASSESSMENT IMPLICATIONS

Any financial, legal and/or risk assessment implications are set out below:

<b>Financial</b>	Depending on the decision there may be a right of appeal to the Magistrates' Court, which, potentially, could involve the Council in costs if any appeal is successful.
<b>Legal</b>	The decision must be lawful.
<b>Risk Assessment</b>	The risk of costs in an appeal situation should be balanced against the risks to the public of licensing a person who fails to comply with the Policy.

## **1.0 INTRODUCTION**

- 1.1 Drivers of hackney carriages and private hire vehicles are licensed under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. This Council issues a joint licence, which enables them to drive both hackney carriages and private hire vehicles.
- 1.2 The Council is not permitted to grant a licence unless it is satisfied that the applicant is a 'fit and proper person' (Local Government (Miscellaneous Provisions) Act 1976 Sections 51(a) and 59(a)) and takes a number of steps to establish that applicants and existing drivers are such persons.
- 1.3 The Authority has adopted a Hackney Carriage and Private Hire Policy; the most recent version came into effect on 29 February 2016. The policy provides the framework for the administration of the service and is available online via the following link:-<https://www.middevon.gov.uk/media/205685/hackney-carriage-private-hire-policy-2016-final.pdf> and we urge all drivers and operators to become familiar with it.
- 1.4 This Council's Policy requires that:-
  - Vehicles are regularly tested at an authorised and accredited garage to ensure that they meet the criteria which is required to ensure public safety.
  - Vehicles more than 3 years old need to be tested every six months.
  - Documentation relating to taxi tests must be submitted to the licensing team for administration when required or requested.
  - Vehicle insurance needs to be continuous and documentation submitted to the licensing team for administration when required or requested.

## **2.0 COMPLIANCE HISTORY OF APPLICANT AND LATE DOCUMENTS**

- 2.1 The Licence Holder, Mr Christopher Wright, has held a Hackney Carriage / Private Hire Drivers licence number with Mid Devon District Council since 08 July 2010.
- 2.2 We have received no complaints from the public during the time that Mr Wright has held his Hackney Carriage / Private Licence combined licence and he has always liaised with members of the licensing team in a polite and courteous manner.
- 2.3 In July 2015 the Taxi Test for the vehicle CX13 TPY had been submitted to the licensing team. This Test was due on 07 July 2015 but the test was not carried out until 14<sup>th</sup> July 2015. The Taxi test and a letter are attached as Annex 1.
- 2.4 This is an offence under section 50 (1) of the Local Government Miscellaneous Provisions Act 1976. The offence carries a maximum level 3 fine of £1000.
- 2.5 On the 28<sup>th</sup> April 2016 the licensing Team contacted to Mr Wright again he had failed to submit an insurance document for a vehicle which was due. The document was quickly supplied and the vehicle had been continuously insured for the period. A letter is attached as Annex 2.



- 2.6 On 13<sup>th</sup> June 2016 the licensing team received Taxi Test certificates for Vehicle FG61HHF a brown Vauxhall insignia and also DK63 CNX a grey Vauxhall Vivaro. Both of these tests had been carried out within the correct time period and had passed the test but the licensing team had not received the test certificates. Both of these certificates are included with this report and are Annex 3.
- 2.7 The licensing Team contacted Mr Wright at this point to explain that as a result of the continued late documents, the matter would be referred to the committee.
- 2.8 On 16<sup>th</sup> June 2016 the licensing team received an email from Mr Wright. The email explains how he intends to ensure he does not submit late documents in future.

### **3.0 SUMMARY**

- 3.1 As a result of the above Mr Wright has received written and verbal advice about failing to submit documents on time and to date the Licensing team had has cause to contact Mr Wright on three separate occasions during the last 12 months to request documentation. With this in mind, The Licensing Team asked Mr Wright to submit written information about how he can improve the current situation with regards to submitting late documents. This email was received and is attached as Annex 4.

### **4.0 ADOPTED GUIDELINES**

- 4.1 The Authority has adopted a Hackney Carriage and Private Hire Policy; the most recent version came into effect on 29 February 2016. The policy provides the framework for the administration of the service the policy is available online via the following link:-<https://www.middevon.gov.uk/media/205685/hackney-carriage-private-hire-policy-2016-final.pdf> and a copy will be available at the hearing.
- 4.2 Section 6.1.3 of the policy relates to Hackney and Private Hire vehicles. The following section of the Policy should be noted:-
- "The reminder service that the Council operates is not a statutory requirement. Failing to receive a reminder is not a valid reason for not renewing a licence in time or supplying the Council with a required document".*

### **5.0 DECISION-MAKING**

- 5.1 The right to a fair hearing is of fundamental importance and consideration should be given if the hearing, or part of the hearing, needs to be heard in private. Reasons should be given for such a decision and if issues arise on the day the Legal Advisor will give Members appropriate advice.
- 5.2 In order to ensure that the licence holder receives a full and fair hearing they have been sent a copy of this report prior to the hearing taking place. They are therefore aware of the information against them and have the opportunity to speak, or be represented, in order to answer the case.
- 5.3 Members are required to make a decision that is proportionate and based on the merits of the case, considering the information as set out in this report and gained on the day of the hearing.

5.4 Ultimately, members must decide whether or not, in light of the information before them, the licence holder is 'fit and proper'.

5.5 Whilst there is no judicially approved test for assessing whether or not a driver is fit and proper, Members may find the following question useful:

*'Do members feel confident that the driver can provide the Licensing Team with documents on time in future?'*

5.6 If the answer is yes then it is an indication that the person remains fit and proper. If the answer is no then it is an indication that the person is no longer fit and proper.

5.7 Members are reminded that the overarching duty of the licensing authority is to ensure that the public are kept safe and the vehicles are safe.

5.8 Members should withdraw to make their decision, having heard the Licence Holder make his case. It is necessary for local authorities to balance their duties to the public against their duties to the drivers they licence and such decisions can be difficult. Above all, the decision must be made on its individual merits, and in the interests of public safety.

5.9 Members may:

- Take no action
- Issue a warning as to future conduct
- Suspend the licence for a period of time
- Revoke the licence

5.10 Members are asked to make a decision that is proportionate and based on the merits of the case. It is evident that this driver has had difficulty in submitting documents in accordance with the policy.

## **6.0 RECOMMENDATION**

6.1 In light of the information in this report and in consideration of what the driver states at the hearing the sub-committee should decide whether or not the driver continues to be suitable to hold a licence. Put simply, will he be able to provide the Licensing Team with documents in time in future. This is a specific question as there does not appear to be any other concerns in relation to his suitability to hold a licence.

## **7.0 TIMESCALE AND RIGHT OF APPEAL**

7.1 Members are asked to make their decision on the day of the hearing and give accompanying reasons for this decision. Reasons are very important and must be sufficiently clear to enable the applicant to exercise their right of appeal.

7.2 The applicant has a right of appeal to the Magistrates' Court within 21 days of formal notification of the decision should the licence be suspended or revoked.

## ANNEXES TO REPORT

- ANNEX 1: Test Certificates for Vehicle CX13 TPY and letter to Mr Wright.
- ANNEX 2: Letter to Mr Wright about late documentation.
- ANNEX 3: Taxi test certificates for vehicles DX63 CNX and FG61 HHF.
- ANNEX 4: Email from Mr Wright to The Licensing Team.

<b>Contact for any more information</b>	Jackie Taylor – 01884 244618 Simon Newcombe – 01884 244615
<b>Background Papers</b>	LGMP Act 1976 MDDC HC & PH Licensing Policy 2016
<b>File Reference</b>	Licensing / taxis / driver / hearings
<b>Circulation of the Report</b>	Applicant / Sub-Committee

