

AGENDA ITEM

REGULATORY SUB COMMITTEE

10 November 2016

REPORT OF THE DIRECTOR OF CORPORATE AFFAIRS AND BUSINESS TRANSFORMATION

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

Responsible Officers: Jackie Taylor – Licensing Officer.
Thomas Keating – Lead Licensing Officer.

REASON FOR REPORT

1. This Council has a licenced driver who has on 5 occasions in the last 18 months failed to submit **Private Hire Vehicle Licence** documentation, **Hackney / Private Hire Drivers Licence** documentation and **Private Hire Operator Licence** documentation in accordance with the Councils Hackney Carriage and Private Hire Licensing Policy. Furthermore, on two occasions in the last 18 months the driver failed to present the Private Hire vehicle for inspection as required under section (50)1 Local Government (Miscellaneous provisions) Act 1976, within the required time.

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, having heard from the licence holder.

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:

Financial

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.

Legal	The decision must be lawful.
Risk Assessment	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, proprietors and operators to become familiar with it.

2.0 COMPLIANCE HISTORY OF APPLICANT AND LATE DOCUMENTS

- 2.1 The Licence Holder, Ms Nina Fajardo, has held her current Hackney Carriage / Private Hire Drivers licence with Mid Devon District Council since 28 October 2010. It should be noted that it was necessary for her to submit a "New" application in October 2015 as she had allowed her existing licence to expire prior to submitting her renewal application.
- 2.2 Ms Fajardo has held a licence with Mid Devon District Council since October 2010. Since holding a licence we have received one complaint about her conduct from a member of the public following an incident on 17 March 2016. However, with no independent witnesses to the incident it was not felt necessary or appropriate to take further action against Ms Fajardo at the time. She has always liaised with members of the licensing team in a polite and courteous manner.
- 2.3 On 18 June 2015 the Taxi Test for the vehicle LB54 TYA was submitted to the licensing team. This Test was due on 18 March 2015 but the test was not carried out until 18 June 2015. The Taxi Test certificate and a letter from the licensing team reminding Ms Fajardo that the test needs to be carried out every 6 months 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 In October 2015 the licensing team contacted Ms Fajardo by letter as her Private hire Operator's Licence had expired on 30 September 2015. Ms Fajardo wrote a letter

explaining the circumstances for the lapse of the licence and this letter is attached as **Annex 2**.

- 2.6 At the same time it also became evident that Ms Fajardo had failed to submit her vehicle insurance documents which were required on 1 September 2015. We did not receive the documentation until 11 September 2015, however it should be noted that the vehicle remained insured throughout the period concerned. Her response to the late insurance document is attached as **Annex 3**.
- 2.7 On the 6th October 2015 the licensing Team contacted Ms Fajardo by telephone as she had failed to renew her Hackney Carriage / Private Hire Drivers licence. During the phone call she said she had not been driving a mid-Devon licenced vehicle during the period the licence had expired. As the Drivers Licence had expired Ms Fajardo had to submit an application for a new Hackney Carriage/ Private Hire Drivers Licence. (Although at the time she wanted to renew the licence). The licensing Team sent a letter to Ms Fajardo and this is attached as **Annex 4**.
- 2.8 On the 28 September 2016 the licensing Team wrote to Ms Fajardo following the late submission of the insurance documents for vehicle BF57 JXS. The insurance certificate was due on 1 September 2016 and it was received by the licensing team on 7 September 2016. Again it should be noted that the vehicle remained insured throughout the period concerned. This letter informed Ms Fajardo that enforcement action may be taken should the current situation with late documents continue. This letter and the insurance document is attached as **Annex 5**.
- 2.9 On 6th October 2016 the licensing team contacted Ms Fajardo about the late submission of a taxi test document for vehicle BF57 JXS. The Taxi test was due on 1 October 2016 but it was not carried out until the 4th October 2016. This taxi test certificate and subsequent email from Ms Fajardo is attached as **Annex 6**.
- 2.10 Again 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.
- 2.11 The Licensing Team contacted Ms Fajardo on 10 October 2016 by email to explain that as a result of the continued late documents, the matter would be referred to a regulatory sub-committee. The email to Ms Fajardo and her response is attached as **Annex 7**.

3.0 SUMMARY

- 3.1 As a result of the above Ms Fajardo has received written and verbal advice about failing to submit documents on time. To date the Licensing team had has cause to contact Ms Fajardo on 5 separate occasions during the last 18 months to request documentation. With this in mind, The Licensing Team asked Ms Fajardo to submit written information about how she can improve the current situation with regards to submitting late documents.
- 3.2 On 24th October 2016 the licensing team received an email from Ms Fajardo explaining how she intends to prevent further failings in submitting documentation to us in a timely manner in the future. This statement is included as **Annex 8**.

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 This Council's current 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.
- Applications for driver licence renewals should be received a minimum of 7 days before the expiry of the licence.
- Applications for Private Hire Operator licence renewals should be received before the expiry of the licence.

4.3 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 Licence holder 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 her 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 Hackney / Private Hire Drivers Licence for a period of time
 - Revoke the Hackney / Private Hire Drivers Licence
 - Suspend the Private Hire Vehicle Licence for a period of time
 - Revoke the Private Hire Vehicle 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 licence holder states at the hearing the sub-committee should decide whether or not the licence holder continues to be suitable to hold a licence. Put simply, will she be able to provide the Licensing Team with documents on time in future. This is a specific question as there does not appear to be any other concerns in relation to her 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 either the Hackney / Private Hire drivers licence or Private Hire vehicle licence be suspended or revoked.

ANNEXES TO REPORT

- ANNEX 1: Test Certificate for Vehicle LB54 TYA and letter to Ms Fajardo.
- ANNEX 2: Letter from the licensing Team following the expiry of Ms Fajardo's Operators Licence and Ms Fajardo's response
- ANNEX 3: Letter from Ms Fajardo in response to late insurance documentation
- ANNEX 4: Letter to Ms Fajardo about failing to renew her Private Hire / Hackney drivers licence.
- ANNEX 5: Letter from the licensing team following late submission of insurance documents.
- ANNEX 6: Taxi Test certificates for vehicle BF57 JXS and supporting letter from Ms Fajardo.

- ANNEX 7: Email to Ms Fajardo and her response.
- ANNEX 8: Supporting statement received via email from Ms Fajardo.

Contact for any more information	Jackie Taylor – 01884 244619 Thomas Keating – 01884 244618
Background Papers	LGMP Act 1976 MDDC HC & PH Licensing Policy 2016
File Reference	Licensing / taxis / driver / hearings
Circulation of the Report	Applicant / Sub-Committee