

Committee: LICENSING & ENVIRONMENTAL HEALTH

Agenda Item

Date: 14 January 2014

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Title: Determination of a private hire driver's licence

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Item for decision

Summary

1. This report has been submitted for members to consider suspension or revocation of a private hire driver's licence under s.61(1)(b) for any other reasonable cause.

Recommendations

2. The committee determine whether Mr Luchoo should have his private hire driver's licence suspended or revoked.

Financial Implications

3. None arising from this report.

Background Papers

4. The following papers were referred to by the author in the preparation of this report.
 - Mr Luchoo's licensing file.
 - Notes of meeting between Mr Luchoo and the Assistant Chief Executive – Legal.

Impact

- 5.

Communication/Consultation	None.
Community Safety	The authority has a duty to only licence drivers who are considered to be fit and proper.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	Under s.61 of the Local Government (Miscellaneous Provisions) Act 1976 district

	<p>councils may suspend or revoke a driver's licence where the driver has been convicted of one of a range of specified offences since the grant of the licence or for any other reasonable cause. Where a driver ceases to meet the council's licensing standards that would be a reasonable cause for revoking a licence.</p> <p>In the event of a licence being suspended or revoked a driver has a right of appeal to the Magistrates' Court. The driver may continue to drive during the appeal period and if an appeal is lodged within that time until such time as the appeal has been determined unless any suspension or revocation is expressed to take immediate effect in the interest of public safety.</p>
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

6. Mr Luchoo is a private hire driver who has been licensed by the council since November 2009. At the time he was first licensed he had a clean driving licence. In July 2010, Mr Luchoo received a fixed penalty notice for using a mobile phone whilst driving. He failed to notify the council of that fixed penalty notice within 7 days and as a result was suspended by the Assistant Chief Executive – Legal for 2 days. He did not appeal against that suspension.
7. On the 14 December 2013 information was received from Mr Luchoo's employer to the effect that Mr Luchoo was not working at that time. Mr Luchoo told his employer that he was not allowed to drive for 3 months. Further enquiries revealed that Mr Luchoo may have been convicted of a drink drive related matter. As a result Mr Luchoo was asked to meet with the Assistant Chief Executive – Legal.
8. At the meeting Mr Luchoo admitted to having been convicted of an offence under s.5(1)(b) Road Traffic Act 1988 of being in charge of a motor vehicle on a road after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit. For the offence Mr Luchoo was fined £200, ordered to pay a victim surcharge of £20 and £85 costs and was disqualified from driving for a period of 3 months.
9. Mr Luchoo explained the circumstances. He went to a party at a friend's house arriving at about 8pm. He was drinking during the course of the

evening. Shortly before midnight he and some friends went out of the house to have a cigarette. One of Mr Luchoo's friends sat in Mr Luchoo's car and turned on the ignition so that they could listen to the radio. Mr Luchoo said that the engine was not switched on and that he was not in the car. A police patrol car stopped and asked who was the owner of the car. Mr Luchoo identified himself as the owner and was asked to take a breath test which proved positive. Mr Luchoo was then arrested and taken to the police station where a further breath test also proved positive. Mr Luchoo did not have the print out showing the breath/alcohol ratio but recalls that the volume of alcohol in his breath exceeded 50 against a legal limit of 35.

10. Mr Luchoo says that he pleaded guilty upon legal advice and was not represented in court.
11. As a result of the conviction Mr Luchoo no longer meets the Council's licensing standards for drivers which provides that a licence would not normally be granted to a person within 3 years of having a driving licence restored after a period of disqualification.
12. Section 5(2) Road Traffic Act 1988 provides that "it is a defence for a person charged with an offence under sub-section (1)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst a proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit."
13. It is not known what mitigation Mr Luchoo put forward to the Magistrates' Court. However, assuming that he gave the facts as explained to the Assistant Chief Executive – Legal these facts would amount to the statutory defence referred to above. The magistrates ought therefore to have rejected the guilty plea and proceeded to trial.
14. By way of example, in the case of Brown –v- Higson 2000, the defendant was charged with being drunk in charge of motor vehicle having been found asleep in the driver's seat of his car with the ignition on sufficient to allow the radio to be played. Although convicted at first instance on appeal the court held that any reasonable court would have concluded that the statutory defence had been established.
15. In Nottingham City Council v Farouk 1998 the court held that it was not open to magistrates on an appeal against a refusal of the licence to go behind the fact of convictions. It follows therefore that in considering whether an individual with a conviction remains a fit and proper person to hold a licence notwithstanding that conviction, the committee should not consider any submissions which would amount to a defence to the charge but may only take into consideration any mitigating factors which fall short of being a defence.
16. Paragraph 6.16 of the council's Licensing Policy Relating to the Hackney Carriage and Private Hire Trades provides that "where a matter has been dealt with through the criminal justice system it is the view of the council that a

suspension of the licence would rarely be suitable. Any punishment which the offender deserved would have been imposed by the courts and a further punishment by way of suspension (which would cause loss of income) would be inappropriate. However, the Licensing & Environmental Health Committee should consider whether in the light of a conviction or a caution the driver or operator remains a fit and proper person to hold a licence. If the Committee is not satisfied that the driver or operator does remain a fit and proper person, then the licence should be revoked.”

17. With regard to the offence Mr Luchoo has been punished by the courts. The issue for members to determine therefore is whether in the light of his conviction, he remains a fit and proper person. If the committee are so satisfied then it should take no action with regard to the conviction. If the committee are not satisfied Mr Luchoo is a fit and proper person the appropriate course of action is to revoke the licence in accordance with the policy.

18. In the event that members are satisfied that Mr Luchoo remains a fit and proper person, members will note that he has breached a condition on his licence by failing to notify the council of the conviction within 7 days. Paragraph 6.6 of the policy states that “where there is a breach ... of a condition there should normally be a sanction imposed.” Paragraph 6.10 of the policy provides that whilst a longer or shorter suspension may be imposed, if the circumstances of a particular case require it, the starting point for a suspension for the first case of a breach of condition should be 5 days. Members will note that this is the second time that Mr Luchoo has breached this condition.

Risk Analysis

19.

Risk	Likelihood	Impact	Mitigating actions
Unsuitable persons are licensed to drive	1, the committee would normally apply its licensing standards unless there are good reasons for not doing so.	4, allowing unsuitable persons to drive may result in damage to property, personal injury or even death.	Members only take no action with regard to the licence if they are satisfied that Mr Luchoo remains a fit and proper person.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.