



CITY OF GLOUCESTER

LICENSING AND ENFORCEMENT COMMITTEE SPECIAL MEETING

Meeting: Monday, 31st January 2011 at 18:30
North Warehouse, The Docks, Gloucester

Membership: Cllrs. Durrant (Chair), C. Witts (Vice-Chair), Gillespie, Tracey, Noakes (Spokesperson), Gill, Field, Brown, Dee, Porter, Taylor, Beeley and Dallimore

AGENDA

1. APOLOGIES

To receive any apologies for absence.

2. DECLARATIONS OF INTEREST

To receive from Members, declarations as to personal and/or prejudicial interests and the nature of those interests in relation to any agenda item. Please see Notes 1 and 2 overleaf.

3. EXCLUSION OF PRESS AND PUBLIC

To consider the following Resolution:

“That the press and public be excluded from the meeting during the following items of business on the grounds that it is likely, in view of the nature of business to be transacted or the nature of the proceedings, that if members of the press and public are present during consideration of this item or these items there will be disclosure to them of exempt information as defined in paragraph 1 of Section 1001 of the Local Government Act 1972 as amended.”

Agenda Item Nos.	Description of Exempt Information
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4, 5 and 6	Information relating to any individual
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4. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - DISCIPLINARY MATTER - PRIVATE HIRE DRIVER LICENCE NUMBER 433 MR M.I. (Pages 1 - 18)

5. **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - DISCIPLINARY MATTER - PRIVATE HIRE DRIVER LICENCE NUMBER 367 MR A.H. (Pages 19 - 40)**
6. **LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - DISCIPLINARY MATTER - PRIVATE HIRE DRIVER LICENCE NUMBER 431 MR S.E. (Pages 41 - 62)**
7. **DATE OF NEXT MEETING**

Scheduled Ordinary Meeting - Tuesday, 15th February 2011 at 6.30 p.m.

Special Meeting – Tuesday 22nd February 2011 at 6.30pm.



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Amanda Wadsley
Corporate Director of Strategy and Development

Notes

1. A personal interest exists where a decision on a matter would affect to a greater extent than other people in the District:-
 - (a) the well being, financial position, employment or business of the Councillor, their family or any person with whom they had a close association;
 - (b) a body employing those persons, any firm in which they are a partner and any company of which they are directors;
 - (c) any corporate body in which those persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) the Councillor's registrable financial and other interests.
2. A personal interest becomes a prejudicial interest where a member of the public (who has knowledge of the circumstances) would reasonably regard the Member's personal interest as being so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Please contact Adam Chalmers, Democratic and Electoral Services Manager, Tel. No. 01452 396125/e-mail: committeesection@gloucester.gov.uk if you have a general query on any agenda item, wish to tender your apologies for absence from the meeting, or would like information on any decision taken by the Council.

Agenda and enclosures can be viewed on the District Council's Website - www.gloucester.gov.uk

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Gloucester City Council

COMMITTEE	: LICENSING & ENFORCEMENT
DATE	: 31 JANUARY 2011
SUBJECT	: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 – DISCIPLINARY MATTER – PRIVATE HIRE DRIVER LICENCE NUMBER 433 MR M.I.
WARD	: ALL
REPORT BY	: GROUP MANAGER, ENVIRONMENTAL HEALTH & REGULATORY SERVICES
NO. OF APPENDICES	: 1: WITNESS STATEMENTS RELATING TO OPERATION ACRO 2: GUIDLINES RELATING TO THE RELEVANCE OF CONVICTIONS 3: PROCEDURE AT THE HEARING – PARAGRAPHS 59 TO 73 OF THE GENERAL CONDITIONS
REFERENCE NO.	: ES21101

1.0 PURPOSE OF REPORT

- 1.1 For members to consider and determine a disciplinary matter referred to them for consideration.

2.0 RECOMMENDATIONS

- 2.1 The Committee is advised that it has the power to take the following courses of action:
- a) To take no action.
 - b) To issue a written warning.
 - c) To suspend the Private Hire Driver licence for a period of time to be determined by the Committee but not for a period exceeding the expiry date of the current licence.
 - d) To revoke the licence. In such circumstances the Committee may wish to give an indication on a suitable time period that must elapse prior to a fresh application being made.

3.0 BACKGROUND

- 3.1 The City Council has statutory powers to licence Hackney Carriage and Private Hire drivers and may apply conditions to the latter. The City Council have approved a comprehensive set of general conditions which are intended to maintain minimum standards of operation within the Hackney Carriage and Private Hire trades for the benefit and safety of the travelling public. The fundamental difference between Hackney Carriage and Private Hire vehicles is that only Hackney Carriages may ply for hire or stand on a rank. Private Hire vehicles licensed under the Local Government (Miscellaneous Provisions) Act 1976 by the City Council may only be pre-booked through a Private Hire operator also licensed by Gloucester City Council. This requirement is laid down by legislation and is not specific to Gloucester City Council.
- 3.2 The licence holder has been written to explaining the need for the disciplinary hearing. He has been sent a copy of this report and invited to attend this hearing.

4.0 INFORMATION

- 4.1 Mr Mahomed Issak has been a licensed Private Hire Driver with Gloucester City Council since 17 December 2008. His current licence is due to expire on 16 December 2013. Mr Issak has not been the subject of any previous disciplinary proceedings.
- 4.2 On 26 February 2010 Operation ACRO, a test purchase operation was conducted by the City Council in partnership with Officers from Gloucestershire Constabulary. Following the operation Mr Issak was convicted at Gloucester Magistrates' Court on 29 October 2010 for the offence of plying for hire without a licence contrary to section 45 of the Town Police Clauses Act 1847. Mr Issak did not enter a plea to the charge and did not attend court. He was fined £350 with a £15 victim surcharge and ordered to pay £200 towards the Council's costs. At the time of the offence Mr Issak also received a fixed penalty notice for driving with no insurance from Gloucestershire Police.
- 4.3 The circumstances of the offence are as follows:
- At approximately 23:40 hours on Friday 26 February 2010 Mr Issak was in Private Hire Vehicle (PHV) 291 outside TNT in Eastgate Street, Gloucester. The vehicle was approached by two plain clothes Police Officers, one of which asked the driver "are you free?" The driver responded that he was and agreed to take them to the Weavers Arms in Quedgeley. PHV 291 was stopped on the Bristol Road by an unmarked Police car and the occupants questioned. The plain clothes Police Officers confirmed that they had not pre-booked the vehicle. When questioned after being read the Caution Mr Issak replied "Thats fine, thats it." Mr Issak was reported for the offence and issued a fixed penalty notice by Gloucestershire Police for using a vehicle uninsured against third party risks (IN10).
- 4.4 Statements from the two Police Officers and Council Officer involved are attached at **Appendix 1**.

4.5 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides:

— (1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—

(a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or violence; or

(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or

(b) any other reasonable cause.

(2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.

(2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

Members are advised that should the Committee determine that Mr Issak's PHD licence should be suspended or revoked it must be done under section 61(1)(a)(ii). Should Members deem necessary by virtue of section 61(2B) such suspension or revocation can take immediate effect provided a statement is included stating the reasons why this action is necessary in the interests of public safety.

4.6 In accordance with section 51(1)(a) of the 1976 Act the Council must be satisfied that all licensed drivers are fit and proper persons to hold such a licence. In making this determination the overriding concern must be that of the safety of the travelling public. Whilst section 61 of the 1976 Act provides for the suspension of PHD licences, this can only be imposed because a person is no longer a fit and proper person to hold such a licence, and should not be used as a means of punishment. It would be difficult to justify how the passage of time alone would be certain of restoring a person's fit and proper status. It could be argued that suspension may be an appropriate option where a viable solution can be implemented to improve the fit and proper status of the licence holder. In most cases suspension is more likely to be an option where, for example, serious concerns are raised over the suitability of an individual to hold a driver licence, but more time is needed to investigate the matter.

- 4.7 The Council has adopted guidelines in relation to the relevance of convictions. Members are advised that whilst due regard must be given to these guidelines the committee's discretion should not be fettered by them and each case must be considered on its merits. The guidelines are attached at **Appendix 2**, Member's attention is drawn to paragraph 3(h).

5.0 CONCLUSIONS

- 5.1 Mr Issak offered no defence when reported for the offence and did not enter a plea at Court. The lack of a defence offered by Mr Issak indicates that he was fully aware of the requirement for all work to be pre-booked. Irrespective of this he still undertook a journey which had not been pre-booked through a licensed Private Hire Operator. This action shows a serious disregard for the legislative requirements and for the safety of the travelling public.
- 5.2 It is the responsibility of every PHD to ensure passengers they carry are indeed the very ones that have made a booking with their operator. The right to ply for hire is held in great importance by the Hackney Carriage trade and is always a sensitive issue. The issue of PHD illegally plying for hire is of great concern as it puts the travelling public at risk, as such it is imperative that such action is not tolerated by the City Council.
- 5.3 The Committee's consideration, based on the balance of probabilities, is whether Mr Issak is a fit and proper person to hold a PHD licence together with the Council's duty to protect the public, and the licence holder's rights under Article 1 of the First Protocol to the European Convention on Human Rights.
- 5.4 If having done so the Committee determines that Mr Issak is not a fit and proper person to hold such a licence they may either suspend or revoke his licence. Should the Committee be minded that neither of these actions are appropriate, they may either issue a written warning to Mr Issak with respect to his conduct or take no further action.

6.0 FINANCIAL IMPLICATIONS

- 6.1 There are no direct financial implications attached to the recommendations in this report. However Members are advised that as detailed below Mr Issak has a right of appeal against any decision to suspend or revoke his PHD licence. At any such appeal costs may be awarded against the Council on successful appeal if the Council has not acted reasonably.

7.0 LEGAL IMPLICATIONS

- 7.1 By virtue of Sections 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Council may suspend or revoke a *drivers licence* on the following grounds:-

a) That since the grant of a licence the driver has:

- (i) been convicted of an offence involving dishonesty, indecency or violence; or

- (ii) been convicted of an offence under, or has failed to comply with, the provisions of the Town and Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976; or

(b) Any other reasonable cause.

- 7.2 An alternative to suspension or revocation of the licence is to provide the individual with an appropriate written warning. In any event, reasons need to be given for the decision reached.
- 7.3 Members may also wish to consider that no action should be taken in respect of this matter.
- 7.4 In reaching its decision, the Licensing and Enforcement Committee is a quasi judicial body, and accordingly must have regard to the rules of natural justice.
- 7.5 The Committee must consider only that evidence which is presented by the licensee (or representative) and the Council Officer. No account should be taken of irrelevant matters. Hearsay evidence is admissible, such as the attached statements, but caution must be exercised with the weight that is attached to any such evidence.
- 7.6 In assessing the weight to be given to any representations Members should be aware of the need for specific details in respect of any matters referred to and of the need for supporting evidence in respect thereof.
- 7.7 The Committee must act reasonably in coming to a decision, which must be based on the evidence presented to it.
- 7.8 The rights attached to a licence is defined as a possession and therefore fall under Protocol 1, to Article 1 and Article 8 of the European Convention on Human Rights (implemented by the Human Rights Act 1998). A revocation or suspension would be a deprivation of the economic interests attached to the licence. The Committee can only deprive the licensee of his licence if that action is either in the general interests or the public interest and is also proportionate.
- 7.9 There is a right of appeal to the Magistrates' Court against any Committee's decision to suspend or revoke a private hire drivers' licence under section 61 of the LG(MP)A 1976. An appeal must be made within 21 days from the date on which notice of the Committee's decision is served upon the licence holder. The effect of the 21 day period and any appeal made is to stay any action until the appeal is determined.
- 7.10 Any Magistrates' Court appeal hearing will be a completely fresh hearing of information available at the date of that hearing. For all intents and purposes, the Magistrates will place themselves in the position of the Committee to satisfy itself of the same principles the Committee must have satisfied itself for their decision. Some weight will be attached to the Committee decision but not overwhelming weight. The Magistrates have discretion to award costs to either party or not at all. The award of costs is normally the exception rather than the rule and may be dictated by the reasonableness of the parties.

8.0 RISK MANAGEMENT IMPLICATIONS

8.1 The key risks arising from this relate to decisions taken by the Licensing and Enforcement Committee. Any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty. There is a risk of appeal to the Magistrates Court should an inappropriate decision be made.

9.0 PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

9.1 There are no adverse impacts or any risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation and community cohesion.

10.0 OTHER CORPORATE IMPLICATIONS

1. Community Safety

The licensing system makes provision for both medicals and Criminal Record Bureau checks and conviction notifications so that the fitness and suitability of persons to be licensed can be kept under review and assessed.

2. Environmental

None.

3. Staffing

There are no staffing implications attached to the recommendations in this report.

4. Trade Union

There are no Trade Union implications attached to this report.

Background Papers :

Published Papers :

Person to Contact : Carl Knights
Tel: 396311
E-mail: carl.knights@gloucester.gov.uk

STATEMENT OF WITNESS

(CJ ACT 1967, s9; MC ACT 1980, s102; MC Rules 1981,r70)ss5A(3)(a) and 5B

STATEMENT OF JOHN BAMBER

Age of witness (if over 18 enter 'over 18') OVER 18

Occupation of witness: LICENSING ENFORCEMENT OFFICER

Address: Licensing Unit,
Herbert Warehouse, The Docks, Gloucester, GL1 2EQ.

This statement (consisting of Two. pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed 

Date. 01.03.2010

I am an authorised officer for the purposes of the Local Government (Miscellaneous Provisions) Act.1976 and the Town Police Clauses Act 1847. On Friday 26.02.2010. I was on duty in company with Constable 1519 HOWES in a Police vehicle on a joint operation to ensure that Hackney Carriages and Private Hire vehicles are operating in accordance with licensing conditions .At 23.45 Hours Officer Howes stopped Gloucester City Council Private Hire licence number 291 ,vehicle registration mark SE03 ENP in Bristol Road in Gloucester by using the police vehicles emergency equipment I observed Officers Harker and Mulla seated in the private hire vehicle. I asked the officers the circumstances of how they had hired the vehicle. I identified myself to the driver by showing him my photographic identity card. I pointed out the offences of, Plying for hire without having a licence to do so and using a vehicle without



01.03.2010,

insurance in respect of public hire. I cautioned the driver and informed him that he was not under arrest and free to seek legal representation. I said, "DO YOU UNDERSTAND WHAT I HAVE JUST SAID". The driver replied "YES". I asked the driver if he wished to make any reply to the caution. He replied, "THATS FINE THATS IT". I asked the driver to show me his Private Hire drivers badge, the driver showed me his Gloucester City Council badge number 433 the photograph matched the driver. The driver gave his details as, Mahomed Hanif Issak, 105 Ryecroft Street, Gloucester, GL1 4ND, Date of Birth 04.04.1955. I informed Mr Hanif Issak that the facts will be reported and you may be summonsed for these offence and any other offences that may come to light. I then asked Mr Hanif Issak to read and sign my notebook if it was a true and accurate record of the incident. Mr Hanif Issak read and signed the notebook and timed and dated the entry as 23.54 hours, 26.02.2010. I wish to enter in to evidence as Exhibit JB1/HANIF ISSAK 26.02.2010 a copy of the notebook entry. Gloucestershire Police then issued the driver with a fixed penalty notice for the insurance offence.



Teh Bhan

01.03.2010.

EXHIBIT
JB1/ HANIF
ISSUE 26.02.2010.
[Signature]

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Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

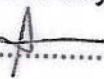
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Title Statement of SC Harker 258960
Age if under 18 Over (if over 18 insert "over 18") Occupation

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 27th day of Feb 2010

Signature.....

Evidence Visually Recorded YES NO (Supply witness details on rear.) V.P.S.S. Actioned YES NO

I am SC HARKER 8960 of Gloucester City station, on Friday 26th February 2010 I was on duty dressed in plain clothes, in the company of SC MULLA 8947 in the locality of EASTGATE STREET, GLOUCESTER. I was taking part in Operation Acro, an operation aiming to assess how compliant licensed private hire drivers are in areas that complaints are received that illegal plying for hire is taking place.

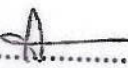
At approximately 2340 I approached a vehicle registration SE03 ENP taxi number 291 clearly marked with a yellow sign saying private hire, at this time the vehicle was stationary outside TNT, Bastgate Street, Gloucester, I asked the male driver "Are you free? To which he replied "yes" I then asked him if he would take us to The Weavers Arms, Quedgeley, He again replied "yes", so myself and SC Mulla 8947 got into the vehicle. We had at no time pre-booked this taxi, nor did we identify ourselves as police officers.

asked the driver what the cost of the journey would be to which he replied " I don't know its on the metre", at this point he engaged the meter and started driving us to our destination.

As we were traveling down Bristol Road, Gloucester, just before McDonalds, the Taxi stopped as it has been indicated to do so by the unmarked Traffic car that was behind us. I noticed at this point that the metre was reading £8.20

The officer from within the traffic car then came to the vehicle that we were in and asked the driver to move out of the car. The officer then asked us how we booked the vehicle I replied "I asked him if he was free and would bring us to Weavers arms, Quedgeley and he did." The officer also asked me if I had at any point pre-booked the taxi to which I replied "no".

We then remained in the vehicle until the officers allowed us to leave.

Signature..... Signature witnessed by

Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

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Title Statement of SC MULLA 8947
Age if under 18 Over (if over 18 insert "over 18") Occupation

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 27th day of Feb 2010

Signature 

*Evidence Visually Recorded YES NO (Supply witness details on rear.) V.P.S.S. Actioned YES NO

I am SC MULLA 8947 of Barton Street police station. On Friday 26th February 2010 I was on duty in the locality of EASTGATE STREET, GLOUCESTER in the company of SC HARKER 8960 dressed in plain clothes. I was taking part in Operation Acro,


At approximately 2340 SC HARKER 8960 approached a vehicle registration SE03 ENP taxi number 291 clearly marked with a yellow sign saying private hire. The vehicle was stationary outside TNT, Eastgate Street, Gloucester. SC HARKER 8960 asked the male driver "Are you free? To which he replied "yes." SC HARKER then asked him if he would take us to The Weavers Arms, Quedgeley, He again replied "yes", so myself and SC HARKER got into the vehicle. We had at no time pre-booked this taxi, nor did we identify ourselves as police officers.

SC HARKER 8960 asked the driver the cost of the journey, to which he replied " I don't know its on the metre", at this point he engaged the meter and started driving us to our destination.

As we were traveling down Bristol Road, Gloucester, just before McDonalds, the Taxi stopped as it has been indicated to do so by the unmarked Traffic car that was behind us. I noticed at this point that the metre was reading £8.20

The officer from within the traffic car then came to the vehicle that we were in and asked the driver to move out of the car. The officer then asked us how we booked the vehicle. SC HARKER 8960 replied "I asked him if he was free and would bring us to the Weavers Arms Quedgeley and he did." The officer also asked SC HARKER if she had at any point pre-booked the taxi, of which she replied "no".

We then remained in the vehicle until the officers allowed us to leave.

Signature  Signature witnessed by

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

General Policy

1. Each case will be decided on its own merits.

The overriding consideration must be the safety of the public. The council has a duty to ensure so far as is possible that persons licensed to drive hackney and private hire vehicles are fit and proper persons to do so.

2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain:
 - (a) Free of convictions for an appropriate period, and
 - (b) Show evidence of good character from the time of the conviction. Simply remaining free of conviction does not necessarily provide sufficient evidence of good character.

Discretion would be appropriate where an offence is an isolated one and there are mitigating circumstances. Multiple offences or a series of offences over a period of time would give greater cause for concern and may give indications of a pattern of criminal behaviour which would need to be taken into account.

3. The following examples afford a general guide on the action to be taken where convictions are disclosed:

- (a) Minor Traffic Offences

Isolated convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, etc., should not prevent a person from proceeding with an application. However the number, type and frequency of the type of offence should be taken into account. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage or Private Hire Drivers Licence may be granted after its restoration but a warning should be issued as to future conduct.

- (b) Major Traffic Offences

An isolated conviction for a major traffic offence should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

A list of those offences considered as major is attached.

ENVIRONMENTAL HEALTH

Gloucester City Council Tel 01452 396396 Fax 01452 396340
Herbert Warehouse Email enviro@gloucester.gov.uk
The Docks Minicom 01452 396161
Gloucester GL1 2EQ www.gloucester.gov.uk



(c) Drunkenness

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour.

More than one conviction for this type of offence should raise grave doubts as to the applicants fitness to hold a licence and, where disqualification has occurred, at least 3 years from the date of restoration of the drivers licence should have elapsed before the application is considered.

If there is any suggestion that the applicant is an alcoholic a special medical examination should be arranged and if the applicant is found to be an alcoholic there should be a period of at least 5 years from the completion of detoxification treatment before an application is entertained

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

(e) Indecency Offences

As Hackney Carriage and Private Hire drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 5 years) free of such offences. More than one conviction of this should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued. NB Sexual Offences Register.

(f) Violence

As hackney carriage and PHV drivers maintain close contact with the public a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. Depending on the seriousness of the offence at least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

(g) Dishonesty

Hackney carriage drivers and PHV drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

(h) Licensing Offences

Any contravention of licensing laws or conditions, irrespective of whether or not these are related to hackney carriage or private hire licensing, are important as they suggest a disregard of the importance of those requirements. Depending on the nature and seriousness of the offence 1 to 3 years should have elapsed following conviction before an application is entertained.

(i) Offences of Discrimination

Offences of discrimination are a serious concern to all as they represent unacceptable treatment of certain sections of our society. A conviction for this type of offence should be taken extremely seriously. Each case would need to be assessed on an individual basis and although the applicant may not be debarred from receiving a licence a strict warning should always be given. On considering any case care should be taken before issuing a licence to assess if the applicant is deemed to be a 'fit and proper person' to hold a licence.

(j) Other Miscellaneous Offences

These could include local authority offences, bye law offences, nuisance offences etc. which although may not be directly relevant to hackney carriage and private hire licensing would demonstrate a feckless or irresponsible attitude and should not be discounted lightly. Each case would need to be assessed on an individual basis and although they may not necessarily debar an applicant from receiving a licence a strict warning should be given.

(k) Spent Convictions

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that full consideration for determining the application cannot be given except by admitting or requiring evidence relating to that spent conviction.

(l) Cautions and Endorsable Fixed Penalties

For the purposes of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

MAJOR TRAFFIC OFFENCES

Paragraph 3(b) refers

AC10	Failing to stop after an accident.
AC20	Failing to give particulars or to report an accident within 24 hours.
AC30	Undefined accident offences.
BA10	Driving while disqualified due to care and attention.
BA20	Attempting to drive while disqualified by order of the court.
CD10	Driving without due care and attention.
CD20	Driving without reasonable consideration for other road users.
CD30	Driving without due care and attention or without reasonable consideration for other road users.
CD40	Causing death through careless driving when unfit through drink.
CD50	Causing death by careless driving when unfit through drugs.
CD60	Causing death by careless driving with alcohol level above the limit.
CD70	Causing death by driving then failing to supply a specimen for analysis.
DD40	Dangerous driving.
DD60	Manslaughter or culpable homicide while driving a vehicle.
DD80	Causing death by dangerous driving.
DR10	Driving or attempting to drive with alcohol level above limit.
DR20	Driving or attempting to drive while unfit through drink.
DR30	Driving or attempting to drive then failing to supply a specimen for analysis.
DR40	In charge of a vehicle while alcohol level above limit.
DR50	In charge of a vehicle while unfit through drink.
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive.
DR70	Failing to provide specimen for breath test.
DR80	Driving or attempting to drive when unfit through drugs.
DR90	In charge of vehicle when unfit through drugs.
IN10	Using a vehicle uninsured against third party risks.
LC20	Driving otherwise than in accordance with a license.
LC30	Driving after making a false declaration about fitness when applying for a license.
LC40	Driving a vehicle having failed to notify a disability.
LC50	Driving after a license has been revoked or refused on medical grounds.
MS50	Motor racing on the highway.
MS60	Offences not covered by other codes.
UT50	Aggravated taking of a vehicle.

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Procedure at the Hearing

59. In view of the nature of the hearing and the personal facts that may emerge, the hearing will be conducted with the press and public excluded. Pursuant to Section 100A(4) of the Local Government Act 1972 (as amended), the public would be excluded on the grounds that the matter involves the likely disclosure of exempt information as defined in Section 100I of the Local Government Act 1972 (as amended).
60. The Chair of the Committee will open the hearing, stressing the Committee's independence and outlining the procedures which will be followed. The Committee can regulate the conduct of the hearing as it wishes, so long as it is acting fairly and reasonably to the parties thereto.
61. The recommended procedure is as follows:-
- i) The Council's case is presented by the Environmental Health Manager (Commercial) or the Licensing Enforcement Officer.
 - ii) The Officer is questioned by the Licensee (or representative) and then by Members of the Committee if any points need clarification.
 - iii) The Chair invites the Licensee (or representative) to present his case.
 - iv) The Licensee (or representative) can be questioned by the Council's officers and/or Members if any points need clarification. Even if represented, the Licensee can be asked questions directly.
 - v) Each side must be given the opportunity to sum up if they so wish, the Licensee (or representative) speaking last.
 - vi) At the conclusion of the case the Chair will request the licensee/representative/ witnesses/Environmental Health Manager (Commercial) (or his representative) to leave the room while the Committee deliberates.
 - vii) When the Committee has reached its decision, the Licensee (or representative) will be invited to return to be informed of the decision.
 - viii) The decision will later be confirmed in writing and will include a statement of reasons for reaching that decision.

Failure to Attend

62. If the Licensee does not attend the hearing at the appointed time and day then the Committee can continue and consider the complaint without the Licensee's presence on the basis of the evidence provided by the Officer, together with any written comments received from the Licensee concerned.

The Committee's Powers

63. The Committee has the following powers:-

- i) To take no action;
- ii) To give a written warning, first or final;
- iii) To suspend for a period of time;
- iv) To revoke the licence;
- v) To require a licensed driver to undertake the approved driver assessment scheme.

Applicants/Licensees Rights

64. To take legal advice at any time.

65. To be represented by a Solicitor or other representative during any part of the procedure. Licensee to be responsible for all costs arising from such representation.

66. To produce all relevant evidence in respect of his case. However, such evidence must be disclosed to the Head of Legal Services at least 7 working days prior to the hearing.

67. To ask questions of the Committee or Officers.

68. To appeal to the appropriate Court against any decision to refuse, suspend or revoke a licence or against a licence condition.

Points to Note

69. The Head of Legal Services will act as Clerk to the Committee and provide advice when needed on matters which may be raised of a legal or procedural nature, either during the hearing or before the Committee's decision is announced.

70. Both sides must be given every reasonable opportunity to present their case.

71. In order to assist the Licensee to present his case, there should be no excessive formality about the hearing. The atmosphere should be such as to bring out all of the facts to enable the Committee to make a reasoned decision.

72. The Committee must not only act but must be seen to act fairly and impartially. The Committee will be acting in quasi judicial manner and must consider only the evidence which is put before it. The Committee must act reasonably on the basis of the evidence and not take into account extraneous or irrelevant facts.

73. Licensees must be made aware that the hearing may take a number of hours to complete and should be prepared to wait until the completion of the case before leaving. It may be that the Committee will be considering other business and several disciplinary cases may be heard on the same day. This could result in several hours wait for a particular Licensee.

CONFIDENTIAL**Gloucester City Council**

COMMITTEE	: LICENSING & ENFORCEMENT
DATE	: 31 JANUARY 2011
SUBJECT	: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 – DISCIPLINARY MATTER - PRIVATE HIRE DRIVER NUMBER 367 MR A H
WARD	: ALL
REPORT BY	: GROUP MANAGER, ENVIROMENTAL HEALTH & REGULATORY SERVICES
NO. OF APPENDICES	: 1: WITNESS STATEMENTS RELATING TO OPERATION ACRO 2: LETTER FROM MR AH RECEIVED 4TH MARCH 2010 3: GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS 4: PROCEDURE AT THE HEARING PARAGRAPHS 59 TO 73 OF THE GENERAL CONDITIONS
REFERENCE NO.	: ES21104

1.0 PURPOSE OF REPORT

- 1.1 For Members to consider and determine a disciplinary matter referred to them for consideration.

2.0 RECOMMENDATIONS

- 2.1 The Committee is advised to consider the following courses of action:

- a) To take no action
- b) To issue a written warning
- c) To suspend the Private Hire Driver licence for a period of time to be determined by the committee but not for a period exceeding the expiry date of the current licence.
- d) To revoke the licence. In such circumstances the Committee may wish to give an indication on a suitable time period that must elapse prior to a fresh application being made.

3.0 BACKGROUND

- 3.1 The City Council has statutory powers to licence Hackney Carriage and Private Hire Drivers and may apply conditions to the issue of such a licence. The City Council have approved a comprehensive set of general conditions which are intended to maintain minimum standards of operation within the Hackney Carriage and Private Hire trades for the benefit, convenience and safety of the travelling public. The fundamental difference between Hackney Carriages and Private Hire vehicles is that only Hackney Carriages may ply for hire or stand on a rank. Private Hire vehicles licensed under the Local Government (Miscellaneous Provisions) Act 1976 by the City Council may only be pre-booked through a Private Hire Operator also licensed by Gloucester City Council. This requirement is laid down by legislation and is not specific to Gloucester City Council.
- 3.2 The licence holder has been written to explaining the need for the disciplinary hearing. He has been sent a copy of this report and invited to attend this hearing.

4.0 INFORMATION

- 4.1 Mr John Hamblin has been a licensed Private Hire Driver with Gloucester City Council since 7th August 1996. His current licence is due to expire on 13th August 2011. Mr Hamblin has not been the subject of any previous disciplinary proceedings but received a conviction for speeding (SP30) back in 1999.
- 4.2 On 27th February 2010 Operation ACRO, a test purchase operation was conducted by the City Council in partnership with Officers from Gloucestershire Constabulary. Following the operation Mr Hamblin was convicted at Gloucester Magistrates Court on 29th October 2010 for the offence of plying for hire without a licence contrary to section 45 of the Town Police Clauses Act 1847. Mr Hamblin pleaded guilty to the charge and was fined £300 with a £15 victim surcharge and ordered to pay £200 Council Costs. Mr Hamblin notified of this offence by letter received 4th March and indicates that he booked the job through to his operator by phone and didn't realise this was not allowed. A copy of this letter can be seen at **Appendix 2**.
- 4.3 The circumstances of the offence are as follows:
- At approximately 21.35 hours on 26th February 2010, Mr Hamblin was in Private Hire Vehicle (PHV) 191 in Eastgate Street. The vehicle was approached by two plain clothed police officers who got into the vehicle and asked Mr Hamblin what the cost of the journey would be to Tesco, Quedgeley, to which he replied: "usually 10 or 11 quid there". PHV 191 was subsequently stopped near the end of Bristol Road in Quedegley by an unmarked Police car and the occupants questioned. The plain clothes Police Officers confirmed that they had not pre-booked the vehicle. Mr Hamblin was reported for the offence and issued a fixed penalty notice by Gloucestershire Police for using a vehicle uninsured against third party risks (IN10).
- 4.4 Statements from the two Police Officers and the Council Officer involved are attached at **Appendix 1**.

4.5 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides:

- (1) Notwithstanding anything in the Act of 1847 or in this Part of the Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:-

(a) that he has since the grant of the licence-

- (i) been convicted of an offence involving dishonesty, indecency or violence; or*
- (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of this Act; or*

(b) any other reasonable cause.

(2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.

(2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

Members are advised that should the Committee determine that Mr Hamblin's PHD licence should be suspended or revoked it must be done under section 61(1)(a)(ii). Should Members deem necessary by virtue of section 61(2B) such suspension or revocation can take immediate effect provided a statement is included stating the reasons why this action is necessary in the interests of public safety.

4.6 In accordance with section 51(1) of the 1976 Act the Council must be satisfied that all licensed drivers are fit and proper persons to hold such a licence. In making this determination the overriding concern must be that of the safety of the travelling public. Whilst section 61 of the 1976 Act provides for the suspension of PHD licences, this can only be imposed because a person is no longer a fit and proper person to hold such a licence, and should not be used as a means of punishment. It would be difficult to justify how the passage of time alone would be certain of restoring a person's fit and proper status. It could be argued that suspension may be an appropriate option where a viable solution can be implemented to improve the fit and proper status of the licence holder. In most cases suspension is more likely to be an option where, for example, serious concerns are raised over the suitability of an individual to hold a driver licence, but more time is needed to investigate the matter.

- 4.7 The Council has adopted guidelines in relation to the relevance of convictions. Members are advised that whilst due regard must be given to these guidelines the committee's discretion should not be fettered by them and each case must be considered on its merits. The guidelines are attached at **Appendix 3**. Member's attention is drawn to paragraph 3(h).

5.0 CONCLUSIONS

- 5.1 Mr Hamblin has been a licensed Private Hire Driver for some 14 years and is well aware of the regulations regarding hire and reward. Private hire licensing is all about public safety to which this driver appears to have a casual approach if not a complete disregard.
- 5.2 It is the responsibility of every PHD to ensure passengers they carry are indeed the very ones that have made a booking with their operator. The right to ply for hire is held in great importance by the Hackney Carriage trade and is always a sensitive issue. The issue of PHD illegally plying for hire is of great concern as it puts the travelling public at risk, as such it is imperative that such action is not tolerated by the City Council.
- 5.3 The Committee's consideration, based on the balance of probabilities, is whether Mr Hamblin is a fit and proper person to hold a PHD licence together with the Council's duty to protect the public and the licence holder's rights under Article 1 of the First Protocol to the European Convention on Human rights.
- 5.4 If having done so the Committee determines that Mr Hamblin is not a fit and proper person to hold such a licence they may either suspend or revoke his licence. Should the Committee be minded that neither of these actions are appropriate, they may either issue a written warning to Mr Hamblin with respect to his conduct or take no further action.

6.0 FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications attached to the recommendations in this report. However Members are advised that as detailed below Mr Hamblin has a right of appeal against any decision to suspend or revoke his PHD licence. At any such appeal costs may be awarded against the Council on successful appeal if the Council has not acted reasonably.

7.0 LEGAL IMPLICATIONS

- 7.1 By virtue of Sections 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Council may suspend or revoke a *drivers licence* on the following grounds:-
- a) That since the grant of a licence the driver has:
- (i) been convicted of an offence involving dishonesty, indecency or violence;
or

(ii) been convicted of an offence under, or has failed to comply with, the provisions of the Town and Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976; or

(b) Any other reasonable cause.

- 7.2 An alternative to suspension or revocation of the licence is to provide the individual with an appropriate written warning. In any event, reasons need to be given for the decision reached.
- 7.3 Members may also wish to consider that no action should be taken in respect of this matter.
- 7.4 In reaching its decision, the Licensing and Enforcement Committee is a quasi judicial body, and accordingly must have regard to the rules of natural justice.
- 7.5 The Committee must consider only that evidence which is presented by the licensee (or representative) and the Council Officer. No account should be taken of irrelevant matters. Hearsay evidence is admissible, such as the attached statements, but caution must be exercised with the weight that is attached to any such evidence.
- 7.6 In assessing the weight to be given to any representations Members should be aware of the need for specific details in respect of any matters referred to and of the need for supporting evidence in respect thereof.
- 7.7 The Committee must act reasonably in coming to a decision, which must be based on the evidence presented to it.
- 7.8 The rights attached to a licence is defined as a possession and therefore fall under Protocol 1, to Article 1 and Article 8 of the European Convention on Human Rights (implemented by the Human Rights Act 1998). A revocation or suspension would be a deprivation of the economic interests attached to the licence. The Committee can only deprive the licensee of his licence if that action is either in the general interests or the public interest and is also proportionate.
- 7.9 There is a right of appeal to the Magistrates' Court against any Committee's decision to suspend or revoke a private hire drivers' licence under section 61 of the LG(MP)A 1976. An appeal must be made within 21 days from the date on which notice of the Committee's decision is served upon the licence holder. The effect of the 21 day period and any appeal made is to stay any action until the appeal is determined.
- 7.10 Any Magistrates' Court appeal hearing will be a completely fresh hearing of information available at the date of that hearing. For all intents and purposes, the Magistrates will place themselves in the position of the Committee to satisfy itself of the same principles the Committee must have satisfied itself for their decision. Some weight will be attached to the Committee decision but not overwhelming weight. The Magistrates have discretion to award costs to either party or not at all. The award of costs is normally the exception rather than the rule and may be dictated by the reasonableness of the parties.

8.0 RISK MANAGEMENT IMPLICATIONS

- 8.1 The key risks arising from this relate to decisions taken by the Licensing and Enforcement Committee. Any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty. There is a risk of appeal to the Magistrates Court should an inappropriate decision be made.

9.0 PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

- 9.1 There are no adverse impacts or any risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation and community cohesion.

10.0 OTHER CORPORATE IMPLICATIONS

1. Community Safety

The licensing system makes provision for both medicals and Criminal Records Bureau checks and conviction notifications so that the fitness and suitability of persons to be licensed can be assessed and kept under review.

2. Environmental

None

3. Staffing

There are no staffing implications attached to the recommendations in this report.

4. Trade Union

There are no Trade Union implications attached to this report.

Background Papers : Service Records
Published Papers : None
Plans : None
Person to Contact : Philippa Finnegan
Tel: (01452) 396028
Fax: (01452) 396340
E-mail: phf@gloucester.gov.uk

STATEMENT OF WITNESS

(CJ ACT 1967, s9; MC ACT 1980, s102; MC Rules 1981,r70)ss5A(3)(a) and 5B

STATEMENT OF JOHN BAMBER

Age of witness (if over 18 enter 'over 18') OVER 18

Occupation of witness: LICENSING ENFORCEMENT OFFICER

Address: Licensing Unit,
Herbert Warehouse, The Docks, Gloucester, GL1 2EQ.

This statement (consisting of Two. pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed 

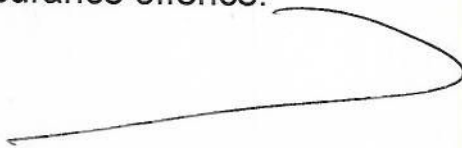
Date. 01.03.2010

I am an authorised officer for the purposes of the Local Government (Miscellaneous Provisions) Act.1976 and the Town Police Clauses Act 1847.On Friday 26.02.2010.I was on duty in company with Constable 1519 HOWES in a Police vehicle on a joint operation to ensure that Hackney Carriages and Private Hire vehicles are operating in accordance with licensing conditions .At 21.45 Hours Officer Howes stopped Gloucester City Council Private Hire licence number 191 ,vehicle registration mark KS06 JLO on Bristol Road in Gloucester by using the police vehicles emergency equipment I observed Officers Harker and Drew seated in the private hire vehicle. I identified myself to the driver by showing him my photographic identity card. I asked the driver to show me his Private Hire drivers badge ,the driver showed me his Gloucester City Council



01.03.2010

badge number 367 the photograph matched the driver .The driver gave his details as, Anthony John Hamblin ,1 Gilbert Road, Long Levens,Gloucester,GL2 0TR,Date of Birth 02.03..1960 I asked Officers Harker and Drew the circumstances of how they had hired the vehicle .I then spoke with the driver of the vehicle. I asked, "DO YOU HOLD AN OPERATORS LICENCE WITH GLOUCESTER CITY COUNCIL". The driver replied "NO."I pointed out the offences of acting as an operator without having a licence to do so in the controlled district of The City of Gloucester, Plying for hire without having a licence to do so and using a vehicle without insurance in respect of public hire. I cautioned the driver and informed him that he was not under arrest and free to seek legal representation .I asked, DO YOU UNDERSTAND WHAT I HAVE JUST SAID. The driver replied YES...I asked if he wished to make any reply to the caution. He replied, "NO NO". I informed Mr Hamblin that the facts will be reported and you may be summonsed for these offence and any other offences that may come to light. I then asked Mr Hamblin to read and sign my notebook if it was a true and accurate record of the incident .Mr Hamblin read and signed the notebook and timed and dated the entry as 21.54 hrs, 26.02.2010.I then noted that the meter was engaged and showing a fare of £17.40.I made a further entry in the notebook and Mr Hamblin made a further signature after the entry ,He then informed me his operator was Johns. I wish to enter a copy of the notebook in to evidence as exhibit JB1/HAMBLIN 26.02.2010.Gloucestershire Police then issued Mr Hamblin with a fixed penalty notice for the insurance offence.



01.03.2010

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21

Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

URN

53

Title Statement of SC Harker 258960

Age if under 18 Over (if over 18 insert "over 18") Occupation

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 27th day of Feb 2010

Signature.....

*Evidence Visually Recorded YES NO (Supply witness details on rear.) V.P.S.S. Actioned YES NO

I am SC HARKER 8960 of Gloucester City station, on Friday 26th February 2010 I was on duty dressed in plain clothes, in the company of SC DREW 8952 in the locality of EASTGATE STREET, GLOUCESTER. I was taking part in Operation Acro, an operation aiming to assess how compliant licensed private hire drivers are in areas that complaints are received that illegal plying for hire is taking place.

At approximately 2135 I approached a vehicle registration KS06 JLO clearly marked with a yellow sign saying private hire, at this time the vehicle was stationary outside Butlers on Eastgate Street Gloucester, I asked the male driver "can you take me to Tesco, Quedgeley." to which he replied "That should be fine." I entered the vehicle, as did SC Drew 8952. We had at no time pre-booked this taxi, nor did we identify ourselves as police officers, as we started to move off the taxi driver turned to us and said that he needed to call in the job, he asked me my name and I replied Lisa, he did this using his Taxi radio, saying to the operator, "I have just dropped someone at Butlers and have now picked up a girl called Lisa and I'm taking her to Quedgeley."

When the driver had finished the call I asked him how much it would be to go to Tescos, to which he replied "usually 10 or 11 quid to there." I said that that was fine and we continued on the journey. While in the vehicle I noted the plate on the dashboard with the number 191 printed on it.

As we were approaching the Quedgeley end of Bristol Road, the Taxi stopped as it has been indicated to do so by the unmarked Traffic car that was behind us. I noticed at this point that the metre had been engaged and was now reading £12.

The officer from within the traffic car then came to the vehicle that we were in and asked the driver to move out of the car. The officer then asked us how we booked the vehicle I replied "We just approached the vehicle outside Butlers and he agreed to take us to Tescos in Quedgeley."

We then remained in the vehicle until the officers allowed us to leave.

Signature Signature witnessed by

Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

URN

53				
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Title Miss Statement of Kirsty Louise Drew

Age if under 18 over 18 (if over 18 insert "over 18") Occupation Special Constable

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 1 day of March 2010

Signature *[Signature]* SC 8952

*Evidence Visually Recorded YES NO (Supply witness details on rear.) V.P.S.S. Actioned YES NO

I am the above named person and I am currently employed by Gloucestershire Constabulary as a Special Constable.

On 26th February 2010 I was in plain clothes crewed with SC Lisa Harker 8960 for Operation ACRO. At 21.35 hrs we approached a parked private hire taxi on EASTGATE STREET outside Butlers bar. SC Harker spoke to the driver and said 'Can you take us to Tesco's in Quedgeley'. The driver then replied 'Yeah, that should be fine'. We then got into the vehicle, once we were inside, the driver said 'Whats your name? I just need to phone the job through'. He spoke to his radio operator and said 'I was just dropping someone outside Butlers and this girl called Lisa asked me to take her to Quedgeley'. When he had finished speaking SC Harker asked him how much it would be, he replied 'About 10 or 11 quid to there'. I would describe the driver as around 50yrs old, approx 6ft tall with dark grey hair. We continued on our journey. When we had almost reached Tesco, we were stopped by an unmarked police car and an enforcement officer from the council on BRISTOL ROAD. The number on the dashboard of the cab was 191 and the vehicle registration mark was KS06 JLO. At no point did we pre-book this private-hire taxi.

Signature *[Signature]* SC 8952

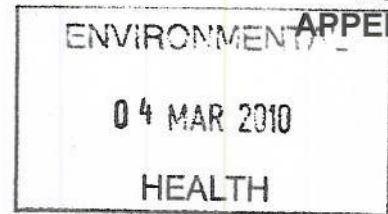
Signature Witnessed By _____

Page Number of Pages

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Dear Sir/Madam

03/03/2010



I feel I need to write down my side of the incident on Friday 26th February 2010.

I Anthony John Hamblin had a pick-up for the Hare and Hounds Churchdown at about 21:20, the three men asked to be taken to Butlers in Eastgate Street Gloucester, which I did.

When they paid and exited the car I was immediately asked by the two ladies to take them to Quedgley, so I said that I would have to book the job through by phone in to the office. I have never been informed that this procedure is incorrect or illegal, as I have only ever been told that it's only illegal to make bookings by the radio. I have looked at all the handbooks of which I have and of other peoples of whom I work along side. And I am still unaware of anywhere that it states that what I have done is wrong. I was also not touting for business. There was a matter of a couple of seconds between dropping off the three men and being approached by the ladies. The two ladies asked me how much it would cost, to which I replied that it would be about £11-£12. As they got in to the car I then put the meter on, I then entered Bristol Road when I noticed an unmarked police car which was near Bakers Street Public House, due to it flashing its blue lights under his bumper.

When I got to the roundabout, at Tesco's the same unmarked police car put his lights on to signal me to pull over on to the pavement, I was then approached by one of the officers and asked for some identification which I gave him and then asked to stand out at the side of the road which I did. This was the last point I saw the two ladies which were in my car of which I never accepted any money's from to complete the journey.

At that moment a council official stepped out from either The Little Owl or Fryer Tucks car park, the council official then asked the officer if he could take over the incident and take my details from me. I was asked to get in to the back of the police car and the council official sat in the front, which he then took all the details of the incident.

Yours Sincerely

Anthony Hamblin.

PRIVATE HIRE DRIVER NO 367.
" " VEHICLE NO 191.

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GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

General Policy

1. Each case will be decided on its own merits.

The overriding consideration must be the safety of the public. The council has a duty to ensure so far as is possible that persons licensed to drive hackney and private hire vehicles are fit and proper persons to do so.

2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain:

- (a) Free of convictions for an appropriate period, and
- (b) Show evidence of good character from the time of the conviction. Simply remaining free of conviction does not necessarily provide sufficient evidence of good character.

Discretion would be appropriate where an offence is an isolated one and there are mitigating circumstances. Multiple offences or a series of offences over a period of time would give greater cause for concern and may give indications of a pattern of criminal behaviour which would need to be taken into account.

3. The following examples afford a general guide on the action to be taken where convictions are disclosed:

- (a) Minor Traffic Offences

Isolated convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, etc., should not prevent a person from proceeding with an application. However the number, type and frequency of the type of offence should be taken into account. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage or Private Hire Drivers Licence may be granted after its restoration but a warning should be issued as to future conduct.

- (b) Major Traffic Offences

An isolated conviction for a major traffic offence should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

A list of those offences considered as major is attached.

ENVIRONMENTAL HEALTH

Gloucester City Council Tel 01452 396396 Fax 01452 396340
Herbert Warehouse Email enviro@gloucester.gov.uk
The Docks Minicom 01452 396161
Gloucester GL1 2EQ www.gloucester.gov.uk



(c) Drunkenness

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour.

More than one conviction for this type of offence should raise grave doubts as to the applicants fitness to hold a licence and, where disqualification has occurred, at least 3 years from the date of restoration of the drivers licence should have elapsed before the application is considered.

If there is any suggestion that the applicant is an alcoholic a special medical examination should be arranged and if the applicant is found to be an alcoholic there should be a period of at least 5 years from the completion of detoxification treatment before an application is entertained

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

(e) Indecency Offences

As Hackney Carriage and Private Hire drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 5 years) free of such offences. More than one conviction of this should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued. NB Sexual Offences Register.

(f) Violence

As hackney carriage and PHV drivers maintain close contact with the public a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. Depending on the seriousness of the offence at least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

(g) Dishonesty

Hackney carriage drivers and PHV drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

(h) Licensing Offences

Any contravention of licensing laws or conditions, irrespective of whether or not these are related to hackney carriage or private hire licensing, are important as they suggest a disregard of the importance of those requirements. Depending on the nature and seriousness of the offence 1 to 3 years should have elapsed following conviction before an application is entertained.

(i) Offences of Discrimination

Offences of discrimination are a serious concern to all as they represent unacceptable treatment of certain sections of our society. A conviction for this type of offence should be taken extremely seriously. Each case would need to be assessed on an individual basis and although the applicant may not be debarred from receiving a licence a strict warning should always be given. On considering any case care should be taken before issuing a licence to assess if the applicant is deemed to be a ‘fit and proper person’ to hold a licence.

(j) Other Miscellaneous Offences

These could include local authority offences, bye law offences, nuisance offences etc. which although may not be directly relevant to hackney carriage and private hire licensing would demonstrate a feckless or irresponsible attitude and should not be discounted lightly. Each case would need to be assessed on an individual basis and although they may not necessarily debar an applicant from receiving a licence a strict warning should be given.

(k) Spent Convictions

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that full consideration for determining the application cannot be given except by admitting or requiring evidence relating to that spent conviction.

(l) Cautions and Endorsable Fixed Penalties

For the purposes of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

MAJOR TRAFFIC OFFENCES

Paragraph 3(b) refers

AC10	Failing to stop after an accident.
AC20	Failing to give particulars or to report an accident within 24 hours.
AC30	Undefined accident offences.
BA10	Driving while disqualified due to care and attention.
BA20	Attempting to drive while disqualified by order of the court.
CD10	Driving without due care and attention.
CD20	Driving without reasonable consideration for other road users.
CD30	Driving without due care and attention or without reasonable consideration for other road users.
CD40	Causing death through careless driving when unfit through drink.
CD50	Causing death by careless driving when unfit through drugs.
CD60	Causing death by careless driving with alcohol level above the limit.
CD70	Causing death by driving then failing to supply a specimen for analysis.
DD40	Dangerous driving.
DD60	Manslaughter or culpable homicide while driving a vehicle.
DD80	Causing death by dangerous driving.
DR10	Driving or attempting to drive with alcohol level above limit.
DR20	Driving or attempting to drive while unfit through drink.
DR30	Driving or attempting to drive then failing to supply a specimen for analysis.
DR40	In charge of a vehicle while alcohol level above limit.
DR50	In charge of a vehicle while unfit through drink.
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive.
DR70	Failing to provide specimen for breath test.
DR80	Driving or attempting to drive when unfit through drugs.
DR90	In charge of vehicle when unfit through drugs.
IN10	Using a vehicle uninsured against third party risks.
LC20	Driving otherwise than in accordance with a license.
LC30	Driving after making a false declaration about fitness when applying for a license.
LC40	Driving a vehicle having failed to notify a disability.
LC50	Driving after a license has been revoked or refused on medical grounds.
MS50	Motor racing on the highway.
MS60	Offences not covered by other codes.
UT50	Aggravated taking of a vehicle.

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Procedure at the Hearing

59. In view of the nature of the hearing and the personal facts that may emerge, the hearing will be conducted with the press and public excluded. Pursuant to Section 100A(4) of the Local Government Act 1972 (as amended), the public would be excluded on the grounds that the matter involves the likely disclosure of exempt information as defined in Section 100I of the Local Government Act 1972 (as amended).
60. The Chair of the Committee will open the hearing, stressing the Committee's independence and outlining the procedures which will be followed. The Committee can regulate the conduct of the hearing as it wishes, so long as it is acting fairly and reasonably to the parties thereto.
61. The recommended procedure is as follows:-
- i) The Council's case is presented by the Environmental Health Manager (Commercial) or the Licensing Enforcement Officer.
 - ii) The Officer is questioned by the Licensee (or representative) and then by Members of the Committee if any points need clarification.
 - iii) The Chair invites the Licensee (or representative) to present his case.
 - iv) The Licensee (or representative) can be questioned by the Council's officers and/or Members if any points need clarification. Even if represented, the Licensee can be asked questions directly.
 - v) Each side must be given the opportunity to sum up if they so wish, the Licensee (or representative) speaking last.
 - vi) At the conclusion of the case the Chair will request the licensee/representative/witnesses/Environmental Health Manager (Commercial) (or his representative) to leave the room while the Committee deliberates.
 - vii) When the Committee has reached its decision, the Licensee (or representative) will be invited to return to be informed of the decision.
 - viii) The decision will later be confirmed in writing and will include a statement of reasons for reaching that decision.

Failure to Attend

62. If the Licensee does not attend the hearing at the appointed time and day then the Committee can continue and consider the complaint without the Licensee's presence on the basis of the evidence provided by the Officer, together with any written comments received from the Licensee concerned.

The Committee's Powers

63. The Committee has the following powers:-

- i) To take no action;
- ii) To give a written warning, first or final;
- iii) To suspend for a period of time;
- iv) To revoke the licence;
- v) To require a licensed driver to undertake the approved driver assessment scheme.

Applicants/Licensees Rights

64. To take legal advice at any time.

65. To be represented by a Solicitor or other representative during any part of the procedure. Licensee to be responsible for all costs arising from such representation.

66. To produce all relevant evidence in respect of his case. However, such evidence must be disclosed to the Head of Legal Services at least 7 working days prior to the hearing.

67. To ask questions of the Committee or Officers.

68. To appeal to the appropriate Court against any decision to refuse, suspend or revoke a licence or against a licence condition.

Points to Note

69. The Head of Legal Services will act as Clerk to the Committee and provide advice when needed on matters which may be raised of a legal or procedural nature, either during the hearing or before the Committee's decision is announced.

70. Both sides must be given every reasonable opportunity to present their case.

71. In order to assist the Licensee to present his case, there should be no excessive formality about the hearing. The atmosphere should be such as to bring out all of the facts to enable the Committee to make a reasoned decision.

72. The Committee must not only act but must be seen to act fairly and impartially. The Committee will be acting in quasi judicial manner and must consider only the evidence which is put before it. The Committee must act reasonably on the basis of the evidence and not take into account extraneous or irrelevant facts.

73. Licensees must be made aware that the hearing may take a number of hours to complete and should be prepared to wait until the completion of the case before leaving. It may be that the Committee will be considering other business and several disciplinary cases may be heard on the same day. This could result in several hours wait for a particular Licensee.

CONFIDENTIAL**Gloucester City Council**

COMMITTEE	: LICENSING & ENFORCEMENT
DATE	: 31 JANUARY 2011
SUBJECT	: LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 – DISCIPLINARY MATTER- PRIVATE HIRE DRIVER NUMBER 431 MR SE
WARD	: ALL
REPORT BY	: GROUP MANAGER, ENVIROMENTAL HEALTH & REGULATORY SERVICES
NO. OF APPENDICES	: 1: WITNESS STATEMENTS RELATING TO OPERATION ACRO 2: GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS 3: PROCEDURE AT THE HEARING PARAGRAPHS 59 TO 73 OF THE GENERAL CONDITIONS
REFERENCE NO.	: ES21105

1.0 PURPOSE OF REPORT

- 1.1 For Members to consider and determine a disciplinary matter referred to them for consideration.

2.0 RECOMMENDATIONS

- 2.1 The Committee is advised to consider the following courses of action:

- a) To take no action
- b) To issue a written warning
- c) To suspend the Private Hire Driver licence for a period of time to be determined by the committee but not for a period exceeding the expiry date of the current licence.
- d) To revoke the licence. In such circumstances the Committee may wish to give an indication on a suitable time period that must elapse prior to a fresh application being made.

3.0 BACKGROUND

- 3.1 The City Council has statutory powers to licence Hackney Carriage and Private Hire Drivers and may apply conditions to the issue of such a licence. The City Council have approved a comprehensive set of general conditions which are intended to maintain minimum standards of operation within the Hackney Carriage and Private Hire trades for the benefit, convenience and safety of the travelling public. The fundamental difference between Hackney Carriages and Private Hire vehicles is that only Hackney Carriages may ply for hire or stand on a rank. Private Hire vehicles licensed under the Local Government (Miscellaneous Provisions) Act 1976 by the City Council may only be pre-booked through a Private Hire Operator also licensed by Gloucester City Council. This requirement is laid down by legislation and is not specific to Gloucester City Council.
- 3.2 The licence holder has been written to explaining the need for the disciplinary hearing. He has been sent a copy of this report and invited to attend this hearing.

4.0 INFORMATION

- 4.1 Mr Sidney Edmond has been a licensed Private Hire Driver with Gloucester City Council since May 2000. His current licence is due to expire on 13th August 2011. Mr Edmond has been the subject of a previous disciplinary proceeding.
- 4.2 On 19th October 2004 Mr Edmond was convicted at Stroud Magistrates Court for the following:-
- Operating public service vehicles without an operator's licence.
 - Employing drivers who were not appropriately licensed to drive public service vehicles.
 - Operating vehicles without appropriate insurance.

The Committee decided to suspend Mr Edmond's Private Hire Operator's Licence and Private Hire Driver's Licence for *one month*.

- 4.3 On 27th February 2010 Operation ACRO, a test purchase operation was conducted by the City Council in partnership with Officers from Gloucestershire Constabulary. Following the operation Mr Sidney Edmond was convicted at Gloucester Magistrates Court on 29th October 2010 for the offence of plying for hire without a licence contrary to section 45 of the Town Police Clauses Act 1847. Mr Edmond pleaded guilty to the charge and was fined £250 with a £15 victim surcharge and ordered to pay £200 Council Costs. Mr Edmond did not notify of this offence
- 4.4 The circumstances of the offence are as follows:

At approximately 01.10 hours on 27th February 2010, Mr Edmond was in Private Hire Vehicle (PHV) 208 in Eastgate Street. The vehicle was approached by two plain clothed police officers who asked Mr Edmond if he could take them to Tesco, Quedgeley, to which he replied: "yes". PHV 208 was subsequently stopped just outside the Woods Vets by an unmarked Police car and the occupants questioned. The plain clothes Police Officers confirmed that they had not pre-booked the vehicle. Mr Edmond was reported for the offence and issued a fixed penalty notice by Gloucestershire Police for using a vehicle uninsured against third party risks (IN10).

4.5 Statements from the two Police Officers and the Council Officer involved are attached at **Appendix 1**.

4.6 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 provides:

- (1) Notwithstanding anything in the Act of 1847 or in this Part of the Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:-

(a) that he has since the grant of the licence-

(i) been convicted of an offence involving dishonesty, indecency or violence; or

(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of this Act; or

(b) any other reasonable cause.

(2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.

(2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

Members are advised that should the Committee determine that Mr Edmond's PHD 431 licence and PHO 38 licence should be suspended or revoked it must be done under 61(1)(a)(ii) and 62(1)(a) respectively. Should Members deem necessary by virtue of section 61(2B) such suspension or revocation can take immediate effect provided a statement is included stating the reasons why this action is necessary in the interests of public safety.

4.7 In accordance with section 51(1) of the 1976 Act the Council must be satisfied that all licensed drivers are fit and proper persons to hold such a licence. In making this determination the overriding concern must be that of the safety of the travelling public. Whilst section 61 of the 1976 Act provides for the suspension of PHD licences, this can only be imposed because a person is no longer a fit and proper person to hold such a licence, and should not be used as a means of punishment. It would be difficult to justify how the passage of time alone would be certain of restoring a person's fit and proper status. It could be argued that suspension may be an appropriate option where a viable solution can be implemented to improve the fit and proper status of the licence holder. In most cases suspension is more likely to be an option where, for example, serious concerns are raised over the suitability of an individual to hold a driver licence, but more time is needed to investigate the matter.

- 4.8 The Council has adopted guidelines in relation to the relevance of convictions. Members are advised that whilst due regard must be given to these guidelines the committee's discretion should not be fettered by them and each case must be considered on its merits. The guidelines are attached at **Appendix 2**. Member's attention is drawn to paragraph 3(h).

5.0 CONCLUSIONS

- 5.1 Mr Edmond has been a licensed Private Hire Driver and a Private Hire Operator for some 14 years and is well aware of the regulations regarding hire and reward. Private hire licensing is all about public safety to which this driver appears to have a casual approach if not a complete disregard.
- 5.2 It is the responsibility of every PHD to ensure passengers they carry are indeed the very ones that have made a booking with their operator. The right to ply for hire is held in great importance by the Hackney Carriage trade and is always a sensitive issue. The issue of PHD illegally plying for hire is of great concern as it puts the travelling public at risk, as such it is imperative that such action is not tolerated by the City Council.
- 5.3 The Committee's consideration, based on the balance of probabilities, is whether Mr Edmond is a fit and proper person to hold a PHD licence and a PHO licence together with the Council's duty to protect the public and the licence holder's rights under Article 1 of the First Protocol to the European Convention on Human rights.
- 5.4 If having done so the Committee determines that Mr Edmond is not a fit and proper person to hold such a licence they may either suspend or revoke his licence. Should the Committee be minded that neither of these actions are appropriate, they may either issue a written warning to Mr Edmond with respect to his conduct or take no further action.

6.0 FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications attached to the recommendations in this report. However Members are advised that as detailed below Mr Edmond has a right of appeal against any decision to suspend or revoke his PHD and his PHO licence. At any such appeal costs may be awarded against the Council on successful appeal if the Council has not acted reasonably.

7.0 LEGAL IMPLICATIONS

- 7.1 By virtue of Sections 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Council may suspend or revoke a *drivers licence* on the following grounds:-
- a) That since the grant of a licence the driver has:
 - (i) been convicted of an offence involving dishonesty, indecency or violence;
 - or

(ii) been convicted of an offence under, or has failed to comply with, the provisions of the Town and Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976; or

(b) Any other reasonable cause.

- 7.2 An alternative to suspension or revocation of the licence is to provide the individual with an appropriate written warning. In any event, reasons need to be given for the decision reached.
- 7.3 Members may also wish to consider that no action should be taken in respect of this matter.
- 7.4 In reaching its decision, the Licensing and Enforcement Committee is a quasi judicial body, and accordingly must have regard to the rules of natural justice.
- 7.5 The Committee must consider only that evidence which is presented by the licensee (or representative) and the Council Officer. No account should be taken of irrelevant matters. Hearsay evidence is admissible, such as the attached statements, but caution must be exercised with the weight that is attached to any such evidence.
- 7.6 In assessing the weight to be given to any representations Members should be aware of the need for specific details in respect of any matters referred to and of the need for supporting evidence in respect thereof.
- 7.7 The Committee must act reasonably in coming to a decision, which must be based on the evidence presented to it.
- 7.8 The rights attached to a licence is defined as a possession and therefore fall under Protocol 1, to Article 1 and Article 8 of the European Convention on Human Rights (implemented by the Human Rights Act 1998). A revocation or suspension would be a deprivation of the economic interests attached to the licence. The Committee can only deprive the licensee of his licence if that action is either in the general interests or the public interest and is also proportionate.
- 7.9 There is a right of appeal to the Magistrates' Court against any Committee's decision to suspend or revoke a private hire drivers' licence under section 61 of the LG(MP)A 1976. An appeal must be made within 21 days from the date on which notice of the Committee's decision is served upon the licence holder. The effect of the 21 day period and any appeal made is to stay any action until the appeal is determined.
- 7.10 Any Magistrates' Court appeal hearing will be a completely fresh hearing of information available at the date of that hearing. For all intents and purposes, the Magistrates will place themselves in the position of the Committee to satisfy itself of the same principles the Committee must have satisfied itself for their decision. Some weight will be attached to the Committee decision but not overwhelming weight. The Magistrates have discretion to award costs to either party or not at all. The award of costs is normally the exception rather than the rule and may be dictated by the reasonableness of the parties.

8.0 RISK MANAGEMENT IMPLICATIONS

8.1 The key risks arising from this relate to decisions taken by the Licensing and Enforcement Committee. Any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in loss of image, reputation and potential financial penalty. There is a risk of appeal to the Magistrates Court should an inappropriate decision be made.

9.0 PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

9.1 There are no adverse impacts or any risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation and community cohesion.

10.0 OTHER CORPORATE IMPLICATIONS

1. Community Safety

The licensing system makes provision for both medicals and Criminal Records Bureau checks and conviction notifications so that the fitness and suitability of persons to be licensed can be assessed and kept under review.

2. Environmental

None

3. Staffing

There are no staffing implications attached to the recommendations in this report.

4. Trade Union

There are no Trade Union implications attached to this report.

Background Papers : Service Records
Published Papers : None
Plans : None
Person to Contact : Philippa Finnegan
Tel: (01452) 396028
Fax: (01452) 396340
E-mail: phf@gloucester.gov.uk

STATEMENT OF WITNESS

(CJ ACT 1967, s9; MC ACT 1980, s102; MC Rules 1981,r70)ss5A(3)(a) and 5B

STATEMENT OF JOHN BAMBER

Age of witness (if over 18 enter 'over 18') OVER 18

Occupation of witness: LICENSING ENFORCEMENT OFFICER

Address: Licensing Unit,
Herbert Warehouse, The Docks, Gloucester, GL1 2EQ.

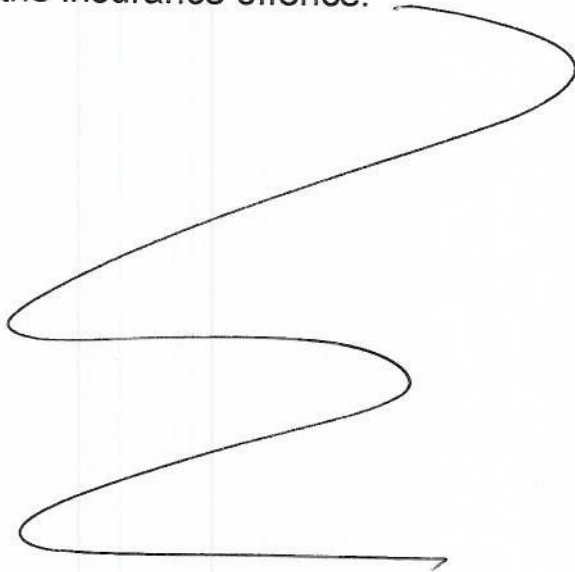
This statement (consisting of Two. pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed John Bamber Date. 01.03.2010

I am an authorised officer for the purposes of the Local Government (Miscellaneous Provisions) Act.1976 and the Town Police Clauses Act 1847. On Saturday 27.02.2010. I was on duty in company with Constable 1519 HOWES in a Police vehicle on a joint operation to ensure that Hackney Carriages and Private Hire vehicles are operating in accordance with licensing conditions .At 01.15 Hours Officer Howes stopped Gloucester City Council Private Hire licence number 208 ,vehicle registration mark LD55 ZPH, in Bristol Road in Gloucester by using the police vehicles emergency equipment I observed Officers Harker , Mulla and Bowden seated in the private hire vehicle. I asked the officers the circumstances of how they had hired the vehicle. I identified myself to the driver by showing him my photographic identity card. I then pointed out the offences of, plying for hire without having a licence to do so and using a vehicle without insurance in respect of public hire. I cautioned the

John Bamber 01.03.2010

driver and informed him that he was not under arrest and free to seek legal representation .I said , "DO YOU UNDERSTAND WHAT I HAVE JUST SAID". The driver replied "YES".I asked the driver if he wished to make any reply to the caution. He replied, "TO BE FAIR THE WIFE TOOK UP THE BOOKING I TOOK THE WRONG PERSON" I informed the driver that the facts will be reported and you may be summonsed for these offence and any other offences that may come to light. . I asked the driver to show me his Private Hire drivers badge ,the driver showed me his Gloucester City Council badge number 431 the photograph matched the driver .The driver gave his details as, Sidney Edmond,18 Billingham Close,Gloucester,GL4 4SS,Date of Birth 24.06.1934. I then asked Mr Edmond to read and sign my notebook if it was a true and accurate record of the incident .Mr Edmond read and signed the notebook and timed and dated the entry as 01.28 hrs, 27.02.2010.I wish to enter in to evidence as Exhibit JB1/EDMOND 27.02.2010 a copy of the notebook entry. Gloucestershire Police then issued Mr Edmond with a fixed penalty notice for the insurance offence.



John G...

01.03.2010.

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Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

URN

53			
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Title Statement of SC Harker 258960

Age if under 18 Over (if over 18 insert "over 18") Occupation

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 27th day of Feb 2010

Signature.....

*Evidence Visually Recorded YES NO (Supply witness details on rear.) V.P.S.S. Actioned YES NO

I am SC HARKER 8960 of Gloucester City station, on Saturday 27th February 2010 I was on duty dressed in plain clothes, in the company of SC DREW 8952, SC MULLA 8947 and SO BOWDEN 8937 in the locality of EASTGATE STREET, GLOUCESTER. I was taking part in Operation Acro, an operation aiming to assess how compliant licensed private hire drivers are in areas that complaints are received that illegal plying for hire is taking place.

At approximately 0110 Myself and SC DREW 8952 approached a vehicle registration LD55 ZPH taxi number 208 clearly marked with a yellow sign saying private hire, at this time the vehicle was stationary outside ZEST, Eastgate Street, Gloucester, I asked the driver if he would take us to Tesco's in Quedgeley, he said yes I entered the vehicle, as did SC DREW 8952, SC MULLA 8947 and SO BOWDEN. We had at no time pre-booked this taxi, nor did we identify ourselves as police officers.

I asked the driver what the cost of the journey would be to which he replied "I don't know its on the metre", at this point he engaged the meter and started driving us to our destination.

As we were on Bristol Road, outside the Woods Vets, the Taxi stopped as it has been indicated to do so by the unmarked Traffic car that was behind us. I noticed at this point that the metre was reading £8.60. As the vehicle came to a halt the taxi driver quickly turned around to us and said, "if they ask you, you pre-booked me, please say you pre-booked me, do this for me." I felt intimidated by the male at this point as he was asking us to lie to the police for him.

The officer from within the traffic car then came to the vehicle that we were in and asked the driver to move out of the car. The officer asked us if I had at any point pre-booked the taxi to which I replied "no". I also told the officer that he had told us to tell them that we had pre-booked the taxi.

We then remained in the vehicle until the officers allowed us to leave.

Signature..... Signature witnessed by

Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

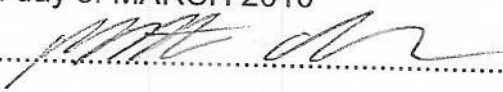
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Title Mr Statement of Matthew BOWDEN

Age if under 18 Over 18 (if over 18 insert "over 18") Occupation Police Officer

This statement (consisting of 2 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 5th day of MARCH 2010

Signature..... 

*Evidence Visually Recorded YES NO (Supply witness details on rear.) V.P.S.S. Actioned YES NO

I am a police officer in the Gloucestershire Constabulary based at Gloucester South (QUEDGELEY) police station.


On Saturday 27th FEBRUARY 2010, I was in plain clothes with a covert harness working from Gloucester City Police Station on Operation ACRO. I was in company with SC 8947 MULLA and on foot in the city of Gloucester.

At 01:10 we were accompanied by two other plain clothed officers, SC 8960 HARKER and SC 8952 DREW on EASTGATE STREET, GLOUCESTER. Whilst outside ZEST Public House, SC HARKER and SC DREW approached a private hire taxi, indicated by a yellow plate stating "Private Hire". The vehicle registration was LD55 ZPH and displayed a taxi number of 208.

I observed SC HARKER briefly speak to the taxi driver and then she indicated to the rest of us that to enter the taxi.

We had not pre-booked this taxi, nor at any point did we indicate that we were police officers.

Whilst in the vehicle SC HARKER said "How much will it cost", to which the taxi driver replied "I don't know, it's on the meter".

Signature  Signature witnessed by

Continuation of Statement of
Continuation Sheet No. 1

The taxi driver drove us towards our requested destination of TESCO Superstore in QUEDGELEY, GLOUCESTER.

As we passed WOOD's Vets on BRISTOL ROAD, GLOUCESTER I could see an unmarked Police Car had turned on its blue lights as to stop the Taxi in which we were riding within.

Once we had stopped, a Taxi Enforcement Officer from Gloucester City Council, who was riding within the unmarked police car, approached the Taxi. He question us to the circumstances in which we got the taxi journey and confirmed we had not pre-booked the vehicle. I noticed him look at the meter which now read £8.60.

We remained inside the Taxi until dismissed by the Police Officer, who had arrived in the unmarked car, at which point we left the area.

At no time did we identify ourselves as police officers to the taxi driver.

Signature  Signature witnessed by

Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

URN 53

Title Statement of SC MULLA 8947
Age if under 18 Over (if over 18 insert "over 18") Occupation

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 27th day of Feb 2010

Signature [Handwritten Signature]

*Evidence Visually Recorded YES [] NO [X] (Supply witness details on rear.) V.P.S.S. Actioned YES [] NO []

I am SC MULLA 8947 of Barton Street police station. On Friday 26th February 2010 I was on duty in the locality of EASTGATE STREET, GLOUCESTER in the company of SC HARKER 8960, SC DREW 8952 AND SO BOWDEN 8937 dressed in plain clothes. I was taking part in Operation Acro

At approximately 0110 SC HARKER 8960 and SC DREW 8952 approached a vehicle registration LD55 ZPH taxi number 208 clearly marked with a yellow sign saying private hire, the vehicle was stationary outside ZEST, Eastgate Street, Gloucester, SC HARKER asked the driver if he would take us to Tescos in Quedgeley, he said yes, I entered the vehicle, as did SC DREW 8952, SC HARKER 8960 and SO BOWDEN 8937. We had at no time pre-booked this taxi, nor did we identify ourselves as police officers.

SC HARKER 8960 asked the driver what the cost of the journey would be to which he replied "I don't know its on the metre", at this point he engaged the meter and started driving us to our destination.

As we were on Bristol Road, outside the Woods Vets, the Taxi stopped as it has been indicated to do so by the unmarked Traffic car that was behind us. I noticed at this point that the metre was reading £8.60. As the vehicle stopped the taxi driver turned around and said to us, "if they ask you, you pre-booked my taxi, please say you pre-booked me, do this for me." I felt anxious and threatened by the male at this point as he was asking us to lie to the police for him.

The officer from within the traffic car then came to the vehicle that we were in and asked the driver to move out of the car. The officer asked us if I had at any point pre-booked the taxi to which SC HARKER 8960 replied "no". We also told the officer that he advised us to tell them that we had pre-booked the taxi.

We then remained in the vehicle until the officers allowed us to leave.

Signature [Handwritten Signature] Signature witnessed by

Statement of Witness

(Criminal Procedure Rules 2005, r.27.1(1); CJ Act 1967, s.9 & MC Act 1980, ss.5A(3)(a) & 5B)

URN 53

Title Miss Statement of Kirsty Louise Drew

Age if under 18 over 18 (if over 18 insert "over 18") Occupation Special Constable

This statement (consisting of 1 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 2nd day of March 2010

Signature *[Signature]* SC 8952

*Evidence Visually Recorded YES NO (Supply witness details on rear.) V.P.S.S. Actioned YES NO

I am the above named person and I am currently employed by Gloucestershire Constabulary as a Special Constable.

On 26th February 2010 I was in plain clothes crewed with SC Lisa Harker 8960, SO Matt Bowden 8937 and SC Asma Mulla 8947 for Operation ACRO. At 01.10 hrs on 27th February 2010 SC Harker and I approached a parked private hire taxi on EASTGATE STREET. SC Harker spoke to the driver and said 'Can you take us to TESCOS in QUEDGELEY?', the driver then replied 'yeah alright then'. We all then got into the vehicle. We asked him how much it would be, he replied 'I don't know', and then pointed to the meter. I would describe the driver as black, around 50 years old, approx 5ft 6" tall and slim wearing glasses. We continued on our journey. When we were going along BRISTOL ROAD, in QUEDGELEY we were stopped by an unmarked police car and an enforcement officer from the council. As soon as the driver realised it was the police that were pulling him in, he turned to us and said 'if anyone asks, you pre-booked me, ok?', to this we made no reply. He then asked us again 'if anyone asks will you please say you pre-booked me?, Will you do this for me?' To which we replied 'ok'. We explained to the enforcement officer and to the uniformed officers what had happened. The vehicle registration mark was LD55 ZPH. The meter was engaged at £8.60. At no point did we pre-book this private hire taxi, nor did the driver ask for anyone's name.

Signature *[Signature]* SC 8952 Signature Witnessed By _____
Page Number 1 of 1 Pages

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GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

General Policy

1. Each case will be decided on its own merits.

The overriding consideration must be the safety of the public. The council has a duty to ensure so far as is possible that persons licensed to drive hackney and private hire vehicles are fit and proper persons to do so.

2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain:

- (a) Free of convictions for an appropriate period, and

- (b) Show evidence of good character from the time of the conviction. Simply remaining free of conviction does not necessarily provide sufficient evidence of good character.

Discretion would be appropriate where an offence is an isolated one and there are mitigating circumstances. Multiple offences or a series of offences over a period of time would give greater cause for concern and may give indications of a pattern of criminal behaviour which would need to be taken into account.

3. The following examples afford a general guide on the action to be taken where convictions are disclosed:

- (a) Minor Traffic Offences

Isolated convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, etc., should not prevent a person from proceeding with an application. However the number, type and frequency of the type of offence should be taken into account. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a Hackney Carriage or Private Hire Drivers Licence may be granted after its restoration but a warning should be issued as to future conduct.

- (b) Major Traffic Offences

An isolated conviction for a major traffic offence should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

A list of those offences considered as major is attached.

ENVIRONMENTAL HEALTH

Gloucester City Council Tel 01452 396396 Fax 01452 396340
Herbert Warehouse Email enviro@gloucester.gov.uk
The Docks Minicom 01452 396161
Gloucester GL1 2EQ www.gloucester.gov.uk



(c) Drunkenness

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour.

More than one conviction for this type of offence should raise grave doubts as to the applicants fitness to hold a licence and, where disqualification has occurred, at least 3 years from the date of restoration of the drivers licence should have elapsed before the application is considered.

If there is any suggestion that the applicant is an alcoholic a special medical examination should be arranged and if the applicant is found to be an alcoholic there should be a period of at least 5 years from the completion of detoxification treatment before an application is entertained

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

(e) Indecency Offences

As Hackney Carriage and Private Hire drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 5 years) free of such offences. More than one conviction of this should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued. NB Sexual Offences Register.

(f) Violence

As hackney carriage and PHV drivers maintain close contact with the public a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. Depending on the seriousness of the offence at least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

(g) Dishonesty

Hackney carriage drivers and PHV drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become “fair game” for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

(h) Licensing Offences

Any contravention of licensing laws or conditions, irrespective of whether or not these are related to hackney carriage or private hire licensing, are important as they suggest a disregard of the importance of those requirements. Depending on the nature and seriousness of the offence 1 to 3 years should have elapsed following conviction before an application is entertained.

(i) Offences of Discrimination

Offences of discrimination are a serious concern to all as they represent unacceptable treatment of certain sections of our society. A conviction for this type of offence should be taken extremely seriously. Each case would need to be assessed on an individual basis and although the applicant may not be debarred from receiving a licence a strict warning should always be given. On considering any case care should be taken before issuing a licence to assess if the applicant is deemed to be a ‘fit and proper person’ to hold a licence.

(j) Other Miscellaneous Offences

These could include local authority offences, bye law offences, nuisance offences etc. which although may not be directly relevant to hackney carriage and private hire licensing would demonstrate a feckless or irresponsible attitude and should not be discounted lightly. Each case would need to be assessed on an individual basis and although they may not necessarily debar an applicant from receiving a licence a strict warning should be given.

(k) Spent Convictions

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that full consideration for determining the application cannot be given except by admitting or requiring evidence relating to that spent conviction.

(l) Cautions and Endorsable Fixed Penalties

For the purposes of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

MAJOR TRAFFIC OFFENCES

Paragraph 3(b) refers

AC10	Failing to stop after an accident.
AC20	Failing to give particulars or to report an accident within 24 hours.
AC30	Undefined accident offences.
BA10	Driving while disqualified due to care and attention.
BA20	Attempting to drive while disqualified by order of the court.
CD10	Driving without due care and attention.
CD20	Driving without reasonable consideration for other road users.
CD30	Driving without due care and attention or without reasonable consideration for other road users.
CD40	Causing death through careless driving when unfit through drink.
CD50	Causing death by careless driving when unfit through drugs.
CD60	Causing death by careless driving with alcohol level above the limit.
CD70	Causing death by driving then failing to supply a specimen for analysis.
DD40	Dangerous driving.
DD60	Manslaughter or culpable homicide while driving a vehicle.
DD80	Causing death by dangerous driving.
DR10	Driving or attempting to drive with alcohol level above limit.
DR20	Driving or attempting to drive while unfit through drink.
DR30	Driving or attempting to drive then failing to supply a specimen for analysis.
DR40	In charge of a vehicle while alcohol level above limit.
DR50	In charge of a vehicle while unfit through drink.
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive.
DR70	Failing to provide specimen for breath test.
DR80	Driving or attempting to drive when unfit through drugs.
DR90	In charge of vehicle when unfit through drugs.
IN10	Using a vehicle uninsured against third party risks.
LC20	Driving otherwise than in accordance with a license.
LC30	Driving after making a false declaration about fitness when applying for a license.
LC40	Driving a vehicle having failed to notify a disability.
LC50	Driving after a license has been revoked or refused on medical grounds.
MS50	Motor racing on the highway.
MS60	Offences not covered by other codes.
UT50	Aggravated taking of a vehicle.

Aiding, abetting, counselling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Procedure at the Hearing

59. In view of the nature of the hearing and the personal facts that may emerge, the hearing will be conducted with the press and public excluded. Pursuant to Section 100A(4) of the Local Government Act 1972 (as amended), the public would be excluded on the grounds that the matter involves the likely disclosure of exempt information as defined in Section 100I of the Local Government Act 1972 (as amended).
60. The Chair of the Committee will open the hearing, stressing the Committee's independence and outlining the procedures which will be followed. The Committee can regulate the conduct of the hearing as it wishes, so long as it is acting fairly and reasonably to the parties thereto.
61. The recommended procedure is as follows:-
- i) The Council's case is presented by the Environmental Health Manager (Commercial) or the Licensing Enforcement Officer.
 - ii) The Officer is questioned by the Licensee (or representative) and then by Members of the Committee if any points need clarification.
 - iii) The Chair invites the Licensee (or representative) to present his case.
 - iv) The Licensee (or representative) can be questioned by the Council's officers and/or Members if any points need clarification. Even if represented, the Licensee can be asked questions directly.
 - v) Each side must be given the opportunity to sum up if they so wish, the Licensee (or representative) speaking last.
 - vi) At the conclusion of the case the Chair will request the licensee/representative/ witnesses/Environmental Health Manager (Commercial) (or his representative) to leave the room while the Committee deliberates.
 - vii) When the Committee has reached its decision, the Licensee (or representative) will be invited to return to be informed of the decision.
 - viii) The decision will later be confirmed in writing and will include a statement of reasons for reaching that decision.

Failure to Attend

62. If the Licensee does not attend the hearing at the appointed time and day then the Committee can continue and consider the complaint without the Licensee's presence on the basis of the evidence provided by the Officer, together with any written comments received from the Licensee concerned.

The Committee's Powers

63. The Committee has the following powers:-

- i) To take no action;
- ii) To give a written warning, first or final;
- iii) To suspend for a period of time;
- iv) To revoke the licence;
- v) To require a licensed driver to undertake the approved driver assessment scheme.

Applicants/Licensees Rights

64. To take legal advice at any time.

65. To be represented by a Solicitor or other representative during any part of the procedure. Licensee to be responsible for all costs arising from such representation.

66. To produce all relevant evidence in respect of his case. However, such evidence must be disclosed to the Head of Legal Services at least 7 working days prior to the hearing.

67. To ask questions of the Committee or Officers.

68. To appeal to the appropriate Court against any decision to refuse, suspend or revoke a licence or against a licence condition.

Points to Note

69. The Head of Legal Services will act as Clerk to the Committee and provide advice when needed on matters which may be raised of a legal or procedural nature, either during the hearing or before the Committee's decision is announced.

70. Both sides must be given every reasonable opportunity to present their case.

71. In order to assist the Licensee to present his case, there should be no excessive formality about the hearing. The atmosphere should be such as to bring out all of the facts to enable the Committee to make a reasoned decision.

72. The Committee must not only act but must be seen to act fairly and impartially. The Committee will be acting in quasi judicial manner and must consider only the evidence which is put before it. The Committee must act reasonably on the basis of the evidence and not take into account extraneous or irrelevant facts.

73. Licensees must be made aware that the hearing may take a number of hours to complete and should be prepared to wait until the completion of the case before leaving. It may be that the Committee will be considering other business and several disciplinary cases may be heard on the same day. This could result in several hours wait for a particular Licensee.