

Licensing Sub-Committee of the Regulatory Committee

9.30am, Tuesday, 25 July 2023

B Agenda

Suspension of Private Hire Driver's Licence – David Sutherland

Executive/routine

Wards

All

Council Commitments

N/A

Executive Summary

The Licence Service has requested the suspension of a Private Hire Driver's Licence on the grounds of a serious threat to public safety and therefore has been referred to the Committee for consideration of suspension of the licence under Paragraph 11 of Schedule 1 of the Civic Government (Scotland) Act 1982.

This report outlines the procedures that the Committee should adopt when considering whether to suspend the licence and sets out the various options open to the committee.

Andrew Mitchell

Head of Regulatory Services

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Suspension of Private Hire Driver's Licence – Mr David Sutherland

1. Recommendations

- 1.1 After hearing from Council officers and the licence holders, the Committee is asked to:
 - 1.1.1 note the request by the Licencing Service to suspend the Private Hire Driver's Licence;
 - 1.1.2 whether to take no action, issue a warning or suspend the licence; and
 - 1.1.3 if necessary determine whether any suspension made shall be of immediate effect.

2. Background

- 2.1 The Licensing Service and other persons can make comments or complaints regarding the holder of a licence and, in certain cases, request that the relevant licence should be suspended. The Committee can consider such comments and requests. It can decide to take no further action, issue a warning to the licence holder or suspend the licence.
- 2.2 On 28 September 2022 the applicant applied to renew their existing Private Hire Driver's licence. As an existing licence holder, the applicant can continue to operate while their renewal application is being determined.
- 2.3 The applicant was sent for a medical examination as part of the renewal application process as they were over 60 year old during the renewal period. This is to ensure that they meet the DVLA group 2 medical standards which the Council have adopted for their Private Hire Drivers.
- 2.4 The medical report stated that while further tests were required the applicant was assessed as fit to continue to drive on 28 February 2023. Accordingly, the licence was renewed.
- 2.5 On 14 April 2023 an updated medical report was provided following the additional tests. It stated that applicant did not meet the DVLA group 2 standards, and this is expected to be permanent.

3. Main report

- 3.1 The Committee has adopted the medical standards published by the DVLA for group 2 licence holders for both Taxi and Private Hire Drivers. It is a condition of the licence that the licence holder has a current certificate of medical fitness.
- 3.2 The Licensing Service contracts a medical service provider to provide certificates of medical fitness to the Council and licence holder's are required to attend such medical examinations as are necessary to obtain a certificate.
- 3.3 The Licensing Manager received an updated medical certificate (Appendix 1) from its medical service provider in respect to a Private Hire Driver's Licence holder following additional tests to assess their fitness to drive. The report stated that the existing licence holder did not meet the DVLA group 2 standards as they failed a cardiac test and therefore was no longer fit to drive.
- 3.4 The medical report stated that Private Hire Driver's Licence holder had been informed to stop operating as a Private Hire Driver.
- 3.5 The licence holder was contacted by the Licensing Service, and they stated that they were not operating as Private Hire Driver and would voluntarily return their badge. The badge was duly returned to the Council however the licence holder remains licenced.
- 3.6 It is the opinion of the Council's medical service provider that the licence holder will be permanently unfit to drive however the licence holder is having further independent tests.
- 3.7 The licence holder states that the failed the cardiac test is due to lifestyle issues. The licence holder states that have made lifestyle changes and by improving their fitness they will be able to meet the DVLA group 2 medical standards. They are awaiting an appointment with an NHS consultant, and they are requesting time to allow them to become fit again.
- 3.8 The Committee is now asked to consider if any other action is required – for example whether there are grounds to suspend the licence under Paragraph 11 of the Act.
- 3.9 The licence holder has been invited to attend.
- 3.10 In terms of Paragraph 11(4) of the said Schedule, in considering whether to suspend a licence, the Council may have regard to:
 - 3.10.1 any misconduct on the part of the licence holder, whether or not constituting a breach of any provision of Part I or II or the said Schedule of the said Act, which in the opinion of Council has a bearing on the fitness to hold a licence;
 - 3.10.2 where the licence relates to an activity consisting of or including the use of premises or a vehicle or vessel, any misconduct on the part of persons frequenting or using the premises, vehicle or vessel occurring there or any misconduct in the immediate vicinity of the premises, vehicle or vessel which is attributable to those persons.
- 3.11 At the meeting the Licensing Service will be provided with an opportunity to address the Committee. The licence holder and any representative will then be provided

with an opportunity to address the committee. Members of the Committee can then ask questions of the licence holder.

- 3.12 If there are matters or allegations raised in the case that are not admitted by the licence holder, the committee can either arrange an evidential hearing on another date or decide to proceed on the basis of the material presented to them.
- 3.13 If the latter option is adopted, the Committee should allow Council officers and the licence holder to make full submissions on the alleged incidents. All parties should answer any points raised by the other and by the committee. The committee members will have to:
 - 3.13.1 carefully consider the information they have before them;
 - 3.13.2 disregard any allegations which they consider to be gossip, speculation or unsubstantiated innuendo;
 - 3.13.3 identify which matters are admitted or disputed;
 - 3.13.4 consider whether the source of any statements, their nature and inherent probability gives it greater degree of credibility
 - 3.13.5 decide whether, on the balance of probability, the licence holder has committed the alleged misconduct;
 - 3.13.6 be in a position to explain their approach and the basis on which they preferred any version of events.
- 3.14 Having heard from all parties the Committee should decide what, if any, action it wishes to take. It can decide to take no further action, issue a warning to the licence holder as to future conduct or suspend the licence.
- 3.15 If committee members decide to suspend the licence, they have to consider the period of suspension. The licence holder should be asked to provide their views as to the length of any period of suspension. The Committee can suspend a licence for any unexpired portion of the period of the licence, or such shorter period as the licensing authority may fix.
- 3.16 If the Committee's decision is to suspend the licence, the suspension may take immediate effect or may commence up to 28 days later.
- 3.17 Suspension of a licence means that the licence remains in existence but has no effect whilst the suspension is in place. The licence holder must cease the licensed activity during the period of suspension. Any ID badges or plates should be immediately returned to the Council. It is a criminal offence for the licence holder to continue the licensed activity during any period of suspension.

4. Measures of success

- 4.1 Not relevant, as decisions on individual licences must be considered on their own merits.

5. Financial impact

- 5.1 None, as the costs of these matters are recovered through taxi and private hire car vehicle and driver licence application fees.

6. Risk, policy, compliance and governance impact

- 6.1 The process outlined takes account of the relevant statutory provisions.
- 6.2 The licence holder has a right of appeal against any decision made. The appeal lies to the Sheriff Court.

7. Equalities impact

- 7.1 There is no equalities impact arising from the contents of this report.

8. Sustainability impact

- 8.1 There is no environmental impact arising from the contents of this report.

9. Consultation and engagement

- 9.1 None.

10. Background reading/external references

- 10.1 None.

Andrew Mitchell

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11. Appendices

- 11.1 Appendix 1 – City Health Clinic Fit Note – 14 April 2023 – Derek Sutherland