

WEST DUNBARTONSHIRE COUNCIL

Report by the Head of Legal, Democratic and Regulatory Services

Licensing Committee – 6 March 2013

Subject: Hearing regarding possible suspension of a Taxi Driver's/Private Hire Car Driver's Licence

1. Purpose

- 1.1** To consider a possible suspension of a Taxi Driver's/Private Hire Car Driver's Licence held by Mr. Kevin Huxter, 96 Moraine Drive, Blairdardie, Glasgow, G15 6HA.

2. Recommendations

- 2.1** Members are asked to consider the report and decide whether or not Mr. Huxter remains a fit and proper person to hold a Taxi Driver's/Private Hire Car Driver's Licence.

3. Background

- 3.1** Section 2 of the Smoking, Health and Social Care (Scotland) Act 2005 creates the offence of any person smoking in a no smoking premises at any time. For the purposes of the act, no smoking premises includes any public or commercial vehicle, and includes all licensed taxis and private hire cars.
- 3.2** Any person found to be in contravention of Section 2 of this legislation can be issued with a fixed penalty notice which carries a fine of £50. This penalty is reduced to £30 if paid within 14 days.
- 3.3** West Dunbartonshire Council Environmental Health Officers (EHOs) are authorised to enforce this legislation and issue the relevant fixed penalty notices however Civic Government Enforcement Officers are currently not authorised to issue the relevant fixed penalty notices.
- 3.4** In recent months, West Dunbartonshire Council EHOs and the Civic Government Licensing Enforcement Officer have made unannounced visits to taxi ranks and taxi pick-up / drop off points throughout the West Dunbartonshire area, as part of an enforcement initiative.
- 3.5** At about 11.30am on Monday 30 July 2012, EHO Mark Walsh and Civic Government Licensing Officer James McArthur were approaching 2 stationary taxis whilst driving the taxi enforcement vehicle on Kilbowie Road adjacent to the site of the former Clydebank College.
- 3.6** Both officers observed taxi driver Kevin Huxter smoking outside his vehicle and then enter the vehicle while smoking before discarding the cigarette

moments later from the offside of his taxi before driving off.

Mark Walsh and James McArthur attended at the same location a short time later and identified themselves to Kevin Huxter, who confirmed that he was aware of the legislation in relation to smoking within his vehicle.

Mr. Huxter denied smoking in his vehicle.

A fixed penalty notice was thereafter issued by Mark Walsh and given to Kevin Huxter. Mark Walsh clearly explained to Kevin Huxter the options available to him in relation to the fixed penalty notice.

- 3.7** A reminder letter was sent to Kevin Huxter on 9 January 2013 by WDC Regulatory Services, requesting payment of the fixed penalty notice.
- 3.8** At the time of writing this report, payment of the fixed penalty notice has not been made by Kevin Huxter. No other form of response has been received. A letter was sent to him at his home address on 4 February 2013, advising him that West Dunbartonshire Council will now commence civil proceedings to recover the outstanding amount.
- 3.9** Mr. Huxter has stated that he lodged an appeal against the fixed penalty notice 10 days after issue however enquiries with the Legal, Democratic and Regulatory Services have failed to trace any such correspondence.

4. Main Issues

- 4.1** A licensing authority may order the suspension of a licence if in its opinion the holder of the licence is not, or is no longer, a fit and proper person to hold the licence.
- 4.2** The period of suspension of a licence is the unexpired portion of the duration of the licence, or such shorter period as the licensing authority may fix.
- 4.3** Where a licensing authority decides to order the suspension of a licence, the suspension generally does not take effect until the expiry of the time within which the holder of the licence may appeal against the suspension (28 days from the date of the decision to suspend) or, if an appeal has been lodged, until the appeal has been abandoned or determined in favour of the suspension. However, if the licensing authority determines that the circumstances of the case justify immediate suspension, it may order that the licence be suspended immediately.
- 4.4** A licensing authority must, before deciding to suspend a licence, give the holder of the licence, the complainer and the Chief Constable an opportunity of being heard.
- 4.5** Mr. Huxter and Mr Mark Walsh (EHO) have been invited to attend the meeting of the Committee on 6 March 2013 in order that a hearing may take place with regard to the possible suspension of the licence.

4.6 In considering whether to suspend a licence the licensing authority may have regard to any misconduct on the part of the licence holder which in the opinion of the authority has a bearing on his fitness to hold a licence.

4.7 The matters which the Committee will require to consider are as follows:-

- (a) Whether the alleged misconduct has been established.
- (b) If the Committee is satisfied that the alleged misconduct has been established, whether, having regard to the misconduct, Mr. Huxter is no longer a fit and proper person to hold a taxi driver's licence.
- (c) If the Committee is of the opinion that Mr. Huxter is no longer a fit and proper person, the Committee must consider whether his licence should be suspended.
- (d) If the Committee is satisfied that the licence should be suspended, the Committee must give Mr. Huxter an opportunity of being heard on the length of the suspension and the date from which the suspension should commence.
- (e) The Committee must then consider what length of suspension is appropriate and whether the circumstances of the case justify immediate suspension.

5. People Implications

5.1 There are no personnel issues.

6. Financial Implications

6.1 Mr Huxter, by virtue of the fact that he has failed to pay the fixed penalty notice and, as a consequence of the failure to pay, the Council may incur further costs in their recovery of the fine through the court.

7. Risk Analysis

7.1 There is no increased risk to the Council associated with the contents of this report.

8. Equalities, Health & Humans Rights Impact Assessment

8.1 No impact assessment is required because this report does not involve any change to policies or services or financial decisions.

9. Strategic Assessment

9.1 There are no strategic implications.

10. Strategic Assessment

10.1 In terms of the Council's Strategic Priorities, the purpose of licensing is to protect the welfare of the community, including vulnerable people.



Head of Legal, Democratic and Regulatory Services

Date: 4/2/2013

Person to Contact: Robert Mackie,
Senior Officer (Licensing Services),
Licensing Team,
Rosebery Place,
Clydebank,
G81 1TG.

Tel. No. (Direct line) 01389 738742.
robert.mackie@west-dunbarton.gov.uk

Appendices: N/A.

Background Papers:

1. Fixed penalty notice issued to Kevin Huxter on 30 July 2012
2. Letter to Mr. Huxter dated 9 January 2013.
3. Letter to Mr. Huxter dated 18 February 2013.

Wards Affected: N/A.