

WEST DUNBARTONSHIRE COUNCIL

Report by the Head of Legal, Democratic and Regulatory Services

Licensing Committee – 5 September 2012

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. Mark Harkins, 31 Portree Place, Kilpatrick View, Drumchapel, G15 8AR.

2. Recommendations

- 2.1** Members are asked to consider the report and decide whether or not Mr Harkins 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 11.47am on Monday 27 February 2012, EHO Martin Keeley and Civic Government Licensing Officer James McArthur attended at the taxi pick up point in Britannia Way, Clydebank, near to the ASDA supermarket.
- 3.6** On arrival at this location, both officers immediately saw taxi driver Mark

Harkins sitting in the drivers seat of his taxi, smoking a cigarette. Mark Harkins was alone in the vehicle at this time and the vehicle was stationary.

Martin Keeley and James McArthur identified themselves to Mark Harkins, who confirmed that he was aware of the legislation in relation to smoking within his vehicle.

A fixed penalty notice was thereafter issued by Martin Keeley and given to Mark Harkins.

Martin Keeley clearly explained to Mark Harkins the options available to him in relation to the fixed penalty notice.

- 3.7** A reminder letter was sent to Mark Harkins on 19 March 2012 by WDC Regulatory Services, requesting payment of the fixed penalty notice.
- 3.8** On Friday 30 March 2012 Mark Harkins was again spoken to by Martin Keeley and James McArthur and confirmed that he had not yet paid the fixed penalty notice. Mr Harkins stated that he did not have enough funds and further stated that it was unlikely that payment would be made in the foreseeable future.
- 3.9** On 18 April 2012 Mark Harkins attended at the Licensing Team and was advised by the Senior Licensing Officer, Robert Mackie, that failure to pay the fixed penalty notice may result in the matter being reported to Committee and that he should officially respond to the fixed penalty notice either by payment or by a letter of response.
- 3.10** At the time of writing this report, payment of the fixed penalty notice has not been made by Mark Harkins. No other form of response has been received. A letter was sent to him at his home address on 7 June 2012, advising him that West Dunbartonshire Council will now commence civil proceedings to recover the outstanding amount.

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. Harkins and Mr Martin Keeley (EHO) have been invited to attend the meeting of the Committee on 5 September 2012 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. Harkins 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. Harkins 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. Harkins 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 Harkins, by virtue of the fact that he has failed to pay the fixed penalty notice, has deprived the Council of income 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.

Head of Legal, Democratic and Regulatory Services

Date: 3/8/2012

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Appendices: N/A.

Background Papers:

- 1.** Fixed penalty notice issued to Mark Harkins on 27 February 2012
- 2.** Letter to Mr. Harkins dated 7 June 2012.

Wards Affected: N/A.