



## AGENDA

### RECORD OF OFFICER DECISION MEETING

Date: Thursday, 24 November 2016

Time: 10.00 am

Venue: Committee Room, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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1. Review of decision of Licensing Sub-Committee

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Decision taken by the Monitoring Officer.

**Issued on Monday, 9 January 2017**

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Director of Corporate Services, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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## RECORD OF OFFICER DECISION

This form must be completed by or on behalf of the relevant Officer immediately after any decision has been made. Please send to the Proper Officer for publication in accordance with the Council's Constitution.	
<b>NAME OF OFFICER MAKING DECISION (INCLUDING JOB TITLE) AND THE DECISION BEING MADE</b>	Mark Radford, Monitoring Officer  <b>Review of decision of Licensing Sub Committee</b>
<b>TITLE OF REPORT</b>	Review of a Hackney Carriage Driver's Licence
<b>DATE THE DECISION WAS TAKEN</b>	24 November 2016
<b>SUMMARY OF REASONS FOR DECISION</b>	<p>The Licensing Sub Committee held on 31 October 2016 considered whether the respondent was a fit and proper person to hold a Taxi Driver's badge. The following is Minute 983/10/2016:</p> <p><b>Minutes:</b></p> <p>The Licensing Officer introduced the report which sought to consider whether the Respondent, who had accumulated a total of 12 penalty points on their Swale Driving Badge, was a fit and proper person to hold a Taxi Driver's badge. The Licensing Officer explained that a licensed driver was entitled to have up to 11 penalty points, and as soon as they reached 12 or more points, the driver would be brought to the Licensing Sub-Committee for a review of their licence.</p> <p>The Licensing Officer detailed the incidents at which the Respondent had accumulated penalty points:</p> <ul style="list-style-type: none"> <li>· 6 points for allowing another person to drive their hackney carriage without the proprietors consent (Breach of Code of Conduct); and</li> <li>· 6 points for an illegal left turn.</li> </ul> <p>The Chairman asked the Respondent to present their case and Members asked questions. The Respondent outlined the circumstances of each of the occasions where penalty points had been awarded.</p> <p>In response to queries from Members, the Respondent explained the specific circumstances for allowing another person to drive their hackney carriage. The respondent referred to specific dates and outlined the reasons why the vehicle had to be taken to the repair shop. The Respondent advised that they collected the vehicle from the repair shop on 14 March 2016, so could not have been driving the vehicle when it was caught speeding by Kent Police the early hours of Sunday 13 March 2016. The</p>

	<p>Respondent confirmed that they had given permission for the repair shop to take the vehicle for a test drive. The Respondent noted that the licence plates were damaged when he collected the vehicle and produced photographic evidence for Members.</p> <p>The Senior Lawyer (Contentious) asked the Respondent whether he had heard further from Kent Police about the speeding incident. The Respondent advised that he had not.</p> <p>The Respondent stated that he would not take their vehicle to the repair shop in question again, and would in future keep a log-book of all maintenance works carried out to their vehicle.</p> <p>In response to a question from a Member, the Respondent stated that they had not informed the Council that the car was “off-road” as they thought it would only need to be with the garage for a day or so.</p> <p>Members of the Sub-Committee adjourned to make their decision at 3.55pm. Members of the Sub-Committee, the Senior Lawyer and Democratic Services Officer returned at 3.32pm, when the meeting was re-convened.</p> <p>The decision, as set out at Appendix 1 to these minutes was announced.</p> <p><b><i>Resolved: That the Respondent’s Hackney Carriage Driver’s Licence not be suspended and a formal warning be given.</i></b></p> <p>The following is the record of decision:</p> <p>Licensing Sub-Committee 3.30pm 31 October 2016</p> <p>Case No6/2016</p> <p>Decision: The Licensing Sub-Committee was asked to determine whether this respondent was a fit and proper person to hold a Hackney Carriage/Private Hire Dual Driver’s Licence against the background of having accumulated 12 penalty points on the Council’s Hackney Carriage and Private Hire Policy.</p> <p>The Sub-Committee heard from the Respondent indicating that at some point whilst their licensed vehicle was in for repair an employee of the repair shop had taken the car, possibly for a test drive, and had been caught by a speed camera.</p> <p>However, the Sub-Committee were of the view that in failing to advise the Council that the vehicle was off the road the Respondent had permitted an unlicensed driver to</p>
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	<p>drive their licensed vehicle. The Sub-Committee felt that this was at the lower end of this offence. The Sub-Committee also noted that the driver had been licensed for a period of 7 years and until this year had not received any Swale Penalty Points.</p> <p>Taking into account all of the above the Sub-Committee determined that the appropriate and proportionate action would be to issue a formal written warning at this time.</p> <p>The Sub-Committee draw the attention of the Respondent to the fact that Swale Penalty Points remain on the Hackney Carriage/Private Hire Dual Driver's Licence for a period of 3 years and in the event of appearing before a future Sub-Committee it is unlikely that a further warning would be given.</p>
<b>BACKGROUND</b>	<p>Under the Articles of the Constitution functions of the Monitoring Officer para 11.3 b I have a responsibility to ensuring lawfulness and fairness of decision-making. This matter was drawn to my attention as there were concerns that procedurally there may have been errors in the process arrived at to inform the final decision made by the Sub Committee.</p> <p>I have investigated the matter and would conclude:</p> <ol style="list-style-type: none"> <li>1) the six points that were given to the Respondent were incorrectly given. There was no power under our current policy to give 6 points or indeed any points for the offence that was suggested.</li> <li>2) Further, the respondent was not advised of his right of appeal against the six points that were endorsed on his Swale Dual Drivers Licence. This is a procedural impropriety.</li> <li>3) Any right of appeal should have been dealt with before the matter was referred to a Sub-Committee, as if the appeal was upheld, this driver would not have appeared before the Sub-Committee.</li> <li>4) On account of point 1) above, an appeal against the endorsement of 6 points for this Driver would have been successful and therefore this Driver should not have been referred to the Sub-Committee as he would not have accumulated sufficient penalty points. The decision of the Sub-Committee hearing has not been reached lawfully or fairly and hence the decision cannot be implemented.</li> </ol>

<b>DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	There is no alternative option as to not revoke the decision would mean that the Council was acting unfairly.
<b>DETAILS OF ANY CONSULTATION UNDERTAKEN</b>	Detailed consultation has been undertaken with the Licensing Officers and the Senior Lawyer (Contentious). I have also made the Chairman of the Sub Committee aware of my decision.
<b>DETAILS OF ANY CONFLICTS OF INTERESTS</b>	None
<b>CONTACT FOR ENQUIRIES/FURTHER INFORMATION</b>	Mark Radford 01795 417268
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