

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**12 JULY 2017**  
**ALL WARDS**

**OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS  
TAKEN DURING MAY 2017**

1. **Summary**

- 1.1 This report advises the Committee of the outcomes of appeals against the Sub Committee's decisions which are made to the Magistrates' Court, and any subsequent appeals made to the Crown Court, and finalised in the period mentioned above.

2. **Recommendation**

- 2.1 That the report be noted.

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### 3. Summary of Appeal Hearings for May 2017

	Magistrates'	Crown
Total	8	2
Allowed		2 (1 of which allowed to BCC)
Dismissed	4	
Appeal lodged at Crown		n/a
Upheld in part	1	
Withdrawn pre-Court	3	

### 4. Implications for Resources

- 4.1 The details of costs requested and ordered in each case are set out in the appendix below.
- 4.2 In May 2017 costs have been requested to the sum of £6,079.60 so far with reimbursement of £6,079.60 so far (100%) ordered by the Courts.
- 4.3 For the fiscal year thus far, April 2017 to May 2017, costs associated to appeal hearings have been requested to the sum of £10,154.60 so far with reimbursement of £7,179.60 so far (70.7%) ordered by the Courts.
- 4.4 In May 2017 costs of £1,350 have been requested against Birmingham City Council with reimbursement of £250 ordered by the Courts.

### 5. Implications for Policy Priorities

- 5.1 The contents of this report contribute to the priority action of providing an efficient and effective Licensing service to ensure the comfort and safety of those using licensed premises and vehicles.

### 6. Public Sector Equality Duty

- 6.1 The actions identified in this report were taken in accordance with the Enforcement Policy of the Regulation and Enforcement Division, which ensures that equality issues have been addressed.

7. Consultation

- 7.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and the business community in terms of the regulatory duties of the Council. Any enforcement action taken as a result of the contents of this report is subject to that Enforcement Policy.

**ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: Prosecution files and computer records in Legal Proceedings team.

**APPENDIX****MAGISTRATES' COURT – PRIVATE HIRE DRIVER'S LICENCE**

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Bahar Gul	12.05.2017	Dismissed	£250	£250	On 1 March 2017, as the result of concerns expressed regarding matters disclosed not only as the result of a Police check but also by the appellant at the hearing, Committee considered and resolved to refuse to grant a licence. In the opinion of the Magistrates "the Committee decision was not wrong".
2	Abdul Shahren	19.05.2017	Dismissed	£300	£300	On 1 February 2017, as the result of conviction for offences of plying for hire and using a vehicle while uninsured, Committee considered and in line with the relevant policy resolved to revoke the licence. The appellant did not attend Court and there was no information from him as to why he was not in attendance.
3	Shamrez Khan	22.05.2017	Dismissed	£300	£300	On 13 February 2017, as the result of a complaint received that the appellant had defecated on the public highway and had failed to clean up after himself, Committee considered and resolved to suspend the licence for a period of three months. He was ordered to pay the costs within 14 days.
4	Sabir Hussain (Mr Hussain is also a hackney carriage driver)	22.05.2017	Withdrawn at Court	£150	£150	On 13 February 2017, as the result of disqualification from driving for a period of six months in August 2016, Committee considered and in departure from the relevant policy resolved to suspend and/or refuse the renewal of both licences for a period of three months. He was ordered to pay the costs within 14 days.

### MAGISTRATES' COURT – PRIVATE HIRE OPERATOR'S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Mohammed Mushtaq t/a Atlas Intercity Sky Cars	12.05.2017	Dismissed	£2872.10	£2872.10	On 5 October 2016, as the result of concerns expressed that the appellant was not in day-to-day control of the operation, in that records were not being maintained in the prescribed manner and in some cases missing, and that customers' complaints were not being adequately recorded or properly investigated or were passed to the company's Sandwell base, Committee considered and resolved to revoke the licence. After numerous adjourned hearings at Court a licence was issued to a third party and the appellant was deemed to have abandoned his appeal; however, judgement was handed down on 12 May 2017.

### MAGISTRATES' COURT – HACKNEY CARRIAGE DRIVER'S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Zafar Iqbal	12.05.2017	Allowed in part	£750 contra BCC	£250 contra BCC	On 1 February 2017, as the result of a complaint that the appellant had not only refused to convey persons, one of whom is registered blind and whose leg was in plaster, on a journey on grounds that "it was a short journey", but also that he had assaulted a third party who had attempted to assist, Committee considered and resolved to suspend the licence for a period of six months. The appeal was allowed in part, in that the period of suspension was reduced to three months. The Court took the view that the period of suspension imposed should be reduced, given the fact that the appellant was being deprived of earning a living

# **MAGISTRATES' COURT – LICENSING ACT 2003**

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Najibullah Asakzai iro International Supermarket, 117 Villa Road, Handsworth	n/a (hearing listed 22.05.2017)	Withdrawn 22.05.2017	£1207.50	£1207.50	On 24 January 2017, as the result of concerns expressed by the Chief Inspector of Weights & Measures that serious concerns existed which undermined and contravened the prevention of crime and disorder, the protection of children from harm, public safety, and the prevention of public nuisance objectives in the Act, Committee considered and resolved that the premises licence be revoked. The appeal was withdrawn at Court but the District Judge ordered that full costs as claimed be paid, within 28 days.
2	Emperors Lounge, 26 Birchall Street, Highgate	n/a (hearing listed 06.07.2017)	Withdrawn 10.04.2017	0	0	As the result of the Licensing Authority receiving notification that the Magistrates' Court had issued a closure order on grounds that a person had engaged in anti-social behaviour on the premises and the use of the premises was associated with significant and persistent disorder or persistent serious nuisance to members of the public, on 23 January 2017 Committee considered and resolved to revoke the premises licence. No order for costs was made because the appeal was abandoned at an early stage.

**MAGISTRATES' COURT – LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**  
**SEXUAL ENTERTAINMENT VENUE**

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Scarlets, 34 Horsefair, Birmingham B1 1DA	09.05.17	Allowed. Consent order agreed	Nil	Nil	On 14 December 2016 the Licensing and Public Protection Committee refused to renew the SEV licence for Scarlets, the main reason being that the premises had not paid its business rates since having been granted its SEV licence in 2011. At court, the licence holder accepted liability for the business rates at the premises from 1 November 2015. This acceptance of responsibility for back taxes was significant because before the court hearing responsibility for business rates rested with two limited companies, both of which had been liquidated. Under the consent order the licence holder agreed to pay all outstanding liabilities that had arisen since 1 November 2015, which amount to £24,561.01 up to 31 March 2017. £7,166 was ordered to be paid to Birmingham City Council on the day of the court hearing and four equal sums thereafter on a monthly basis, the remaining sum outstanding to Birmingham City Council of £17,395 (the total amount to be paid by no later than 9 September 2017). By this agreement the premises is permitted to renew its SEV licence.

## CROWN COURT – PRIVATE HIRE DRIVER’S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Bahadur Singh	05.05.2017	Allowed	£600 contra BCC	Zero	On 13 December 2016, as the result of numerous previous motoring convictions, including two disqualifications from driving, and the previous revocation of such a licence in June 2012, Committee considered and resolved to refuse the grant of a licence. The appeal was dismissed by the Magistrates on 24 February 2017. The Bench found that “the Committee decision and consequently the Magistrates’ decision was wrong” and “insufficient weight had been placed on the fact that the appellant had been licensed by another authority since 2014”.
2	Mohammed Zabir Khan	25.05.2017	Allowed. <b>This appeal was brought by BCC</b>	£1000	£1000	On 3 November 2016, as the result of information received from West Midlands Police to the effect that the appellant had been involved in an incident involving offensive weapons, in consultation with the Chair of your Committee the licence was revoked with immediate effect on grounds of public safety. The appeal to the Magistrates was allowed on 13 March 2017 on a technicality and not through any merit of the case because, in the words of the Clerk to the Justices, “the notice was defective” and “did not set out the reasons” and in the opinion of the Magistrates “the notice does not comply with S61(2A) or (2B).” An appeal to the Crown Court was immediately lodged.