

BIRMINGHAM CITY COUNCIL

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

13 FEBRUARY 2019
ALL WARDS

OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS:
December 2018

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 December 2018

	Magistrates'	Crown
Total	5	
Allowed	1	
Dismissed	3	
Appeal lodged at Crown		
Upheld in part		
Withdrawn pre-Court		
Consent Order	1	

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 December 2018 costs have been requested to the sum of £579.11 so far with reimbursement of £384.11 so far (66.3%) ordered by the Courts.
- 4.3 For the fiscal year thus far, April 2018 to December 2018, costs associated to appeal hearings have been requested to the sum of £12633.61 so far with reimbursement of £10984.21 so far (86.9%) ordered by the Courts.
- 4.4 For the fiscal year thus far, April 2018 to December 2018, costs contra Birmingham City Council associated to appeal hearings have been requested and awarded in excess of £10483.

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.

DIRECTOR OF REGULATION AND ENFORCEMENT

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

MAGISTRATES' COURT – PRIVATE HIRE DRIVER'S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Shahzad Amar	10.12.2018	Dismissed	£309.11	£309.11	The appeal was against the Sub Committee decision made on 09.04.2018 to refuse to grant a private hire driver's licence to Mr Amar due to a conviction for dangerous driving. Pre-Court the appellant had indicated that the appeal may be withdrawn. The appellant did not attend court, the court confirmed that the appeal had been lodged within the 21 day period and that the fault for the delay in the complaint being laid lay with the court administration. No email communication had been received confirming that the appeal was to be withdrawn, the District Judge dismissed the appeal and awarded costs in the sum of £309.11

2	Saleem Akhtar	10.12.2018	Allowed	£0.00 (contra BCC)	£0.00 (Contra BCC)	<p>The appeal was against the Sub Committee decision to revoke the private hire driver's licence issued to Mr Akhtar because he had not provided a criminal record check, in line with the requirements of his licence. Mr Akhtar attended unrepresented, the background to the appeal was outlined, and that Mr Akhtar had failed to provide a DBS and provided no reasonable explanation. Mr Akhtar had obtained a DBS when he was notified the matter was being referred to the Sub Committee. The Magistrates confirmed that the appeal was upheld on the basis of new information received since the Committee Meeting, namely the clean DBS check that they had before them today. The Court stated that the decision made by the Licensing Sub-Committee was not wrong when it was made in September due to the lack of a clean DBS check at that point, however when considered today, with the benefit of having Mr Akhtar's DBS check, the decision to revoke would have been the wrong decision today. It was outlined to the court that there should be no order as to costs against the Authority as it had acted reasonably and honestly at all times during the discharge of its public duties and the Court agreed that this was the case therefore refused to make any order as to costs. It was further stated that if the Court had the power to do so we had considered making an application for Mr Akhtar to pay our costs for defending the Appeal as he has wasted public resources however we were not aware that such power in fact existed. The Court confirmed that it could not make an order for costs against a party that had been successful in its appeal.</p>
3	Mohammed Zaheer	17.12.2018	Dismissed	£120.00	£0.00	<p>The appeal was against the Sub Committee decision to refuse to grant a Private Hire Driver's Licence to Mr Zaheer due to convictions recorded against him. Mr Zaheer failed to attend court. The district judge accordingly dismissed his appeal with no order as to costs.</p>

4	Munawar Hussain	19.12.2018	Dismissed	£150.00	£75.00	The appeal was against the decision to revoke with immediate effect under the chair's authority, the private hire driver's licence held by Mr Hussain following information disclosed by West Midlands Police. After hearing from both parties the Magistrates dismissed the Appeal on the basis that the decision of the Chair of the Licensing and Public Protection Committee on 14 August 2018 was not wrong and that the interests of public safety justified the immediate revocation of Mr Hussain's licence. The court awarded costs in the sum of £75.00.
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MAGISTRATES' COURT – LICENSING ACT 2003

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Matthew Eason In respect of Glamorous Show Bar 27-35 Hurst Street Birmingham B5 4BD	10.12.2018	Consent Order	Nil	Nil	The appeal was against the Sub Committee decision to remove the Designated Premises Supervisor, modify the hours for licensable activities and impose conditions on the licence, following an expedited review submitted by West Midlands Police. Birmingham Magistrates Court agreed by way of a Consent Order that the decision of the Sub Committee be rescinded and replaced with three new conditions of licence.