

**BIRMINGHAM CITY COUNCIL**

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

**13 SEPTEMBER 2017**  
**ALL WARDS**

**OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS  
TAKEN DURING JUNE AND JULY 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 June and July 2017

	Magistrates'	Crown
Total	5	2
Allowed	1	
Dismissed	3	1
Appeal lodged at Crown		n/a
Upheld / allowed in part	1	1
Withdrawn pre-Court		

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 June and July 2017 costs have been requested to the sum of £5,757.35 with reimbursement of £5,038.60 (87.5%) ordered by the Courts.
- 4.3 For the fiscal year thus far, April 2017 to July 2017, costs associated to appeal hearings have been requested to the sum of £15,911.95 with reimbursement of £12,218.20 (76.8%) 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.

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

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Zubair Ahmed	14.06.2017	Allowed In part	£300	£200	<p>Mr Ahmed was prosecuted for the offence of refusing to carry a passenger with an assistance dog, but due to the failure of a witness to attend court the Council was forced to offer no evidence and Mr Ahmed was found not guilty. Nevertheless, a Sub Committee considered the facts on 13 February 2017 and resolved to revoke the licence.</p> <p>At appeal the Magistrates found that "Committee had acted in a fit and proper manner and entirely within its jurisdiction and had acted entirely properly in weighing the evidence, and approached it all in a reasonable manner. The decision reached was fair, reasonable and rational: the appellant was not a fit and proper person. However, the Committee was wrong in its assessment of seriousness. The appellant's actions merited more than a warning but less than a revocation. The licence would therefore be suspended for three months."</p>
2	Saleem Abbas Chohan	28.06.2017	Dismissed	£929.15	£929.15	<p>On 27 March 2017, as the result of conviction for driving without due care, namely, driving his licensed vehicle along a pedestrianised area in Birmingham, and concerns expressed regarding his behaviour and attitude, Committee considered and resolved to revoke the licence. The Magistrates were very concerned regarding the careless driving and could find no reason whatsoever to think the Committee's decision was wrong: "Not a momentary lapse; a calculated decision in defiance of the law and common sense." The appellant "Gave very strange evidence which was wrong and confused." His evidence was "inconsistent and unreliable." He was "Difficult to control, outspoken" and seemed to be "rambling and strange."</p>

3	Abdulhadi Zori	03.07.2017	Allowed	Nil (contra BCC)	Nil	<p>On 1 February 2017, a Licensing Sub Committee resolved to refuse the renewal of the driver's licence for a period of six months as the result of the Sub Committee hearing evidence about a complaint from a member of the public regarding an alleged overcharge, which upon investigation proved to be an allegation of plying for hire. The driver had not been prosecuted for the offence because the witnesses would not attend court. The driver also had a previous conviction from 2011 for plying for hire. A prosecution for another offence of plying for hire and overcharging was dropped against the driver in 2015 when the witnesses would not attend court.</p> <p>At appeal Mr Zori's barrister made submissions regarding the fact that none of the complaints had resulted in conviction, and therefore the Sub Committee should have exercised its discretion in his favour and not refused to allow him to renew his licence for 6 months. The Magistrates having retired for some time allowed the appeal.</p>
4	Basil Abdul Karem Mohammed	07.07.2017	Dismissed	£300	£150	<p>On 26 April 2017, as the result of prosecution by Birmingham City Council and conviction in 2014 for two offences of using fraudulent insurance documents, one offence of using a vehicle while uninsured and one offence of driving a licensed vehicle when not being in possession of a licence to do so, all committed whilst licensed as a private hire driver by Sandwell MBC, Committee considered and resolved to refuse the grant of a licence.</p>

## MAGISTRATES' COURT – LICENSING ACT 2003

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Jamaica Expats Association	10.07.2017	Dismissed	£3609.45	£3609.45	On 22 February 2017, as the result of representations received from both responsible authorities and other persons objecting to the grant of a time limited premises licence at Handsworth Park on 5 and 6 August 2017, on grounds that the prevention of crime and disorder, public safety, and protection of children from harm licensing objectives would not be promoted, Committee considered and resolved to refuse the grant of a licence.

## CROWN COURT – PRIVATE HIRE DRIVER'S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Gul Zubair	07.07.2017	Allowed In part	Nil	Nil	On 8 November 2016, as the result of conviction for offences of plying for hire and thereby invalidating his insurance, Committee considered and in line with the relevant policy resolved to revoke the licence. The appeal to the Magistrates' Court was dismissed on 3 April 2017. The Crown Court Bench considered that revocation of the licence was excessive and considered suspension of the licence for a period of two months to be more appropriate, and substituted the Committee's decision.

## CROWN COURT – HACKNEY CARRIAGE DRIVER’S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Shangara Singh Samra	14.07.2017	Dismissed	£618.75	£150	On 16 January 2017, as the result of four previous convictions for alcohol-related motoring offences, and two previous revocations of hackney carriage driver licences, including one instance of revocation with immediate effect in 2016, Committee considered and resolved to refuse a licence. The appeal to the Magistrates was dismissed on 10 March 2017 was dismissed on grounds that the decision “was not unreasonable or wrong”. HHJ Laird QC “had great sympathy for Mr Samra” but was of the view that the decision of the Licensing Sub Committee and Magistrates was correct, this being the unanimous view of the Bench. In view of the appellant’s financial difficulties the costs order was reduced from the £618.75 requested to £150.