

BIRMINGHAM CITY COUNCIL

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

12 June 2019
ALL WARDS

OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS:
March - April 2019

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 March – April 2019

	Magistrates'	Crown
Total	9	4
Allowed	2	1
Dismissed	6	2
Appeal lodged at Crown		
Upheld in part		
Withdrawn pre-Court	1	1
Consent Order		

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 March 2019 costs have been requested to the sum of £4072.45 so far with reimbursement of £2006.70 so far (49.2%) ordered by the Courts.
- 4.3 For the fiscal year, April 2018 to March 2019, costs associated to appeal hearings have been requested to the sum of £22,553.66 with reimbursement of £18,113.57 (80.3%) ordered by the Courts.
- 4.4 For the fiscal year, April 2018 to March 2019, costs contra Birmingham City Council associated to appeal hearings have been requested and awarded to the sum of £9199.67.

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	Shiraz Shoukat	06.03.2019	Allowed	£0.00 (Contra BCC)	£0.00 (Contra BCC)	The appeal was against the Sub Committee Decision to refuse to grant a private hire driver licence due to convictions for drug related offences. Given the age of the convictions (most recent 2004) the magistrates were minded to allow the appeal as they deemed Mr Shoukat to be a fit and proper person.
2	Waqar Ahmed	20.03.2019	Dismissed	£375.00	£100.00	The appeal was against the Sub Committee decision to revoke the private hire driver licence issued to Mr Ahmed, due to a conviction recorded against him. The appeal was dismissed at Magistrates Court.
3	Rizwaan Matloob	22.03.2019	Dismissed	£195.50	£195.50	The appeal was against the Sub Committee Decision to refuse to grant a private hire driver licence to Mr Matloob due to a conviction recorded against him. Mr Matloob was present and was represented by Mr Vesey of Warwick Vesey Solicitors. The appeal was heard before DJ Strongman who heard representations from both sides. Mr Matloob did not give evidence. DJ Strongman dismissed the appeal, stating that although the conviction was of some age, it was clearly a serious offence which Mr Matloob continues to minimise to this date. An application for costs was made in the sum of £195.50, the full amount was subsequently awarded.

4	Kesete Abraha	22.03.2019	Allowed	£0.00 (Contra BCC)	£0.00 (Contra BCC)	The appeal was against the Sub Committee decision to refuse to grant a private hire driver licence to Mr Abraha due to a conviction recorded against him. Mr Abraha was present and was not represented. The matter was heard before DJ Strongman who allowed the appeal. In doing so, DJ Strongman noted that his job at appeal was to decide if the decision made by the licensing sub-committee was wrong. However, he felt that in this case, he was unable to come to a decision about whether that decision was right or wrong as the minutes from the meeting and the subsequent decision letter to Mr Abraha had little information as to how the committee reached its decision. He further stated that he hoped this could be addressed going forward as it makes the job of the appeal court almost impossible.
5	Raja Adnan	27.03.2019	Dismissed	£250.00	£250.00	The appeal was against the Sub Committee decision to refuse to grant a private hire driver licence to Mr Adnan due to convictions recorded against him. The appeal was dismissed.

CROWN COURT – PRIVATE HIRE DRIVER’S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Nesar Ali	08.03.2019	Allowed	£0.00 (Contra BCC)	£0.00 (Contra BCC)	The appeal was against the Sub Committee Decision to refuse to grant a private hire driver licence to Nesar Ali. Mr Recorder A Smith QC and his lay colleagues concluded that the decision of the licensing sub-committee to refuse to grant Mr Ali a private hire driver’s licence was wrong, and accordingly the appeal was allowed. It was recognised, however, that the local authority has acted properly, reasonably and in good faith throughout the proceedings. Therefore, the court was satisfied that it ought to make no order as to costs. It did however make clear that the costs awarded in the magistrates’ court will no longer apply.

2	Sajad Mahmood	11.03.2019	Dismissed	£740.75	£0.00	The appeal was against the Sub Committee decision to revoke the private hire driver licence issued to Sajad Mahmood due to information disclosed by West Midlands police on Mr Mahmood's Disclosure and Barring Service Certificate. Mr Recorder A Smith QC and his lay colleagues dismissed the appeal, as they considered that the decision of the licensing sub-committee was not wrong. It was a decision plainly open to the committee on the information provided to them. Costs were applied for, but not awarded in this case. The reason given was that the court had regard to the effect of its dismissal of the appeal on the earning ability of Mr Mahmood.
3	Aslam Ahmed	n/a	Withdrawn pre-Court	£557.00	£557.00	The appeal was against the Sub Committee decision to revoke Mr Ahmed's private hire driver licence due to convictions for plying for hire and no insurance, in line with policy. Mr Ahmed withdrew the appeal pre-court.
4	Tahir Masood	26.10.2018 (final outcome obtained March 2019)	Dismissed	£554.20	£554.20	The appeal was against the Sub Committee decision to revoke Mr Masood's private hire driver licence due to convictions recorded against him. The appeal was dismissed on the basis of Mr Masood's most recent convictions.

MAGISTRATES' COURT – HACKNEY CARRIAGE DRIVER'S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Riasat Ali	18.03.2019	Dismissed	£750.00	£100.00	The appeal was against the decision to revoke with immediate effect under the chair's authority, the hackney carriage driver's licence held by Mr Hussain following information disclosed by West Midlands Police. Following submissions, the magistrates decided that the decision made was not wrong and as such, dismissed the appeal. Mr Ali was ordered to pay £100 in costs.

2	Abid Hussain	27.03.2019	Dismissed	£650.00	£250.00	The appeal was against the Sub Committee decision to revoke Mr Hussain's hackney carriage driver licence, following a complaint regarding driving in an inconsiderate manner. The subsequent investigation identified that Mr Hussain had not been carrying out a contract awarded to him. Mr Hussain was represented by Mr Griffiths (Counsel). The appeal was heard, the Magistrates dismissed the appeal.
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MAGISTRATES' COURT – PRIVATE HIRE OPERATOR'S LICENCE

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Muniba Khan	10.04.2019	Dismissed	£410.00	£410.00	The appeal was against the Sub Committee decision to refuse to renew the private hire operator's licence issued to Mrs Khan, due to a conviction recorded against her and an investigation carried out by Licensing Enforcement Officers which identified a number of matters. Mrs Khan did not attend court, the magistrates dismissed the appeal, full costs were granted to the sum of £410.00.

MAGISTRATES' COURT – LICENSING ACT 2003

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Theory of Evolution Limited in respect of Darwin Street Warehouse, Darwin Street, Birmingham, B12 0TP	n/a	Withdrawn pre-Court	£0.00	£0.00	The appeal was against the Sub Committee decision to refuse to grant a Premises Licence following representations received from other persons. The appeal was withdrawn pre-court.