

Report of the Assistant Director Waste, Fleet & Transport Services to the meeting of the Bradford District Licensing Panel to be held on 7 September 2022

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Subject:

To invite the panel to consider a personal licence holder, who has been convicted of a relevant offence (Section 132A of the Licensing Act 2003).

Summary statement:

The Licensing Panel are asked to consider a personal licence following a conviction of a relevant offence by the holder of that licence.

EQUALITY & DIVERSITY

The Council has to comply with the public sector equality duty in S.149 Equality Act 2010.

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Portfolio:

Neighbourhoods & Community Safety

Overview & Scrutiny Area:

Corporate

1. SUMMARY

The Licensing Panel are asked to consider a personal licence following a conviction of a relevant offence by the holder of that licence.

2. BACKGROUND

2.1 Personal Licence

Personal licences are issued by the Licensing Authority where the applicant resides, and applicants must hold an accredited licensing qualification. Once granted, a personal licence remains valid unless surrendered, suspended, revoked or declared forfeit by the Courts.

A personal licence was granted to Mr Vijay Kumar Patel on 19 September 2019. A copy of the personal licence is attached at Appendix 1.

- 2.2** Since 06 April 2017, a Licensing Authority which issued a Personal Licence is now able to suspend (for up to 6 months) or revoke a Personal Licence, where the Licensing Authority becomes aware that an individual holding a personal licence has been convicted of a relevant offence or a foreign offence, a foreign offence being an equivalent offence committed in any place other than England and Wales, or if the holder has been required to pay an immigration penalty. This is a discretionary power.

A list of relevant offences is attached at Appendix 2.

- 2.3** LA 2003 Section 128 provides that where the holder of a personal licence is charged with a relevant offence, he must, produce to the court the personal licence, or notify the court of the existence of the personal licence and the identity of the relevant licensing authority and of the reasons why he cannot produce the licence. A person commits an offence if he fails, without reasonable excuse, to comply with this section.

The Licensing Authority has been unable to obtain information from West Yorkshire Magistrates Court, as to whether Mr Patel disclosed to the Court that he holds a personal licence.

- 2.4** LA 2003 Section 132 places an obligation on the licence holder to notify the Licensing Authority of any conviction of a relevant offence. A person commits an offence if he fails, without reasonable excuse, to comply with this section.

The Licensing Authority was notified by West Yorkshire Police that the personal licence holder had been convicted of a relevant offence as defined in Schedule 4 of the Act. Mr Patel did not inform the Council as Licensing Authority of the relevant offence.



Details of the offence are attached at Appendix 3.

- 2.5** Where the Licensing Authority becomes aware that a holder of a Personal Licence has been convicted of a relevant offence or foreign offence and is considering revocation or suspension of the licence, notice must be sent to the holder of the Personal Licence inviting the Personal Licence Holder to make representations regarding the conviction within 28 days. This notice cannot be sent until after the period for lodging an appeal against the conviction for a relevant offence has passed. Where an appeal has been lodged, it must be decided and the conviction upheld in order for the Licensing Authority to exercise its powers.

The West Yorkshire Magistrates convicted Mr Patel of the offence of driving a motor vehicle when alcohol was above the prescribed limit (offence date 19 January 2022) contrary to Section 5 (1) (a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988

Mr Patel was found guilty of the offence on 9 March 2022.

The court disqualified Mr Patel from driving.

A copy of the notice served on Mr Patel is attached at Appendix 4.

- 2.6** Mr Patel has not responded to the notice.

3. OTHER CONSIDERATIONS

Legal Appraisal

- 3.1** The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:
- a) the prevention of crime and disorder
 - b) public safety
 - c) the prevention of public nuisance
 - d) the protection of children from harm
- 3.2** The Council must also have regard to the guidance issued by the Home Office under Section 182 of the Licensing Act 2003. Regard must also be taken of the Council's statement of Licensing Policy for the District.
- 3.3** LA2003 Section 132A This section applies where a licensing authority has granted a personal licence and it becomes aware that the holder of the licence has been, at any time before or after the grant of the licence—
- (a) convicted of any relevant offence or foreign offence, or
 - (b) required to pay an immigration penalty.



The relevant licensing authority may—

- (a) suspend the licence for a period not exceeding six months, or
- (b) revoke the licence.

If the relevant licensing authority is considering whether to suspend or revoke the licence, the authority must give notice to the licence holder.

The notice must invite the licence holder to make representations regarding—

- (a) the relevant offence, foreign offence or immigration penalty that has caused the relevant licensing authority to issue the notice,
- (b) any decision of a court under section 129 or 130 in relation to the licence, and
- (c) any other relevant information (including information regarding the licence holder's personal circumstances).

The licence holder may make representations to the relevant licensing authority within the period of 28 days beginning with the day the notice was issued.

Before deciding whether to suspend or revoke the licence the Licensing Authority must consider:

- a) any representations made by the licence holder
- b) any decision of a court to forfeit or suspend the personal licence of which the licensing authority is aware, or any suspension of that decision on appeal; and
- c) any other information which the authority considers relevant.

Statement of Policy Issues

- 3.4** The following parts of the Licensing Policy are of particular importance; Part 4 (prevention of crime and disorder).

4. FINANCIAL & RESOURCE APPRAISAL

There are no apparent finance or resource implications.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

There are no apparent risk management and governance implications.

6. LEGAL APPRAISAL

Referred to in part 3 of this report.

7. OTHER IMPLICATIONS

7.1 SUSTAINABILITY IMPLICATIONS

There are no apparent sustainability implications.



7.2 GREENHOUSE GAS EMISSIONS IMPACTS

There are no apparent implications.

7.3 COMMUNITY SAFETY IMPLICATIONS

The Licensing Authority is required to pay due regard to the prevention of crime and disorder objective referred to in 3.1 of this report.

7.4 HUMAN RIGHTS ACT

The following rights are applicable:

Article 1 First Protocol to the Convention – Right to peaceful enjoyment of possessions subject to the state’s right to control the use of property in accordance with the general interest. The Council’s powers set out in the recommendations fall within the states right. A fair balance must be struck between public safety and the applicant’s rights.

Article 6 – A procedural right to a fair hearing. As refusal of the application is an option, adherence to the Panels’ usual procedure of affording a hearing to the applicant is very important. The applicant should also be able to examine the requirements of the fire authority. If the decision is to refuse then reasons should be given.

7.5 TRADE UNION

Not applicable.

7.6 WARD IMPLICATIONS

Not applicable.

7.7 IMPLICATIONS FOR CHILDREN AND YOUNG PEOPLE

There are no apparent implications.

7.8 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

There are no apparent data protection or information security implications.

8. NOT FOR PUBLICATION DOCUMENTS

None.

9. OPTIONS



- 9.1** Members may:
- (a) take no further action
 - (b) suspend the personal licence for a period not exceeding 6 months
 - (c) revoke the personal licence
- 9.2** If Members propose not to revoke the licence, the Licensing Authority must give notice to the police and invite the police to make representations within 14 days of receipt of the notice.
- 9.3** Any representations made by the police must be taken into account by the Licensing Authority and a second hearing will be held for Members to consider the original information, any representations from the police or licence holder and give a final decision.
- 9.4** Should the personal licence holder feel aggrieved at any decision with regard to the licence they may appeal to the Magistrates Court. Where an appeal is made, any decision by the Licensing Authority does not have effect until the appeal is disposed of.
- 9.5** Where no appeal is made, the decision of the Licensing Authority comes into effect at the end of the period that an appeal can be made.

10. RECOMMENDATIONS

Members are invited to consider the information and documents referred to in this report and determine what action should be taken.

11. APPENDICES

1. Personal Licence.
2. List of relevant offences.
3. Offence details.
4. Notice to the personal licence holder.

12. BACKGROUND DOCUMENTS

Legislation, guidance and regulations.

