

The Highland Licensing Committee

Meeting – 7 October 2014

Licensed Taxi Operator – Hugh Hutton
(Ward 22 – Fort William & Ardnamurchan)

Report by the Legal Manager

Agenda Item	13.3
Report No	HLC/070/14

Summary

This Report relates to a licensed taxi operator who has been reported for a breach of licence conditions.

This application is subject to a formal hearings procedure.

1.0 Background

1.1 The Highland Council has resolved that in terms of the Civic Government (Scotland) Act 1982 a licence will be required for the operating of a licensed taxi. A licence for the same issued by the Highland Council is valid for the whole Council Area.

1.2 Mr Hugh Hutton is both a licensed taxi operator and licensed taxi driver with the Highland Council and currently holds the following licences:-

Taxi Driver's Licence: Expires – 6 December 2016

Taxi Operator's Licence: Taxi Plate 23018 – Expires - 29 January 2016

2.0 Highland Council Penalty Points System for Taxi and Private Hire Operators

2.1 Highland Council (Trading Standards) introduced a Penalty Points System on 1 July 2006 to assist in the assessment of the level of compliance shown by each Operator in relation to Conditions 1 and 2 of a Taxi Operator's Licence. When the points on an Operator's Licence reach 20 or more during a two year rolling period, the Operator becomes the subject of a report to the Licensing Committee.

2.2 On 16 September 2014 a report in relation to Mr Hutton was received from the Council's Trading Standards Service who are responsible for the enforcement of the licensing scheme for taxi/private hire cars and their drivers. A copy of the report received from Trading Standards is attached. (Members are asked to note that some of the productions referred to in the Trading Standards Report have not been circulated but will be made available at the meeting).

This report has been submitted due to Mr Hutton accruing a total of 26 points on Taxi Operator Licence No. 23018 and for failing to maintain his licensed taxi to the standards required by the Licensing Authority.

3.0 Process

3.1 A copy of the report and all attachments have been sent to both parties who, in terms of Paragraph 4(2) of the Civic Government (Scotland) Act 1982, have been invited to attend and will be provided with an opportunity to be heard by the Committee. A copy of the procedure which will be followed at the meeting has also been sent to both parties.

4.0 Consideration of action to be taken

4.1 In terms of Section 11 of Schedule 1 of the Civic Government (Scotland) Act 1982 a Licensing Authority may suspend a licence(s) on the following grounds:

- (a) if in their opinion the holder of the licence is no longer a fit and proper person to hold the licence(s);
- (b) the carrying on of the activity to which the licence relates has caused, is causing or is likely to cause undue public nuisance or a threat to public order or public safety; or
- (c) a condition of the licence has been contravened.

4.2 If Members are not of a mind to suspend the licence, the Committee could require the operator to present his vehicle for inspection on a more frequent period than the current 6 or 12 months inspection regime eg. every 3 months. This would allow Trading Standards an opportunity to undertake more regular monitoring of the vehicle.

5.0 Policies and Conditions

5.1 The Standard Taxi Operator's licence conditions are relevant to this case and can be accessed via the following link:

http://www.highland.gov.uk/downloads/file/3516/taxi_operator_conditions_of_licence

In terms of Condition 1 of the Taxi Operator's licence conditions, "the holder of a Taxi Operator's licence shall ensure that the taxi, including all body work, upholstery and fittings, is maintained in a safe and serviceable condition and, subject to prevailing road conditions, is maintained in a clean condition and of smart appearance".

6.0. Recommendation

The Committee is invited to consider whether any action should be taken against the licence holder as outlined at paras 4.1 and 4.2 above.

Should the Committee be of a mind to suspend the licence(s), the Committee must specify a reason for the suspension in terms of paragraph 4.1 above.

Designation: A H Mackenzie, Legal Manager
Officer Reference: Julie Traynor
Date: 22 September 2014
Background Papers: Civic Government (Scotland) Act 1982
Highland Council's Taxi Operator Licence Conditions
Appendix 1: Trading Standards Report



Mr A H MacKenzie
Legal Manager
Corporate Governance Service
The Highland Council
Lochaber House
High Street
Fort William
PH33 6EL

Please ask
for: Liz Gardner
Direct Dial: 01463 228722
e-mail: elizabeth.gardner@highland.gov.uk
Your Ref:
Our Ref: EAG/HKH/PP2/14
Date: 16th September 2014

Dear Mr MacKenzie

**Civic Government (Scotland) Act 1982
Report Concerning Mr Hugh Kane Hutton, Taxi Operator Licence Number 23 18**

Trading Standards, Development and Infrastructure Service, Highland Council wishes to submit a Report to the Licensing Committee stating that Mr Hugh Kane Hutton, 72 Kennedy Road, Fort William, PH33 6HN has failed to maintain his licensed vehicle to the standard required by Highland Council contrary to Condition 1 of the Taxi Operator's Conditions of Licence.

Please find attached the Report, the redacted Report and the Productions referred to in the Report.

Yours sincerely,

Elizabeth Gardner
Trading Standards Officer.

CIVIC GOVERNMENT (SCOTLAND) ACT 1982
Penalty Points System for Licensed Taxi and Private Hire Car (PHC)
Operators and Drivers

Reference No. TS/CG(S)A/PP/2/14

Against: Hugh Hutton

Address:

Licences Held:

Taxi Driver's Licence reference number TD/2010/12/01, ID 23079

Taxi Operator's Licence reference number 23 18, expires on 29th January 2016

Plate Number 23 18:

Vehicle Description: Toyota Avensis

Registration Number: FP04 NFR

Penalty Points Total as of 28th July 2014: 26 Points

REPORTING OFFICER:

Elizabeth Anne Gardner

DESIGNATION:

Trading Standards Officer

ADDRESS:

Highland Council

TEC Services

Trading Standards

38 Harbour Road

Inverness

IV1 1UF

TELEPHONE NO:

01463 228700

It Is Reported That:

Mr Hutton has failed to maintain his licensed taxi to the standard required by the Licensing Authority, Highland Council, contrary to Condition 1 of the Taxi Operator's Conditions of Licence, as demonstrated by the results of a vehicle inspection carried out by Highland Council's contractor and two routine visual inspections carried out by an officer from Trading Standards and is therefore not a fit and proper person to hold a licence.

Background Information

The Penalty Points System was introduced on July 1st 2006. Its purpose is to assist Trading Standards in the evaluation of how well licensed operators are maintaining their vehicles.

Points accumulate when faults are discovered at the Council's inspection of the licensed vehicle or during "on the spot" inspections of the vehicle by Trading Standards staff. An appeal system is in place which allows an operator to question the allocation of points.

When the points total reaches 20 or more during a two year rolling period, the operator becomes the subject of a report to the Licensing Committee.

A Taxi and PHC Penalty Points Tariff which identifies possible faults and the points allocated to those faults, is included with this report. (**Production Number 1** Penalty Points Tariff)

Summary of Facts and Evidence

This report relates to the licensed vehicle operated by Hugh Hutton, licence number 23 18. This matter is reported because more than 20 Penalty Points have been accumulated within a two year rolling period.

The Highland Council

Trading Standards

Statement of Witness

maintained his licensed vehicle. The interview was arranged for Monday 28th July 2014 and I asked HUGH HUTTON to have any paperwork which related to the maintenance of his vehicle with him.

I interviewed HUGH HUTTON at 11.00am on Monday 28th July 2014, in the presence of WITNESS HIDDLESTON, in Fulton House, Cameron Square, Fort William. I told HUTTON that the accumulated points were as a result of a Council inspection on 5th June 2014 when two MOT failures had been identified along with two Group B faults

(**Production Number 3** Taxi Test Report Form dated 5th June 2014)

and a routine inspection by WITNESS HIDDLESTON on 19th June 2014 when the two front tyres on the vehicle had been found to be below the legal minimum tread of 1.6mm over more than 25% of the surface of the tyres.

(**Production Number 7** s11 Notice dated 19th June 2014)

I asked HUTTON what maintenance regime he had for his vehicle. He said that Edward Gall and his mate did a lot of the work for the June test. The car had been pre-checked at Slipway Autos

(**Production Number 8** Invoice dated 30/05/2014 from Slipway Autos Ltd, Annat, Corpach,
Fort William)

He had a quote from Slipway Autos for the bodywork to be done. It would be booked in sometime in August when Slipway had a space. Hutton acknowledged this was beyond the 21 Days within which the Council inspection had required the work to be carried out and the further 21 Day extension granted to

Date:-

Signed:-

The Highland Council

Trading Standards

Statement of Witness

him by myself which had expired on 17th July. Hutton said the car was 10 years old and showing her age a bit.

HUTTON had the pre-check on his car done on the 30th May because he knew his test must be due sometime soon, it was a combined MOT/Council inspection and his MOT ran out on 5th June, but he hadn't had notification from the Council when the test was. Usually he got notice of his appointment about a month before. He spoke to Julie Traynor, Licensing Officer for Lochaber, after he'd had his pre-check done to find out when his appointment was but there had been a mix up, she hadn't put a date in somewhere and no appointment had been made. Julie made the appointment for the 5th June. Most of the work identified in the pre-check on the car was done before the Council inspection but when trying to fix the parking brake the thread had been stripped and a replacement couldn't be found before the test. HUTTON couldn't cancel the test because this happened less than 48 hours before the test, he'd forfeit the £110 fee and he couldn't afford that so he put the car in for its test knowing it would fail on the brakes. He got the car back for its re-test the following day, Friday 6th June and had got a "Conditional Pass" because the MOT failures had been sorted.

The previous Council inspection of the car on 9th December 2013 had been a "Pass" result but in the Observations which are for information only there was the statement "Park Brake efficiency 19%".

(Production Number 2 Taxi Test Report Form dated 9th December 2013)

I asked HUTTON if the attempt to fix the brakes before the June inspection had been the first attempt to fix the brakes since the December observation. He replied No, the brakes had been sorted before but it

Date:-

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The Highland Council

Trading Standards

Statement of Witness

had been by a mate at mate's rates for cash with no paperwork involved. He wouldn't identify who had been involved.

On 19th June 2014 WITNESS HIDDLESTON had been carrying out routine inspections of the taxis on the taxi rank at the Railway Station in Fort William. He saw HUTTON'S taxi and after inspecting it issued a s11 Notice suspending the taxi's Licence to Operate because both front tyres were below the legal minimum tread depth.

(Production Number 7 s11 Notice dated 19th June 2014)

I asked HUTTON why he had been on a taxi rank with tyres in that state. HUTTON replied that a garage had told him the tyres were okay the day before WITNESS HIDDLESTON saw the tyres. HUTTON knew the tyres were going a bit at the edges but the garage had told him that they were okay for more than 80% of the tread so they were legal. However replacement tyres were on order, he just hadn't got them on the day WITNESS HIDDLESTON saw the taxi. He'd ordered tyres from Edward Gall to get a good deal. Gall deals in scrap cars and he had a car which had crashed with almost new tyres on it so HUTTON has replaced all four tyres on the taxi the day after WITNESS HIDDLESTON had seen it and the s11 Notice had been cleared by Jenny Jones, an officer with Trading Standards based in Fort William. HUTTON hadn't argued about the tyres because he knew he was changing them anyway, although he acknowledged WITNESS HIDDLESTON had offered to get him a second opinion on the tyres from a police officer because he had challenged WITNESS HIDDLESTON'S assessment of the tread on the day. HUTTON had turned down the offer and decided not to argue.

The tyres had been fitted by a garage, "not McConechy's, the other one". HUTTON was unable to identify which garage fitted the tyres.

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The Highland Council

Trading Standards

Statement of Witness

When the interview was completed HUTTON, WITNESS HIDDLESTON and myself went down to the car park outside Fulton House to look at HUTTON'S taxi. The body work identified as requiring repair in the Council inspection of 5th June still required to be repaired. I had previously confirmed with a telephone call to Slipway Autos on Thursday 24th July that HUTTON had taken his car to them and received a quote for the work. No appointment had been made however and wouldn't be until Gordon Penman, the garage owner, came back from holiday. WITNESS HIDDLESTON carried out a routine inspection of the vehicle and issued a 21 Day Notice for the offside front window which did not work. (Production Number 9 21 Day Notice dated 28th July 2014.)

This fault meant another 1 point was added to the points total for the licence.

I advised HUTTON that results of the interview would be reviewed and I would be back in touch with him to let him know if he would be the subject of a report to the Licensing Committee.

I subsequently telephoned HUTTON on Wednesday 30th July to inform him he would be the subject of a report to the Licensing Committee.

Date:-

Signed:-

The Highland Council

Trading Standards

Statement of Witness

Surname: HIDDLESTON **Maiden Name:**
Forename(s): CHARLES STEWART
Title: MR
Address (H): **Tel No (H):**

Address (B): Trading Standards,
38 Harbour Road,
Inverness
IV1 1UF **Tel No (B):** **01463 228700**

Place and Date of Birth

Occupation: Assistant Trading Standards Officer

**'Care of' Address (e.g. students,
etc.):**

Known as or Alias:

Taken by: **On(Day, Date):**

At (Time):

At (Location):

States:-

I have been employed as an Assistant Trading Standards Officer, enforcing the Civic Government (Scotland) Act 1982 as it applies to licensed taxis and PHCs and the Conditions of Licence for licensed operators and drivers for 18 years.

I was carrying out routine inspections of taxis and following up 21 Day Notices which had expired in Fort William on Thursday 19th July 2014. I was at the Railway Station taxi rank in the

Date:-

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The Highland Council

Trading Standards

Statement of Witness

morning of the 19th and taxi licence plate number 23 18 was there. It had an outstanding 21 Day Notice on it though it wasn't due to expire until the 26th June. I carried out a routine visual inspection of the taxi. I asked HUTTON about the problems with the bodywork. He said he was trying to get the car booked into a body shop. I saw that the front nearside tyre looked feathered at the edge. I asked HUTTON to start the vehicle up and turn the steering wheel so I could see the nearside front tyre better. I found the tyre to be below the minimum legal tread depth of 1.6mm. The outside edge of the tyre had no tread at all. The remaining tread covered less than 75% of the surface of the tyre. I then checked the offside front tyre. This tyre was in the same condition as the nearside front tyre.

I told HUTTON that in my opinion the vehicle should not be used for hire and reward. HUTTON said he had tyres coming from Edward Gall and he'd 'phone to see if they were there. HUTTON then used his mobile 'phone but got no reply. HUTTON said he'd had the tyres checked and he'd been told they were alright. He didn't tell me who had checked them or when. I offered to get him a second opinion by calling 101 and asking that a police officer to attend. HUTTON said "Just write the Notice".

I wrote out a s11 Notice suspending his licence to operate stating that both front tyres were below the legal limit.

(Production Number 7, s11 Notice dated 19th June 2014)

Date:-

Signed:-

The Highland Council

Trading Standards

Statement of Witness

I told HUTTON that I would be in Fort William for another couple of hours, till at least 1pm, and if he had new tyres fitted he should come back to me so I could check them and clear the Notice. Failing that he should go to the Police Station and they would clear the Notice. He then drove away.

I was present when WITNESS GARDNER interviewed HUTTON at Fulton House, Cameron Square, Fort William on Monday 28th July 2014. I can corroborate WITNESS GARDNER'S statement where it relates to that interview and the subsequent visual inspection of HUTTON'S taxi.

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