

AGENDA

Regulatory Sub Committee

Date: **Tuesday 26 March 2013**

Time: **2.00 pm**

Place: **The Council Chamber, Brockington, 35 Hafod Road,
Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

Ricky Clarke, Democratic Services Officer

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Agenda for the Meeting of the Regulatory Sub Committee

Membership

**Councillor BA Durkin
Councillor JW Hope MBE
Councillor GA Vaughan-Powell**

AGENDA

	Pages
1. ELECTION OF CHAIRMAN To elect a Chairman for the hearing.	
2. APOLOGIES FOR ABSENCE To receive apologies for absence.	
3. NAMED SUBSTITUTES (IF ANY) To receive any details of Members nominated to attend the meeting in place of a Member of the Committee.	
4. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the Agenda.	
5. APPLICATION TO RE-INSTATE AN EXPIRED HACKNEY CARRIAGE VEHICLE LICENCE OUTSIDE STANDARD CONDITION 11.5 To decide whether to licence a vehicle outside the standards vehicle licence conditions.	5 - 8
6. FITNESS OF LICENSED VEHICLE H088 FOLLOWING VOSA INSPECTION To determine if the proprietor and vehicle remain suitable to be licensed.	9 - 14
7. FITNESS OF LICENSED VEHICLE H024 FOLLOWING VOSA INSPECTION To determine if the proprietor and vehicle remain suitable to be licensed.	15 - 20
8. FITNESS OF LICENSED VEHICLES H055 AND H275 FOLLOWING VOSA INSPECTION To determine if the proprietor and vehicle remain suitable to be licensed.	21 - 26

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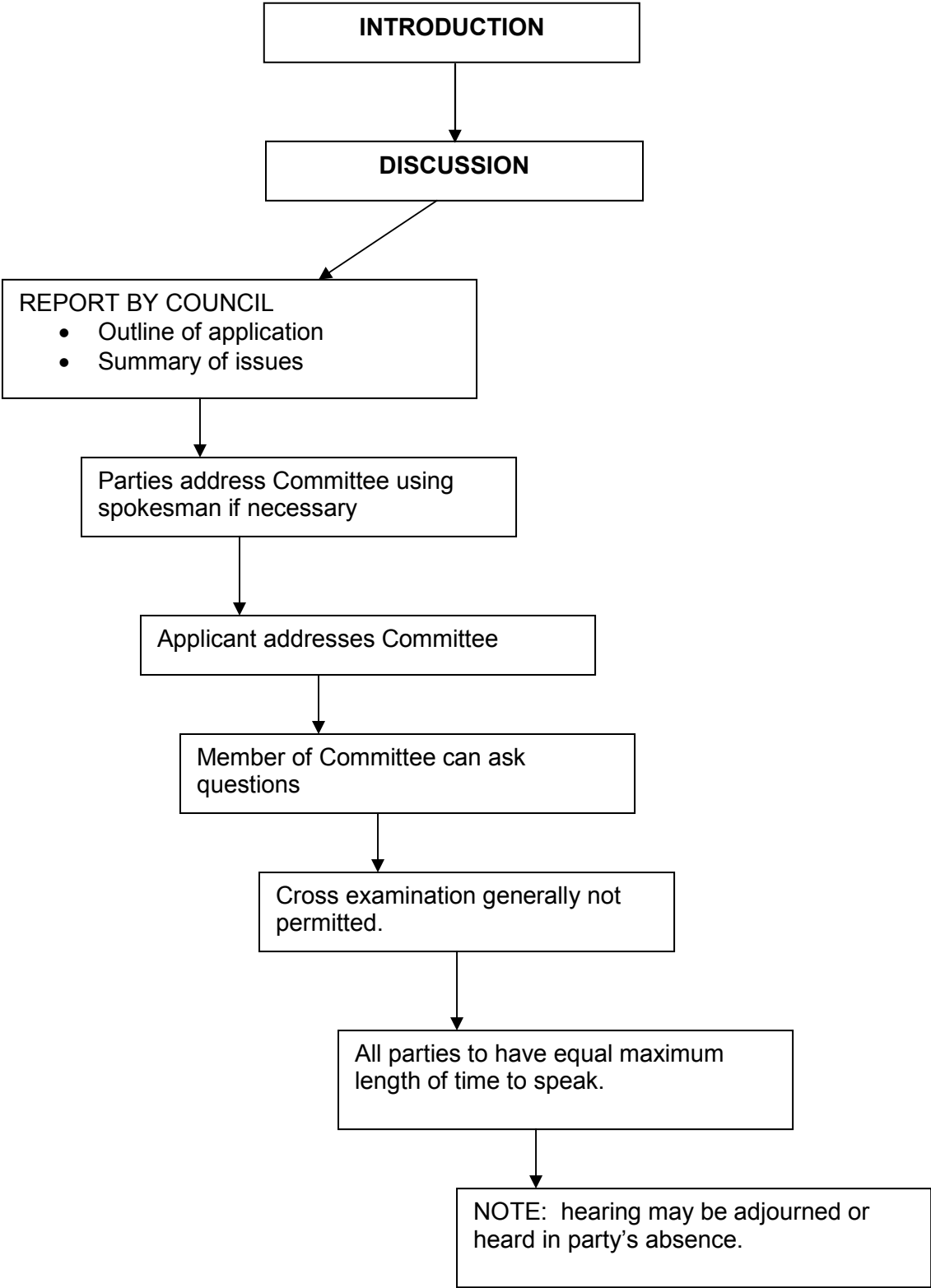
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LICENCING HEARING FLOW CHART



MEETING:	SUB-REGULATORY COMMITTEE
DATE:	26 MARCH 2013
TITLE OF REPORT:	APPLICATION TO RE-INSTATE AN EXPIRED HACKNEY CARRIAGE VEHICLE LICENCE H336 OUTSIDE STANDARD CONDITION 11.5 BY MR ROBERTS JEGGERS
PORTFOLIO AREA:	ENVIRONMENTAL HEALTH AND TRADING STANDARDS

CLASSIFICATION: Open

Wards Affected

Countywide

Purpose

To decide whether to licence a vehicle outside the standards vehicle licence conditions.

Key Decision

This is not a key decision.

Introduction and Background

1. Under the terms of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, local authorities may make reasonable conditions for the regulation of hackney carriages and private hire vehicles, drivers and operators.
2. The current version of the standard licence conditions were approved at Regulatory Committee on the 31st March 2010.
3. Standard condition number 11.5 states: -
'All applications received after the date of expiry will be treated as grants and not renewals and the appropriate conditions and fees will apply'.
4. This Authority previously licensed a Mazda 6 Hatchback with registration number FP05 AKV on Plate No.H336, which was first registered in April 2005.
5. This plate & licence expired on 28th February 2013.
6. On 31st December 2012 a renewal reminder letter and application form were sent to Mr Jegers i.e. two months before the expiry date in accordance with current practice.

Further information on the subject of this report is available from
Claire Berrow – Licensing Officer on (01432) 383542

7. The plate & licence expired on 28th February 2013.
8. On the date of expiry a further letter was sent out as telephone communication has been unsuccessful advising Mr Jeggers that the vehicle was no longer licensed.
9. On 1st March 2013 Mr Jeggers made application for renewal of licence plate H336. He was advised that the application would have to be referred and a plate could not be issued until the date of the next hearing.
10. Mr Jeggers has paid £285 for the renewal of the plate, if he is granted permission to renew he will be required to pay a further £150 for the cost of referral to Committee.

Recommendation(s)

THAT Committee:

- (a) **Assuming Mr Jeggers offers some mitigation, grant the licence outside the standard conditions.**

Key Points Summary

- Hackney Carriage Plate No.H336 expired 28th February 2013.
- Application to renew the plate made 1st March 2013.

Alternative Options

1 **The licence cannot be granted and therefore is refused**

Advantages: It ensures that the existing licence conditions are met.

Disadvantages: It could be subject to legal challenge.

Reason for rejection: Although this has been considered it has not been recommended as it is considered to be inappropriate and unreasonable given the circumstances.

2. **To defer the decision in order to get more information**

The Committee could make a decision to grant the licence subject to that information meeting the criteria set by committee being produced to the Licensing Officer. Where this was not produced the licence would remain not granted until that information was produced.

Advantages: Gives the opportunity for the applicant to produce further information in support of the application and allows him a fair hearing. It would also reduce the need for an additional Committee Hearing thus saving costs.

Disadvantages: This would delay the decision making process and may mean that the livelihood of the applicant could be affected.

Reason for rejection: It is felt that any information required to reach a decision has been provided within the application.

To reach some other decision

Advantages: This leaves other solutions open to the Committee to resolve the application.

Disadvantages: There are no clear directions from the Head of Service in respect to what alternatives could exist.

Reason for rejection: It is difficult to envisage what other decision could be reached.

Reasons for Recommendations

Mr Jeggers may provide mitigating circumstances for the late application. .

Key Considerations

Whether or not, given the circumstances, the application should be granted outside the standard conditions.

Community Impact

It is felt that any decision made will have very little or no impact on the community.

Financial Implications

Not applicable

Legal Implications

Under the Local Government (Miscellaneous Provisions) Act 1976 there is a right of appeal to a Magistrates Court within 21 days of notification of the decision being served on the applicant.

Appendices

None

Background Papers

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

MEETING:	REGULATORY SUB COMMITTEE
DATE:	26 MARCH 2013
TITLE OF REPORT:	FITNESS OF VEHICLE H088 FOLLOWING VOSA INSPECTION – CARRYING OVER 8 PASSENGERS
PORTFOLIO AREA:	ENVIRONMENTAL HEALTH AND TRADING STANDARDS

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To determine if the proprietor and vehicle remain suitable to be licensed.

Key Decision

This is not a Key Decision.

Recommendation(s)

THAT Committee:

- (a) **Issue 4 Penalty Points for making alterations to the vehicle without consent (adding a seat into vehicle);**
- (b) **and issue a final warning, that if the vehicle is found to be defective or altered in the future the licence will be revoked and the vehicle will not be able to be licensed in Herefordshire in the future.**

Key Points Summary

- Vehicle proprietor is Lyndsay Oakley-Davies
- Inspections carried out by VOSA and West Mercia.
- The vehicle had nine passenger seats in it.
- 18 penalty points issued for breaches identified during vehicle inspection.
- Further consideration regarding the fitness of the proprietor to retain the licence.

Further information on the subject of this report is available from
Claire Corfield Licensing Manager 01432 383324

Alternative Options

- 1 **Revoke the vehicle licence – Advantages – ensures compliance with the statutory requirement to only licence vehicle up to 8 passenger seats. Disadvantages – the proprietor could Appeal the decision to revoke.**

Defer the decision – Advantages – will allow further information to be supplied if it is deemed necessary. Disadvantages – further delays the decision

Reasons for Recommendations

- 2 The recommendation has been made as the proprietor claims he was unaware of the additional seat being put into the vehicle. Mr Oakley-Davies further added that the additional seat had been added at the request of the school and made directly to the driver.

Introduction and Background

- 3 The vehicle is owned by Lindsay Oakley-Davies and has been owned by him since January 2009.

VOSA and West Mercia undertook a joint vehicle check at Blackmarsden School on 6/3/2013. During the inspection a number of vehicles were found to have defects or other problems. H088 CN51 EYG was found to be carrying **nine** passengers. The legislation only allows the Local Authority to licence vehicle up to **eight** passengers. The test certificates were inspected and at the time of inspection, the vehicle only contained **eight** passenger seats.

The vehicle was requested to be presented at Bath Street Offices for inspection. The vehicle was driven in by Lee Perkins. The vehicle was found to have **eight** passenger seats and the driver confirmed that sometimes there is an extra seat put in and indicated the two positions where it can be located.

Mr Oakley-Davies was telephoned following the inspection and he indicated that his investigation of the matter found that the additional seat had been requested by the school to accommodate one more passenger, the driver was not the normal driver and agreed to this being done, Mr Oakley-Davies was unaware of this request.

Following the inspection a number of other matters were identified and are listed:-

No meter

No roof sign

No door signs

No tariff sheet displayed

Plate not affixed to rear of vehicle but displayed in back window

The passenger step was rusty and fixed in the closed position. The driver did manage to get the step out but it was very difficult to do so.

The above matters were requested to be rectified as soon as possible and accumulated 18 penalty points.

Due to the fact that the vehicle is being used for transporting children, it was felt that the matter was serious and warranted a referral to Regulatory Sub Committee for determination.

Key Considerations

- 4 On the balance of probabilities, is the vehicle proprietor able to retain the licence and maintain control of the vehicle. Is there a risk that he will once again add extra seating in the licensed vehicles?

Community Impact

5. Mr Oakley-Davies operates four other licensed vehicles 3 are 8 seaters and 1 car. His company undertakes a number of school and other contracts for the Council therefore drives some of the County's most vulnerable people around on school taxi contracts and bus runs. The most recent VOSA and Police inspection was carried out at Blackmarsden School.

Financial Implications

- 6 There are no financial implications for the Council only for the vehicle proprietor.

Legal Implications

- 7 The maximum number of passengers that can be carried in a vehicle for it to be capable of being licensed as a hackney carriage is 8. Any vehicle which carries more than 8 is classified as a public service vehicle (PSV) under the Public Passenger Vehicles Act 1981.

S60 (1) of the TPCA 1847 states

- 8 A district Council may suspend or revoke a vehicle licence on the following grounds:-
- b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the proprietor or driver; or
 - c) any other reasonable cause

Risk Management

- 9 There is a reputational risk to the Council as it awards contracts for transport services, which covers school transport. If the vehicles are not licensed or are not operated within the Regulations the insurance will be voided and the passengers will be travelling without any cover. A claim could be made against the Council if the vehicle was not adequately insured defective or not operated within the statutory requirements.

Consultees

- 10 Not applicable

Appendices

- 11 Copy of West Mercia e-mail

Background Papers

- None identified.

CN51EYG LDV minibus. Plate no:**HO88**

Vehicle was carrying 9 passengers it is only plated for 8.

Driver: Mr Geoffrey Bridges 10/08/38 Pomona. 7 Broadlands Lane,
Hereford.

He does not hold a category D1 entitlement on his driving licence. He is also
required to wear glasses when driving....he wasn't.

MEETING:	REGULATORY SUB COMMITTEE
DATE:	26 MARCH 2013
TITLE OF REPORT:	FITNESS OF VEHICLE H024 (DEFECTIVE TYRE, AND VEHICLE NOT LICENSED) FOLLOWING VOSA INSPECTION
PORTFOLIO AREA:	ENVIRONMENTAL HEALTH AND TRADING STANDARDS

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To determine if the proprietor and vehicles remain suitable to be licensed.

Key Decision

This is not a Key Decision.

Recommendation(s)

THAT Committee:

- (a) **Issue 4 Penalty Points for a breach of Condition B10 (Failure by driver or proprietor to take reasonable precautions to ensure the safety of passengers);**
- (b) **and issue a final warning, that if the vehicle is found with defective tyres or found not to be displaying plate, in the future the licence will be revoked and the vehicle will not be able to be licensed in Herefordshire in the future, and;**
- (c) **allow the licence to be renewed.**

Key Points Summary

- Vehicle proprietor is Nicholas James Maddy
- Inspections carried out by VOSA and West Mercia.
- The vehicle H024 found with defective tyre and expired hackney carriage plate.

Further information on the subject of this report is available from
Claire Corfield Licensing Manager 01432 383324

- Further consideration regarding the fitness of the proprietor to retain the licence.

Alternative Options

- 1 **Revoke the vehicle licence – Advantages – ensures compliance with safety of passengers by ensuring the vehicles are safely maintained and licensed. Disadvantages – the proprietor could Appeal the decision to revoke.**

Defer the decision – Advantages – will allow further information to be supplied if it is deemed necessary. Disadvantages – further delays the decision

Reasons for Recommendations

- 2 The recommendation has been made in accordance with the Council's Penalty Points Scheme.

Introduction and Background

- 3 The licences are owned by Mr Nicholas Maddy.

VOSA and West Mercia undertook a joint vehicle check at Blackmarsden School on 6/3/2013. During the inspection a number of vehicles were found to have defects or other problems. H024 were found with a defective tyre and expired licence plate.

Mr Maddy own other licensed vehicles.

Due to the fact that the vehicles were and are being used for transporting children, it was felt that the matter was serious and warranted a referral to Regulatory Sub Committee for determination.

Mr Maddy was unable to have his plate issued as it did not comply with the licence conditions. When it was inspected by Ady Poole it was found to have a meter that was not connected. He was advised to remedy this and then the plate would be issued. Mr Maddy was reminded by telephone and the plate remained unclaimed. The plate was not re-issued but instead the matter is referred to Regulatory Sub Committee for determination.

Key Considerations

- 4 On the balance of probabilities, is the vehicle proprietor able to retain the licence and maintain control of the vehicle. Is there a risk that he will once again allow the vehicles to be run with defective tyres or other defects or not display a valid plate?

Community Impact

5. Mr Maddy operates other licensed vehicles. The company undertakes a number of school and other contracts for the Council therefore drives some of the County's most vulnerable people around on school taxi contracts and bus runs. The most recent VOSA and Police inspection was carried out at Blackmarsden School.

Financial Implications

- 6 There are no financial implications for the Council only for the vehicle proprietor.

Legal Implications

S60 (1) of the TPCA 1847 states

- 7 A district Council may suspend or revoke or refuse to renew a vehicle licence on the following grounds:-
- b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the proprietor or driver; or
 - c) any other reasonable cause

Risk Management

- 8 There is a reputational risk to the Council as it awards contracts for transport services, which covers school transport. If the vehicles are not operated within the Regulations the insurance will be voided and the passengers will be travelling without any cover. A claim could be made against the Council if the vehicle was not adequately insured defective or not operated within the statutory requirements.

Consultees

- 9 Not applicable

Appendices

- 10 Copy of West Mercia e-mail

Background Papers

- None identified.

EU51FVB Vauxhall Movano van. Plate No: **HO24**

Defective tyre

Apparently the driver has complained on a regular basis to the company ,N. Maddy, Abbey Dore, about the condition of vehicles. He got reported!

MEETING:	REGULATORY SUB COMMITTEE
DATE:	26 MARCH 2013
TITLE OF REPORT:	FITNESS OF VEHICLE H055 (FRONT OFFSIDE TYRE EXPOSED INTERNAL STRUCTURE AND H275 (TWO DEFECTIVE FRONT TYRES) FOLLOWING VOSA INSPECTION
PORTFOLIO AREA:	ENVIRONMENTAL HEALTH AND TRADING STANDARDS

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To determine if the proprietor and vehicles remain suitable to be licensed.

Key Decision

This is not a Key Decision.

Recommendation(s)

THAT Committee:

- (a) **Issue 4 Penalty Points for each vehicle for a breach of Standard Condition B10 (Failure by driver or proprietor to take reasonable precautions to ensure the safety of passengers);**
- (b) **and issue a final warning, that if the vehicle is found with defective tyres in the future the licences will be revoked and the vehicles will not be able to be licensed in Herefordshire in the future.**

Key Points Summary

- Vehicle proprietor is Lina Hussini
- Inspections carried out by VOSA and West Mercia.
- The vehicle H055 had AE03UGC VW Passat Plate No:**H055**

FOS tyre worn down to expose internal structure of tyre.

Further information on the subject of this report is available from
Claire Corfield Licensing Manager 01432 383324

MV53YRC Blue Peugeot 406LX estate. Plate no:H275
This vehicle had two defective front tyres

- Further consideration regarding the fitness of the proprietor to retain the licence.

Alternative Options

- 1 **Revoke the vehicle licences – Advantages – ensures compliance with safety of passengers by ensuring the vehicles are safely maintained. Disadvantages – the proprietor could Appeal the decision to revoke.**

Defer the decision – Advantages – will allow further information to be supplied if it is deemed necessary. Disadvantages – further delays the decision

Reasons for Recommendations

- 2 The recommendation has been made as the proprietor claims she was unaware of the defective tyres, the drivers have already been sent Penalty Points, but the primary responsibility remains that of the vehicle proprietor.

Introduction and Background

- 3 The licences are owned by Mrs Lina Hussini.

VOSA and West Mercia undertook a joint vehicle check at Blackmarsden School on 6/3/2013. During the inspection a number of vehicles were found to have defects or other problems. H055 and H275 both were found with defective tyres.

Mrs Hussini and her Husband Mr Issam Bairkdar own a further 22 licensed vehicles.

Due to the fact that the vehicles were and are being used for transporting children, it was felt that the matter was serious and warranted a referral to Regulatory Sub Committee for determination.

Key Considerations

- 4 On the balance of probabilities, is the vehicle proprietor able to retain the licence and maintain control of the vehicle. Is there a risk that she will once again allow the vehicles to be run with defective tyres or other defects?

Community Impact

- 5 Ms Hussini and her husband operate 22 other licensed vehicles. Their company undertakes a number of school and other contracts for the Council therefore drive some of the County's most vulnerable people around on school taxi contracts and bus runs. The most recent VOSA and Police inspection was carried out at Blackmarsden School.

Financial Implications

- 6 There are no financial implications for the Council only for the vehicle proprietor.

Legal Implications

S60 (1) of the TPCA 1847 states

- 7 A district Council may suspend or revoke a vehicle licence on the following grounds:-
- b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the proprietor or driver; or
 - c) any other reasonable cause

Risk Management

- 9 There is a reputational risk to the Council as it awards contracts for transport services, which covers school transport. If the vehicles are not operated within the Regulations the insurance will be voided and the passengers will be travelling without any cover. A claim could be made against the Council if the vehicle was not adequately insured defective or not operated within the statutory requirements.

Consultees

- 10 Not applicable

Appendices

- 11 Copy of West Mercia e-mail

Background Papers

- None identified.

As part of Op Coachman I attended Blackmarston school on 6th March 2013.
I was in company with vehicle and traffic examiners from VOSA.

Of concern were the following:

MV53YRC Blue Peugeot 406LX estate. Plate no:**H275**
This vehicle had two defective front tyres.

AE03UGC VW Passat Plate No:**H055**
FOS tyre worn down to expose internal structure of tyre.

These two are run from 3 The Pastures, Lower Bullingham by Mr Bairkdar.
He also owns a tyre company.

Drivers have been reported and I intend to report Mr Bairkdar.

