

BRISTOL CITY COUNCIL

MINUTES OF A MEETING OF THE
PUBLIC SAFETY AND PROTECTION SUB-COMMITTEE B
HELD ON 10TH JANUARY 2011 AT 10.00 A.M.

P Councillor Christopher Davies
P Councillor Alf Havvock
A Councillor Jeff Lovell
A Councillor David Morris
P Councillor Guy Poultney (in the Chair)
P Councillor Ron Stone (for Cllr Lovell)

PSP

147.1/11 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies were received from Councillor Lovell, substitute Councillor Stone; and Councillor Morris.

PSP

148.1/11 DECLARATIONS OF INTEREST

There were no further declarations of interest.

PSP

149.1/11 PUBLIC FORUM

Nothing was received.

PSP

**150.1/11 CONSIDERATION OF THE SUSPENSION OF COMMITTEE
PROCEDURE RULES (CMR 10 AND 11) RELATING TO THE
MOVING OF MOTIONS AND RULES OF DEBATE FOR THE
DURATION OF THE MEETING**

RESOLVED - that having regard to the quasi judicial nature of the business on the agenda, those Committee Rules relating to the moving of motions and the rules of debate (CMR 10 and 11) be suspended for the duration of the meeting.

PSP

151.1/11 EXCLUSION OF PRESS AND PUBLIC

RESOLVED - that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part I of Schedule 12A to the Act, as amended.

PSP

152.1/11 HACKNEY CARRIAGE DRIVER - COMPLAINT FROM PASSENGER - MV

(Exempt paragraph 3 - Information relating to a person's financial or business affairs)

The Sub-Committee considered an exempt report of the Director of Neighbourhoods (agenda item no. 6) concerning a complaint made against MV from a member of the public.

MV was in attendance, accompanied by his solicitor, AS.

The complainant, DW, was also in attendance, accompanied by two carers and her partner.

Also in attendance was the Licensing Enforcement Officer, IW, who had investigated the complaint.

The Chair outlined the procedure that would be followed and everyone introduced themselves.

The Licensing Officer introduced the report and summarised it for Members.

The complainant then made representations in support of her written statement attached to the report as Appendix A highlighting the following:

- She had been waiting at the BRI for a pre-booked taxi which had not arrived

- She and her carer had phoned the taxi company twice and were firstly told that the taxi allocated was stuck in traffic but was on its way. When the second call was made they were told that the company was having difficulties getting anyone to her, which she found strange, as previously they had been told the taxi was on its way.
- She had finished hydrotherapy treatment and was cold and wet. The BRI had no facilities where she could change so she was wearing wet swimwear
- When a taxi arrived (55 minutes after the pre-arranged time) her carer had asked for the heater to be turned on, but had been told by the driver that he was hot and he refused. The driver was wearing two coats.
- The driver had radioed to ask why there was only one carer instead of two (there had been two on the way to the BRI but only one on the return journey). He had used the words “what stupid bastard said there were two carers”. He had then changed the word “bastard” to “bar steward”
- At the start and during the journey the driver referred to her as a “retard” on five occasions
- She suffers from spasms and had found the journey down Trenchard/Lodge Street particularly uncomfortable and had asked the driver to slow down (Lodge Street is cobbled and steep). He seemed to be going quite fast.
- The driver had said “you’re not still moaning are you – you retards always get what you want”
- When the vehicle was near the Council House she had slid forwards and the driver again used the word “retards”
- During the journey her son had phoned her but she had been too upset to even know where she was when he phoned
- The driver had received a call on his mobile phone during the journey (from she assumed his partner) and she had heard him say that he had an extra job and he would be home in

about 40 minutes

- She knew that the driver lived in Weston because he had commented that if he hadn't had to pick her up he would be half way home to Weston by now
- She had never met MV before the incident. She knew nothing about him and had nothing against him personally. She did not want to put herself nor MV through all of this for no reason. She did not want anyone else in the same position to have to go through this
- She confirmed that MV had called her a "retard" five times

She then answered questions from MV's solicitor and Members highlighting the following:

- MV was not the original pre-booked driver; she had an account with the taxi company and had booked a return trip; she had not seen MV before the incident
- Her contract was with the taxi company and she had taken about £750 worth of journeys
- The arrangement had been for the return pick up to be at 4.15 pm; she had 'phoned the company twice and been told firstly that the driver was stuck in traffic and then that somebody was on their way; the taxi arrived 55 minutes late
- She was wearing a wet swimsuit and was wrapped in towels and blankets when MV collected her from the Hydrotherapy Unit
- She was in the waiting area of the BRI when MV came inside to collect her
- She recalled that her carer had pushed her to the taxi and then MV took over and pushed her up the ramp
- She did not consider that he had got her into the taxi as quickly as he could have done or that he had closed the doors as quickly as he could have done

- MV did not put the heating on when requested. Her carer had asked him to put the heating on
- She recalled that her carer was in the vehicle whilst MV was securing her although she accepted that she might have been mistaken about this
- MV had not explained to her that the heating in his vehicle was not very good
- She did not advise MV of her disability but did not consider that it was relevant for her to tell the driver about this. She is a wheelchair user and she has an account with the taxi company. It was very cold.
- MV had radioed his base after leaving the BRI and had used inappropriate language over the radio
- She did not recall the traffic being exceptionally busy
- She had complained to MV about his driving especially after the drive down the cobbled street
- She had not been angry with MV because of the late arrival of the taxi - he had only been given the job a short time previously
- She confirmed that MV had called her a “retard” five times

(MV’s solicitor stated that the court record showed in her evidence she had only stated that MV called her a “retard” a couple of times and therefore it was suggested to her that she was trying to make her complaint sound worse today than it was in court. The Representative of the Service Director, Legal Services, who was also the trial advocate, commented that from her own very clear recollection of the hearing, both witnesses had given evidence that MV had used the word “retard” five times and therefore the testimony of Witness 1 was not inconsistent.)

DW continued: -

- She did not know why MV had started calling her a “retard”

- She was not aware of MV's demeanour when entering the taxi as she had been having a coughing fit at the time and had to be assisted by her carer
- She had told MV how cold she was; she thought that the taxi company might have told him about her disability
- She confirmed that during the phone call MV received he had stated that he would be home in 40 minutes
- The Hydrotherapy Unit has no facilities for her to have a shower and therefore after her treatment she has to travel home in towels and a coat, etc.
- Within a few minutes of getting into the cab MV had been asked to shut the rear door. She did not understand the procedures but knew how the system goes with the ramp. She could not understand why MV could not have shut the rear door once the ramps were in. It was a cold December night.
- She accepted that MV would not have known about her condition
- MV did start calling her a retard very soon after she was in the vehicle
- She confirmed that the basis of her complaint was the offensive language that MV had used. That was why she was here

The Licensing Enforcement Officer then answered questions from MV's solicitor and Members highlighting the following:

- He confirmed that he had previously been a Police Officer
- He confirmed Lodge Street was a reasonable route to take and that 10 to 15 mph would be an appropriate speed, although he could not comment why MV had taken that particular route to Hartcliffe

- Although Fiat Doblo's are converted vans they are licensed vehicles
- He did not know about the heating system in the Doblo
- He had taken the statement from DW, the main complainant, and a colleague had taken a statement from the other witness (both on 7th December 2009); Both statements were taken entirely separately. Drivers are normally given at least two weeks notice to attend for interview so that they can arrange legal representation if they want to

MV then made the following representations in response to questions from his solicitor highlighting the following:

- He had worked 28 years as a taxi driver doing both private hire and hackney carriage work. There had never been any other complaints made against him and he had never previously had to appear before committee
- He is self employed and receives work from a taxi company, Transcab. He has to pay for that privilege. He was working on the Transcab radio link on the night in question
- His Fiat Doblo is wheelchair accessible; he does a lot of wheelchair work - 40 to 50 journeys per week - it forms the majority of his work
- He had received training from the company in loading wheelchairs into cars. On a Fiat Doblo all doors have to be opened first, and the rear doors are always closed last; passengers sit to the left
- He works days and had only been given the job at a very late stage – 4.45 to 4.50 pm – he was not the original driver allocated the job; he was told he would be picking up two carers and a woman in a wheelchair who was not happy as she had been waiting so long; he was not told of her disabilities
- He arrived at the BRI and backed the taxi into position; the passengers were waiting in the foyer

- In order to load a wheelchair in the vehicle, all three seats in the back go forward, the side doors are opened and then the rear ramp goes down
- When he went into the BRI he introduced himself and said, "I'll just put the ramps down and get you loaded". He put the ramps down and went back into the BRI and took the wheelchair off the carer. He then pushed the wheelchair into the taxi
- He secured the wheelchair, put the ramps back in the taxi and closed all the doors; the rear door is always shut last. You cannot fasten a wheelchair if the side doors are closed. That's how he is told to do it. No conversation took place until everyone was in the taxi
- He loaded the wheelchair as quickly as he could
- A passenger can sit to the left of the wheelchair in the back
- The Doblo has three seats which are split 2/1. Two of them go down and forward to allow the wheelchair to go in
- The heating was on to prevent the taxi steaming up but there is no heating in the rear of a Doblo. When the rear seats are put forwards they block the heat from getting into the rear of the vehicle
- DW's carer was not in the vehicle when he was fastening the wheelchair
- He was not wearing two coats as suggested by DW. He was wearing one jacket. You cannot drive with more than one jacket on
- He did not use the word "retard" or anything like it. It is not a word he uses. At no time did he have any argument with his passengers
- He did not use inappropriate language over the radio. Drivers are not allowed to otherwise the radio would get

taken off them

- When the job was given to him he was on another job which was running late and he had to take that passenger to Redcliffe Hill first before he could go to the BRI
- He radioed to say that he had picked up two rather than three people
- The traffic was heavy and he took the shortest route which included Lodge Street
- He did not drive too fast down Lodge Street – only 10 to 15 mph – but DW did say at the bottom she was in discomfort and he apologised to her
- He received a call on his mobile from his partner, which he answered using a Bluetooth device and stated that he would phone in 40 minutes
- He was given another job after this one
- He never used derogatory or bad language; he never swears on the radio; had never seen Witness 1 before that day; and had been found not guilty in court

MV then answered questions from Members highlighting the following:

- It took 3 to 4 minutes to load and secure the wheelchair; the clamping system is the same for all wheelchairs
- He did have another job after. He did not recall what time. After he had dropped off the complainant he was given the other job almost straight away. He cannot remember the time – it was almost 12 months ago
- He had apologised at the bottom of Lodge Street because the carer had said something like “that was rough”. He only knew that DW was in discomfort at the end of the street
- He seldom uses Lodge Street except during the rush hour as

it cuts out the traffic

- He never used any offensive language
- The journey took 25 to 30 minutes; it would usually take 15 to 20 minutes
- He was cold himself
- The air conditioning was on to keep the windows clear; he never used the word “retard”; he never swore on the radio; he was given another job which he received after this one; he had said he would call his partner back in 40 minutes

DW commented that the journey seemed rushed. She added that she had nothing to gain from this. Prior to coming to committee it had been the first time she had used taxis since the incident. She had spent over £750 in respect of taxi journeys and had never been treated like this before.

On behalf of MV his solicitor summed up his case. He commented on the unusual background to the case. He invited the committee to give weight to the evidence that had been heard today and less weight to what had not been heard. He was not inviting the committee to ignore the written statement of the second witness but to attach less weight to it. MV had an unblemished record and transporting disabled passengers comprised the majority of his work.

The Committee had a difficult task because there were two directly opposing versions of events. MV was not the person who let the complainant down and probably regrets that he was given the job that day. In EO’s statement she uses the word “smiley” to describe MV when he arrived. Nothing untoward was said when the passengers were approached neither in the BRI nor in the area.

DW must have been miserable when she was loaded in the taxi. The doors had to be left open for a short period of time in order to properly load the wheelchair. It was a basic vehicle and would have been cold but MV swiftly secured the wheelchair.

There is a dispute as to whether the heating was on. The taxi has four vents in the dashboard. Why would MV at that particular time

launch into derogatory language at the outset and then continue it for no explicable reason? He is an experienced driver of 28 years.

MV's story has remained the same throughout. He has been steadfast and consistent in his belief as to what happened.

There could be no middle ground in this case. One witness has clearly got it right; the other has got it wrong. The Committee were invited to look at the demeanour of the two witnesses present at the hearing and make a finding in favour of MV.

All parties and the representatives of the Director of Neighbourhoods left the room.

Details of the Committee's findings and reasons for the decision are set out in Appendix 1.

All parties and the representatives of the Director of Neighbourhoods returned to the room to hear the decision on the finding of fact of the Committee.

After the decision on the facts was announced, the Representative of the Service Director, Legal Services stated that as the Committee had found against MV, the Committee would now have to make a decision on what (if any) action to take against him based on whether he was still a fit and proper person to hold a Hackney Carriage Driver's Licence. Given the nature of the complaint against MV the Committee also had to have regard to the Council's duty under the Equalities legislation. MV was then invited to make a statement in mitigation in order to persuade the Committee that no action should be taken in respect of his licence.

On behalf of MV his solicitor made a statement highlighting the following:

- He tabled written references on behalf of MV; copies of these are contained in the Minute Book
- MV had been licensed for 28 years and this was the only complaint made against him. The committee should take into account 28 years of positive behaviour
- The Committee had to look at the whole picture – this was an

isolated incident

- He carries 40 to 50 disabled people per week
- The Committee has to consider the demeanour of the passengers who had been kept waiting for a long time and one was in discomfort
- MV has carried a large number of people since the incident and a lot of people ask for him because of his attitude. There has not been one complaint made against him since the incident which was now almost 14 months ago
- The Committee had the power to issue a warning, suspend or revoke the licence. As MV had such a good track record it would not be proportionate to take away his livelihood. It was accepted that the Committee had to do something but it was respectfully suggested that a warning would be sufficient. This will be on MV's record, which has now been marked.

All parties and the representatives of the Director of Neighbourhoods left the room.

Details of the Committee's findings and reasons for the decision are set out in Appendix 1.

All parties and the representatives of the Director of Neighbourhoods returned to the room to hear the decision of the Committee on the action to take against MV.

RESOLVED - that there was "reasonable cause" to suspend the Hackney Carriage Driver's Licence held by MV for a period of one month on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976

INFORMATION ITEM

PSP

153.1/11 DATE OF NEXT MEETING

RESOLVED - that the next meeting be held on Tuesday 25th January 2011 at 10.00 a.m. and will be another meeting of Sub-Committee B.

(The meeting ended at 2.15 pm.)

CHAIR

BRISTOL CITY COUNCIL

**MINUTES OF A MEETING OF THE
PUBLIC SAFETY AND PROTECTION SUB-COMMITTEE B
HELD ON 10th JANUARY 2011**

PSP

152.1/1

Agenda item no: 6

Agenda title:

**HACKNEY CARRIAGE DRIVER - COMPLAINT FROM PASSENGER -
MV**

Findings of Fact

- On a balance of probabilities, the complaint made against MV was upheld.
- There was “reasonable cause” to take action in respect of the Hackney Carriage Driver’s Licence held by MV.

Decision

That there was “reasonable cause” to suspend the Hackney Carriage Driver’s Licence held by MV for a period of one month on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

Reasons for Decision

Members considered very carefully all of the written and verbal evidence presented to them.

Although it was noted that both DW and MV’s versions of events had remained largely consistent throughout, there was little common ground between them as to what had actually occurred on the evening in question. The two versions of events as to what was said or not said in the taxi were so far apart that someone was not telling the truth.

Although it was difficult to comprehend that a taxi driver of MV’s experience would behave in the manner alleged, on a balance of probabilities, the Members concluded that the complainant’s version of events, corroborated by a second witness, was essentially truthful and more credible.

There were some issues over how the wheelchair was loaded into the taxi that DW might not have clearly recollected, but her evidence was clear and consistent concerning the abusive and inappropriate language that was used by MV during the course of the journey. The abusive language formed the main basis of DW’s complaint – not the manner as to how she was loaded into the taxi. There was some dispute over the heating and MV’s manner of driving, but it was clear that the main

reason for DW making the complaint was the abusive and inappropriate language used.

It had been suggested to DW during questioning by MV's solicitor that perhaps she was trying to make her complaint seem more serious today. The Members did not accept that suggestion. DW's written statement in support of her complaint was taken from her within a matter of days after the incident, when the events would have been fresh in her mind. Her statement was consistent with what she had said to the committee today – that MV had used the words "you retards" on not less than five occasions. She was also consistent in her evidence that she had heard MV use inappropriate language when he had contacted his base. The second witness, EO, corroborated the language alleged to have been used.

It did not go unnoticed by the Members that DW was giving her evidence from memory alone and that she had no paperwork or notes to refer to in order to refresh her memory during the course of the committee hearing. Her oral evidence was still largely consistent with her first written statement even though the incident was over a year ago.

The Members also found it significant that DW had been a regular user of taxis prior to her complaint but had seldom used them since due to this incident.

The complaint was therefore upheld.

When considering what action, if any, to take in respect of MV's Hackney Carriage Driver's Licence, the Members were mindful of the Council's duties under the equalities legislation. They also noted that the conduct was akin to offences under the Hackney Carriage Byelaws and the Public Order Act 1986 of a licensee failing to conduct himself in a proper manner towards his passengers and of using abusive or insulting words or behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. The starting point under the Council's Policy in respect of offences under the Town Police Clauses Act 1847 would usually be a period of six months suspension. The Members carefully considered MV's solicitor's invitation to deal with the complaint by way of a warning. However, the Members were of the view that the nature of the complaint was far too serious to simply give MV a rap over the knuckles. MV's conduct had fallen well below the standards the Council is entitled to expect from those whom it licences and therefore a period of suspension was considered to be a suitable and

proportionate response. However, the usual period of 6 months would be significantly mitigated to a period of suspension of one month, acknowledging the fact that MV was an experienced taxi driver of 28 years with a previous unblemished record. Hopefully, MV would use this period of time to focus upon his future conduct and ensure that there would never be a repeat of such an incident.

Chair's Signature