

Bristol City Council

Minutes of the Public Safety and Protection Sub-Committee B



4 August 2020 at 10.00 am

Members Present:-

Councillors: Richard Eddy (Chair), Chris Davies, Fi Hance and Carole Johnson

Officers in Attendance:-

Sarah Flower (Licensing Policy Advisor), Lynne Harvey (Legal Advisor), Carl Knights (Licensing Officer) and Oliver Harrison (Democratic Services Officer)

1. Welcome and Safety Information

The Chair welcomed everyone to the meeting and drew attention to the safety information.

2. Apologies for Absence

None received.

3. Declarations of Interest

None received.

4. Public Forum

None received.

5. Minutes of the Previous Meeting

The minutes of the PSP Sub B meeting on 21 July 2020 were agreed as a correct record.

6. Suspension of Committee Procedure Rules CMR10 and CMR11 Relating to the Moving of Motions and Rules of Debate



That having regard to the quasi-judicial nature of the business on the Agenda, those Committee Procedure Rules relating to the moving of motions and the rules of debate (CMR10 and 11) be suspended for the duration of the meeting.

7. Exclusion of the Press and Public

That under Section 11A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the ground that involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Act, as amended.

8. PSP Report RK

The applicant was in attendance.

The Licensing Officer introduced the report and drew attention to the following:

- This is an application for a Private Hire Driver's (PHD) Licence. RK declared a conviction for conspiracy to supply class B drugs, which was confirmed on a DBS check, the conviction date being 19 October 2018. Disposal was imprisonment for 16 months.
- RK previously held a PHD from 27 June 2011. An officer hearing was held by Emma Lake on 24 Jan 2019, where the decision was made to revoke the licence with immediate effect.
- There are 2 DVLA convictions from 9/10 years ago. There is also a previous caution on theft by finding from July 2006.
- RL is seeking exemption from the gold standard and knowledge tests.
- Policy on drug offences is to refuse an application within 5 years of conviction, which would cover up to 19 October 2023.

The applicant gave the following evidence:

- RK believes that a considerable amount of time has passed since the offence.
- Serving a prison sentence has been a life changing experience and made RK realise what is important in life. He has been a taxi driver for 8 years.
- RK notified BCC as soon as possible about the arrest which shows honesty as he still had 2 years on his licence.
- RK apologised for his behaviour and explained it was a difficult period in his life as he was going through separation and got involved with a bad crowd.
- RK wants a chance to go back to work and lead a normal life. He believes that his custodial sentence was punishment enough and preventing him from working is punitive.

After questioning from the committee, the following information was confirmed:

- The nature of a particular drug offence can be considered, supply of drugs is more serious than possession. 2 weeks ago the Department for Transport produced new standards guidance which



we will be adopting in the future. Under this new guidance, drug possession is a 5 year cool off period but supply is a 10 year cool off. Current BCC policy is 5 for all drug offences.

- There is a requirement for Local Authorities to have regard for the new guidance even if it is not adopted.
- It was confirmed that the belated evidence submitted, including character reference, had been circulated to members.
- RK was caught with 1kg of cannabis in his possession.
- The law is that personal circumstances are not relevant in these hearings. It is about the suitability of individual to hold a licence and public safety.
- RK was arrested in March 2018, remanded until October 2018, served 7 months in prison and was out on licence since June 2019.

The Committee withdrew to deliberate on their decision.

RESOLVED (unanimous decision)

To refuse to grant the application for a Private Hire Driver's licence in accordance with section 51 of the Local Government (Miscellaneous Provisions) Act 1976 because the Committee could not be satisfied that RK was a fit and proper person to hold such a licence.

Reasons for Decision:

The Committee acknowledged that RK was remorseful about his previous conduct and how it had impacted on his life. However, he had been convicted of a drug related offence on 19 October 2018 which resulted in a 16 months prison sentence being imposed. This indicates that the Court considered the criminal conduct to be at the most serious end of the scale. The Council's policy on offending behaviour recommends a period of at least 5 years free of conviction before an application will be entertained. The recently published statutory taxi and private hire standards recommended a longer period free of conviction in regard to intent to supply. In RK's case the recommended period free of conviction was not due to expire until at least 19 October 2023.

The burden of proving that a departure from Council policy can be made lies on the individual applicant. In RK's case the Committee could not be satisfied that he had discharged the burden of proving that an exception to the policy could be made without undermining it or the reasons that underlie it.

The conviction on its own was sufficient to debar RK from being a suitable person to hold a licence, but had he passed this first hurdle, the Committee also considered that it would not be appropriate to exempt him from the Gold Standard and Knowledge tests. The Committee could not therefore be satisfied that RK was a fit and proper person to hold a private hire drivers licence and consequently the application was refused.

9. PSP Report MW

The applicant was in attendance.



The Licensing Officer introduced the report and drew attention to the following:

- MW is applying for renewal of a PHD licence. His existing licence expired 15 June 2020. MW has held a licence since June 2010 with short interruptions. On his application, MW declared two speeding offences from 2017. However a DVLA check showed two speeding offences from 2016 which were not declared.
- When MW received penalty points in November 2017 he was up to a total of 12 points on his licence. This would normally result in a driving ban. This was considered by Weston-Super-Mare Magistrates Court, but they accepted a plea of exceptional hardship.
- Licensees are required to notify the Local Authority of any offence they incur. MW has not notified any of his offences to date. At the time of his 2016 offences, MW was reminded of the need to declare convictions in future but he did not declare his 2017 convictions. MW maintains that he telephoned the authority to inform, but there is no record of this.
- MW has several complaints on file: allegation of plying for hire (2011), making obscene gestures (2011) and using a map during the knowledge test (2009). Has also received conviction for driving without due care and attention in 2014.

The applicant gave the following evidence:

- MW maintains that he made two phone calls to the BCC licensing office when he received the summons his speeding offence. He was advised to contact again once the case went to court. A licensing officer took his details and said she would call him back but he claims this never happened.
- MW has not incurred any offences since 2017. He stated that incurring traffic offences is inevitable given the amount of miles driven. He stated that he had a badly behaving customer distracting him at the 2017 offences.
- MW is a carer for his brother, who has MS and is bed-bound. His mother was also diagnosed with cancer at the time of the offences. She is now in remission but is still weak. MW is restricted in his work during Covid-19 as he has to be careful about infecting his vulnerable family members.
- MW apologised for his conduct and acknowledged that it was below the standard expected of taxi drivers.

After questioning from the committee, the following information was confirmed:

- New statutory guidance has come into force a few weeks ago on criminal convictions. Drivers must notify the authority within 48 hours of arrest, charge or conviction. Failure to disclose might be seen as a question of honesty that affects their suitability to hold a licence.
- Under the current BCC policy, notification must happen on the next working day after the offence.
- MW has been told several times to put notifications in writing. It also says this in the licencing documents. Notification by phone is insufficient.
- MW said that as he rents his vehicle, there have been delays in his previous notification as he gets the offence paperwork second hand from the vehicle owner.
- MW's recent speeding offences were travelling at 35mph in a 30mph limit, and travelling at 59mph in a 50mph limit on a smart motorway with variable limits. MW said he found the variable limits difficult to deal with.
- The court issued MW with a minimum fine given his financial situation.



The Committee withdrew to deliberate on their decision.

RESOLVED (unanimous decision)

That MW's application to renew his Private Hire Driver's (PHD) Licence be refused on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976, namely any other reasonable cause, because the Committee could no longer be satisfied that he was a fit and proper person to hold such a licence

Reasons

The Committee noted that MW had submitted an application to renew his PHD licence on 3 June 2020. His existing licence expired on 15 June 2020. A search on his DVLA licence revealed not less than four endorsements between 8 October 2016 and 30 November 2017 – all for speeding. The most recent offence of speeding on a motorway (SP50) took his penalty points total to 12 which meant that he was liable to be disqualified from driving under the totting up procedures. However, he successfully argued exceptional hardship and avoided disqualification. The Council's policy on offending behaviour states that "In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify a driver, (e.g. because satisfied of exceptional hardship) the Council is likely to refuse a hackney carriage or private hire driver's licence because different criteria apply and an applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non- disqualification."

In MW's case this meant that had he immediately disclosed details of this conviction in writing to the Council in compliance with the conditions attached to his licence, consideration of his fitness to continue to hold a private hire driver's licence would have been placed before this committee at that time with a policy starting point of 12 months "off the road". However, there was no record of MW ever having disclosed this conviction to the Council which had resulted in him benefitting from no action being taken on his licence.

Although MW contended that he had informed the Council via telephone about the conviction, there was no file record of him ever having done this and information was provided to the Committee that MW had previously been advised, albeit verbally, by a Licensing Officer that all convictions needed to be disclosed to the Council in writing.

The statutory taxi and private hire licensing standards, that recently came into force, place emphasis on the importance of licensees self-reporting offences to the issuing authority and that a failure to disclose convictions the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder.

Although a speeding conviction on its own is treated as a minor motoring offence under the Council's policy, the pattern and frequency of the convictions gave rise to a cause for concern.



The finding of exceptional hardship was made on 25 September 2018 but the matter was not considered by the committee at that time, since the convictions were not brought to the licensing team's attention. On balance, it was found that MW had not properly notified his convictions to the Council which had resulted in him having the benefit of retaining his licence until a check of his DVLA licence had been carried out.

In consequence the Committee could no longer be satisfied that MW was a fit and proper person to hold a PHD licence and there was reasonable cause to refuse his application to renew it.

10 PSP Report NET LS

The driver was in attendance.

The Neighbourhood Enforcement Officer introduced the report and drew attention to the following:

- This report is to determine if action needed against LS. LS holds a PHD licence with expiry of 4 October 2020. He has held a licence since 2006. He also owns his taxi and is the only person insured for it, with an expiry of 25 December 2020.
- The Neighbourhood Enforcement Team (NET) received notification from Gwent Police on 30 July that LS had been arrested on the M4 for drink driving and failed to provide a specimen in custody. His court case will be heard on 11 August 2020.
- LS did not notify the Local Authority of his arrest, which is a breach of his licence conditions.
- A DVLA check shows LS has no other offences recorded. There is one complaint recorded in 2012, where LS was aggressive and sexist to female driver.

The applicant gave the following evidence:

- LS was under a large amount of strain at the time of the offence. His wife was ill and in and out of hospital regularly. His mother died in April. He has 5 siblings and is the de facto head of the family now. His father is deaf and LS is a carer for him. He had to arrange the funeral for his mother, but was only permitted 10 attendees due to Covid-19 restrictions.
- LS admitted to having alcohol in his system as he had 2 beers with dinner. Under normal circumstances, he would take a shift off work if he had been drinking, but on this occasion he drove to visit his sister in Cardiff. He was low on petrol so drove at a slower rate and was stopped by police. He was then arrested on suspicion of drink driving.
- LS apologised for his actions, but said that he did not think he was impaired by that amount of alcohol he had drunk. He has a thyroid issue meaning alcohol stays in his system for longer than average.

After questioning from the committee, the following information was confirmed:



- The legal position is this committee is fulfilling a regulatory function. It is not second guessing the active criminal proceedings but is still able to act. The committee does not have to wait until a criminal conviction to take action.
- The committee is here to establish whether there is a risk to the public. It is not allowed to take into account personal circumstances of a licensee.
- There is new statutory guidance that states licensees should notify the Local Authority of motoring offences within 48 hours. The current BCC policy is to notify the authority by the next working day. This requirement is stated on the licence.
- LS stated that his solicitor had told him he did not need to notify the authority as he had not been convicted of the offence.

The Committee withdrew to deliberate on their decision.

RESOLVED (unanimous decision)

1. That the Private Hire Drivers Licence of LS be revoked on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 namely any other reasonable cause
2. That the Private Hire Vehicle Licence of LS be revoked on the ground contained in section 60(1)(c) of the Local Government (Miscellaneous Provisions) Act 1976 namely any other reasonable cause

Reasons

The Committee noted that on 30th July 2020 the Police had notified the Council that LS had been stopped on the M4 and tested positive at the roadside. He was arrested but failed to provide an evidential specimen in custody and was charged with drink driving. LS was due to appear in Court on 11/08/2020 and intended to plead Not Guilty. At the time of the alleged offence LS was driving his Bristol City Council licensed PH vehicle. LS had not notified the Licensing Office of his arrest or pending prosecution which is a requirement as per the conditions attached to his private hire drivers licence.

Although LS had not been convicted of any offence, it was not the role of the Committee to try to second guess the outcome of the criminal matter. The function of the Committee is a regulatory one whereby the main focus is protection of the public and therefore it was not necessary for the Committee to await the outcome of the criminal case in order to make a judgement as to whether LS was still a fit and proper person to hold a private hire driver's licence. This approach is further endorsed by the recently published statutory taxi and private hire vehicle standards which state that an arrest for any motoring offence should result in a review by the issuing authority as to whether the licence holder is fit to continue to hold a licence. The statutory guidance also places an emphasis on the importance of licensee's self-reporting an arrest, charge or conviction for any motoring offence. A failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation.

The Committee considered the allegations to be of a serious nature and although the prosecution proceedings were to be defended, the CPS was satisfied that there was a realistic prospect of securing a



conviction. The Committee was also concerned at LS's explanation that he was not aware he needed to notify the Council of his arrest in writing and he had not read the conditions attached to his licence.

Therefore, the Committee could no longer be satisfied that LS was a fit and proper person to hold a Private Hire Driver's licence and there was reasonable cause to revoke it. There was also reasonable cause to revoke the PH Vehicle licence since LS was the only person insured to drive it.

Meeting ended at 12.00 pm

CHAIR _____

