

# Bristol City Council

## Minutes of the Public Safety and Protection Sub-Committee B



**23 March 2021 at 10.00 am**

### **Members Present:-**

**Councillors:** Richard Eddy (Chair), Tom Brook and Chris Davies

### **Officers in Attendance:-**

Lynne Harvey (Legal Advisor), Abigail Holman (Licensing Policy Advisor), Wayne Jones, Carl Knights (Licensing Policy Advisor) 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.

### **1. Apologies for Absence**

Apologies were received from Councillor Fi Hance.

### **1. Declarations of Interest**

None received.

### **1. Minutes of the Previous Meeting**

The minutes of the last meeting 19 January 2021 were agreed as a correct record.

### **1. Public Forum**

None received.

### **1. Suspension of Committee Procedure Rules CMR10 and CMR11 Relating to the Moving of Motions and Rules of Debate**



Resolved - 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.

## **1. Exclusion of the Press and Public**

Resolved - that under Section 11A(4) of the Local Government Act 1972 the press and 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.

### **1. SM REPORT TO DETERMINE WHETHER ACTION SHOULD BE TAKEN AGAINST THE HOLDER OF A PRIVATE HIRE DRIVER LICENCE AND PRIVATE HIRE VEHICLE LICENCE**

PC Quinton (PCQ) was present for this item.

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

- This committee is to consider whether action should be taken against SM. His current Private Hire Driver's license is due to expire in May 2021. He also holds a Private Hire Vehicle licence due to expire in March 22. SM was previously a Hackney Carriage Driver, but this licence expired in March 2020.
- PCQ had stopped SM's vehicle as part of a test purchase with a plain-clothes PCSO acting as a passenger. PCQ asked SM for his badges as they were not being displayed, 3 were produced, but only 1 was valid.
- The PCSO confirmed that SM had agreed to transport him for £9. SM confirmed during the stop that he was plying for hire. Now SM says that it was a mistake and that he thought the PCSO was "Zack", another booking received via Uber.
- Upon inspection of the vehicle, PCQ found defects with the vehicle lights.
- SM maintains that he was confused, that he thought the PCSO was Zack and after he realised the error, he did not want to stop the journey for the PCSO.
- Uber confirmed that the booking for Zack was made after the PCSO was picked up.
- The Court date is set for 6 July 2021. PCQ offered a fixed penalty disposal but this was not responded to. The committee should consider whether SM is fit and proper to hold a licence after this incident.

The applicant gave the following evidence:

- SM has been driving professionally for 16 years. He has experienced no problems with council previously and has no points on his licence. He has no criminal offences on record either.
- SM said he intends to plead guilty on the issue of plying for hire. It was very difficult to get work during lockdown. He agreed to pick up the PCSO for £9. SM said that he had some serious family problems to deal with, including relatives dying from Covid. SM said he did not know why he picked up the PCSO, his mind was occupied and he did not even get the money up front.



- SM said he did not believe it was fair to do undercover policework on drivers in these circumstances.
- Regarding the car defects, he received a vehicle inspection notice from PCQ related to the lights. He did not notice there was an issue with the lights before he drove that day. After he received the notice, he repaired the car immediately.
- He forgot to wear his ID badges as this was his first job on that day.
- During his summing up, SM said that this was during a particularly hard time where his family is facing financial hardship. He did not get a job after 2 hours of starting his shift. He reiterated his previously clean record.

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

- One offence was driving without insurance. It was confirmed that SM only had insurance for acting as a private hire driver. During this incident he had picked up someone without pre-booking and therefore the insurance was not valid as he was plying for hire without the appropriate licences in place.
- The vehicle has since passed a vehicle inspection, so the necessary repair work to the lights has been carried out.
- SM picked up the PCSO at 0150, the Uber record shows a booking for Zack at 0151. This is a very short time window, so members wanted to know whether this could have been an honest mistake. The GPS data supplied to PCQ by Uber shows that the vehicle was carrying the PCSO when the Uber booking was made.

### Decision

1. That the PHD licence of SM 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 PHV licence of SM be suspended for a period of 6 months on the ground contained in section 60(1)(c) of the Local Government (Miscellaneous Provisions) Act 1976 namely “any other reasonable cause”.

### Reasons for Decision

The Committee did not accept that SM had made an innocent mistake since his explanation was at odds with the evidence PC Quinton had obtained from Uber and the manner in which the PCSO had approached him and spoken to him was not conducive with an Uber booking because the driver would not need to negotiate a fare at the pick-up point. Nor was there any indication that SM had made any checks as to the name of the PCSO before allowing him to get into the vehicle, which would be expected if SM genuinely believed the PCSO to be his pre-booked fare. This was a situation where SM had been presented with an opportunity which he had taken advantage of.

The Committee takes a dim view where PHD’s unlawfully ply for hire because not only does it deprive properly licensed hackney carriage drivers of their trade but it also places the public at risk since the use of the vehicle means that it will not be insured. This, together with the other matters PC Quinton



discovered meant that the conduct of SM had fallen well below the standards the Council is entitled to expect from those whom it licences.

The usual policy starting point for offences of plying for hire and no insurance would be a period of 6 months without a licence. The members considered that there was reasonable cause to impose a suspension in respect of both the PHD and PHV licences held by SM but since there was less than 6 months left to run on the PHD licence (which was due to expire on 14 May 2021), the PHD licence would instead be revoked. SM had not put forward any reasons as to why a departure from Council policy should be made in his particular case.

## **1. EE APPLICATION FOR THE RENEWAL OF A PRIVATE HIRE DRIVER LICENCE, AND THE RENEWAL OF A HACKNEY CARRIAGE DRIVER LICENCE**

The driver and his wife were in attendance.

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

- This is an application to renew a Private Hire Driver (PHD), and Hackney Carriage Driver (HCD) Licence. EE was given 3 penalty points in November 2020, which he did not declare when they were received. They were declared on the renewal application form.
- EE has 6 current points on his licence, and 6 expired points (these remain on record for a year after expiry).
- EE previously appeared at PSP in Mar 2019 with 9 points on his licence. The committee considered his literacy difficulties last time and reminded him that his conditions required him to declare any points in future and that any future offence of this nature would result in a referral to PSP.
- The policy is that isolated convictions may not require action, but if there are several offences, they should be considered by the committee. Failure to declare points would usually result in a 6-month suspension. Officers recommended refusal of this application.

The applicant gave the following evidence:

- Not declaring the points was an honest mistake, it was declared on the application form, but the applicant did not inform the licensing department when they were received. This was not intentional.
- EE has difficulty with his English, his wife has better English so will do all the paperwork from now on.

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

- The last committee was understanding about language issues and took a lenient approach. However, they were very clear that EE should declare any future offences and should not speed again.
- For the most recent offence, EE was travelling at 29mph in a 20mph limit.
- EE has been driving for 17 years he has not received any customer complaints.



## Decision

That EE's application to renew his PHD and HCD licences be refused on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 namely "any other reasonable cause"

## Reasons for Decision

EE had applied to renew both his PHD and HCD licences on 29 January 2021 (which expired on 26 February 2021) when he declared "...I have new penalty added to my driving licence which is 3 points." A search was carried out on EE's DVLA licence which revealed a speeding offence dated 12 November 2020 of which the Licensing Team was not previously aware. It is a requirement of the PHD licence conditions that motoring convictions or endorsements should be notified to the Council in writing by the following working day. EE had failed to promptly declare this offence to the Council. The DVLA licence also revealed three more speeding endorsements between February 2017 and March 2018.

This was not the first time that EE had failed to declare motoring convictions to the Council as he had appeared before members of this committee on 26 March 2019 due to having nine penalty points on his licence, failing to declare penalty points on his renewal forms and failing to declare the points at the time they were received. On that occasion the Committee accepted EE's explanation that this was not intentional and may be due to his literacy difficulties. No action was therefore taken on his licence but it was made clear to him that he should be careful in the future to avoid further speeding convictions as if he were to receive another 3 points, this would need to be referred back to the Committee. He was also advised to take full responsibility for filling out renewal forms and declaring all convictions.

It was again contended on behalf of EE (by his wife) that there were language barriers and that she would in future complete all application forms on EE's behalf. The failure to declare the speeding offence was not intentional and EE had been licensed by the Council for 17 years.

The Members were concerned at the number and frequency of the speeding endorsements which together demonstrated a pattern of poor driving standards over a period of time. Where 3 or fewer penalty points are imposed as a result of a speeding conviction, this is classed as a minor traffic offence under the Council's policy on offending behaviour. Isolated convictions will not generally prevent a person from having a licence but where there are several offences of this nature the applicant will normally be expected to show a period free of conviction of at least 6 months, in which case a 6 months suspension would usually be imposed. Where an individual fails to promptly declare such convictions resulting in the offence, that individual will not generally be allowed to benefit from the period of time that has elapsed since the offence.

The Committee were concerned that EE had failed, not for the first time, to declare his latest speeding offence to the Council, again claiming that it was due to literacy and language difficulties. The Members did not accept this explanation since EE had been issued with a very clear warning when he previously appeared before Committee of the importance of taking responsibility for complying with the conditions



of his licence. An experienced licensee of 17 years is expected to be well acquainted with the conditions and rules applicable to his trade. This failure to promptly disclose the speeding offence was seen as behaviour that questioned honesty and therefore the suitability of EE to be granted a licence.

It was therefore unanimously decided that both applications should be refused.

## 1. JM APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE DRIVER LICENCE

The driver and his representative SZ were in attendance. DR presented as a character witness at the appropriate point in the meeting.

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

- The last time JM appeared at committee, the said the committee determined that he would need to demonstrate that he was fit and proper person since the incident occurred. There are 14 character references and 2 qualifications submitted by JM however they were completed prior to the incident.
- The revocation of his license was due to his failure to secure a wheelchair passenger, resulting in serious injury.
- The licensing officer advised, for JM's information that the current criminal convictions policy was under review and the council is likely to adopt an amended one in the next few months. Part of this policy is that individuals with sexual offences cannot be licensed. If the committee is minded to grant a licence today, it may have to be reconsidered in a few months as JM has two cautions for sexual offences. However, a decision today should not be based on that future policy.

The applicant's representative gave the following evidence:

- JM has been a taxi driver for 32 years and a Hackney Carriage Driver since 1999. He has made a few mistakes during this time and has paid the price. From 2015 to 2019 he behaved himself and committed no offences.
- In 2019 JM lost his licence and has not offended since then. Incident in 2019 JM failed to secure a disabled wheelchair property, which resulted in the loss of his licence. This was a mistake with no malice.
- Last time the committee did not make a determination. Advice was given that he should wait 12 months since the revocation before reapplying. It has now been 18 months since the incident. He deserves a second chance. The applicant submitted 14 character references. SZ believes that JM fits the criteria of a fit and proper person to hold a licence.
- The references are from a variety of individuals and organisations. He has been helping people during lockdown.

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

- The committee reiterated that JM would need to show remorse for his actions and demonstrate how his character has changed since the incident. JM said he was sorry that it had happened, and he would never do anything like that again. He has not been able to work for 18 months which has put strain on his family.
- Since the last PSP meeting of July 2020, JM has been helping transport disabled people during Covid, and doing deliveries via the Mosque to help isolated people.
- DR appeared as a character witness for JM. He has known JM from working with him on rail replacement services and was always strapped in properly. JM was part of a team at GWR / First to support the disabled. DR thought that this was a mistake and an isolated incident.



- The committee asked whether JM had undertaken any kind of courses or training to extend or refresh his skills since the revocation. He has undertaken marshalling experience at the mosque to help others during Covid and did training to handle funerals. Has also done training with charities to drop food and help isolated people during Covid. It has been difficult to source official courses during lockdown.

### Decision

That JM's application for the grant of a HCD licence be refused in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976 in that the Committee were not satisfied he was a fit and proper person to hold such a licence.

### Reasons for Decision

JM's HCD licence had been revoked by this committee in September 2019 following a very serious incident whereby JM had failed to secure an elderly passenger's wheelchair in his HC vehicle resulting in the wheelchair toppling over and the passenger having to be taken to the BRI as he had sustained an injury to his head. JM's conduct on this occasion had been found to be, at the very least, grossly negligent but his demeanour and attitude towards the passengers had also been found wanting. The Council's committee resolved that this complaint, on its own, was sufficient to give rise to "reasonable cause" to revoke JM's licence but the history of previous complaints against JM and various revocations of his licence gave rise to a greater cause for concern and demonstrated a pattern of inappropriate behaviour over a period of time. It was further considered that due to the seriousness of the incident, it was in the interests of public safety to revoke the licence with immediate

JM appealed against this revocation to Bristol Magistrates Court and his appeal was heard in January 2020 where it was dismissed and he was ordered to pay costs of £1,449.00.

Almost immediately following his unsuccessful appeal, JM applied for the grant of a HCD licence on 29 January 2020. This application was considered by the members of this committee at a meeting on 26 May 2020 when it was unanimously decided that it was too soon for JM to apply for restoration of his licence and that no determination would be made on this occasion. The Committee did not consider it appropriate to determine this matter without additional evidence that JM had taken a proactive approach to demonstrate that he was a fit and proper person to hold a licence and that references alone were unlikely to be sufficient. The Committee considered that a period of 12 months would be a starting point and would consider any further information that JM submitted after this time.

Mr Mohammad had been given advice following the meeting of 26 May 2020 that, as detailed in the minutes of the meeting, references alone were unlikely to be sufficient to demonstrate that he is a fit and proper person. JM however requested that his application be placed before this committee for determination.

The Committee noted that JM had since supplied 14 character references, a BTEC level 2 certificate in introduction to the role of the professional taxi and private hire driver (dated 17 October 2015) and



Driving Standards Agency Hackney Carriage/Private Hire Test Assessment pass certificate (dated 18 August 2015). Although JM's representative commented that JM had been undertaking a lot of work in the community and at the mosque during the pandemic, the qualifications he had produced were not recent and there was no evidence that he had made any efforts to undergo further training, such as disability awareness training.

JM's representative further commented that the incident involving the disabled passenger was an isolated incident, there was no malice involved, that JM was very sorry and had paid the price for a very long time. Notwithstanding Mr Z speaking very highly of JM and the impressive character references, there was no getting away from the fact that JM had one of the worst possible track records that the committee had seen of any licensee. The incident involving the disabled passenger was, on its own, sufficient reason to call JM's ability to hold a HCD licence into doubt, but the series of proven incidents and other complaints over a period of time, some of them very serious, gave rise to a grave cause of concern.

The Members asked themselves the following question: "without any prejudice and based on the information before us, would we allow a person for whom we care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?" On a balance of probabilities, the answer was a resounding "No" in which case JM should not hold a HCD licence.

The safeguarding of passengers is the overriding concern and does not require the committee to take into account the personal circumstances of the applicant which are irrelevant. Unfortunately, JM had proven, time and time again that his conduct had fallen well below the standards the Committee is entitled to expect from those whom it licences.

It was therefore unanimously decided that JM was not a fit and proper person to hold a HCD licence and his application should be refused.

Meeting ended at 1.00 pm

**CHAIR** \_\_\_\_\_

