Bristol City Council
Minutes of the Public Safety and Protection Sub-Committee A

15 June 2021 at 10.00 am

Members Present:-
Councillors: Amal Ali (Chair), Marley Bennett, Chris Davies and Richard Eddy

Officers in Attendance:-
Wayne Jones (Neighbourhood Enforcement Officer, Carl Knights (Licensing Officer), Shreena Parmar (Legal Advisor), Abigail Holman (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.

2 Apologies for Absence

Apologies were received from Cllr Tessa Fitzjohn.

3 Declarations of Interest

None received.

4 Minutes of the Previous Meeting

The minutes of the previous meeting 20 April were agreed as a correct record.

5 Public Forum

None received.

6 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.

7 Exclusion of Press and Public

RESOLVED – 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 1of Schedule 12A to the Act, as amended.

8 SM NET REPORT APPLICATION FOR THE RENEWAL OF A PRIVATE HIRE DRIVER LICENCE

The driver and his representative were present. The representative and Cllr Eddy know each other, but not to the extent that would present a conflict of interest. PC Patrick Quinton was present.

It was confirmed by the clerk that additional references had been submitted and circulated to the committee on the day.

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

- This is an application for the renewal of a Private Hire Driver licence. On 14 October 2020 the enforcement team received an email from a safeguarding officer at BCC regarding an overcharging complaint from a member of the public. This is a potential criminal offence under taxi regulations.
- On 10 October 2020, SM is alleged to have overcharged a customer £2.50, then supplied a personal number for future bookings. The customer complained to the operator.
- PC Quinton earmarked the vehicle for a test purchase. PCQ stopped the vehicle, whereupon SM said he was not working. The passenger confirmed it was a taxi journey and that he did not book through an operator. SM said he was giving a friend a lift home and was not working. PCQ asked SM if he was plying for hire, but he maintained he was giving a lift.
- PCQ issued a fixed penalty for driving without insurance and referred the matter to PSP. A Background check has revealed historical complaints about tailgating and speeding.

The appellant gave the following evidence:

- There was a complaint about alleged tailgating two years ago. This was resolved by SM speaking to licensing officers. This was a historical event, and he was reissued a license regardless of this in May 2020.

- SM has been a licensed driver since 2008 and up to 2019 he has no complaints on record. SM was not contacted about historical events prior to PSP referral so was unable to put his side of the story forward.
- There is a fine line between the overcharging and asking for a tip, i.e. rounding up costs by a small amount. The person making the complaint was not the passenger and did not see the transaction of this alleged overcharging.
- The committee has received references that paint SM as a reliable and trustworthy driver. We understand that earlier complaints are of lesser interest compared to the incident in May.
- SM did accept a pre-booking not through an operator. The BCC policy is clear, but we would ask you to consider his very good record. 2 more recent complaints did not need action and this incident in May is out of character.
- These are very hard times for the taxi trade, and this was not plying for hire in the traditional sense. We would ask the committee to give a formal warning rather than action.
- SM has taken this matter seriously at all stages and has contacted the NET and PCQ on several occasions on his own initiative.

After questioning from the committee, the following information was confirmed

- That SM's insurance would have been invalidated during this journey as the terms of the licence were breached.
- That SM has not yet accepted a Fixed Penalty Notice, but the notice period has not expired. The committee can give weight to the information presented regardless of whether the FPN is accepted.
- SM's rear plate was not displayed, the front plate was displayed. SM said that he found it difficult to attach plates to the rear of the vehicle but now had proper fixtures.
- Complaints about driver conduct may not be significant enough for action per se, but it does bring a driver to the attention of the authorities, resulting in more checks in future or the committee considering conduct at a hearing.
- SM explained someone who was not the passenger contacted him. That person was a previous customer who then requested a ride for someone else. It was essentially a pre-booked journey not through an operator. This is not plying for hire in the traditional sense. It was not an on street pick up, SM was acting as an operator without a licence.
- SM said that he and the customer did not agree a fee, but that if he was offered something, he would take it. SM views the transaction as a favour. PCQ confirmed no payment was received as SM was stopped during transport.
- PCQ said that in difficult situations like lockdown, more rule breaking is likely. SM has received few complaints over 10 years which reduces the risk element.
- SM lost his regular airport job due to lack of business. He has tried to work as much as possible during lockdown including odd jobs.

Decision

The Committee, having heard from the Neighbourhood Enforcement Officer, the Applicant and the Applicant's representative determined to refuse to renew the Private Hire Driver Licence under section

61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976, namely any other reasonable cause.

The Council's guidelines on the relevance of criminal behaviour - General Policy (referred to hereafter as "the Policy") affords a general guide on the action which might be taken where convictions, cautions and endorsable fixed penalties are disclosed, or where offending behaviour is proved to the satisfaction of the Council and reference to conviction should be construed accordingly.

The Committee made a finding of fact on the balance of probabilities that the Applicant took a direct booking that wasn't booked through a licenced private hire operator as required which amounts to an offence under section 46 of the Town and Police Clauses Act 1847 or section 46 of the Local Government (Miscellaneous) Provisions Act 1976. The Committee heard the submissions from the Applicant's representative about the matter not falling within plying for hire in the usual sense but were satisfied that other sections of the legislation made it an offence to take the booking without a private operator's licence.

The Committee notes that there were other matters on the record which they are entitled to take into account but the most weight was given to the May 2021 matter for taking a direct booking not via a private hire operator and thereby invalidating the insurance.

The Council's Policy on the relevance of criminal behaviour states that a serious view is taken for convictions under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 when deciding whether an applicant is to be treated as a fit and proper person. In particular, an applicant will normally be refused a licence where (s)he has been convicted of an offence under the Acts (where offending behaviour of proved to the satisfaction of the Council reference to conviction should be construed accordingly) at any time during the 6 months preceding the application or has more than one conviction within the last 2 years preceding the date of the application. The driving with no insurance matter is covered under traffic offences in the Policy which was also considered by the Committee when making the decision.

The Committee is not satisfied that the Applicant is a fit and proper to hold a licence at this time or that there is any exceptional circumstances that would justify departure from the Council's policy.

9 MH - APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE DRIVER LICENCE SEEKING DEPARTURE FROM BRISTOL CITY COUNCIL POLICY

The driver was present.

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

- MH has held a licence since 2004 (which is when electronic records begin) and possibly has earlier licences on paper records.
- His previous licence expired in 2019 and his renewal application was considered by PSP in January 2020 due to a conviction for battery.

- For violent offences such as battery the policy is not to licence until between 5 to 10 years has passed. The Magistrate has suggested a period of 2 years due to the offence being on the lower end of the scale, but it is 5 years as per the policy.

The appellant gave the following evidence:

- MH said that he has a previous good record over 20 years and the conviction was a minor one.
- He expressed remorse for his actions, which were very out of character. This is the only offence on his record, and he will not offend again.
- MH said the offence occurred during a very stressful time and that he has financial and health issues.

After questioning from the committee, the following information was confirmed

- It was confirmed that the committee cannot go behind criminal convictions, they stand and are not a matter for debate.
- The magistrate's recommendation of a two-year period without licence is not binding on the committee. The committee is led by the policy standard of 5-8 years for assault.

Decision

The Committee, having heard from the Licensing Officer and the Applicant, determined to refuse to grant MH's Hackney Carriage Driver Licence under section 59(1)(a)(i) of the Local Government (Miscellaneous Provisions Act) 1976 and have applied the Council's guidance on the relevance of criminal behaviour – General Policy (referred to hereafter as "the Policy"). The Committee considered the comments made by the Magistrates' Court for an application to be considered favourably after two years from the conviction as the Court considered the offence to be at the lower end of the guidelines however the Committee re-iterate that those comments on are not binding on this Committee.

In making the decision, the Committee could not go behind a criminal conviction and applied the section of the Policy on violence, namely, that as hackney carriage and private hire drivers have close contact with the public, in general a period of 5 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will be required before an application is likely to be considered favourably; an application will normally be refused where the Applicant has a conviction for an offence of common assault (and other offences not listed here) and the conviction is less than 5 years prior to the date of the application. Between 5 and 8 years after conviction more weight will be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

The Policy states that a person with a current conviction for a serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for an appropriate period and show adequate evidence of good character from the time of the conviction. Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.

Whilst the Committee heard that MH is sorry, the Members were not satisfied that MH provided supporting evidence to discharge his burden of proving that he is a fit and proper person to hold a licence or that he demonstrated exceptional circumstances to justify a departure from the Policy.

10 ZR - APPLICATION FOR THE RENEWAL OF A HACKNEY CARRIAGE VEHICLE LICENCE SEEKING DEPARTURE FROM BRISTOL CITY COUNCIL POLICY

The driver's mother was in attendance as ZR is in hospital.

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

- This is an application for a renewal of a Hackney Carriage Vehicle License. The vehicle in question was first registered in 2011. It is council policy not to renew licences for vehicles older that 10 years. This policy is in place to contribute to better air quality in the city so the applicant must give reasons for the committee to divert from this policy.
- ZR has requested an extension of 6 months to earn enough money to secure a replacement vehicle.

The appellant gave the following evidence:

- The family is in a difficult financial situation and needs an extension for this vehicle to secure funds for a replacement. The family has a fleet of vehicles but covid has made their maintenance and replacement difficult.

After questioning from the committee, the following information was confirmed

- The vehicle is large and well suited to taxi work. It has no defects and has passed its MOT every time. All vehicles are checked weekly and receive regular servicing. They believe selling the vehicle now would be wasteful.

Decision
The Committee determined to refuse the application for the renewal of a Hackney Carriage Vehicle licence seeking departure from the Council's Hackney Carriage Vehicle Policy (referred to hereafter as "the Policy") on the ground contained in section 60(1)(a) and section 60(1)(c) of the Local Government Miscellaneous Provisions Act 1976, namely, that the vehicle is unfit for use as a Hackney Carriage vehicle and any other reasonable cause.

The Policy states that any vehicle first registered between 1st January 2011 and 31st August 2015 can be relicensed until 10 years from date of first registration. ZR's vehicle was first registered on 24th April 2011 and as it is over 10 years since first registration no longer complies with the Policy. The Committee is not satisfied that there are exceptional circumstances to justify departure from the Policy. Personal and financial circumstances are not a relevant consideration when making a decision.

11 AH - APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER LICENCE

The driver was present.

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

- AH suffers from angina and needs to take a fitness test to be able to drive. Taxi drivers in Bristol need to achieve level 2 on the test to be licensed.
- AH is also seeking exemption from the knowledge and gold standard tests.

The appellant gave the following evidence:

- It has been one and half years since AH appeared at PSP and two and a half months since his last application.
- AH provided a doctor's note that said he was satisfied with his health level.

After questioning from the committee, the following information was confirmed

- Members asked whether officers had discussed the medical evidence required with the appellant and when it can be secured. It is difficult in the current climate to get fitness tests, the quickest way to secure test is by going to a private healthcare provider.
- AH is seeking exemption from the knowledge test. He has been a driver for 16 years, so his knowledge is already very good. AH said it is a financial burden to take these tests and he is currently unemployed.
- AH has never taken the gold standard test as it is listed as optional on applications. He is prepared to take it if directed by the committee.
- AH experienced a stroke which led to his licence being withdrawn. He provided a medical reference, but this does not override the need for AH to complete the necessary fitness test for taxi drivers. This is something that AH will need to arrange. The licensing officer confirmed that he could write to AH's GP about the requirements and ask for a referral.

Decision

The Committee determined to refuse the application for a Private Hire Driver Licence in accordance with section 51(1)(a)(i) of the Local Government Miscellaneous Provisions Act 1976. AH sought departure from the Council's Hackney Carriage and Private Hire Fit and Proper Person Policy (referred to hereafter as "the Policy"), specifically, exemptions from the requirement to complete the Gold Standard Test and the Knowledge Test. The Policy states that "all applicants and licence holders shall satisfy the Council that they are a fit and proper person to hold such a licence. The Medical Fitness Policy and Training Policy shall form part of the fit and proper person test."

AH's previous licence was revoked in January 2020 due to medical reasons; therefore he is treated as a new applicant and is subject to the requirements of the Policy. AH has not previously been required to complete the Gold Standard test, which became a requirement in 2012. It has been over one year since AH was licensed and although he has had years of experience being a licenced driver in Bristol, this is not up to date and the Knowledge Test is a reasonable requirement, as is the Gold Standard test. The Committee is not satisfied that there are exceptional reasons that justify departure from the Policy. Personal and financial circumstances are not a relevant consideration when making a decision.

Furthermore, AH has not demonstrated that he satisfies the Medical Fitness part of the Policy, as he has not provided a medical examination report showing that he meets the DVLA Group 2 entitlement of fitness to drive, which is the required standard for licensed drivers in the Policy. As a result of his particular medical history he is also required to provide the results of an exercise tolerance test (Bruce protocol or equivalent) that in a registered medical professionals opinion confirms adherence to the group 2 entitlement. The results of such a test have not been provided to the council.

Meeting ended at 3.00 pm

CHAIR _____