

Bristol City Council

Minutes of the Public Safety and Protection

Sub-Committee B

17 September 2019 at 10.00 am



Members Present:- Councillors Chris Davies and Fi Hance (Chair)

Also in attendance:- Lynne Harvey (Legal Advisor), Corrina Haskins (Democratic Services), Abigail Holman (Licensing Officer for items 10 & 11 and Licensing Policy Advisor for items 8), Carl Knights (Licensing Policy Advisor for items 8 and Licensing Officer for items 9, 10 & 11), Graham Lang (Licensing Officer and Observer) and Alison Wright (Neighbourhood Enforcement Officer) for item 9.

1. WELCOME AND SAFETY INFORMATION

The Chair drew attention to the safety information.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Richard Eddy.

3. DECLARATION OF INTEREST

There were no declarations of interest.

4. PUBLIC FORUM

There were no public forum statements.

5. MINUTES OF THE PREVIOUS MEETING

RESOLVED – that the minutes of the meeting of 9th July 2019 be confirmed as a correct record and signed by the Chair.

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

8. REPORT OF AN APPLICATION FOR THE RENEWAL OF A PRIVATE HIRE DRIVER LICENCE AND AN EXISTING PRIVATE HIRE VEHICLE LICENCE GA (AGENDA ITEM 8)

The Applicant was in attendance with his Legal Representative and Interpreter.

The Witness was not present and it was noted that this was due to an administrative error on the part of the Council.

The Legal Representative addressed the committee as follows:

- He would like the matter to proceed even though the Witness was not in attendance;
- This was the third time that the item had come to committee after having been adjourned on two previous occasions;
- The Applicant would like the issue concluded today to have clarification on whether he could continue working as a taxi driver;
- The Applicant had not been able to work since 16 June 2019 and as the sole breadwinner living with wife and daughter, he was suffering financial hardship and finding it difficult to pay his rent and feed his family;
- The Applicant had no other skills to find alternative work;
- The Applicant had provided his account of what had happened on more than one occasion, including a statement to the police.

At this point in the meeting, the Applicant, Legal Representative and Interpreter withdrew from the meeting while the committee considered whether to determine the application in the absence of the Witness. They returned to hear the decision.

Cllr Hance apologised on behalf of the Council for the administrative error which meant that the Witness was not present at the meeting as it was understood that the Witness was still willing to attend and give evidence to the Committee. She informed the Applicant that, although she accepted his financial hardship, the Committee was responsible for public safety and protection and could not take financial issues into account in making a decision. She advised the Applicant that if he was concerned about the extra expense incurred by the adjournment, he could raise this with the Licensing Manager. It had also been noted that although this was

the third time the matter had been before Committee, the two previous adjournments had been requested on behalf of the Applicant.

RESOLVED – that consideration of the application be adjourned to the Public Safety and Protection Sub-Committee of 24th September 2019 to allow the Witness an opportunity to attend the meeting, and as consideration of the application had been adjourned before, the application would be determined at the meeting of 24th September irrespective of whether the Witness was in attendance.

9. CONSIDERATION OF WHETHER THE DRIVER IS ‘FIT AND PROPER’ FOLLOWING ON FROM AN INVESTIGATION BY THE NEIGHBOURHOOD ENFORCEMENT TEAM JM (AGENDA ITEM 9)

The Licence Holder was in attendance with his Legal Representative and three supporters.

The Neighbourhood Enforcement Team (NET) Officer outlined the background to the investigation as follows:

- The investigation had followed a complaint by a member of the public that the Licence Holder had failed to safely and securely transport a wheelchair using passenger during a journey from Bristol Temple Meads to Bristol Royal Marriot Hotel and as a result of this, the wheelchair had fallen over and the passenger bumped his head and had to attend the Accident and Emergency (A&E) department at the hospital for a CT scan;
- The Licence Holder’s current licence was due to expire in 2020;
- On 7 July 2019 the complaint had been received via Council’s website;
- The Neighbourhood Enforcement Officer had spoken to the complainant and due to the fact that she did not live locally, the Complainant had offered to take witness statements and forward them to the NET Team via email;
- She had studied the CCTV footage from Bristol Temple Meads and had documented what she saw, a copy of which had been circulated to all parties;
- The Licence Holder had attended an interview with NET officers accompanied by his Legal Representative where a prepared statement was read out and the Licence Holder exercised his right to not answer any of the questions other than to confirm that he did know how to secure a wheelchair and he had attended the Gold Standard Course. The Licence Holder had also denied the alleged conversation with the Complainant and her husband outside the Royal Marriot Hotel and confirmed that he had not reported the incident to the police. The interview was paused twice at the request of the Legal Representative and after the second time, the Licence Holder exercised his right to withdraw from the interview;
- The Licence Holder had been asked to bring his vehicle to the interview, but it was being repaired at the time in a garage and he brought it to the Licensing Office at a later date and successfully demonstrated how to secure a wheelchair;

- The safety of the public was the overall concern of the Council and officers recommended that the Licence Holder should have his Driver's Licence revoked as he could not be considered to be a fit and proper person to hold a licence due to his neglect of duty and causing an avoidable trauma to vulnerable passenger.

In response to questioning the NET Officer confirmed that the CCTV was not available for the Committee to view as the Council did not have the appropriate software but she had viewed it at Bristol Temple Meads and, as an authorised officer, had documented the film.

The Witness gave the following account:

- Her family were getting together in Bristol for the wedding of her son;
- Her father was of delicate health, having undergone brain surgery in 2018, and he was currently in intensive care;
- Her father had been looking forward to traveling to Bristol from his home in North Lincolnshire to spend time with his family and meet his great grandchild;
- She had arranged for her mother and father to stay at the Marriot Royal Hotel and they had been accompanied on the train journey by her sister-in-law and niece;
- Her family were not generally taxi users but they felt confident in getting a taxi from the train station to the hotel;
- On her way to meeting her parents at the hotel, she had received a message from her mother to say that something had happened in the taxi, but they were on their way;
- The taxi had pulled up outside the hotel and she was aware that something was wrong as her mother was looking pale and her father was holding his head. When she asked the Driver what had happened he had said it was not his fault but she didn't think she got a full description of what had happened;
- Her husband had challenged the Driver and got his details, which he seemed reluctant to give. The Driver had said that he should not have been working and was not properly trained;
- Due to her father's health problems and him being prescribed the drug, Apixiban, once she realised that he had suffered a bump to his head, she knew he had to go to A&E for a CT scan;
- She accompanied her father to the hospital where they spent between 3pm and 10pm in A&E and he had a CT scan;
- The incident would not have happened had her father been strapped in and it had been the last opportunity for her father to see his wider family due to his deteriorating health.

In response to questioning about the procedure for strapping in a wheelchair, the Licensing Policy Advisor confirmed that although there were differences for different

vehicles, the wheelchair needed to be secured at 3 points and involved anchoring the vehicle, strapping the user in and engaging the brakes.

The Licence Holder's Legal Representative asked the circumstances by which the witness statements were taken using a section 9 form and the Complainant confirmed that she has taken the statements following consultation with the NET Officer who had sent her the forms.

The Committee's Legal Advisor reminded all parties that the role of the Committee was to carry out the Council's regulatory function and it was not a criminal process. She confirmed that the Committee needed to make a decision on the facts of the case and the standard of proof was the civil one, namely on a balance of probabilities and unlike criminal proceedings, hearsay evidence was admissible.

The Licence Holder's Representative presented his case as follows:

- He had been a Private Hire Driver since 1988 and a Hackney Carriage Licence Holder since 1999;
- He had achieved the Gold Standard in 2015;
- He had taken many wheelchair passengers;
- Further evidence had been circulated to all parties supporting the Licence Holder, including a letter from the owner of the taxi companies which employed the Licence Holder and 6 letters containing character references and confirming that he had experience of transporting wheelchair users;
- At time of incident it was his turn to pick up passengers and there was a discussion with passengers about who to take and it was agreed that he take a party of 4 including a wheelchair user;
- He denied being over-worked and miserable;
- He pushed the wheelchair up the ramp and was followed by a female passenger;
- He was intending to strap the wheelchair user in, but was told not to secure the passenger as he didn't like to be strapped in and so he just applied the brakes of the wheelchair;
- He dropped off 2 of the passengers at a Premier Inn and then took a U-turn to begin the journey to the Royal Marriot Hotel when he heard a noise in the back of the taxi. At this point he stopped and saw the wheel chair had fallen over;
- He asked if the passengers were alright and they confirmed that they were and he continued the journey to the hotel;
- At the hotel a male and female were waiting and the Licence Holder said the male was aggressive and asked for his details, although he wasn't interested in taking his name and so he drove off;
- He later received a call from the Taxi Company asking him to return to the hotel and that the passenger had experienced a brain haemorrhage. He returned to the hotel and gave his details to the male, although he denied

being asked questions about his training and claimed that the male was being aggressive.

In response to a question about how the wheelchair was secured, the Licence Holder confirmed that it was not anchored and he had been told by the female passenger not to strap the male passenger in as he did not like it. On further questioning as to whether the Licence Holder understood that it was his responsibility to ensure that the wheelchair user was secure, he responded that he did and it was the first time that he hadn't done so and he had made a mistake in listening to the female passenger.

The Committee's Legal Advisor stated that although there was some discrepancy in relation to the accounts of the incident, there was no dispute over the fact that the wheelchair user had not been secured properly and the Committee needed to consider whether any action should be taken against the Licence Holder. She reminded the Committee that any action should be proportionate to the incident in accordance with the relevant policies and guidance.

The Licence Holder's Legal Representative summed up by asking the Committee to consider the length of time that he had been a taxi driver and that this was the first time that an incident such as this had happened.

At this point in the meeting the Licence Holder, his Legal Representative and supporters and the Neighbourhood Enforcement Officer withdrew from the meeting while the Committee considered the application. They returned to the meeting to hear the decision.

RESOLVED

(1) that there was reasonable cause to revoke the Licence Holder's Hackney Carriage Driver's Licence on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 as the Council could no longer be satisfied that he was a fit and proper person to hold such a licence. It was further determined that in the interests of public safety the revocation have immediate effect in accordance with section 61(2B) of the same Act for the following reasons:

The Committee considered the oral evidence of the Witness, together with her written statement and those of other witnesses regarding the incident and evidence from the Investigating Officer. The Committee found their versions of events to be credible and more reliable than that of the Licence Holder.

Even if the Licence Holder's explanation was true, that the passenger asked him not to secure the wheelchair, it was unacceptable and grossly negligent for him not to do so.

The failure to properly secure a disabled passenger resulted in an accident whereby the passenger had to be taken to A&E. This was a most serious case of neglect on the Licence Holder's part. Nor was there any remorse on the part of the Licence Holder.

In consequence the Committee could no longer be satisfied that the Licence Holder was a fit and proper person to hold a Hackney Carriage Driver's Licence. This incident on its own would be sufficient for the Committee to reach this finding. However, the Committee also looked at the previous case history of the Licence Holder during his time as a licensed driver with the Council and had grave concerns about the pattern of misconduct over a period of time.

The Committee therefore decided that there was "reasonable cause" to revoke the Licence Holder's Hackney Carriage Driver's Licence on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

The Committee also considered that as the incident was of such a serious nature, in the interests of public safety the revocation should have immediate effect in accordance with section 61(2B) of the same Act.

(2) That the Vehicle Licence should NOT be revoked, but the Licence Holder be reminded that he would no longer be licensed to drive it, although he could lease the vehicle to someone else.

10. APPLICATION FOR THE RENEWAL OF A PRIVATE HIRE DRIVER LICENCE MEC (AGENDA ITEM 10)

The Applicant was in attendance with two representatives.

The Licensing Officer outlined the background to the application as follows:

- The application was for the renewal of a Licence which had expired on 12 August;
- On renewal the Applicant had declared driving convictions and on carrying out a search on his Driver's Licence he was found to have 9 penalty points;
- In relation to the CU80 offence, the applicant was convicted in November 2017 at Bristol Magistrates' Court where he received six penalty points and a fine;
- The Applicant had entered a plea of exceptional hardship which was accepted by the court and meant that he was not disqualified from driving;
- The Applicant had not notified the Council at the time of the offence which he should have done so in accordance with the conditions of his licence;

- The Applicant had previously renewed two licences online without declaring his motoring offences;
- The Council was unable to consider exceptional hardship as different criteria applied for the granting of PHD Licences.
- He commended that the Committee be guided by Council policy in determining the application.

The Applicant's Representative presented his case as follows:

- He asked the Committee to consider reinstating the Applicant's licence;
- He confirmed that there was no dispute over what had happened and the Applicant had pleaded guilty to the first 2 offences of speeding and driving through a red traffic light;
- In relation to the third offence of answering a mobile phone while driving, the Applicant was awaiting a telephone call from a consultant regarding the result of hospital tests;
- He accepted that he had taken a call while driving and this was a serious offence, but there were mitigating circumstances;
- In relation to the non-declaration of these offences, the Applicant had not deliberately withheld this information. He did not have the literacy skills in English to complete the form and so he had attended the Licencing Office where he was helped to do so using the online form. He had no recollection of being asked about his offences at these times. In applying for his current licence he was asked to declare his offences and this was the first time he recollected being asked to do so;

The Applicant confirmed that his failure to declare his convictions was a genuine mistake and that he had been driving for 20 years without any complaints. The Licensing Officer confirmed that there were no complaints in relation to the Applicant.

The Applicant's Representative:

- asked the Committee to consider the mitigating circumstances and consider his personal circumstances;
- confirmed that the Applicant was not a threat to public safety and that it had been nearly 2 years since the last conviction;
- asked the impact on the Applicant and his family would be disproportionate.

At this point in the meeting the Applicant and his representatives and Licensing Officer withdrew from the meeting while the Committee considered the application. They returned to the meeting to hear the decision.

RESOLVED – that the application for a Private Hire Driver's Licence be GRANTED for the following reasons:

The Committee was satisfied that the Applicant was a fit and proper person to hold a Private Hire Driver's Licence. The Committee noted the history of driving convictions and that the Applicant had been unlicensed for a period of time already whilst awaiting the outcome of this application. The Committee accepted that there were mitigating circumstances in respect of commission of the latest driving conviction which was taken into account.

The Committee accepted the explanation that the omission to tell the Licensing Office of the previous convictions was a genuine mistake and advised the Applicant of the requirement to do so immediately in the future and also to comply with all conditions attached to the licence otherwise, should there be any future offences, another Committee may not be so lenient.

11. APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER LICENCE SA (AGENDA ITEM 11)

The Applicant was in attendance with his wife.

The Licensing Officer outlined the background to the application as follows:

- This was an application for private hire driver's licence, the Applicant's previous licence had expired in 2016 but no application had been made to renew it until June 2017 when it was refused by this Committee;
- In his application, the Applicant had not made a full disclosure of his previous convictions;
- The Applicant had a number of previous convictions, 10 in total, and the most relevant for the Committee were convictions listed in the report as 8-10 as these had not been considered before;
- These convictions related to a road rage incident and breaches of community orders associated with the initial offence;
- The Council's Policy advised a period of 5 – 10 years free of conviction before granting a licence in the case of a violent offences and 5-8 years for damage to property;
- Officers were recommending that the application be refused in accordance with Council Policy.

The Applicant outlined his case as follows:

- He regretted the Road Rage incident and confirmed that it was out of character to act in that way and he was not a violent person;
- He was going through a bad period at the time of the incident as he lost both his parents in a short space of time and his wife was suffering from depression;
- He was a father to 5 children and his wife and children had suffered as a result of his actions;
- In relation to the community orders, he was not able to undertake the work due to illness but his sick note had not arrived in time;

- In relation to the Road Rage incident, he had taken his children out early to buy sandwiches for a school trip and while approaching a roundabout, a car cut in front of him which nearly resulted in him losing control of the vehicle. He was angry with the car driver for driving dangerously, especially as his children were passengers in his car and when both vehicles stopped at a set of traffic lights an argument escalated with both him and the other driver being abusive to each other.

The Applicant's wife spoke in support of her husband:

- They had been married for 22 years;
- He was a good father and husband;
- The incident was out of character;
- He was a well-respected member of the community and often approached by his neighbours for help;
- He had learnt from his mistakes.

At this point in the meeting the Applicant, his wife and the Licensing Officer withdrew from the meeting while the Committee considered the application. They returned to the meeting to hear the decision.

RESOLVED – that the application for a Private Hire Driver's Licence be REFUSED in accordance with the Local Government (Miscellaneous Provisions) Act 1976 Section 51(1)(a) as the Applicant could not be considered a fit and proper person to hold a Private Hire Driver's Licence for the following reasons:

Under the Council's policy, for the offence of criminal damage, a period of 5 – 8 years free of conviction was usually recommended. The Committee noted that there was also a conviction for the offence of using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence. Although that particular offence was not specified in the policy, it was considered that a similar period free of conviction should apply.

In this case the convictions were still less than 5 years old. In respect of the criminal damage conviction a suspended prison sentence was imposed by the Court, which demonstrated that the offending conduct was considered to be at the more serious end of the scale.

The Committee was not satisfied that the Applicant had put forward any exceptional circumstances such as to justify a departure from Council policy being made.

The meeting ended at 3.30 pm

CHAIR