

# Bristol City Council

## Minutes of the Public Safety and Protection

### Sub-Committee B

28<sup>th</sup> January 2020 at 10.00 am



**Members Present:-** Councillors Chris Davies, Richard Eddy (Chair) and Fi Hance.

**Also in attendance:-** Shreena Parmar (Legal Advisor), Carl Knights (Senior Licensing Officer – Policy Advisor), Norman Cornthwaite (Democratic Services), Alison Wright (Neighbourhood Enforcement Team - Presenting Officer for item 8), Wayne Jones (Neighbourhood Enforcement Team - Presenting Officer for item 9), Abigail Holman (Senior Licensing Officer – Presenting Officer for items 10,11, 12, 13, 14 and 15).

#### 1. Welcome and Safety Information

The Chair drew attention to the safety information.

#### 2. Apologies for Absence

There were no apologies for absence.

#### 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 26<sup>th</sup> October 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. To consider whether the driver is ‘fit and proper’ following on from an investigation by the Neighbourhood Enforcement Team, as a result of an allegation from a member of the public: MI (Agenda Item No. 8)**

MI was not in attendance.

Two witnesses were in attendance.

MI had previously advised the Neighbourhood Enforcement Officer that he would not be attending, stating that “the job is too dangerous”. It was agreed that in view of the fact MI had been given sufficient notice of the Committee Meeting but had chosen not to attend and that the two witnesses had attended, the case be heard in the absence of MI.

The Neighbourhood Enforcement Officer introduced the report and summarised it for everyone

- She confirmed that MI had been given every opportunity to put his case at the interview;
- MI was born in 1984;

Both witnesses summarised their statements and confirmed that they were each a true version of events.

It was noted that the Police did not think that there was sufficient evidence to secure a conviction, hence the case had not been pursued through the courts.

The Neighbourhood Enforcement Officer and witnesses left the room whilst the Committee made its decision.

### **Decision**

The Legal Advisor reminded Members that they would need to make findings on the balance of probabilities about whether the incidents involving an emergency stop, erratic driving, aggressive and abusive behaviour by MI took place before making a decision on whether any action was required in accordance with Council Policy.

The Committee noted all of the written and verbal evidence put before it.

The Committee also noted that previous behaviour by MI had brought him before the Committee in 2014.

The Members of the Committee noted that without MI being in attendance they were unable to obtain any further information concerning his version of events.

The Committee considered the version of events put forward by the witnesses to be credible. The Committee therefore decided that on the balance of probabilities the incidents involving MI had taken place.

In view of this, the Committee decided that MI was no longer a fit and proper person to hold a Private Hire Driver's Licence and revoked the Licence.

Everyone returned to hear the decision.

**Resolved – (voting 3 for, 0 against) that the Private hire Drivers Licence held by MI be revoked as he is no longer a fit and proper person to hold such a Licence.**

9. **To consider the ability of a licensed Private Hire Driver (PHD) to be considered a fit and proper person to hold a PHD licence, due to the recent medical information provided - AH To also consider the PHV licence which AH is the proprietor and only named driver (Agenda Item No. 9)**

AH was in attendance accompanied by his daughter.

The Neighbourhood Enforcement Officer introduced the report and summarised it for everyone.

- He confirmed that BCC has adopted a Fit and Proper Person Policy on the relevance of fitness to drive a licensed vehicle in which it states that taxi drivers are treated as DVLA Group 2 drivers for medical standards. The adoption of DVLA Group 2 was a Government recommendation and as far as is known has been adopted by all other Local Authorities which licence taxi drivers.
- He noted that AH had submitted a letter from NHS North Bristol stating that AH could return to driving "as soon as possible", this however relates to DVLA Group 1 – driving a private vehicle for your own needs, not a taxi (or any other vehicle) used to transport members of the public.
- It was noted that the NHS website categorises a TIA the same as a mini stroke.

AH's daughter put his case, explained the sequence of events, the visits to doctors and the advice given to him including that he may start driving again.

AH stated that he is not able to do any other type of work and does not therefore have a job at present.

The Neighbourhood Enforcement Officer, AH and his daughter left the room whilst the Committee made its decision.

### **Decision**

The Legal Advisor explained the legal position to the Committee.

The Members of the Committee noted that although the NHS North Bristol letter had stated that AH may start driving again, there may have been a lack of awareness concerning the DVLA Group 2 medical requirements for taxi drivers.

The Council has adopted a Fit and Proper Person Policy on the relevance of fitness to drive a licensed vehicle in which it states that taxi drivers are treated as Group 2 drivers for medical standards. Whilst the Committee has sympathy for AH, the Committee needs to follow policy unless there is good reason to depart from it. In the circumstances, it noted that AH suffered from a single transient ischemic attack (TIA) and have provided medical evidence that suggests that he is fit to drive which is considered to only addresses his capacity to drive as a Group 1 driver

The Committee has given due consideration of the *DVLA Guidance of Assessing fitness to drive – a guide for medical professionals*, and in accordance with that it applied the same criteria; a licence will be refused or revoke for 1 year following a stroke or TIA and will consider relicensing after such time.

The overriding consideration is the safety of the public and the Committee can no longer be satisfied that AH is a fit and proper person to hold a Private Hire Driver's Licence and in accordance with section 61((1)(b) of the Local Government (Miscellaneous) Provisions Act 1976 there is reasonable cause to revoke the licence.

It was noted that AH could apply for a Licence in October 2020 and seek exemption from being required to pass the Knowledge Test again but would need a new DBS check. It was also noted that the Private Hire Vehicle Licence could be renewed and used by another Licensed Driver.

Everyone returned to hear the decision.

**Resolved – (voting 3 for, 0 against) that the Committee can no longer be satisfied that AH is a fit and proper person to hold a Private Hire Driver's Licence and in accordance with section 61((1)(b) of the Local Government (Miscellaneous) Provisions Act 1976 there is reasonable cause to revoke the licence.**

### **10. Application for the Grant of a Private Hire Driver's Licence - MSA (Agenda Item No. 10)**

MSA was in attendance.

The Senior Licensing Officer introduced the report and summarised it for everyone. In particular she explained that a recent DBS check relating to MSA had revealed a number of convictions. Information had also been received from the Police concerning the arrest and subsequent trial of MSA in 2019 relating to 2 offences of Robbery. At the trial the jury found MSA not guilty of any offences.

The Legal Advisor reminded the Members of the Committee that burden of proof required by them is on the balance of probabilities.

MSA put his case highlighting the following:

- The interview and statements do not contain a lot of information
- He could not leave the scene of the robbery because of fears for his safety
- He was threatened and his taxi was damaged after the event
- He waited outside the property
- He challenges some of the statements made at the interview
- The case is more complex than stated in the papers
- He represented himself in court
- One of the other defendants was sentenced to 9 years 6 months in prison
- He has not heard from any of the others who participated in the crime for 3 to 4 months
- His taxi office and car windows had previously been broken and he had received threatening 'phone calls
- He has a taxi company and would like to keep his Private Hire Driver's licence
- The people involved in the crime are well known locally

MSA then answered questions highlighting the following:

- He is quite well known locally
- He went along on the robbery as he was expecting to receive money - £1,000
- When he picked up the passengers they said the money had already been stolen, they were collecting it and he would receive some of it
- He did not have representation at his trial as he had done nothing wrong and there was no evidence against him
- He did not testify in court for reasons of fears for his safety
- The defendant was in his car; the other people were not and were not arrested
- There were other people in his car who he did not know
- The Police did not put a lot of his interview forward as evidence for reasons of his safety
- He did not know some of the people he picked up but he had picked them up in the past; he was paid £50 for the job
- He did not know they were going to rob the house

- His past offences took place when he was young, he was not doing real work but was hanging around with the wrong people; he has changed since 2014, he moved to a new area, has a Private Hire Drivers Licence and an Operator's Licence
- He confirmed that he did say he "wanted a chunk of money"; he thought the people were going to retrieve stolen money

The Senior Licensing Officer and MSA left the room whilst the Committee made its decision.

### **Decision**

The Legal Advisor reminded the Committee of the legal situation concerning the standard of proof they required.

The Committee considered all of the written and verbal evidence presented to it.

The Committee considered this application and the lengthy prosecution papers and noted that the Applicant was found not guilty of two robbery offences. That was a criminal case where the standard of proof is beyond reasonable doubt. The standard of proof in this Private Hire Driver's Licence application is the civil standard which is on the balance of probabilities meaning a finding that something is more likely than not; this is a lower standard of proof than the criminal standard.

The Committee considered an incident that occurred on 23rd April 2017. They were entitled to go behind an acquittal and must make finding of facts on a balance of probabilities. The Applicant made a number of admissions in interview under caution which he did not challenge in the hearing and the committee made a finding of fact that they more likely occurred than did not:

- By MSA's own admission, he went to the door of the location that was robbed to see what was going on, whilst the robbery was taking place and had a detailed knowledge of what was happening including that there were weapons involved
- He didn't drive away or call the police and stayed for the duration of the incident. MSA stated that a law-abiding citizen would leave the scene and get away as soon as possible and yet MSA did not do this; he states the reason for this was fear of reprisal however in his interview under caution he gave the police a detailed account of other persons involvement
- He wanted a piece of the money and stated that he expected to get £1000. He knew at that point that the money had previously been stolen but did not think that it was wrong to accept a share of stolen money
- He drove the customers to cashpoints afterwards knowing that they were going there to try bank cards that were stolen
- He knew the customers were involved in crime generally; he stated that he could have refused the job but accepted it because it was a £50 job

The Committee also considered MSA's previous convictions including theft and robbery in 2005 and 2006 and a drugs offence in 2014; they accept that MSA had been considered a fit and proper person since those convictions however in light of this current incident they were concerned that there was a pattern of similar dishonest conduct over a period of time. This incident was only 2.5 months after that licence was granted. Furthermore, MSA did not inform the Licensing team that he was subject to criminal proceedings which was a requirement of his licence.

The Council's Guidelines relating to the relevance of criminal behaviour 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 were no longer be satisfied that MSA was a fit and proper person to hold a Private Hire Driver's Licence and in accordance with section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 there is reasonable cause to refuse to renew the licence.

The Members did not find it necessary to make a finding of fact on whether the Applicant demanded the victim's gold chain and bracelet as the above findings of facts along with the previous convictions warranted the Members decision

The Committee did not find that there was an exceptional reason to depart from the policy in this case.

Everyone returned to hear the decision.

**Resolved – (voting 3 for, 0 against) that the application by MSA for a Private Hire Driver's Licence refused as he has not convinced the Council that he is a fit and proper person to hold such a Licence.**

**11. Application for the Grant of a Private Hire Driver's Licence Seeking departure from BCC Policy – AA (Agenda Item No. 11)**

AA was in attendance.

The Senior Licensing Officer introduced the report and summarised it for everyone. She confirmed that AA is seeking exemption from taking the Knowledge Test.

AA put his case.

- He has been a driver for a number of years
- He considers himself to be a good driver
- He had a problem renewing his licence
- He was not aware of the requirement to take the Test again after a break of more than 1 year not holding a licence

He answered questions highlighting the following:

- He know Bristol very well
- He had to go abroad for a time and then returned to the country

The Senior Licensing Officer explained that when AA applied for his licence in 2018 some information to back up the application was missing.

The Senior Licensing Officer and AA left the room while the committee made its decision.

### **Decision**

The Legal Advisor provided legal advice to the Committee.

The Committee considered all of the written and verbal evidence put before it.

The Committee noted that AA had held a licence since 2013 and had a good record. It was also noted that, but for the problem with the missing information, it is likely that his previous application would have been approved. He does not present a danger to public.

In view of this, the Committee agreed to grant him an exemption from being required to take the Knowledge Test.

Everyone returned to hear the decision.

**Resolved – (voting 3 for, 0 against) that AA be granted an exemption from being required to take the Knowledge Test and that his application for a Private Hire Driver’s Licence be granted.**

### **12. Application for the Renewal of a Hackney Carriage Driver’s Licence and whether any action to be taken on an existing Hackney Carriage Vehicle Licence – MH (Agenda Item No. 12)**

MH was in attendance.

The Senior Licensing Officer introduced the report and summarised it for everyone.

MH put his case highlighting the following:

- He tabled character references that were circulated to Members of the Committee
- His daughter had ‘phoned him to say that a neighbour had blocked her car in for 4 hours
- He went to her house
- When he arrived there he was approached by the neighbour who had was holding an aerial for a remote control car
- He pushed the neighbour with his stomach and asked him to move the car; he did not hit him
- He had pleaded guilty in court
- He summed up his case

The Senior Licensing Officer and MH left the room whilst the Committee made its decision.

### **Decision**

The Legal Advisor provided the Committee with legal advice and reminded Members of their Policy.

The Committee considered all of the written and verbal evidence presented to it.

The Members noted that their Policy specifies that a Licence will normally be refused for where an applicant has a conviction for Common Assault where the conviction is less than 5 years prior to the date of application. (Whilst Battery is not specifically mentioned in the policy it is understood that it is treated by the Crown Prosecution Service with the same consideration as common assault.) They noted ~~and the fact~~ that MH had pleaded guilty to the offence. Although the Committee noted in mitigation MH's previous good record and the references he produced, the Members did not consider that they had heard enough evidence to satisfy them that MH should be treated as an exception to Council Policy in this case. The Committee therefore decided that the application should be refused as MH had not satisfied the Members that he is a fit and proper person to hold a Hackney Carriage Driver's Licence.

Everyone returned to the room to hear the decision.

**Resolved – (voting 3 for, 0 against) that the application by MH for the renewal of a Hackney Carriage Driver's Licence be refused as he has not convinced the Council that he is fit and proper person to hold such a licence.**

### **13. Application for a Private Hire Vehicle Licence seeking exemption from Council Policy – SA (Agenda Item No. 13)**

SA was in attendance accompanied by a colleague.

The Senior Licensing Officer introduced the report and summarised it for everyone.

SA put his case highlighting the following:

- He had lost his licence some years ago as a result of a drink/driving conviction
- The vehicle was licensed some years previously
- The vehicle was sold and the vehicle licence revoked

The Senior Licensing Officer stated that the vehicle licence was revoked in 2018, however the Notice of Revocation was not available.

SA was aware of the revocation.

In view of the fact that the Notice of Revocation was not available, the Committee decided that the case should be adjourned to allow time for the Notice to be produced.

**Resolved – that the case be adjourned until a future Meeting of the Committee to allow time for the Notice of Revocation of the Vehicle Licence to be produced.**

**14. Application for the Grant of a Private Hire Vehicle Licence seeking departure from Council Policy – AT (Agenda Item No. 14)**

Members of the Committee inspected the vehicle.

AT was in attendance accompanied by a colleague.

The Senior Licensing Officer introduced the report and summarised it for everyone. In response to a question she confirmed that information relating to the type of vehicle that the Council is prepared to licence is on the website. The Licensing Section also wrote to everyone on the newsletter list when the Policy was set and if anyone is unsure they can 'phone the Licensing Section.

AT put his case highlighting the following:

- He has seen a lot of the same type of vehicles on the road being used as taxis
- He did not look at the website and was therefore not aware of the Council Policy
- He would be happy with a time limited exemption of say one year
- He summed up his case

The Senior Licensing Officer, AT and his colleague left the room while the Committee made its decision.

**Decision**

The Legal Advisor provided legal advice for the Committee and reminded the Members that granting an exemption would greatly undermine the Policy and could lead to a number of other applications for a similar exemption.

The Policy Advisor stated that an exemption of say one year could not be granted as the vehicle could be transferred to someone else during that period.

The Committee considered all of the written and verbal evidence presented to it.

The Committee heard the Applicants reasons, however upon inspecting and measuring the vehicle and considering the policy on vehicle specifications the

Committee did not believe that the vehicle was suitable in type, size and design for a private hire vehicle, nor comfortable. The Applicant did not present any exceptional circumstances to depart from Council policy. The Committee would expect an applicant to make reasonable enquiries, such as looking at the policies and seeking guidance from the Licensing team, however Mr Touqeer failed to make such enquiries prior to purchasing the vehicle. He relied on other taxi drivers having the same vehicle assuming that he would be afforded the same licence without consideration to the age of those vehicles and the Council's policy on Private Hire Vehicle Specification.

The application to depart from the Council's policy on Private Hire Vehicle Specification is refused. The Committee did not find there were exceptional circumstances to depart from the policy in this case.

**Resolved – (voting 3 for, 0 against) that the application by AT for a Private Hire Vehicle Licence seeking departure from Council Policy be refused.**

**15. Application for the Renewal of a Hackney Carriage Driver's Licence and whether any action is to be taken on an existing Hackney Carriage Vehicle Licence – FH (Agenda Item No. 15)**

FH was in attendance accompanied by a solicitor.

The Senior Licensing Officer introduced the report and summarised it for everyone.

The solicitor put the case for FH highlighting the following:

- This is a new application
- The solicitor drew attention to Appendix B of the report where FH puts his case
- In relation to the conviction on 11<sup>th</sup> December 2019, FH had stopped and got out of his car but could not find anyone to report the accident to
- FH has children at two different schools; his wife does not drive
- The family are reliant on FH's income from taxi work
- The vehicle was bought using finance

FH and his solicitor answered questions highlighting the following:

- FH accepts the seriousness of the speeding offences and stated that he will drive more carefully
- The solicitor stated that FH had been able to keep his DVLA Licence in spite of accumulating 12 points on it due to hardship evidence
- FH cannot remember the speed he was doing when he received 6 penalty points

- The solicitor drew Members attention to aspects of the Policy; FH not stopping after an accident was an isolated incident; the last speeding offence was nearly three years ago; FH is a fit and proper person
- FH received a letter in 2013 concerning his suspension by the Committee as a result of a complaint against him
- FH does not recall receiving a letter concerning a complaint against him made in 2014
- FH confirmed that he would be on his best behaviour from now onwards

The Policy Advisor confirmed that a complaint against FH had been received in 2014 but the matter was not brought before the Committee.

The Senior Licensing Officer, FH and the solicitor left the room while the Committee made its decision.

### **Decision**

The Legal Advisor provided the Committee with legal advice and reminded the Members of their Policy.

The Committee considered all of the written and verbal evidence presented to it.

The Committee heard the account FH gave regarding the conviction in December 2019 for failing to stop after a road accident including that he informed his insurance company and that the penalty was at the lower end of the penalties available to the court, however they cannot go behind the conviction. The Council's policy on the relevance on criminal behaviour states that some offences (including SP30) will be treated as major traffic offences if 4 or more penalty notes were imposed for the offence. 6 points were imposed for this offence therefore it is a major traffic offence. AC10 is a major traffic offence. The policy further states that where the conviction is within 6 months prior to the date of the application the application will normally be refused. More than one conviction for this type of offence within the last 5 years is likely to merit refusal.

Furthermore, FH's Hackney Carriage Vehicle licence required him to notify the Council of any convictions which the Licensing team do not have a record of him doing; this could be construed as a criminal offence of failing to comply with licence conditions.

There were two major traffic convictions that are within the last three years (one of which was less than 2 months old at the time of the hearing) and three minor traffic offences from 2014, 2015 and 2016, and also a complaint in 2011 which resulted in his licence being suspended for three months. The Committee were therefore

concerned with his behaviour on the road and general conduct. The Committee found there was no exceptional reason to depart from policy; there is a major traffic offence within 6 months prior to the application and two major traffic offences within the last 2 years.

The Committee can no longer be satisfied that FH is a fit and proper person to hold a Private Hire Driver's Licence and in accordance with section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 there is reasonable cause to refuse to renew the licence and suspend the vehicle licence. It was noted by the committee that if suitable insurance in the name of another licensed driver was provided then there would be no need to suspend the vehicle licence.

Everyone returned to hear the decision.

**Resolved – (voting 3 for, 0 against) that the application by FH for the renewal of a Hackney Carriage Driver's Licence be refused as he is no longer a fit and proper person to hold such a Licence, and that the Hackney Carriage Vehicle Licence held by FH be suspended.**

The meeting ended at 3.55 pm.

**Chair**