

# Bristol City Council

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



19 April 2022 at 10.00 am

### **Members Present:-**

**Councillors:** Amal Ali (Chair), Marley Bennett, Richard Eddy and Tessa Fitzjohn

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

Abigail Holman (Licensing Policy Advisor), Shreena Parmar (Legal Advisor), Oliver Harrison (Democratic Services Officer) and Alison Wright (Neighbourhood Enforcement)

## **1 Welcome and Safety Information**

The Chair welcomed everyone to the meeting and issued the safety information.

## **2 Apologies for Absence**

Apologies were received from Cllr Chris Davies.

## **3 Declarations of Interest**

None received.

## **4 Minutes of the Previous Meeting**

RESOLVED the minutes of the previous meeting 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 1 of Schedule 12A to the Act, as amended.

## **8 JM - APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE DRIVER LICENCE**

Cllr Eddy was nominated as Chair for this case as Cllr Ali had to withdraw.

The applicant was present with a representative and three character witnesses. These witnesses were called at the start of the hearing and gave the following accounts:

1. Had known JM for 14 years and is a supervisor at Bristol Temple Meads. He organises road replacement services and finds JM helpful. This includes provision for disabled travellers. Where other drivers are reluctant to take wheelchair users, JM is always prepared to do so. During a major flooding incident JM helped in the coordination of replacement services even though this meant missing out on jobs personally.
2. Had known JM for 30 years and is chair of a Bristol mosque. He has found JM very helpful towards disabled users including transporting them to and from home. JM trained as a covid marshal during the pandemic and helped mosque attendees. JM is one of 13 members of the organising committee and has been for 9 years. JM has looked after vulnerable people at the mosque and the community trusts him to do so. The witness does not believe JM presents a risk to the public, though he admitted the PSP risk standards may be different.
3. Had known JM for 25 years and runs a funeral organisation. JM has assisted in transporting the deceased and bereaved families. JM does this on a voluntary basis and with great sensitivity. The witness does not believe JM presents a risk to the public and would trust family members with his care.

The witnesses were thanked and dismissed for the remainder of the hearing.

In presenting his case, JM and his representative made the following points:

- The medical statement about the wheelchair user injured in 2019 shows that this accident was a minor issue. The representative said that the sub-committee had been ‘misled’ over the seriousness of the incident.
- The statement from DR in the report pack supports that JM can be trusted with vulnerable people. DR understands the regulations and policies around disabled people better than most.



- JM has been a licenced driver for over 20 years. He has some offences in his early days but has paid the price for these. In 2015 he was issued a licence after a PSP hearing that considered his whole record.
- JM has undertaken several courses to improve his skill and safeguarding ability. He has worked as a covid marshal, with responsibility for women and children.
- JM has done community work recently which he believes has changed his attitude, and he will bring this new attitude to work.

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

- That there was a new set of national standards set last year and BCC had updated its own policy to reflect those standards and the sub-committee would be making decisions on that basis.
- The sub-committee is unable to reconsider the decisions of previous sub-committees or court judgements. They will also consider the whole of JM's record to judge his suitability to hold a licence.
- The new standards and policy apply retroactively to the whole of a driver's record.
- The applicant's representative stated that JM has no offences on record since 2015. There are however several incidents / complaints on his record. While there are no formal criminal convictions over this period, the sub-committee will still take offending behaviour into account if it is proved to the satisfaction of the council.
- The statements from the applicant were submitted to the courts, who dismissed his appeal. The applicant's representative was unable to confirm whether any of the material submitted was new.

The applicant was given the opportunity to sum up, then parties left the room while the sub-committee deliberated.

## Decision

That JM's application for the grant of a Hackney Carriage Driver (HCD) licence be refused in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976 as the Sub-Committee is not satisfied that he is a fit and proper person to hold such a licence

## Reasons

### Introduction and history

JM was first licenced as a Hackney Carriage Driver (HCD) by Bristol City Council in around 2000. Between 2002 and 2019 there have been a number of complaints/incidents that have put his suitability to hold a licence into doubt. A summary of the history is as follows, which is important to understand the Sub-Committee's decision:

- 2002: Dangerous driving and overcharging a passenger (licence revoked in October 2002 and appeals at the Magistrates' Court and Crown Court dismissed in July 2003)
- 2004: Inappropriate behaviour towards a female whom he was delivering medication to involving scratching her palm and finding a telephone number on the medication to call the complainant and ask her out for a drink (licences refused and court appeals dismissed in October 2004)



- 2007: JM received a caution for persistently soliciting a woman for prostitution from a motor vehicle or causing annoyance/nuisance to others - Sexual Offences Act 1985 s.1(1)(A) (July 2007 and JM did not hold a licence at this stage)
- 2008: JM was granted a HCD licence in February 2008.
- 2008 – 2010: three complaints were received and resolved by way of advice letters or no further action where JM refunded a passenger that he overcharged
- 2012/2013 Licence revoked (July 2013) as a result of a police caution received in September 2012 for soliciting another for the purpose of obtaining their sexual services as a prostitute in a street/public place (Sexual Offences Act 2003 s.51A). JM unsuccessfully appealed this decision to the Magistrates Court in November 2013 and to the Crown Court in July 2014.
- 2015: JM was granted a HCD licence in July 2015 where the Sub-Committee hearing the matter determined that he was rehabilitated in respect of the soliciting offence and the application was granted although it was made clear that should there be any future concerns about his behaviour, he would be brought back before a Sub-Committee.
- April 2018 Further complaint about JM's standard of conduct as a HCD involving being on his mobile phone whilst driving and carrying a passenger and also driving into a barrier. He was investigated by PC Patrick Quinton however due to errors and prosecution deadlines not being met the matter was discontinued with no further action
- July 2019 The Council's Neighbourhood Enforcement Team received a complaint about JM failing to secure an elderly wheelchair user in his hackney carriage vehicle, resulting in the wheelchair toppling over and the passenger sustaining a head injury and being taken to the hospital. The complaint was upheld and in consequence, the Sub-Committee hearing that matter could no longer be satisfied that the JM was a fit and proper person to hold a HCD Licence. 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 on that occasion 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 effect.
- 22 January 2020 JM's appeal against the revocation of his HCD Licence was heard at the Bristol Magistrates' Court; the bench hearing the appeal found the complainant's version of events to be truthful and that JM's version of events was not credible. His appeal was dismissed and the Sub-Committee's decision was upheld, the licence remained revoked.
- 29 January 2020 Only a week after losing his appeal JM applied for the grant of a HCD Licence
- 26 May 2020 PSP Sub-Committee decided that it was too soon after the appeal for JM to expect to be relicensed and that the application would not be determined at this stage. It was determined on 23 March 2021 that the application be refused as the Sub-Committee was not satisfied that he was a fit and proper person to hold such a Licence. That appeal was heard and dismissed at Bristol Magistrates' Court



on 29 December 2021 . Within two months JM applied for a HCD licence, which was heard by this Sub-Committee on 19 April 2022.

The Sub-Committee must consider whether JM is a fit and proper person to hold the licence he has applied for. The Council's Hackney Carriage and Private Hire Licensing Policy 2021-2026 (referred to hereafter as the Policy) sets out the factors to consider when determining if an applicant is a fit and proper person, which is confirmed in case law. In reaching a decision, the Sub-Committee is entitled and indeed should take into account the entire history of an applicant where there has been persistent inappropriate behaviour and complaints over a period of time, even where complaints are not pursued. It is a matter for the Sub-Committee to determine how much weight it will attribute to the matters placed before it.

Whilst JM argues that his previous record should not be considered, especially as he was relicensed in July 2015 and was deemed to be rehabilitated, the Sub-Committee cannot ignore that there have been a significant number of incidents on his record. His record is not wiped away by virtue of being licenced again (following revocation). Public safety and protection is of paramount importance when considering the suitability of an applicant for a HCD licence and therefore it is not disproportionate nor unfair to consider the totality of persistent offending and inappropriate behaviour over a period of time in assessing the risk the JM poses to the public.

The Policy states:

"Multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view should be taken where the victim of the offence is especially vulnerable." Offending behaviour need not result in a conviction but may be proved to the satisfaction of the council.

The Statutory Taxi and Private Hire Vehicle Standards (para. 4.29) to which the Court must also have regard state:

"Complaints about drivers provide a source of intelligence when considering the renewal of a licence or to identify problems during the period of the licence. Patterns of behaviour such as complaints against drivers, even when they do not result in further action in response to an individual complaint may be indicative of characteristics that raise doubts over the suitability to hold a licence. All licensing authorities should have a robust system for recording complaints, including analysing trends across all licensees as well as complaints against individual licensees. Such a system will help authorities to build a fuller picture of the potential risks an individual may pose and may tip the balance of probabilities assessment that licensing authorities must take."

Generally, the Police (and other agencies) may offer a caution as an alternative to a prosecution in certain circumstances if there is sufficient evidence to provide a realistic prospect of conviction if an offender were to be prosecuted.

The Policy was amended in July 2021 which adopts the Department for Transport's Statutory Taxi & Private Hire Vehicle Standards; this includes changes to sexual offences (the policy previously indicated a period of time to remain free of conviction, whereas in line with national standards it does not include



this now). Paragraph 3.14 of the Statutory Taxi & Private Hire Vehicle Standards states: “Any changes in licensing requirements should be followed by a review of the licences already issued”

The Policy, as amended, states “Where an applicant has a conviction for any offence involving or connected with illegal sexual activity, a licence will not be granted”. In strictly applying this, it is deemed that those convicted (and conviction includes cautions for the purpose of the Policy) of sexual offences are not and will not be fit and proper persons to hold licences that would enable them to transport members of the public. Of course, each case will be considered on its own merits.

Notwithstanding that JM was licenced around 3 years after the second caution for a solicitation offence, he has demonstrated further inappropriate behaviour in the way he has conducted himself as a licenced driver which resulted in further revocations and unsuccessful appeals. This Sub-Committee can apply retrospective consideration of previous matters in light of the amended Policy. The two cautions for sexual offences alone hold good ground to refuse a licence, however there is the serious more recent matter from 2019 to consider too.

The Sub-Committee found that JM’s representative minimised the most recent incident in 2019 by stating that the hospital report shows that there was a minor traumatic brain injury and was discharged, and that the only reason he is before the Sub-Committee is because of a little accident. This demonstrates that the severity of the matter is not understood. JM’s conduct fell far short of what is expected of him as a licenced driver and Magistrates’ Court appeals have been dismissed on two separate occasions following the 2019 revocation and subsequent application.

JM provided a number of references in support of his application, which was supported in person by three of the referees. It is not known whether the references provided were given in full knowledge of JM’s record with the council. Whilst the references show some impressive positive aspects in JM’s character in other parts of his life, there is no escaping the fact that JM has a long and tainted record.

JM appears to have undergone some training courses and has received certificates for attendances. Some of these are several years old, whereas others are recent were obtained close to the last appeal on 29 November 2021; the court hearing that appeal were aware of these certificates. This is a positive step, however, the court during that appeal said “we appreciate your willingness to learn from mistakes, but these should not have been made in the first place”, with which the Sub-Committee agrees. Given JM’s abysmal record as a licensee the Sub-Committee must consider whether he can be entrusted with the members of the public in a professional driving capacity. JM has been given numerous opportunities to improve his behaviour and conduct himself in a professional manner between 2002 and 2019 and the Sub-Committee cannot be satisfied that JM can be licenced in such a way that will ensure the safety and protection of the public.

The safeguarding of the passengers is the overriding concern and does not require the committee to take into account the personal circumstances of the applicant which are irrelevant in determining applications. Unfortunately, JM’s conduct has fallen below the standards the Sub-Committee is entitled to expect from those it licences. 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 "No" and it was unanimously decided that JM is not a fit and proper person to hold a HCD licence and his application is refused.

## 9 SA - REPORT OF AN APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER LICENCE

The applicant and his representative were present. The representative submitted additional information which was copied and circulated to the sub-committee.

In presenting his case, SA and his representative made the following points:

- SA and his representative challenged the conviction for dangerous tyres.
- SA has attended every meeting with his support organisation, showing dedication and organisation skills. SA's solicitor was not supportive.
- SA has a difficult personal life, his mother has passed away and he was not able to visit due to Covid restrictions. His partner has also passed away, giving him more responsibility for the children. SA is willing to make amends if he has done something wrong. He has always cooperated and submitted relevant evidence openly.
- SA does not believe he is a dangerous driver and all his convictions are unintentional. He said he has learned from everything that has happened and has seen life collapse on him.
- It has been a difficult period financially, especially for the self-employed.
- SA said he is a good driver despite the personal circumstances and is especially careful with vulnerable people. He said he gives free lifts to older people.
- SA said that his manager trusts him to run the most expensive car in the fleet.

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

- The standard of proof that the sub-committee considers matters to is the balance of probabilities (i.e. more likely than not), which is the civil standard of proof and a lower standard than the criminal standard of proof.
- The Department for Transport published the Statutory Taxi & Private Hire Vehicle Standards in July 2020 which are national standards; BCC Hackney Carriage and Private Hire Licensing Policy 2026 was amended and published in 2021 which incorporates these standards. The committee will need good reason to depart from the policy. SA would need to convince the committee he is fit and proper person to hold a licence. Under the policy a single offence may not be a prohibit the grant of a licence but repeat offences should be considered.
- SA currently has 9 points on his licence. At one point he had 15 points on his licence.
- It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.
- The sub-committee cannot 'go behind' a conviction. In the matter regarding dangerous tyres, a court has already found SA guilty.



- SA said that he did not accept the decision of the court, that he did not understand what was going on and that his solicitor did not appear.
- SA has an offence of driving without insurance. It was clarified that as SA did not hold a private hire drivers' licence at the time, he was not able to drive a private hire vehicle even in a personal capacity.
- SA has complaint on his file for an offence of illegal overtaking which was reported by a police officer. SA said he overtook a lorry at the harbourside to pick up his son. A police officer visited SA at work after the incident. SA said he thought the matter would be dealt with informally, but he was issued a ticket that said action would be taken against him.
- The sub-committee cannot take personal financial circumstances into consideration when making their decision.
- This is a new application as the previous licence was revoked.

The applicant was given the opportunity to sum up, then parties left the room while the sub-committee deliberated.

#### Decision

That SA's application for the grant of a Private Hire Driver licence be refused in accordance with section 51 of the Local Government (Miscellaneous Provisions) Act 1976 as the Sub-Committee is not satisfied that he is a fit and proper person to hold such a licence

#### Reasons

In reaching its decision, the Sub-Committee considered the previous Sub-Committee's decision regarding the two defective tyres, for which SA has now received convictions and 6 penalty points for (3 points per tyre), as well as previous matters and new matters brought to the attention of the Sub-Committee.

The Sub-Committee heard that SA currently has 9 penalty points on his DVLA licence, however, this had previously reached 15 points until two endorsements expired in February 2022 thereby leaving 9 points remaining. This means that between June 2020 and February 2022 (including in June 2021 when SA applied for new licence), SA had 15 penalty points on his licence. The Sub-Committee considers this to be a high number of penalty points which questions SA's standards as a driver and the Sub-Committee has considered and applied the Council's Hackney Carriage and Private Hire Licensing Policy 2021-2026 (referred to hereafter as the Policy). The Policy sets out the position on criminal behaviour, which is a general guide on the action which might be taken where convictions, cautions and fixed penalties are disclosed, or where offending behaviour is proved to the satisfaction of the council (reference to conviction should be construed accordingly). The Policy, with regard to motor convictions, states that: It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally. Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not





necessitate the revocation of a taxi or private hire vehicle driver licence providing the authority considers that the licensee remains a fit and proper person to retain a licence. Consideration will be given to the nature of the offence and the penalty including points and fines.

The Sub-Committee heard the account of SA in relation to the defective tyres and made clear to him that it wasn't a re-hearing of that criminal matter and that it could not go behind the convictions. The Sub-Committee found that SA and his representative minimised the most recent convictions, in particular a comment made by the representative along the lines of "it was refused just because of a tyre" demonstrating that the seriousness of the matter, for which convictions have been received, is not understood. The number and nature of the motoring convictions as well as the penalties received and the previous history of not reporting the convictions in breach of licence conditions (and other breaches) are such that the Sub-Committee is not satisfied that SA is a fit and proper person to hold the licence, and in reaching this decision considered the fit and proper person factors in the Policy and case law.

Furthermore, the Sub-Committee heard that SA has been driving a leased Private Hire Vehicle when he did not have a Private Hire Driver licence to do so in contravention of section 46(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976; SA's ignorance as to the law on this matter, especially having been an experience licenced driver previously, is no defence. Although SA had been caught on only one occasion in breach of the legislation (for other road traffic matters too), the Sub-Committee heard that SA had in fact been using the vehicle for private use for a longer period. The fact that SA believed that he was insured to drive the vehicle does not alleviate him from liability, and he may have invalidated the insurance in any event due to not having a valid Private Hire Driver licence (in line with the wording of the policy) which creates a further risk to the public. The Sub-Committee is not satisfied that SA understands and can follow laws and conditions as a licenced driver in a manner that ensures the safety and protection of the public.

SA's personal circumstances, including financial circumstances, is not a relevant consideration that the Sub-Committee can consider in reaching its decision.

## **1 IR - APPLICATION FOR THE RENEWAL OF A HACKNEY CARRIAGE DRIVER LICENCE AND A 0 PRIVATE HIRE DRIVER LICENCE.**

The applicant was present. IR submitted additional information which was circulated to the sub-committee.

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

- The sub-committee is asked to consider the renewal of both Hackney and Private Hire Driver's licences.
- The Neighbourhood Enforcement Team was informed by PC Quinton on 26 February 2021 that IR's vehicle was stopped as part of a static check. Two young women were in the vehicle. The meter was on but had no value on it. The women said they had agreed a fixed price with the driver. Drivers must use their meter immediately when a passenger embarks.



- The passengers refused to supply an exact address so it is unknown whether the agreed price would be overcharging.
- There are no previous history of complaints, points or endorsements.

In presenting his case, IR made the following points:

- IR said he was sorry for not using the meter and that it was his job to use it, he said it was the first time and it was a mistake. He understands it is his responsibility, not the customer. He said that this was an isolated incident and will not do it again.
- He was approached by a pair of women who said that Uber had quoted them an expensive fare, so negotiated a lower one with IR.
- IR was struggling financially at the time and was having difficulty supporting his disabled daughter.
- IR has a very long and clean record with no other complaints or endorsements.
- Since this incident, IR has been approached by other customers attempting to agree a fixed fare but has refused.

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

- A committee member said that other drivers in similar cases have said that this was their first and only offence. IR insisted that this was true in his case, and he has no other offences since 1989.
- IR has been a private hire driver for 17 years. He was asked whether he fully understood what is expected of him as a licensed driver. IR has undertaken the gold standard training programme.
- IR submitted financial and medical evidence, but the sub-committee cannot consider this as part of its decision.

The applicant was given the opportunity to sum up, then parties left the room while the sub-committee deliberated.

## Decision

The Sub-Committee has determined to renew the applicant's Private Hire Driver licence and Hackney Carriage Driver licence and imposes a warning as to his conduct of accepting a fare without using the meter, which is an offence under the byelaws (the City of Bristol Byelaws With Respect to Hackney Carriages and Motor Vehicles).

The Sub-Committee, in arriving at this decision, took into account the applicant's 17 years of experience as a licenced driver and an otherwise unblemished record during that time. The Sub-Committee also heard the remorse the applicant has regarding this matter and took into account that the applicant has been unlicensed since the licences expired just over one month ago. The Sub-Committee considered there to be justification to depart from its policy (Hackney Carriage and Private Hire Licensing Policy 2021-2026) regarding offences under the Town and Police Clauses Act 1847. The personal and financial circumstances of the applicant were not a relevant consideration when reaching this decision.

The Sub-Committee is satisfied that the applicant is a fit and proper person to hold such licences, however, places a warning on his record and encourages him to familiarise himself with the conditions of



his licences and our policy . It also reminds him that any reports of further offending behaviour can be brought back before the Public Safety and Protection Committee.

Meeting ended at 2.30 pm

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

