

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



20 December 2022 at 11.00 am

Members Present:-

Councillors: Amal Ali (Chair), Marley Bennett (up to Minute Number 50) and Chris Davies

Officers in Attendance:-

Lynne Harvey (Legal Advisor), Dakota Ferrara (Licensing Policy Adviser for Minute Numbers 50 and 51), Wayne Jones, Jeremy Livitt, Alison Wright, Dakota Ferrara, Holly Mann and Phoenix Cheung

43 Welcome and Safety Information

The Chair welcomed all parties to the meeting and explained the emergency evacuation procedure.

44 Apologies for Absence

Apologies for absence were received from Councillor Richard Eddy and Councillor Guy Poultney.

45 Declarations of Interest

There were no Declarations of Interest.

46 Minutes of the Previous Meeting held on Tuesday 25th October 2022

RESOLVED – that the minutes of the meeting held on Tuesday 25th October 2022 be confirmed as a correct record and signed by the Chair.

47 Public Forum

There were no Public Forum items.



48 Suspension of Committee Procedure Rules CMR10 and CMR11 Relating to the Moving of Motions and Rules of Debate

RESOLVED – that CMR10 and CMR11 be suspended.

49 Exclusion of Press and Public

RESOLVED - that that the press and public be excluded from the following items of business to allow consideration of items containing exempt information under Paragraph 1 of Part 1 of Schedule 12(A) of the Local Government Act 1972.

50 AHA - Report To Determine Whether Action Should be Taken Against The Holder of Both a Private Hire And Hackney Carriage Driver Licence and Private Hire Vehicle Licence (containing exempt information under Paragraph 1)

The following were in attendance for this item: Wayne Jones, Neighbourhood Enforcement Officer, was in attendance to present the report. PC Quinton was in attendance to give evidence. AFA was also in attendance, together with his solicitor for the meeting and an interpreter.

Prior to the commencement of the hearing, AFA's solicitor produced additional documentation which had not been circulated in advance requesting an adjournment. This was requested on the following grounds:

- that the allegation against AFA was not defined
- the investigation had not been concluded
- no evidence of a criminal offence had been provided when he had been interviewed under caution
- Under Code C1A of the relevant Act, the same consideration should be given to both parties and the case determined on its own merits
- AFA cannot defend himself unless he knows what the charges are. He has been advised he cannot comment on investigations until they are concluded as part of the Police investigation

Wayne Jones and PC Quinton responded to this request. They indicated that the Police investigation could run concurrent to this hearing as occurred in other cases.

PC Quinton proposed that he leave the room when AFA provided his evidence to avoid any concerns that this might affect the court proceedings.

The Sub-Committee asked all parties to withdraw whilst they made a decision as to whether or not to accede to AFA's request to postpone the hearing.

Upon their return, the Chair confirmed that the Sub-committee had agreed that the hearing should proceed on the grounds that it could run concurrently. The Sub-Committee was exercising a regulatory function and, in accordance with relevant case law, was determining whether not AFA was



a fit and proper person to hold a Private Hire and Hackney Carriage Driver Licence. It was not second guessing a criminal conviction. Moreover, the Sub-Committee was concerned that due to the nature and extent of the allegations against AFA, any deferral could result in a considerable delay in the decision which would not be reasonable in the circumstances. The Sub-Committee also agreed that PC Quinton should not be present during the evidence provided by AFA during the hearing.

Wayne Jones introduced the report and made the following comments:

- The fare sheet shows that AFA was working on the date in question and that there were 17 fares
- Data checks had been carried out on the two names provided by AFA as driving the vehicle on this date. Neither of these two people were registered licence holders. In accordance with *Benson vs Boyce*, the same person driving must hold the relevant licences unless specifically nominated
- Checks revealed there had been previous complaints against AFA relating to policy guidance and whether not he was a fit and proper person

PC Quinton provided the following evidence:

- We have received information that the person nominated as driving the vehicle had previously received fixed penalties. Therefore, it is likely that either they were driving and not licensed or the information we were given has not been given to us accurately.
- There may have been an attempt to pervert the course of justice
- These two most likely scenarios give me cause for concern that AFA is not a fit and proper person to hold a licence and he will need to be interviewed under caution as part of an investigation

AFA's solicitor made the following comments:

- In November 2007 AFA had been granted a licence. He cannot comment on Paragraphs 5, 6, 7 or 10 of the report as he has no knowledge of investigation. The facts relating to paragraphs 8,9 and 11 are agreed.
- The relevance of Paragraph 11 is disputed since these are historic complaints
- Whilst AFA concedes he neglected to inform the Licensing Team of his attendance at the education course following his conviction for running a red light without passengers but misunderstood his obligations under the policy. He is now aware of these and would ensure he complied with them in future
- Previous complaints referred to are 6 to 13 years old and therefore not relevant in this case since all former matters had been resolved and concluded with punishment as set out in the report relevance is disputed.
- In the case of the incident referred to in Appendix C, he had not refused the request as alleged since the customer had not provided their address



- In the incident in question, AFA did not behave aggressively but had apologies for any offence and offered to provide £30 in compensation
- AFA had been a taxi driver for 15 years and had not received any complaints in recent years. A character reference was provided from a taxi firm. He had also provided a service for SEN children as part of his taxi work
- Since AFA is the sole wage earner, he is prepared to undertake any remedial action such as the blue lamp refresher course and for his licence to be suspended until this course is completed
- AFA will not be answering any questions at the hearing relating to the incidents in question pending the court proceedings

The Sub-Committee pointed out that it would be very difficult to conduct the hearing properly if AFA was not prepared to answer any questions.

Following questions from the Sub-Committee, AFA confirmed that he believed that if the plates were removed, someone else could drive the car.

The Chair then asked both parties to withdraw and upon their return announced the decision of the Sub-Committee as follows:

RESOLVED (unanimously):

1. That both the Hackney Carriage and Private Hire Driver's Licences held by AHA be revoked on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 namely "any other reasonable cause"
2. That the Private Hire Vehicle Licence held by AHA be revoked on the ground contained in section 60(1)(c) of the Local Government (Miscellaneous Provisions) Act 1976 namely "any other reasonable cause"

REASONS

The Committee had been asked to consider whether any action should be taken in respect of AHA's Hackney Carriage Driver (HCD), Private Hire Driver (PHD) and Private Hire Vehicle (PHV) Licences due to a pending criminal investigation. It was noted that both his HCD and PHD Licences were due to expire on 12 January 2023 and the PHV Licence was due to expire on 19 September 2023. There were a series of matters for the Committee to consider in the committee report.

The Committee considered the representations (both written and verbal) made on AHA's behalf and it was understood that AHA had received legal advice not to answer questions about the incidents due to a concern of incriminating himself. However, the function of the Committee is a regulatory one whereby it is not the role of the Committee to try to "second guess" the outcome of the criminal investigation. There is no requirement for there to be a



finding of guilt, or, for the Committee to reach a conclusion that there is at least a reasonable chance of AHA being convicted of an offence before a decision can properly be made as to whether there is “any reasonable cause” to take action on AHA’s licences.

The Committee were very concerned that AHA had a pending criminal investigation hanging over him for either perverting the course of justice, or, allowing unlicensed drivers to use his PHV. Both potential allegations were very serious and on their own, amounted to sufficient grounds for there to be “reasonable cause” to call into question whether AHA could still be regarded as a fit and proper person to retain his licences.

The Committee were also concerned that as a licensed driver of 15 years, AHA was not familiar with the conditions pertaining to his licence requiring him to notify the Council of certain events, in this case, where AHA had neglected to inform the Council of the offence in 9 April 2021. AHA also stated, in general terms (but not in relation to the specific allegations), that he was not aware that he could not allow unlicensed drivers to use his PHV for general use, even with the plates removed.

The National Standards enable the Committee to take into account the history of complaints against an individual, even those complaints not proceeded with, in order to build a fuller picture of the potential risks an individual may pose to the public. The report detailed two complaints in 2011 and 2016 resulting in no further action. However, in 2010 two complaints concerning AHA’s conduct as a driver were upheld by this committee resulting in AHA’s licence being suspended. Although AHA vehemently denied these two incidents, it was noted that he decided to abandon his appeal, meaning he was no longer entitled to re-open the facts and challenge them.

The Committee did not consider AHA’s personal circumstances to be of relevance to the decision since the main focus was protection of the public.

At this point in time, the Committee could no longer be satisfied that AHA was a fit and proper person to hold a PHD or HCD licence and that there was reasonable cause to revoke both of these licences together with his vehicle licence.

Councillor Marley Bennett left the meeting at this point.

51 AA - Report To Determine Whether Action Should Be Taken Against The Holder of a Hackney Carriage Driver And Application To Determine Whether A Person Is A Fit and Proper Person To Hold a Hackney Carriage Vehicle Licence

Alison Wright was in attendance to present the report. The complainants were in attendance. AA was in attendance, together with a solicitor and an interpreter. It was noted that one witness to the incident was not present due to COVID but could attend remotely if required.



The Sub-committee were shown CCTV footage of the incident.

Alison Wright presented the report and the Sub-Committee noted the key issues contained within it. They noted that it was illegal to discriminate against someone because they are disabled and/or require an assistance dog with them. They further noted that, whilst most disabled people are instantly recognisable by a harness jacket, this was not a legal requirement.

Alison Wright also made the following points:

- The incident occurred on 28th November 2022. The witnesses indicated that they felt the driver had been aggressive and confrontational during the incident
- AA had received the fair but travelled a longer route to the destination. A calculation of route showed that it was 1.5 Miles, but the witnesses had travelled 3.4 Miles and felt that the journey was unnecessarily prolonged.
- A statement setting out the details was included in Appendix G of the papers, together with AA's response. There is a requirement under his licence for a Hackney Carriage Driver to comply with any reasonable request
- AA had a previous offence for not using a meter within the Bristol boundary for which his licence had been suspended for 6 months
- The Neighbourhood Enforcement Team requested that the Sub-Committee consider revoking the licence held by AA and consider whether the hackney Carriage Vehicle Licence should be reviewed

The complainants responded to questions from the Solicitor as follows:

- Whilst they had not originally mentioned that the dog responded to an increase in heart rate due to stress, this had been subsequently mentioned. However, the main concern was the discrimination that had occurred and that was the reason for the complaint
- Although it was acknowledged that AA had spoken with an accent and in broken English since this was not his first language, he should at least be aware that service dogs and assistance dogs are not pets even if English is not his first language
- AA had stated that he could take a guide dog. Even if he did not understand the term assistance, he is not allowed to do this. In addition, I showed him my mobile phone to point out that he was required to take me
- When the witness asked what happened in the incident, she backed me up that this was required and was helpful as I felt overwhelmed but did not aggravate the incident

The Solicitor presenting the case on behalf of AA made the following points:

- This was an application to renew a licence
- The interview summary was disputed as AA indicated that he did not see a harness. It was only later when evidence was shown to him that he saw it. Pages 6 and 7 of the report indicate the transcript of the incident
- The witness came into the incident yelling and was asked by AA to calm down



- AA denied saying he would not take the dog but repeatedly asked if the dog was a service dog. He knows by law he was required to accept a passenger with a service dog but wanted sure that this was the case. He denies that the complainant ever asked him to check the harness.
- AA was of good character and did not discriminate. His refusal to carry the assistance dog was based on an misunderstanding due to his lack of knowledge of English
- AA recognises that he should know the use of the word service dog and is happy to address this by attending English Language course. He was standing at wrong angle to see harness and dog although acknowledges that the complainants dispute this since the harness is the same primary colour as the dog and not conspicuous.
- AA was respectful and honest. The Sub-Committee's attention is drawn attention to the character reference from a previous employer showing that he is transparent and shows kindness to service users.
- There are no witness statements showing that he behaved inappropriately. Whilst AA gesticulated with his hands during the incident, this does not indicate aggression but merely that he was arguing with the complainant–
- AA has demonstrated honesty and reliability in the delivery of his account since his e-mail and verbal interview are largely consistent.
- In relation to the other incident outside Urban Tiger, AA concedes that he verbally challenged other driver but was not aggressive as alleged by the customer. AA was seeking strict adherence to the policy and sought to inform the other driver of their obligations. AA acted out of concern for customer safety in charging longer due to aggression against him during a separate incident. He wrongly put this above his obligation to take the most efficient route.
- AA was a taxi driver over 15 years with a clean drivers licence and was the sole earner for his family. He was willing to undertake a language and safeguarding course at his expense. If this was deemed appropriate in this instance.

Following the withdrawal of both parties to allow the Sub-Committee to make their decision, upon their return, the Chair advised them of the decision as follows:

RESOLVED (unanimously) – that:

1. **AA's Hackney Carriage Driver's Licence be suspended on the ground contained in section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 namely "any other reasonable cause"**
2. **That AA's application to renew his Hackney Carriage Vehicle Licence be refused on the ground contained in section 60(1)(c) of the Local Government (Miscellaneous Provisions) Act 1976 namely "any other reasonable cause"**

and

3. **That the suspension of the Hackney Carriage Driver's Licence shall continue until such time that AA has successfully completed the following courses:**



- a recognised English language proficiency course as specified by the Council
- the Council's safeguarding course, and
- an accredited disability and equalities awareness course

REASONS

The Committee were asked to consider whether any action should be taken in respect of AA's Hackney Carriage Driver (HCD) Licence and whether to grant AA's application to renew his Hackney Carriage Vehicle (HCV) Licence. It was noted that AA's HCD Licence was due to expire on 6 March 2024 but that the HCV licence had expired on 23 October 2022. The report had been placed before the Committee following a complaint being received by the Council on 23 August 2022 regarding AA allegedly refusing to take an assistance dog from Temple Meads.

Since the writing of the report a further complaint had been received concerning AA's conduct as a HCD. However, the main issue upon which the Members of Committee were invited to make findings of fact, was the complaint concerning the failure to transport the assistance dog. There were no witnesses in attendance regarding the other complaint although the Committee were concerned to read that another complaint had been received so soon after the one detailed in the main report.

The Committee noted that both the Licensee and the complainants had been consistent in their respective versions of events and therefore it was a question of whom the Committee chose to believe, on a balance of probabilities.

The Committee considered that AA should have transported the complainants with their assistance dog in his HCV and were very concerned that the neglect to do so undermined the Council's public sector equality duty. AA appeared to have been more concerned about his HCV getting dirty rather than going to better efforts to assist the complainant's.

The Committee did however recognise that there might have been a language and cultural barrier between AJA and the complainants. The situation might also have been aggravated by the independent witness intervening. However, the Committee believed that had this witness not intervened, then AJA would not have changed his mind and agreed to transport the complainants. By then it was too late because the complainant's no longer felt comfortable about getting into AJA's HCV. This was therefore considered to be unacceptable conduct towards the complainants which fell well below the standards the Council is entitled to expect from those whom it licences.

There is no evidence that AJA was impolite towards the complainants, but he should have been aware of the legal requirement to transport the assistance dog which was also a matter of concern.

This case has raised a concern about language proficiency which is a requirement under the Council's policy. It was represented that AJA would be willing to undertake language and



safeguarding courses at his own expense and that a suspension for the necessary time to allow AJA to complete the Blue Lamp Course would be adequate punitive action.

However, the function of the Committee is not to punish individuals but to regulate the trade and ensure high standards are maintained in the interests of public safety and protection.

The Committee therefore decided that there was “reasonable cause” to suspend AHA’s HCD licence and refuse to renew his HCV licence until such time as he has successfully completed the following courses:

- a recognised English language proficiency course as specified by the Council
- the Council’s safeguarding course, and
- an accredited disability and equalities awareness course

52 IO - Report of a Private Hire Driver Charged With an Offence

IO was in attendance, together with his Solicitor and Interpreter.

Dakota Ferrara, Senior Licensing Officer, presented the report. The Sub-Committee noted that the report outlined details of the offence for which IO had been charged.

IO’s solicitor explained that the case had been re-opened by way of a statutory declaration at Bristol Magistrates Court.

- IO’s solicitor explained that he had been involved in a minor road traffic collision on 18th August 2019 and had spoken to Police at the scene. He has taken photos of what had happened at the scene since the Police refused to take photos
- IO had indicated that he was not responsible for this accident. Whilst on some occasions, the Police ask someone to come in voluntarily and give their version of events and then decide whether or not to prosecute, this did not happen in this instance
- It is incorrect to state that this incident would have been referred to the crown prosecution service since minor traffic accidents are usually only prosecuted by the Police. Details in the paperwork confirmed that he was summoned to attend Bath Traffic Court and prosecuted by the Police. However, the notice had been sent to the incorrect address very soon before the hearing. The summons to attend Bristol Magistrates Court in April 2021 was delayed due to the pandemic
- Whilst the regulations required the Licensing Team to be advised by close of play of the following day of receiving a DVLA conviction, this did not apply in this case
- The case was not set aside until September 2021. The convictions were set aside and the case reopened almost 2 years after the incident
- Following the issuing of a not guilty plea at the October 2021 hearing at Bath Magistrates Court, the solicitor had engaged a traffic consultant to examine the scene at which IO had taken a photo prior to the 8th December 2021 hearing. The report from the traffic consultant and the photos



clearly disproved the evidence from the witnesses at the incident claiming that he was not looking and had transgressed the dividing line between each side of the road

- IO remains a fit and proper person and had held a Hackney Carriage Licence for about 15 years. He had never received a complaint or conviction or any penalty points until this time. He is sober, courteous, mentally and physically fit, honest and not a person who would take advantage to abuse or assault passengers
- Whilst he had a good and arguable case, it had been discontinued.
- IO is 42, married and is the sole breadwinner for his family. Due to this incident and the way it has been handled, he has been unable to drive for two years.
- In view of these facts, IO requested that this application be renewed

The Legal Adviser confirmed that the Sub-Committee could go behind an acquittal on a lower standard of proof whilst acknowledging that there was no live evidence from other witnesses. Subject to the appropriate weight, hearsay could be taken into account along with the discontinuance.

The Chair asked both parties to withdraw to allow the Sub-Committee to make its decision and upon their return gave the following decision.

RESOLVED – that IO’s applications to renew both his Hackney Carriage and Private Hire Driver’s Licences are granted.

REASONS:

The Committee are entitled to go behind an acquittal or discontinuance of a prosecution and consider the evidence on a balance of probabilities as the primary function of the Committee is a regulatory one, namely public safety and protection.

Having heard all of the evidence presented on behalf of IO, and in the absence of the complainants in the criminal matter giving oral evidence, the Committee considered that IO was not at fault and had not caused the accident on the date in question.

The Committee also considered IO’s previous good driving record and considered that he was a fit and proper person to hold a Hackney Carriage and Private Hire Drivers licence. Both applications were therefore granted.

53 Date of Next Meeting

It was noted that the next meeting would be held at 2.30pm on Tuesday 28th February 2023.



Meeting ended at 5.20 pm

CHAIR _____

