



MINUTES OF GENERAL LICENSING SUB-COMMITTEE

MEETING DATE Monday, 27 March 2017

MEMBERS PRESENT: Councillor Marion Lowe (Chair) and Councillors Gordon France, Tom Gray, Adrian Lowe and Mick Muncaster

OFFICERS: Stephen Culleton (Lead Licensing and Enforcement Officer), Alex Jackson (Legal Services Team Leader), Stefanie Leach (Legal Assistant) and Nina Neisser (Democratic and Member Services Officer)

17.LSC.107 Declarations of Any Interests

No declarations of any interests were received for any of the items on the agenda.

17.LSC.108 Procedure

The Chair outlined the hearing procedure that would be used to conduct the meeting.

17.LSC.109 Exclusion of the Public and Press

RESOLVED – That the press and public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

17.LSC.110 To Determine Suspension Notice Issued Under Section 61 (2b) of the Local Government (Miscellaneous Provisions) Act 1976

The Director of Early Intervention and Support submitted a report to inform Members of the suspension with immediate effect of Private Hire (PHD) and Hackney Carriage Driver (HCD) Licences. Members had originally been invited to consider the contents of the report and determine the suspension/revocation of the PHD and HCD licences under Section 61 (2b) of the Local Government (Miscellaneous Provisions) Act 1976.

The Licence Holder attended the meeting to make his representations to the Sub-Committee through his solicitor.

The Lead Licensing and Enforcement Officer informed Members that subsequent to the report being published the Council had received a notice of appeal by the Licence Holder against the suspension of his driver licences with immediate effect made under officer delegated powers. As a result, the continued suspension or otherwise of both

driver licences was subsequently in the hands of the magistrates' courts subject to its powers. The Licence Holder's solicitor did not object to the hearing going ahead.

Members acknowledged that the appeal lodged at the magistrates' court meant that the issue of the suspension or otherwise of the Private Hire Driver Licence and Hackney Carriage Driver Licence was now out of the hands of the Sub-Committee. However, Members considered that based on the officer report and any representations which the Licence Holder and his solicitor may make that they could reach a view on whether they were satisfied that the Licence Holder was a fit and proper person. This would inform their view on whether to support officers in resisting the appeal or whether the appeal should not be opposed and any application for renewal be granted.

On 20 February 2017, Lancashire Constabulary informed Council Officers of the arrest of the Licence Holder on 17 February for assaulting a female child passenger in a licensed Chorley Private Hire vehicle. The Licence Holder was suspended from driving Hackney Carriage and Private Hire vehicles with immediate effect on the same day under the Local Government (Miscellaneous Provisions) Act 1976.

The Council's records indicated that the Licence Holder had held both his HCD and PHD Licences since August 2008. During this time, there was no record that the Licence Holder had previously come to the attention of officers.

The Licence Holder was invited to attend an interview at the Council offices in February 2017 to offer his account of the allegations that had been made against him. The Licence Holder responded through his solicitor who was in attendance with him at the meeting. Following his solicitor's advice, the Licence Holder did not answer officer's questions at that time and alternatively chose to provide a written statement in response to the complaint.

The Licence Holder was arrested on suspicion of a Section 39 assault on the young girl. He was interviewed by Lancashire Constabulary, where through his solicitor, gave a prepared statement in which he provided a detailed account of the events. He then gave a no comment answer to the remaining questions. This was not deemed conducive to ascertaining the facts of the alleged incident.

Lancashire Constabulary subsequently offered the Licence Holder a caution with a condition to write the young girl a letter of apology. He refused to accept the caution. He was bailed until 30 March with conditions not to contact the three people in his taxi or to enter the street where they reside.

The Licence Holder's solicitor informed the sub-committee that the Licence Holder had received no complaints during the years he had been a taxi driver. The Licence Holder accepted that he picked up an adult passenger with two children, who he had never taxed before, and the young girl insisted on sitting in the front passenger seat. It was reported that her mother approved this. When they arrived at the destination, the mother collected the fare whilst the young girl struggled to unfasten her seatbelt; the Licence Holder unbelted the seatbelt when he saw she was struggling and then kissed her hand, however he denied kissing her cheek. The solicitor reiterated that this was

not meant in a sinister or malicious way which was reflected by only being offered a caution from the police. The sub-committee were also reminded that the Licence Holder had young children of his own.

In addition, the Licence Holder's solicitor argued that the incident was only reported one day later which indicated a lack of urgency and therefore suggested that the Licence Holder did not act improperly.

The Licence Holder's solicitor believed that referring to the interview held on 27 February as a 'no comment' interview was an unfair assessment as the Licence Holder had provided a detailed response via his written statement. It was also argued that the Licence Holder's historic driving record suggested that he was fit and proper to hold his PHD and HCD licences and felt it unfair to suggest that this one incident be enough to revoke his licence.

Members were reassured that the Licence Holder had learnt a lot following this incident and were reminded that the criminal investigation was still ongoing. It was suggested that it would therefore be premature to determine whether the Licence Holder was improper and unfit and it was advised to give the benefit of the doubt until the pending investigation was completed.

The Licence Holder's solicitor pointed out that the offence with which his client had been investigated by the police was not a sexual offence.

Members expressed concerns regarding young children sitting in the front passenger seat of the taxi and reminded the Licence Holder of his responsibility when carrying young passengers to ensure they travel in the rear seats of the taxi at all times. Following queries, Members were reassured that the Licence Holder had no issues with writing a letter of apology and although the Licence Holder accepted kissing the girl's hand he did not accept the conditional police caution because he did not want to accept a caution for something he did not do as it would stain his licence.

The Lead Licensing and Enforcement Officer confirmed in response to a question from the legal officer that there had been no contact between the child's mother and the Council.

In response to a question from the legal officer the Licence Holder's solicitor explained that the handwritten statement within the agenda papers signed by the Licence Holder was silent on the issue of kissing the girl because it was produced in relation to a council investigation which was not criminal.

After careful consideration and taking into account all of the relevant factors, the Sub-Committee **RESOLVED to support officers in resisting the appeal and to authorise officers not to grant any application for renewal of the driver licences for the following reasons;**

- 1. The Licence Holder had admitted kissing the hand of the young girl in his taxi**
- 2. The Licence Holder admitted that this was not proper conduct**

3. **The Licence Holder had been driving a taxi for 9 years so should be fully aware of what behaviour was proper**
4. **The Council's policy on previous convictions calls for incidents in a taxi to be viewed in a more serious light**
5. **The Council's policy on previous convictions calls for persons to be free of convictions for assault for three years before being considered for a licence**
6. **Members did not accept that there had been any significant delay in the reporting of the incident by the child's mother**
7. **The child should have been carried in the rear of the taxi.**

Members further added that they would have been minded to revoke the Private Hire Driver Licence and Hackney Carriage Driver Licence for the above reasons had the matter not been subject of appeal.

17.LSC.111 Application for the Grant of a Private Hire and Hackney Carriage Driver's Licence Made Under Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976

The Director of Early Intervention and Support submitted a report to the General Licensing Sub-Committee to enable Members to determine whether the applicant was a fit and proper person to hold a Private Hire and Hackney Carriage Driver's Licence.

The applicant attended the meeting to make his representations to the Sub-Committee along with his representative.

In October 2015, the applicant submitted a piecemeal application for the grant of a Private Hire (PHD) and Hackney Carriage (HCD) Drivers Licence to the Council. The applicant declared one motoring conviction and failed to disclose a further two convictions that appeared on this DVLA licence, and failed to declare a number of historic offences. The applicant declared two historic convictions but failed to disclose a number of other historic convictions which were identified from his Disclosure and Baring certificate. The applicant's DVLA Group II Medical identified a medical condition that required further consideration.

The applicant previously held HCD and PHV Driver Licences with Chorley Council from October 2003 to September 2014, before these licences were allowed to lapse. The applicant previously appeared before Members to have a number of Hackney Carriage and Private Hire Driver Licence non-compliance and criminal convictions considered in 2003, 2006 and 2012. The decisions at these committees included strong warnings as to future conduct and failure to declare any convictions.

In the applicant's present application he declared one motoring conviction which was of concern to the Council, as his DVLA Driver Licence identified 3 current offences totalling 6 penalty points. The applicant also had a number of historic offences, ranging from 2001 to 2011 that had now been removed from his DVLA driver record. The sub-committee expressed concern that the applicant had a history of failing to notify the Council of the offences as he had a legal obligation to do so.

It was noted to members that the matters considered at the aforementioned sub-committee meetings were taken prior to the council's adoption of its present Safeguarding, Suitability and Convictions Statement of Policy for Taxi Licensing adopted in November 2015. As this was an application for a grant of a PHD and HCD Licence and all of the convictions that the applicant failed to disclose as identified in his Disclosure and Barring certificate and DVLA driver history fell within the Council's Safeguarding, Suitability and Convictions Statement of Policy for Taxi Licensing, they were required to be considered under this policy as a result.

There was no record within the applicant's licensing history that he did suffer or had any health issues. However, the medical supplied as part of the current application was referred to the Council's DVLA Group II Medical Consultant due to items on the medical requiring further assessment and clarification against the Group II standards. This identified a medical condition that had not previously been disclosed to the Council when required. Members were made aware that the Council had adopted different procedures in recent times which ensured that applicants and licence holders consulted with the Council's own Medical Advisor which could amount to the reason for why this was not addressed previously.

The applicant was regularly assessed by a specialist as recently as January 2016 for the medical condition identified on the most recent medical. As a result of this medical condition, the Council's Medical advisor recommended that any licences that may be granted to the applicant were limited to a period no longer than 12 months where a further medical assessment would be required prior to the licences being granted for a period not exceeding 12 months. Members were informed that the Medical Advisor's recommendation was made in isolation of the applicant's licensing history.

Following discussion between the applicant's representative and a Council Officer in March 2017, there was concern that the applicant did not recognise that he had a medical condition and the potential effect this had on the applicant's ability to notify the Council as a result. Members expressed concern at the risk and reiterated the importance of the obligation to report changes in circumstance to the council.

In addition, the Council's One Stop Shop staff described the applicant as a being difficult and presented himself as a challenging individual when attending the council offices or making contact via phone. However, the Council's Lead Licensing and Enforcement Officer emphasised that there was no threatening behaviour by the applicant.

The applicant's representative reminded Members that the Council's Medical Advisor advised of no reason why the applicant should be denied a licence subject to conditions which the applicant had agreed to abide by. In addition, members were made aware of an email received from a council officer that stated that a licence would be issued subject to provision of a signed mandate from DVLA which the applicant had subsequently presented. The applicant's representative maintained that the applicant had been subject to more than one Medical test and DBS check during this application and believed that he had not been treated fairly as a result.

The applicant's representative informed the committee that the applicant had not worked as a licensed driver since 2012. The applicant had allowed his licences to lapse as he had moved away from the area for a two-year period due to family matters. It was reasoned that the applicant had come under numerous pressures in his personal life which could have been likely to lead to his medical condition.

Members were assured that the applicant had been discharged from visiting the specialist and his medication.

The applicant presented the sub-committee with a document indicating his criminal record which showed no convictions in his country of origin. The applicant's representative clarified that the applicant was not party to any current court proceedings and had no motoring convictions pending at present. He reminded members that all historic convictions had been dealt with at previous sub-committees and provided reassurance that the applicant would declare all convictions and changes to his circumstances to the Council's Licensing Department in the future as required.

Members were made aware that the applicant was currently enrolled as a student at college following advice to improve his English reading and writing. Members were assured that the applicant received no complaints from the public previously and although he had a loud personality, the applicant was well liked by the public and did not present a risk to them.

After careful consideration and taking into account all of the relevant factors, the Sub-Committee **RESOLVED to grant the driver licences with a special condition that the applicant presents for review before the Council's medical consultant within six months in the first instance and thereafter at intervals of 12 months for the following reasons:**

- 1. There was no evidence of a link between the medical condition causing negative reactions with the travelling public**
- 2. Many of the convictions were historic**
- 3. The applicant was clearly voluble in his behaviour on occasion during the hearing but this did not pose a risk to passengers**
- 4. The applicant has in the past not reported significant matters so a six month review is appropriate and proportionate by way of monitoring his condition.**

However, Members expressed serious concerns regarding the applicant's failure to heed written warnings from the Council in 2006 and 2012 about failure to declare convictions. Members emphasised that any failure to declare convictions or changes in medical conditions were unlikely to be dealt with by a mere warning in the future.

Members were also concerned about the construction and use offences for defective tyres and driving with a mobile phone. Members resolved to issue a warning as to future conduct in relation to these or any other similar offence.

Members did not attach significant weight to the email of the Council Officer produced by the applicant's representative as it contained the views of an officer which are not binding on the sub-committee and was not based on all of the other matters contained in the officer report.

Chair

Date