



MINUTES OF GENERAL LICENSING SUB-COMMITTEE

MEETING DATE Tuesday, 12 April 2016

MEMBERS PRESENT: Councillor Roy Lees (Chair) and Councillors Anthony Gee, Mark Jarnell, Matthew Lynch and Mick Muncaster

OFFICERS: Stephen Culleton (Licensing Officer), Alex Jackson (Legal Services Team Leader), Ruth Rimmington (Democratic and Member Services Officer) and Simon Charnock (Support Engineer) present for only part of the hearing

16.LSC.65 Declarations of Any Interests

No declarations of any interests were received.

16.LSC.66 Procedure

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

16.LSC.67 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 ground that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of schedule 12A of the Local Government Act 1972.

16.LSC.68 Section 60, 61 and 62 of the Local Government (Miscellaneous Provisions) Act 1976, Suspension / Revocation of Private Hire; Vehicle, Driver and Operators Licenses

The Sub Committee which had adjourned on 16 March reconvened. On 16 March the Licence Holder's solicitor had only received instruction from his client the previous day and more time was required to prepare the case to ensure that his client had a fair hearing. The Licence Holder's solicitor made reference to the Human Rights Act 1998.

The Licence Holder's solicitor had said on 16 March that there were a number of papers which were material to the case which could be produced to support the licence holder's case and there had also been technical difficulties in playing the DVD evidence. Members felt that the receipt of this information was needed to help them decide on whether the licence holder was a fit and proper person and so had adjourned until 8 April. When this proved impossible for the Licence Holder's solicitor Chair had authorised a further adjournment to 12 April.

The Sub Committee considered a report of the Director of Public Protection, Streetscene and Community to bring to the attention of Members matters relating to the conduct of the Licence Holder, in regards to the Private Hire Operator's Licence, Private Hire Driver's Licence, and Private Hire Vehicle Licences.

The Licence Holder came to the attention of officers on 27 August 2015, following a report from a member of the Taxi trade alleging that the Licence Holder was operating a vehicle in connection to his Private Hire Business and that vehicle was not a licensed Private Hire or Hackney Carriage Vehicle.

Officers had investigated the allegations and were satisfied that the circumstantial evidence, as presented, was sufficient to ask Members to consider whether the Licence Holder was a fit and proper person to continue to hold a Private Hire Operator, Driver and Vehicle Licences.

Officers had prepared a prosecution file requesting that the offences highlighted within that file be reported to the Courts. However, following legal advice, it was determined that the CCTV evidence might not be sufficient to enable a conviction beyond a reasonable doubt - therefore the file had not been progressed. Members were informed that the burden of proof in Committee hearings was less onerous than that required of the criminal legal system. Members need to be satisfied on the balance of probabilities, and did not have to be satisfied beyond a reasonable doubt when reaching their decision.

The Licence Holder attended the meeting on 12 April with his solicitor.

The Licence Holder had made an application for the grant of the Private Hire Vehicle Licence for the vehicle in question on 25 August 2015.

The Sub Committee watched the CCTV footage from 26 August 2015 which showed four occasions where the freephone telephone was used by shoppers. The telephone only called the Licence Holder's taxi company. On the four occasions the people were then observed to get into a vehicle which resembled a vehicle of the same manufacturer and model as that subject of the licence holder's application. Two further occasions were viewed when people got into a vehicle which resembled a vehicle of the same colour, manufacturer and model as that subject of the licence holder's application. It was not possible to see the registration of the vehicle.

Members noted that the time sequences supported the distance from where Licence Holder's taxi company was based and that the person driving the vehicle had distinctive white hair and was slightly taller than the vehicle. The vehicle had a badge on the side like the metallic ones used by Licence Holder's taxi company and the vehicle had tinted windows. The four sets of people who had used the phone moved towards the vehicle when it approached and the vehicle was insured as a taxi a month before it was actually licensed. The insurance that was in place could well have been invalid as there was no licence in place. There were no other vehicles of the same colour, manufacturer and model registered as a Private Hire Vehicles within the Borough at the time. The Licence Holder stated that he was not the driver and the vehicle observed was not his. On the V5 the vehicle was described as red.

The original complaint of plying for hire led the Licensing Officer to investigate further. The complainant had been invited to attend the meeting by the Licensing Officer at the end of the previous week and give evidence, but had declined to attend. The Licence

Holder said he only knew the complainant in passing and didn't know his name, but later said he did know his name.

The Licence Holder referred to frequent instances when taxis attended to pick passengers up, but another taxi had collected them and that this would be what had happened on 26 August. He had made complaints to other local authorities about this, however these were not evidenced in the records provided. All journeys booked should be recorded.

Simon Charnock, Support Engineer, left the room at this point.

The Licence Holder was an experienced Private Hire Driver and Operator and would have been aware of the requirements to keep records in accordance with his licence. When the Licence Holder attended the PACE interview he failed to mention that the book of records had in fact been stolen. He raised this in his witness statement submitted before the hearing and during the Sub Committee and alleged that the theft had occurred at the beginning of October. Officers had attended the premises on 5 October and requested the records. The Licence Holder stated at that time that his drivers made records of their bookings at the time of booking and these records were kept by the driver in the car.

These records identified the driver/vehicle by number, rather than by name. The records produced did not satisfy the requirements of the licence: the time of the booking, the full address of the hirer, the full destination address, the vehicle used and driver.

The changeover in driver was, at times, only denoted by a change in handwriting. This would not be sufficient for the Licensing Officer to investigate if needed.

The Licence Holder advised that the reason for the delay in him attending the Council offices was because he had requested that a manager be present. On the first two occasions a manager had not been available.

The vehicle in question had been presented to the testing station on 26 August. The Licence Holder originally stated he couldn't remember who had picked the vehicle up from the testing station. At the meeting the Licence Holder stated he had collected the vehicle at 6pm, but then said he picked it up when it was dark, about 8pm.

The skeleton argument from the Licence Holder's solicitor stated "it seems likely that the decision to grant the licence was made when the Licence Holder submitted the licence application with the fee and supporting evidence as to insurance and the test certificates that related to the vehicle having satisfied the authorised officer that all was in order". No legal authority was cited in support. However, the Licence Holder stated when questioned by the Council's legal officer that he did not consider the vehicle to be licensed for use until he had collected the licence and the plates.

Members carefully considered the officer reports containing material from the Licensing Officer, the driver and the oral representations at Sub Committee from the Licence Holder and his solicitor. Members also received advice on the driver's skeleton argument from the council's legal officer which dealt amongst other things with arguments about the fairness of the hearing under Article 6 of the European Convention on Human Rights. This advice was contained in a supplemental report which had been disclosed by e-mail to the driver's solicitors before the hearing.

Members also had sight of an e-mail from the Licence Holder's insurance underwriter in a further supplemental report.

After careful consideration and taking into account all the relevant factors the Sub Committee **RESOLVED** to revoke the Licence Holder's Private Hire Operator Licence under section 62(d) of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act") and to revoke his Private Hire Driver Licence under Section 61(b) of the 1976 Act. There would be a requirement to pass the DSA Taxi Driver Assessment as a condition of any Hackney Carriage or Private Hire Driver licence application being made in the future for the following reasons:

1. **Members were satisfied that on the balance of probabilities the Licence Holder had on several occasions on 26 August 2015 been the driver of the vehicle shown picking up passengers in the CCTV footage, which would have been unlicensed and lacked a private hire plate. The phone in the outlet connects directly to his taxi company. The person driving the vehicle appeared to have distinctive white hair and was slightly taller than the vehicle. The vehicle had a badge on the side like the metallic ones used by the Licence Holder. The vehicle had tinted windows. The four sets of people who had used the phone moved towards the vehicle when it approached. There were no other vehicles of the same colour, manufacturer and model registered as a Private Hire Vehicles within the Borough at the time.**
2. **If the vehicle were unlicensed this created a risk on several journeys that the vehicle insurance was invalidated, which was supported by the e-mail dated 11 April 2016 from the underwriter. Members were aware that the effect on the insurance policy could be debated. However, the fact that its validity was put into question was not in Members' view acceptable. The travelling public should be assured that a taxi was properly insured and there should not be a question mark over the effectiveness of the insurance policy because of acts of the driver.**
3. **Members did not find the Licence Holder to be a reliable witness. He appeared to have changed his story from his earlier account given in the PACE interview. The Licence Holder originally stated in the PACE interview conducted on 4 November 2015 that he couldn't remember when he had picked the vehicle up on 26 August 2015 from the testing station. At the Sub Committee hearing the Licence Holder stated he had collected the vehicle at 6:00pm. He then said he picked it up when it was dark, about 8:00pm.**
4. **Members did not find his claim credible that other taxi firms might have intercepted passengers who had used the phone in the outlet to make a booking with his firm. If the Licence Holder's claim were true this would have happened by coincidence several times on 26 August 2015 very shortly after a phone booking was made with his firm. Even if it were true, the booking which did not result in a pick-up should still have been recorded. Its absence would be a further breach of the conditions attached to his operator licence and referred to in paragraph 5 below. When The Licence Holder attended the PACE interview he failed to mention that the operator records had been stolen from his premises. He alleged that the theft had occurred at the beginning of October 2015. Officers had attended the premises on 5 October 2015 and requested the records but the Licence Holder had not mentioned the theft. The Licence**

Holder said at the Sub Committee hearing that he only knew the complainant in passing and didn't know his name, but later said he did know his name. The Licence Holder accepted that he knew the complainant by sight.

- 5. The Licence Holder's operator records were materially in breach of the relevant conditions attached to his operator licence. The conditions require that both the time and date of the booking and time and date of the pick-up should be recorded. Only one time was shown. The vehicle used and the driver should be identified. The Licence Holder appeared to claim that a number on each page satisfied this requirement which Members did not accept. The name and address of the hirer should be recorded. Some entries appeared to have been doctored by the addition of passenger names at a later date. The records were not kept in book form as required by the conditions, but as loose leafs.**
- 6. The Licence Holder did not appear to take on board any criticism at all of his operator records so there was every reason to believe that he would carry on as before. Poor record keeping meant that plying for hire and driving an unlicensed vehicle would be made easier. It would help facilitate the acts described in paragraph 1 above.**
- 7. Overall Members concluded that the Licence Holder was dishonest and therefore not a fit and proper person to continue to hold the operator or driver licences.**

The holder of the licences has 21 days from receipt of notice of the decision to appeal to the local magistrates' court.

Chair

Date