



MINUTES OF GENERAL LICENSING SUB-COMMITTEE

MEETING DATE Wednesday, 8 February 2017

MEMBERS PRESENT: Councillor Anthony Gee (Chair), and Councillors Hasina Khan, Mark Jarnell, Sheila Long and Mick Muncaster

OFFICERS: Stephen Culleton (Lead Licensing and Enforcement Officer), Carl Gore (Empty Properties and Enforcement Officer), Alex Jackson (Legal Services Team Leader) and Nina Neisser (Democratic and Member Services Officer)

17.LSC.100 Declarations of Any Interests

No declarations of any interests were received.

17.LSC.101 Procedure

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

17.LSC.102 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.103 To Determine a Private Hire Driver Licence Under Section 61 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 bring to the attention of Members the conduct of a Chorley Private Hire Driver following a complaint. It was the responsibility of Members of the Sub-Committee to determine whether the Licence Holder was a fit and proper person to hold a Chorley Borough Council Private Hire Driver Licence

The Licence Holder attended the meeting alongside his representatives; Mr Charles Oakes and the Private Hire Operator who employed him. Sergeant Bushell of Lancashire Police was also in attendance.

In December 2016, the Council received a complaint in relation to the manner in which the Private Hire Vehicle (PHV) of the Licence Holder was being driven in November 2016. The nature of the complaint alleges that the PHV was being driven in a dangerous and reckless manner on the North bound carriageway of the M6 motorway. The complaint was in the form of a statement and was supported by a recording taken

by the complainant's on-board CCTV recording equipment. The footage from the CCTV statement was exhibited later during the hearing following the summary of the report.

The Licence Holder was first granted a Private Hire Driver's licence in August 2006 and since this time has not previously come to the attention of officers. The Private Hire Operator was the proprietor of the Private Hire Vehicle. It was confirmed that the vehicle was currently licensed by Chorley Council until May 2017. Officers were satisfied that the Licence Holder had the authority to drive the vehicle and the vehicle was properly licensed at the time of the incident.

The Licence Holder was invited to attend the Council's offices in November 2016 following a letter inviting him to do so. The Licence Holder responded to the invitation and attended the interview with his Private Hire Operator. The Licence Holder has regular use of the Private Hire Vehicle for both Private Hire work and Social and Domestic purposes.

The Licence Holder attended the meeting in January 2017 where following being shown the recordings of the CCTV he identified himself as being the driver of PHV at the time of the incident. He confirmed that he had his daughter with him in the vehicle at the time. The driver did remember the incident and stated that he was frustrated with the vehicle that belonged to the complainant; he stated that the complainant's vehicle was hogging the outside lane. The Licence Holder accepted that his response at the time got out of hand, and admitted that his driving fell below the standard expected. He denied that he was making any gestures or flashing his headlights at the complainants.

The CCTV footage was exhibited to the Sub-Committee whilst Sergeant Bushell provided an analysis of the incident. Members were informed that the Licence Holder had committed an offence under Section 3 of the Road Traffic Act 1988 as he was seen to be driving without due care and attention and presented a lack of consideration to other vehicles on the road. Sergeant Bushell indicated to members that the CCTV footage illustrated that the Licence Holder was causing an inconvenience to other drivers when undertaking and pulling in front of the complainant's vehicle in the outside lane before indicating his decision to do so. Although undertaking is not considered an offence it is not recommended as it suggests driving without due care and attention.

Sergeant Bushell informed Members that had a Police Officer witnessed the events first-hand the Licence Holder would have been spoken to although a charge was a different matter depending on what the Licence Holder might have said. He concluded that the Licence Holder's standard of driving was below that expected which consequently caused inconvenience and forced drivers to make alternative actions. However he understood that the manner of the complainant's driving could also be criticised and seen to be driving without due care and attention.

Having viewed the footage Members accepted Sergeant Bushell's analysis however agreed that the complainant's driving could also be seen to be causing a nuisance. On

occasion the complainant's vehicle appeared to undertake the Licence Holder to get a clearer view of him driving the vehicle on the CCTV. If the Licence Holder had been driving at 100mph as reported, it could be suggested that the complainant was travelling at such speed to stay close to his vehicle. Charles Oakes informed the Sub-Committee that the Licence Holder was not challenging that his driving was below standard but reassured Members that he was not driving at speeds of, or near, 100mph.

The Licence Holder subsequently justified his actions on the CCTV footage and assured Members that he was not driving at speeds of 100mph. The Licence holder stated that he has been driving for many years and used to be a HGV Class 1 driver therefore had plenty of experience. The Licence Holder expressed remorse in admitting that he was ashamed when he observed the CCTV footage and there was no excuse for his actions and he understood the potential consequences that could have occurred.

After careful consideration of all the relevant factors Members **RESOLVED that;**

- a) The Licence Holder be given a warning in regards to future conduct which would lie on his licensing file.**
- b) The Licence Holder should within the next 3 months demonstrate to the Lead Licensing and Enforcement Officer that he has successfully completed a course equivalent to the former DSA test.**

For the following reasons;

- 1. The Licence Holder had admitted his standard of driving fell below the required standard, as shown on the CCTV video footage and expressed remorse.**
- 2. Members accepted that there was fault on both sides – that of the Licence Holder but also the complainant.**
- 3. Sergeant Bushell stated that depending on the attitude of the driver it might have resulted in only words of advice being given to the Licence Holder had the police witnessed the incident.**
- 4. The Licence Holder has not previously come to the attention of the Sub-Committee.**

17.LSC.104 Application for the Grant of a Private Hire & Hackney Carriage Drivers Licence Made under Section 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976

The Director of Early Intervention and Support submitted a report 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, Charles Oakes.

The applicant submitted an application for the grant of a Private Hire and Hackney Carriage Driver Licence in December 2016. The applicant declared three motoring convictions on his application which were of concern to the Council, all of which involved speeding and fall within the Council's Safeguarding, Suitability and Convictions Statement of Policy for Taxi Licensing. The applicant further breached his licence conditions by failing to inform the Council of a change of address during the period of his previous licence.

The applicant's DVLA Licence Summary details the following motoring convictions:

- The applicant received a fixed penalty for an offence of SP30 (exceeding the statutory speed limit on a public road) in February 2014 for which his DVLA Licence was endorsed with 3 penalty points.
- The applicant received a fixed penalty for an offence of SP30 (exceeding the statutory speed limit on a public road) in October 2014 for which his DVLA Licence was endorsed with 3 penalty points.
- The applicant received a fixed penalty for an offence of SP50 (exceeding the statutory speed limit on a motorway) in February 2015 for which his DVLA Licence was endorsed with 4 penalty points.

Members were advised that the applicant confirmed that the motoring convictions were committed in a vehicle licensed by Chorley Council. The applicant confirmed that he currently held 10 points on his licence and was not awaiting further convictions on this licence.

The applicant had successfully passed the Council's Knowledge Test and he meets the Council's Group II Medical requirements and DVSA Private Hire Driver Test Assessment. The Licence Holder was previously licensed as a Private Hire and Hackney Carriage Driver with Chorley Council from December 2013 until December 2016 when he allowed his licences to lapse. With regards to this, the applicant informed the Sub-Committee that this was unintentional and he thought that he had completed the required procedures in enough time however his DBS took longer to be issued than expected.

The applicant was interviewed under caution at the Council offices in January 2017 regarding his failure to report a change of address and notify the council of his motoring convictions. Officers have concerns that the applicant has used a number of addresses to reside at over the past three years whilst he has held his PHD and HCD licences and not informed the Council in writing as he is required to do.

The applicant advised that he was unaware that he had to inform the Council of his change of address. He stated that at the time all his time had been consumed by looking for a job. The applicant confirmed that he had moved to his brother's address which was in close proximity to his previous address at his father's house where he was subsequently rotating between the two addresses. Following this, the applicant moved away due to work commitments and therefore changed address again before moving back to his brother's address as previously, to work at the branch of the

company closer to home. The applicant confirmed that he considered his taxi driving to be a part-time job, predominantly on weekends.

The applicant expressed remorse and apologised for his offences and understood that he should have sought advice following his actions. The applicant confirmed that his SP50 offence was issued when he was above the speed limit in an average 50mph speed check zone on the motorway. He reassured members that each offence occurred at the end of his shift in the early hours of the morning, therefore there were no passengers in his vehicle and very few other vehicles on were on the road.

The applicant's representative reiterated to Members, that the applicant was remorseful and understood how close he was to receiving the maximum 12 points on his DVLA licence and the consequences of this. Following previous discussions members were informed that the applicant would be willing to privately complete a speed awareness course.

After careful consideration and taking into account all of the relevant factors, the Sub-Committee **RESOLVED** that the applicant was a fit and proper person to hold a Private Hire Driver Licence and Hackney Carriage Driver Licence under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and that his application be granted subject to a special condition attached to his Private Hire Driver Licence that within three months the applicant demonstrate to the Lead Licensing and Enforcement Officer that he has successfully completed a speed awareness course for the following reasons;

1. The applicant expressed remorse for his actions.
2. The applicant exceeded the speed limit on the motorway within a special 50 mph average speed check zone so his speed was not as excessive as it might have otherwise seemed.
3. The applicant did not have any customers in his taxis at the time of his speeding offences.
4. The applicant breached his Private Hire Driver Licence conditions by failing to inform the Council in writing of a change in his address during the period of his previous licence and failing to notify the Council in writing of his motoring convictions; however the Council's Policy calls for a warning for failing to notify matters required by conditions.
5. The applicant did not come to the attention of the Licensing Officer during the three years of his previously held licences.

The applicant has the right to appeal against conditions attached to his licence within 21 days of receiving notice of the decision.

17.LSC.105 Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, Suspension and Revocation of Drivers Licence

The Director of Early Intervention and Support submitted a report to enable Members of the General Licensing Sub-Committee to determine whether the Licence Holder

was a fit and proper person to hold a Private Hire Driver (PHD) Licence and Hackney Carriage Driver (HCD) Licence.

The Licence Holder did not attend the meeting. The Lead Licensing and Enforcement Officer informed the Sub-Committee that he had spoken to the Licence Holder's wife twice via telephone in the week leading up to the meeting. The most recent correspondence confirmed that the Licence Holder had experienced a family bereavement and would subsequently be out of the country in order to attend to this.

No written confirmation had been received regarding the Licence Holder's anticipated absence. The Licence Holder's wife informed the Lead Licensing and Enforcement Officer that she would provide a copy of their flight tickets via email to evidence that the Licence Holder would be out of the country. However, when this was checked prior to the hearing taking place, no email had been received.

The Licence Holder was advised of the possibility that the hearing could proceed in his absence at the discretion of the Sub-Committee or be adjourned until he returned. In light of this information, Members subsequently resolved to proceed with the hearing in the Licence Holder's absence.

The Licence Holder was first licensed with Chorley Borough Council in July 2010 following a General Licensing Sub-Committee hearing. At this time the Committee determined to grant the Licence Holder's co-terminous application where he fell short of the requirement of holding a DVLA driver's licence for the required 3 years. The Licence Holder has renewed his Private Hire and Hackney Carriage Driver Licences previously when they expired in August 2011.

In April 2016, the Council wrote to the Licence Holder requesting that he complete a new application for an enhanced disclosure from the Disclosure and Barring Unit (DBS) 3 months prior to the expiry of his licences in August 2016. In the provisional period the Council requested that the Licence Holder complete an Interim DBS Declaration to support the renewal of his Private Hire Driver (PHD) and Hackney Carriage Driver (HCD) Licences.

On 9 April 2016, the Licence Holder completed an interim DBS Declaration, declaring amongst other things, that he had never been cautioned by the Police or any other Authority for any reason. The Council received receipt of his medical and the fee payment, however did not renew the Licence Holder's PHD and HCD Licences in the absence of his DBS certificate.

Council records indicated that on 27 September 2016 the Licence Holder phoned the Council to report that he had been advised by the DBS that his certificate would take between 12 and 16 weeks to be issued to him and that he would bring it in as soon as it arrived. However, on 12 December 2016 officers from the Council's transactional team used the DBS tracking service and discovered that the DBS certificate had been issued to the Licence Holder on 23 September 2016.

Section 57 of the Local Government (Miscellaneous Provisions) Act 1976 gives the Council the power to require applicants to submit information as they may reasonably

consider necessary to enable them to determine whether a licence should be granted and whether conditions should be attached to any such licence. On 13 December, the Licence Holder was emailed requesting that he bring in the DBS certificate.

On 13 December, the Licence Holder provided his enhanced DBS certificate to the Council which showed that in November 2014 the Licence Holder accepted a caution from Lancashire Constabulary for an offence of Battery under Section 39 of the Criminal Justice Act 1988. Council records were scrutinised and confirmed that the caution had never been declared. The conditions attached to the issue of the Licence Holder's licences stipulate that the licensee shall notify the Council in writing of any conviction or caution recorded against him/her and/or the imposition of any endorsable or non-endorsable fixed penalty within 7 days of such conviction or caution or penalty being imposed. It was subsequently determined that when completing his Interim DBS Declaration the Licence Holder made a false statement and did not report a caution recorded against himself as required.

On 6 January 2017, the Licence Holder was interviewed under caution at the Council's offices where he was represented by a Licensing Consultant. The Licence Holder recalled an incident involving his sister and agreed that he attended Skelmersdale Police station as a result of this but denies receiving a caution. It was noted that the Licence Holder showed no remorse. Members were advised that it is not the responsibility of the council to go behind a conviction or caution imposed by another authority.

After careful consideration and taking into account all of the relevant factors, the Sub-Committee **RESOLVED to revoke the Licence Holder's Private Hire Driver Licence and Hackney Carriage Driver Licence under Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 on the grounds that he is not fit and proper for the following reasons;**

- 1. The Licence Holder accepted a police caution in November 2014 for Battery which according to the Council's Policy has a rehabilitation period of 3 years.**
- 2. The Licence Holder failed to notify the Council of his caution in writing within 7 days in breach of his Private Hire Driver Licence conditions.**
- 3. The Licence Holder made a false statement on his Interim DBS Declaration on 9 April 2016 by failing to disclose his caution for Battery.**
- 4. The Licence Holder had deliberately misled the Council on 27 September 2016 by claiming that his DBS Certificate would take 12-16 weeks when it had demonstrably been issued to him prior to this on 23 September 2016.**

The Licence Holder has 21 days from receipt of notice of the decision to appeal to the local Magistrate's Court.

Chair

Date