

MINUTES OF GENERAL LICENSING SUB-COMMITTEE

MEETING DATE **Wednesday, 19 June 2019**

MEMBERS PRESENT: Councillor Matthew Lynch (Chair), Councillor (Vice-Chair) and Councillors Jean Cronshaw, Tom Gray, Sheila Long and John Walker

OFFICERS: Nathan Howson (Enforcement Team Leader (Licensing)), Carl Gore (Enforcement Officer (Licensing and Empty Properties)), Elizabeth Walsh (Solicitor) and Philippa Braithwaite (Democratic and Member Services Officer)

19.16 Declarations of Any Interests

There were no declarations of interests received.

19.17 Procedure

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

19.18 Exclusion of the Public and Press

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

19.19 Review of Private Hire Operator's Licence

The Director of Customer and Digital submitted a report for the General Licensing Sub-Committee to determine whether the licence holder remains fit and proper to hold a Private Hire Operator's licence.

The three individuals named on the licence, Licence Holder 1, Licence Holder 2, and Licence Holder 3, and their legal representative were present at the Sub-Committee meeting.

Members were informed that a private hire operator's (PHO) licence has been held in respect of the premises for many years. Records maintained by the Council show a licence held as far back as 2001. This licence has been held by a number of persons during this period.

On 16 July 2014 an application was made by Licence Holder 1 for a PHO licence at the premises. This licence was granted and renewed on 16 July 2015. This licence

was subsequently surrendered by Licence Holder 1 on 27 June 2018. A new PHO licence was granted on 27 June 2018 and is jointly held by Licence Holder 1, Licence Holder 2 and Licence Holder 3. It was this current licence which was the subject of the review.

The Council's Enforcement Team Leader for Licensing informed the Sub-Committee that, on 28 September 2018, a formal warning was given to the licence holders in respect of their failure to produce adequate booking records following a request by an authorised officer.

Members noted that failure to provide records such as this is an offence contrary to S.56 of the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA).

This request was made in relation to a complaint from a member of the public which implicated Licence Holder 1 as the driver. As a result of this and other complaints, Licence Holder 1's Hackney Carriage and Private Hire Driver licences were revoked with immediate effect on 23 August 2018.

Following another complaint by a member of the public, regarding a journey on 12 October 2018, booking records were again requested from the licence holders. These records were provided on 29 October 2018, after the deadline given in the request. The records failed to provide information as to the vehicle and driver used to fulfil the booking, despite having received a warning for the same issue the month previously.

Members noted that the complainant from the incident in October 2018 provided a registration of a vehicle. This vehicle was licensed in 2015 by Licence Holder 1 but has not been licensed since then.

Members noted that using a vehicle as a Private Hire Vehicle without a licence is an offence contrary to S. 46(1)(a) of the LGMPA.

Members also noted that it is a further offence, contrary to S.46(1)(e)(i) to operate a vehicle as a private hire vehicle without the vehicle having a licence.

A notice was served on Licence Holder 1, as the registered keeper of the vehicle, to provide the name of the driver at the time of the complaint. In his response, Licence Holder 1 declared that he was the driver of the vehicle despite his Hackney Carriage and Private Driver Hire driver's licences being revoked at the time of the incident.

Members noted that it is a further offence, contrary to S.46(e)(ii) to operate a vehicle as a private hire vehicle if the driver does not have a private hire driver's licence.

Members were informed that Licence Holder 1's appeal against the revocation of his driver licences was heard on 16 January 2019. Following a full, contested hearing, Magistrates decided to dismiss the appeal and awarded costs to the Council. Members noted that, in their reasoning, Magistrates placed significant weight on the complaint of 12 October 2018.

During this appeal, Licence Holder 1 gave evidence under oath regarding this complaint. He confirmed that he was the driver of the vehicle at the time of the incident, that he had been the person who had taken the booking initially, and that the temptation to complete the journey himself had been too much. Licence Holder 1

confirmed the monetary advantage of the journey was his main motivation for carrying out the journey.

On 18 February 2019, a letter was received from Licence Holder 1's legal advisor, informing the Council that he had resigned from the firm and so no longer has involvement in the business.

Members noted that the Private Hire Operator's licence is held by the three individuals, Licence Holder 1, Licence Holder 2, and Licence Holder 3, and that Licence Holder 1 remained a proprietor of the licence.

Members also noted this matter was previously listed to be determined by the Sub-Committee in April, but this date was postponed as Licence Holder 1 was not able to attend as a result of being out of the country.

Charges have been laid with the Magistrates Court regarding the prosecution of Licence Holder 1 in relation to the following offences:

Charge	Offence	Description
1.	S.46(1)(a) LG(MP)A76	Using a vehicle as a Private Hire Vehicle without a licence
2.	S.46(1)(e)(i) LG(MP)A76	Operating a vehicle as a Private Hire Vehicle without that vehicle being licensed
3.	S.46(1)(e)(ii) LG(MP)A76	Operating a vehicle as a private hire vehicle without the driver being licensed
4.	S.56(2) LG(MP)A76	Failing to keep a booking accepted by you in such form as specified by the Council

In relation to charge 1, Licence Holder 1 has pleaded guilty. In relation to charges 2-3, Licence Holder 1 has pleaded not guilty (Members noted this plea was being made on a legal basis rather than factual). In relation to charge 4, this was not being pursued by the Council since the offence applies to journeys where the proper licences are in place, which was not the case for this incident.

Despite it not being a charge the council were pursuing, the Enforcement Team Leader asked Members to take a serious view of the failure to disclose the identity of either the driver or vehicle used and argued that this was to conceal that an unlicensed driver and unlicensed vehicle were being used. He asked Members to take this into consideration as to whether this demonstrated the licence holder was fit and proper to hold a Private Hire Operator's licence. He reminded Members that Licence Holder 1 remained a proprietor of the licence and that there was no provision within the Act to remove individual proprietors from the licence.

In response to questions from the Sub-Committee, the Enforcement Team Leader clarified that a taxi base had been operating from the premises for many years but that the current PHO licence, held by Licence Holder 1, Licence Holder 2, and Licence Holder 3, had been granted on 27 June 2018. He further clarified that the complaints received had not been concerning the records of the booking taken but that these had been reviewed as part of the subsequent investigation. He confirmed that the complaint had been about the driving standards of the driver and a question as to whether the vehicle was licensed or not. The complainant's suspicion was raised due to the lack of taxi livery on the vehicle.

In response to further questions, the Enforcement Team Leader advised that there were no other applications for operator's licences for this premises or those trading names, nor had there been any application to amend the current PHO licence.

The Licence Holders' Legal Representative talked the Sub-Committee through the supplementary information he had submitted which had been circulated to Members in advance of the meeting. He started by clarifying that, by virtue of his guilty plea to the offence of using a private hire vehicle without a licence, Licence Holder 1 had admitted to being the unlicensed driver of the unlicensed vehicle on the 12th October 2018.

The Licence Holders' Legal Representative advised Members that the Local Government (Miscellaneous Provisions) Act 1976 makes it clear that an operator may be some one other than a single individual and gave examples of the issuing of licences to private and public limited companies, such as Uber, to illustrate. He stated that this PHO licence was granted to Licence Holder 1, Licence Holder 2 and Licence Holder 3 jointly and that they collectively carried out the business of a private hire vehicle operator.

The Licence Holders' Legal Representative informed Members that Section 1 of the Partnership Act 1980 states that a partnership, or firm, exists where persons carry on a business with a view to profit, provided that they are not incorporated or established under Royal Charter. He advised that this does not depend on the execution of a formal deed or agreement. Members heard that Licence Holder 1, Licence Holder 2, and Licence Holder 3 were in business together as private hire operators at the time that the licence was issued and that the firm had several trading names.

The Licence Holders' Legal Representative stated that, by section 20(1) of the Partnership Act 1890, all rights and property acquired by a firm becomes partnership property and argued that it therefore followed that the private hire operator's licence is an asset of the partnership, rather than that of any individual.

The resignation of Licence Holder 1 from the firm would therefore preclude him from working in the business with Licence Holder 2 and Licence Holder 3 with a view to profit. Licence Holder 2 and Licence Holder 3 continue to carry on the same business with a view to profit and are therefore a statutory partnership trading as a firm. They use the same premises and systems, previously approved by the council, under various names and with various participants for many years.

The Licence Holders' Legal Representative advised that the assets of the partnership remain a partnership asset and therefore any interest Licence Holder 1 had in the operator's licence, the only asset with which this Sub-Committee was concerned, is extinguished. He further advised that the operator of the licence is therefore the firm whose members are Licence Holder 2 and Licence Holder 3.

Members noted that no complaints had been received since Licence Holder 1 had resigned from the firm. The Licence Holders' Legal Representative stated that this suggested the business was being run properly. The Licence Holders' Legal Representative advised that the two surviving operators remained fit and proper to hold the licence, and that there had been no material change in the operator or the operator's business since the grant of the licence. He confirmed that, since his resignation, Licence Holder 1 had had no say in the business and no access to the data held by that company.

In response to questions from the Sub-Committee, Licence Holder 1 confirmed he resigned from the company in February 2019 and no longer worked there. In response to a follow-up question, Licence Holder 1 confirmed that he had found employment elsewhere.

Members queried why Licence Holder 1 waited until four months after the incident (in October 2018) to resign from the company (in February 2019). The Licence Holders' Legal Representative confirmed that the resignation had been undertaken after receiving advice. Members queried why no new application had been made for a PHO licence for Licence Holder 2 and Licence Holder 3. The Licence Holders' Legal Representative confirmed that another licence application was not required by the Act as a licence did not have to be held by an individual.

The Chair of the Sub-Committee asked Licence Holder 2 and Licence Holder 3 when they became aware of the incident in October 2018, and what was their reaction. Licence Holder 3 confirmed they had only become aware when the council had got in contact to investigate the complaint and ask for the booking records. Licence Holder 3 advised that his principal reaction was disbelief, and then anger.

The Chair asked what action Licence Holder 2 and Licence Holder 3 had taken on learning about the incident. Licence Holder 3 advised they had complied with the requests of the council for information and, once they had calmed down, asked Licence Holder 1 to step down from the company. In response to a follow-up question, Licence Holder 3 confirmed the four-month period between the incident and Licence Holder 1's resignation was the time taken to calm down. It was noted that no action was taken during this time.

The council's Legal Officer and the Licence Holders' Legal Representative briefly discussed caselaw concerning individual offences when part of a partnership, but it was agreed by all parties that this was a matter for the consideration of the Magistrates' Court and not for debate at this meeting.

The council's Legal Officer queried why, in clause 41 of the supplementary information circulated, Licence Holder 1 had conceded that, by his resignation from the partnership, that he is unlikely to be regarded as being a fit and proper person to participate in the holding of an operator's licence. The Licence Holders' Legal Representative responded that this was obvious, that Licence Holder 1's behaviour was not conducive with the high standards of an operator as he failed to properly record the booking and drove an unlicensed car without a valid driver's licence.

In response to the information contained in the supplementary information circulated in advance of the meeting, the Council's Enforcement Team Leader for Licensing clarified that the charges were not duplicitous, as they related to two separate offences (operating a vehicle as a Private Hire Vehicle without (a) a valid vehicle licence, and (b) a valid private hire driver's licence vehicle). He further clarified that the licence was issued to individuals, not to a firm, and furthermore that a PHO licence was not a property or asset of a partnership as a licence is not property. A licence is a permission to the named individuals to carry out an activity. This permission could not be transferred and could not be an asset of a partnership.

With regards to whether Licence Holder 1 was acting on his own account and not as a private hire operator, it was agreed by all parties that this was a matter for

consideration by the Magistrates' Court and should not be taken into account for the purposes of today's determination.

In response to further questioning from the Sub-Committee, it was established that the computer system used to record bookings had been in place for 5-6 years. The Licence Holders' Legal Representative confirmed that a hard copy of bookings had been kept concurrently, but that this was only done as a back-up and the intention was for the electronic system to be the sole record moving forwards.

In summary, the Licence Holders' Legal Representative advised that the Licence Holder 2 and Licence Holder 3 were of good character and were running the business properly. There was no requirement for a new licence as the current licence was still in force, and that the resignation of one partner was not a major matter. The operator was a firm, and the two remaining individuals comprising that firm were fit and proper to hold a Private Hire Operator's licence.

After careful consideration of the report and representations from the Council's Licensing Enforcement Officer and the representations of the respondent and their representative and having regard to the Council's Safeguarding, Suitability and Convictions Policy, the Sub Committee **RESOLVED that Licence Holder 1, Licence Holder 2 and Licence Holder 3 are no longer fit and proper persons to hold a Private Hire Operator's Licence for the following reasons:**

- 1. Members noted that in the report and representations it states that Licence Holder 1 has resigned from the firm. In the representation it states that this precludes him from working in the business with Licence Holder 2 and Licence Holder 3 with a view to profit. Although this may be true, it is clear from the representation and evidence heard that Licence Holder 1 did not resign as an operator and that he resigned from the partnership. Whilst Members heard from the representative that it is the partnership who are the proprietors of the licence, Members considered that the licence is held by the three individuals.**
- 2. Members noted that Licence Holder 1 is no longer being prosecuted for the fourth charge. However, Members felt that the representations made about this were still valid in considering this review. Even if Licence Holder 1 is not guilty of committing this offence, a serious view must still be taken of the wrongdoing. Licence Holder 1 provided a booking record but failed to disclose the identity of either the driver or vehicle used. This was to conceal the fact that both an unlicensed driver and vehicle were being used. For the purpose of determining Licence Holder 1's fitness and propriety to hold a licence, Members felt that this goes against him in the test of whether he is a fit and proper person.**
- 3. Members noted that in the representations Licence Holder 1 himself has reasonably inferred that by tendering his resignation he accepts that he is likely to be regarded as being unfit to participate in the holding of a private hire operator's licence.**
- 4. Whilst Members noted that the business is now run and controlled by the two surviving partners and note the comments made by the Respondent's Representative of page 9, clause 30 (b) Members felt that the argument that because both surviving partners are considered suitable fit and**

proper persons who have no relevant recorded convictions against them that this still satisfies the Council they were fit and proper persons to hold a licence, in Members view, this does not necessarily remain true.

5. The fact that there was a 4-month period between when the two surviving partners became aware of the incident October 2019 and Licence Holder 1's resignation in February 2019 their continued association with Licence Holder 1 and the lack of communication with the Council during this time calls in to question whether they are themselves fit and proper knowing the issues that surrounded the Operating Licence.

Members feel it is important to make clear to the proprietors of the licence that there is no provision within the Act to remove individual proprietors from the licence.

Members wanted to express that where a licence has been revoked, the General Licensing Sub-Committee will not entertain a further application within 12 months of the date of the previous revocation unless there are substantial material changes in the applicant's circumstances which can be supported by evidence.

An applicant will normally be refused a licence if there has been a conviction for an offence under any of the Acts at any time during the 2 years preceding the application or where there is more than one conviction, within the 5 years preceding the date of the application. However, Members have the right to depart from its own policy if it feels that the evidence presented to them warrants this.

The applicant has the right to appeal to the local Magistrates' Court within 21 days of receiving this notice.

19.20 Review of Hackney Carriage Driver's Licence and Review of Hackney Carriage Vehicle Licence

The Director of Customer and Digital submitted a report for the General Licensing Sub-Committee to determine whether the applicant was a fit and proper person to hold a Hackney Carriage Driver's licence and Hackney Carriage Vehicle Licence.

The Licence Holder was present at the Sub-Committee meeting along with his son and legal representative.

The Council's Enforcement Team Leader for Licensing informed the Sub-Committee that, on 4 December 2018, a member of the public made a complaint against the Licence Holder of an alleged allegation of fly-tipping whilst in a Chorley Licensed Hackney Carriage to Wigan Council. Wigan Council informed Chorley Council of the alleged incident involving the Licence Holder hence why this was investigated by the Enforcement Team Leader. Members noted this alleged incident occurred outside of the borough.

During February 2019, the Licence Holder attended the Council Offices of his own accord and spoke with officers about this complaint. During this conversation, the

Licence Holder repeatedly told officers that he had been given permission by the land owner to tip waste on the land.

On 29 March 2019, officers spoke with the land owner who confirmed that he had not given permission to the Licence Holder to tip waste on that land and that he was aware he would be committing an offence himself if he did so.

An appointment was arranged to interview the Licence Holder under caution at the Council Offices on 8 May 2019. The Licence Holder attended with his legal advisor and daughter. On commencement of the interview, the Licence Holder informed officers that he wished to give no reply to questions and that he wished not to remain in the interview for questioning.

The Council's Enforcement Team Leader for Licensing informed the Sub-Committee that, on 21 August 2018, the licence holder was issued with a Formal Warning as a result of a separate complaint.

In response to a Member's question, the Enforcement Team Leader confirmed that the Licence Holder had not been before the General Licensing Sub-Committee for any previous offences.

The Licence Holder's Legal Representative advised that, with regard to the review of the Hackney Carriage Vehicle Licence, there was no suggestion that the car was unfit for use. He highlighted that a vehicle could be licensed to one individual and driven by another, and to revoke this licence would be unnecessarily punitive.

With regards to the review of the Hackney Carriage Driver's Licence, the Licence Holder's Legal Representative pointed out that Wigan Council had not sought to prosecute for this incident and advised that none of the photographs supplied by the complainant showed any waste deposited on land (as it remained inside the car).

With regards to whether the Licence Holder remained a fit and proper person, the Licence Holder's Legal Representative advised that the incident had no bearing on his standard of driving. The landowner had stated that he had not given permission for the Licence Holder to leave the waste on his land as he not in a position to give permission as it would still be an offence. The Licence Holder's Legal Representative highlighted that the waste had been ultimately disposed of in a skip, and that Wigan Council had been satisfied with this.

With regards to the interview under caution at the Council Offices on 8 May 2019, the Licence Holder had the right not to be interviewed and that he had exercised that right.

In response to questions, the Licence Holder advised that he was visiting the land owner, a family friend, to try and sell some unwanted items. He advised that the land owner's property was some distance away from the site of the incident (approx. 25-50m) but he was unable to drive closer to the property as it was gated. After searching for but failing to locate the land owner, the Licence Holder returned to his car at which point his nephew had opened the boot in preparation for removing the items (having assumed the Licence Holder had successfully found the land owner). The complainant

had then driven up, taken photos, and made allegations that the Licence Holder was fly-tipping.

In response to a question regarding the complainant's allegations that the Licence Holder was aggressive, the Licence Holder advised that the complainant had been hostile and made accusations of fly-tipping in an argumentative manner. With regards to the complainant's statement the Licence Holder claimed he had permission to offload the waste, the Licence Holder clarified he had meant he had permission to be on the land, which was private property and not a public road as the complainant believed.

Finally, the Licence Holder confirmed that the waste had been disposed of in a skip on his own land.

In summary, the applicant's agent queried whether there was sufficient evidence to engage the Sub-Committee's power of review and reminded Members that this meeting was to determine whether the Licence Holder remained a fit and proper person to hold a Hackney Carriage Driver's Licence and Hackney Carriage Vehicle Licence.

After careful consideration of the representations, the Licensing Act 2003 Sub-Committee **RESOLVED that:**

With regards to the Review of the Hackney Carriage Vehicle Licence that no further action needed to be taken.

With regards to the Review of the Hackney Carriage Driver's Licence, the Licence Holder remains a fit and proper person to hold the licence and that no further action needed to be taken.

The applicant and any person who made relevant representations has the right to appeal to the local Magistrates' Court within 21 days of receiving this notice.

19.21 Review of Hackney Carriage Vehicle Licence

Chair

Date