

**MINUTES OF GENERAL LICENSING SUB-COMMITTEE**

**MEETING DATE** **Wednesday, 11 September 2019**

**MEMBERS PRESENT:** Councillor Matthew Lynch (Chair), and Councillors Mark Clifford, Steve Holgate, Sheila Long and John Walker

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

**19.25 Declarations of Any Interests**

There were no declarations of interests received.

**19.26 Procedure**

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

**19.27 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.**

**19.28 Determination of Application for the Grant of HC/ PH Driver's 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 licence.

The applicant and his legal representative were present at the Sub-Committee.

On 21 March 2019 the Council received an application for both a Private Hire Driver's (PHD) licence and Hackney Carriage Driver's (HCD) licence and on 16 April 2019 the applicant passed the Council's Knowledge Test.

Members were informed that, in support of his application, the applicant declared that he had held a Private Hire Driver's licence with Blackburn with Darwen Borough Council (BwDBC) since 2001 and that, on 13 November 2018, this licence had been revoked with immediate effect following a complaint by a member of the public in relation to an alleged sexual assault. Details of the complaint were contained in the report.

Following this allegation, the applicant was arrested and released on bail with conditions. On 21 September 2018 the decision was made by the Constabulary to take no further action in relation to this complaint and the applicant was released without charge.

Members were informed that the applicant did not appeal the subsequent decision of the General Licensing Sub-Committee of BwDBC to revoke his licence.

The applicant's legal representative gave an overview of the applicant's good character and advised Members that no appeal had been made against the decision of BwDBC to revoke his licence owing to the likely costs that would be incurred by legal proceedings and based on advice received that he would earn more as a driver in Chorley than he had in Blackburn.

With regards to the complaint made against the applicant in 2018, the applicant's legal representative drew Members' attention to the fact that the Police had investigated the incident and had found insufficient evidence to proceed with a prosecution.

The applicant's legal representative confirmed that the applicant had co-operated with the Police and BwDBC throughout the investigation and had been released on bail while enquiries were carried out. He advised that the bail conditions had been amended to facilitate the applicant's continued employment as a taxi driver during this time.

The applicant's legal representative drew Members' attention to some discrepancies between the complainant's statements to the Police (which had not been submitted to this Sub-Committee) and to BwDBC.

The applicant's legal representative outlined the applicant's account of the incident. The applicant had known the complainant three years previously in a professional capacity as she was a frequent customer of the taxi firm he worked for, although he had not seen her since that time. The applicant's legal representative stated that the applicant did not make any comment about the complainant's father, but that he had greeted her, and they had a brief conversation about her change in employment. He drove the short journey to her house, during which the complainant remarked she was single and was 'looking for a man'. At the conclusion of the journey the complainant hugged the applicant and kissed his face. The applicant stated he moved away from her advances before kissing her on the side of her face and asking her to leave.

The applicant confirmed that the kiss had not been a good idea, but that it seemed the only thing he could do at that time. The applicant's legal representative advised that there was no forensic evidence to suggest anything occurred of a more sexual nature and that the issue was one of consent, the circumstances of which differed between the complainant's and the applicant's accounts.

In response to Members' questions, it was noted that the complainant had appeared at the BwDBC General Licensing Sub-Committee hearing in November 2018 but had not been invited to today's hearing owing to the nature of the allegations and the possibility of causing further distress. When asked about his feelings regarding the incident and his actions at that time, the applicant responded he would not act in the same way again and that, if granted a licence today, he would install a camera in his vehicle.

In response to further questions, the applicant confirmed he had not had a romantic or sexual relationship with the complainant in the past; he had acted as a regular taxi driver for her for a few years, but this had ended approximately three years previously. When asked to describe the complainant with regards to how she acted or what she looked like (i.e. hair colour), the applicant replied that he would recognise her if he saw her again but could not describe her.

The applicant confirmed he had held a licence with BwDBC since 2001 and had not appealed the decision to revoke his licence as the low level of trade in Blackburn would not be worth the high costs of the appeal. When asked whether he had made any enquiries about applying for a new licence to work in Blackburn, the applicant advised that he had received and completed a renewal letter from BwDBC but upon submission had been told the letter had been sent to him in error.

In summary, the applicant's legal representative advised Members that the applicant had no convictions and that, although the burden of proof required for today's hearing was lower than that used by the Police, no criminal conviction had been pursued in relation to this complaint owing to insufficient evidence.

The aim of the local authority licensing of the taxi and private hire trades is to protect the public, the proceedings are civil proceedings and not criminal and so the burden of proof applied should be that of the civil standard i.e. on the balance of probabilities. As such, after careful consideration of all the relevant factors, the Sub Committee **RESOLVED to refuse the application for a Private Hire and Hackney Carriage Driver's Licence for the following reasons:**

- **Whilst Members heard evidence from the applicant and his representative about the events, Members determined that the applicant was not a fit and proper person to hold a private hire and hackney carriage Drivers licence.**
- **Whilst there is no statutory definition of what a fit and proper person is, following recent case law, Members are advised that if the answer to this question is "no" or "not sure" or "don't know" Members should find the applicant not fit and proper and refuse to grant the licence.**
- **Members took into consideration that the applicant's licence was revoked by Blackburn with Darwen Borough Council on public safety grounds.**
- **After hearing from the applicant, Members felt that although he stated he would not behave in the same way again, his professional conduct was not that of a fit and proper person.**

Chair

Date