



MINUTES OF	GENERAL LICENSING SUB-COMMITTEE
MEETING DATE	Wednesday, 20 January 2016
MEMBERS PRESENT:	Councillor Roy Lees (Chair), Councillors Margaret France, Anthony Gee, Hasina Khan and John Walker
OFFICERS:	Alex Jackson (Legal Services Team Leader), Stephen Culleton (Licensing Officer), Dianne Scambler (Democratic and Member Services Officer) and Ruth Rimmington (Democratic and Member Services Officer)
APOLOGIES:	None
OTHER MEMBERS:	None

16.LSC.51 Declarations of Any Interests

No declarations of any interests were received.

16.LSC.52 Procedure

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

16.LSC.53 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.54 Application for the grant of a private hire and hackney carriage drivers licence under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and Section 46 of the Town and Police Clauses Act 1847

The Sub Committee considered a report of the Director of Public Protection, Streetscene and Community to determine whether or not the applicant was a fit and proper person to hold Private Hire and Hackney Carriage Driver's Licences under section 51 of the Local Government (Miscellaneous Provisions) Act 1976 for the grant of a Private Hire Driver's licence (PHD) and section 46 of the Town & Police Clauses Act 1847.

The applicant made an application for Private Hire and Hackney Carriage Drivers Licences on 18 September 2014. The applicant had successfully passed the

Council's Knowledge Test, DVLA Group II Medical, DSA Private Hire Driver and the DSA Wheelchair Test Assessment.

The applicant's DBS certificate contained information that had been disclosed at the discretion of the Chief Officer of Police. The information provided was of a significant nature where officers had used their discretion to refer the decision to determine the application to the General Licensing Sub-Committee in accordance with the Council's Safeguarding, Suitability and Convictions Statement of Policy for Taxi Licensing.

Members were made aware that it was very rare and only in extreme cases where it was believed the nature of a person's potential employment presented a potential risk to the public that the Chief Officer of Police would disclose information where the applicant had been found not guilty of the charges that were raised.

Members' attention was drawn to the guidelines relating to the relevance of convictions, under the General Policy at Paragraph 5, and under the Specific Guidance on the Relevance of Offences and Convictions at paragraph b) Violence, Offences against adults and d) Sexual and indecency offences.

The DBS disclosed information relating to the applicant being charged with rape and false imprisonment. The applicant was found not guilty of the allegations on 2 February 2011 at Crown Court.

The applicant attended the meeting, along with his representative.

The applicant attended the Council's offices on 9 December 2015 to offer information in relation to his Private Hire and Hackney Carriage driving history and to give an account of the information that had been disclosed through his Disclosure and Barring Certificate. The applicant stated that he had previously held a Private Hire Driver licence with X Council, this had been granted on 7 December 2005 and a Hackney Carriage Driver licence granted on 14 January 2009 by the same Council. The applicant also held a Hackney Carriage Driver licence with Y Council granted on 15 October 2007, the above licences ran concurrently. Y Council revoked the applicant's Hackney Carriage Driver licence on 11 November 2008 following the report from the police of the applicant being on bail for rape.

X Council revoked the applicant's Private Hire and Hackney Carriage driver licences on 15 December 2009 having received information from the police regarding the allegation of rape and a further complaint by a female passenger being terrified having been subject to sexual advances during a taxi journey conveyed by the applicant. The applicant stated to officers that his Private Hire and Hackney Carriage Driver licences had been revoked following the Crown Court Case (2 February 2011) and suggested that they had been suspended in the meantime.

The applicant stated he left the X Council area in 2010 following his arrest and being charged with rape of a female aged 16 years or over and false imprisonment, where he moved to his brother's home in the North West, only returning to the X Council area to attend the Crown Court trial. The applicant gave an account of the events that led to his arrest.

The summing up was an important impartial overview of the testimony of witnesses and evidence that had been laid before the Court, this also offered the Judge

opportunity to give the Jury directions on points of law that they should have regard for in reaching their decision.

The applicant confirmed that on 10 November 2008 the incident had taken place in a Y Council Licensed Hackney Carriage Vehicle (HCV), which he was driving under the authority of his Y Council Hackney Carriage Drivers Licence (HCDL). The applicant stated that he accepted the fare (i.e. the complainant) in the X Council area in the early hours and he had joined a number of other licensed vehicles attempting to gain the attention of revellers for the purpose of hire and reward and that he was not on a Taxi Rank. X Council area was closer to his home address at that time and therefore more convenient to work from and was common practice for him to ply for hire in this area.

Members noted that the applicant had come to the attention of X Council's Enforcement officers on a number of occasions. The applicant advised that he did not remember receiving all of the points shown in the report from X Council. He advised he had not appealed the points, but that he ought to have in hindsight. He did not recall being suspended by X Council as stated in the report. The only offence that had gone to court related to an IN10 (Using a vehicle uninsured against third party risks) in 2011.

The applicant accepted that he should have declared to X Council that he was being investigated regarding the incident in November 2008. The failure to declare formed part of the reason that his licence was revoked.

The applicant stated in his evidence given to defend the charges made out towards him that he reluctantly took part in the sexual acts and that the sexual acts were consensual.

Members noted the inappropriate use of his Hackney Carriage Vehicle and Hackney Carriage Driver licence on 10 November 2008. The applicant's evidence during the trial suggested that he did illegally ply for hire in a technically unlicensed vehicle and used his privileged and trusted position as a licensed Hackney Carriage Driver and used an otherwise licensed Hackney Carriage Vehicle to opportune sex from what might be considered a vulnerable young woman.

The Police received a further complaint in relation to the applicant acting as a Licensed Hackney Carriage / Private Hire driver in December 2009. This alleged that the applicant inappropriately touched a passenger's leg, engaged in inappropriate conversation, and viewed pornographic material on a hand held device and made unsolicited phone calls to the passenger. This was detailed within the Chief Offer of Police disclosure.

The applicant stated he had not engaged in inappropriate conversations with either passenger who had made allegations against him. The incident in 2008 had been consensual and not initiated by himself. He had not made a counter allegation against the passenger.

Members noted that the applicant was found unanimously not guilty of all the charges laid before the Court. Members considered whether or not the applicant was a fit and proper person to be granted the licences applied for in light of the information received from the Chief Officer of Police, the evidence given by the applicant summarised by His Honour Judge Wood, the applicant's Hackney Carriage and Private Hire Driver

history as presented by X Council and representations received from the applicant and their representative.

Members considered the Council's Suitability and Convictions Statement of Policy for Taxi Licensing.

Members noted that the DBS had not included the applicant on the Children's Barred List or Adult's Barred List. However, the letter stated that "It will be for the employer to decide, on the basis of information gathered from references, criminal record checks and other relevant sources of information, whether they wish to employ you".

The applicant explained that the incident in 2008 had made his life worse and that every opportunity had been affected, socially and financially. Had he been aware of the circumstances he would not have acted in the way that he did. He regretted behaving as he had and now understood that it was not appropriate to behave as such when acting as a Hackney Carriage or Private Hire Driver or to use a licensed vehicle in such a manner. The applicant assured members that the behaviour would not be repeated and that he had no criminal or motoring convictions pending.

The applicant advised he was currently helping his brother in his shop and undertaking voluntary work.

Members having carefully considered the officer report, appendices and representations made by the applicant and his representative RESOLVED to refuse to grant the applications for private hire and hackney carriage driver licences.

The reasons for the decision are as follows:

1. Members respect the applicant's acquittal in the Crown Court but note that acquittal should not be equated with accepting the defendant's account in its entirety. Members directed themselves that they should reach a view on whether the applicant was fit and proper on the balance of probabilities.

2. Members attached considerable weight to the Judge's summing up attached to the officer report. It was very fair and comprehensive. Members read enough in the report to have grave concerns about the applicant's conduct even if the account he gave at trial reflected in the summing up were accepted. He had, by his own admission engaged in consensual sexual activity with a lone female passenger who was intoxicated in his taxi. This is not in members' view characteristic of someone who was fit and proper.

3. Members felt comfortable in refusing the licences on the basis of admitted consensual activity in a taxi by a driver. This is because lone passengers, especially inebriated ones are extremely vulnerable. If taxi drivers were allowed to explain away allegations of sexual crimes by claiming consent, given the lack of witnesses and the impaired memory of a drunken victim it could make it easy to rebut genuine complaints. Members considered that zero tolerance of all sexual activity in the vehicle with a passenger was the safest for the travelling public and would also minimise the risk of false allegations against a driver.

4. It appeared to members that the applicant did not fully accept that what he did was wholly wrong, but was insistent it would not happen again because of the negative impact it had exerted on his life.

5. Members noted that the applicant had failed to declare to X Borough Council when applying for a private hire driver's licence in January 2009 that he was being investigated by the police. This added to members' view that the applicant was not trustworthy.

6. Members took into account that X Borough Council had revoked his licences not just because of the alleged attack but also because of a separate complaint in 2009 of sexual advances to another female passenger. Given that the applicant admitted to consensual activity it seemed unlikely to members that the separate complaint was a complete fabrication. Members were particularly concerned that this second complaint related to an incident just over 12 months after the incident which led to the trial. Members felt this showed that the applicant would repeatedly engage in unacceptable behaviour when driving a taxi and could not be trusted. Members noted a disturbing common fact between the two complaints: it was alleged that the applicant had engaged in inappropriate sexual conversation with lone female passengers.

7. Members considered that the sentiments in the Safeguarding, Suitability and Convictions Statement of Policy for Taxi Licensing regarding trust and vulnerable passengers were relevant, along with the question about whether they would trust an applicant to drive a vehicle that their family would use. The policy made clear that complaints resulting in a police investigation may be taken in to account. Members noted that complaints about behaviour when driving a taxi would be viewed in a more serious light.

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

Chair

Date