

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 5th January, 2016, 10.00 am

Councillors: Paul Myers (Chair), Mark Shelford and Caroline Roberts

Officers in attendance: Carrie-Ann Evans (Senior Legal Adviser), Alan Bartlett (Public Protection Team Leader) and Michael Dando (Senior Public Protection Officer)

103 EMERGENCY EVACUATION PROCEDURE

The Senior Democratic Services Officer read out the procedure.

104 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

105 DECLARATIONS OF INTEREST

There were none.

106 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

107 MINUTES OF THE 15TH DECEMBER 2015

These were approved as a correct record and signed by the Chair.

108 TAXI PROCEDURE

The Chair drew attention to the procedure to be followed for agenda items 8 and 9.

109 EXCLUSION OF THE PUBLIC

RESOLVED that, the Sub-Committee having been satisfied that the public interest would be better served by not disclosing relevant information, the public be excluded from the meeting for agenda items 8 and 9 in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, and that the reporting of these items be prevented in accordance with Section 100A(5A) of the Act, because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

110 CONSIDERATION OF FIT AND PROPER PERSON IN THE ABSENCE OF A VALID DBS CERTIFICATE AND COMPLAINTS RECEIVED AND ENFORCEMENT ACTION TAKEN - MR DM

Mr D M confirmed that he had received and understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the updated report and invited the Sub-Committee to determine the issue.

Mr D M gave an oral statement and was questioned by Members.

Mr D M explained that, for the last six months or so, he had been going through difficulties in his personal life which had had an impact on his actions and behaviour and compromised his integrity. In relation to the incident on 24.03.15 Mr D M did not accept that he had a hostile and rude attitude towards his client. He said that there was no agreed price because he only charged the fare on the meter as he was the only car available. Mr D M did say that he would have charged different price only if there were drivers at the other end to confirm an agreed price. Mr D M took full responsibility for speeding incident. Mr D M also claimed that he did not open letters sent to his home address hence why he had not submitted a valid DBS certificate.

Mr D M was questioned by Members and made the following responses:

On a question from a Member why he didn't produce a valid DBS check or respond to letters from the Council – Mr D M responded that the effects of not being able to see his daughter were that he didn't open and answer any mail (letters) for which he apologised. Mr D M said that he was not clear about the DBS check procedure. He felt that he only needed to pay renewal by credit card and he didn't realise that he had to produce new DBS check for year 2015. Mr D M believed that he only needed to complete renewal form electronically without the need of sending new DBS check.

Senior Public Protection Officer said that Mr D M had been asked to produce new DBS check in March 2015.

Mr D M said that his personal problems had started at around that time and that his behaviour started to deviate from that time.

On a question from a Member about how he can explain the chronology of incidents over the last 8 years – Mr D M responded that he was a lot younger and not thinking of consequences then. He felt that he had nothing to lose then. In relation to the incident from 24.03.15 he said that he felt the girl who complained was over exaggerating; he was entitled to the full fare and was not aware that there was a road closed. He said he already had her over a barrel as he was the only taxi in the rank, so he had no need to stronghold her. Mr D M also said that he had had anger management therapy in the last couple of years and that he had learned how to control his temper and that when he is wrong he now admits he is wrong.

On a question from a Member as to how the Committee could be assured that he would be dealing with the letters and paperwork appropriately and on time in the future – Mr D M responded that he was always late in submitting applications in the past, for which he apologised. Mr D M also said that applications were much simpler in the past and he had apologised for not fully understanding the current process even though at the time he thought he did understand. He explained that at the time he did not feel he was in any hurry and was trying to hold on to his sanity. Mr D M also said that he had never overcharged any of his clients and that he considered himself fairly honest and not one for lying. He said that in the past he would 'over stand up for' his rights whereas now he will say if he believes he is right but will give passengers his badge details if they want to complain. Mr D M said that he may

have been rude but he was not derogatory or over threatening towards his clients but he said 'if you're threatening, I'm threatening' but he explained that he has tried to improve, whilst accepting that he is not perfect. He said that he has a vested interest in getting better at handling situations. As far as the incident of 23.07.15 was concerned, he apologised for speeding but explained that he was later going to Bristol.

Mr D M confirmed that he remembered filling out the forms for his DBS check. He said he had kept all of his mail so he will definitely have it if it has been sent to him.

A Member clarified with Mr DM exactly when he did the anger management course and Mr D M confirmed it was 2 years ago.

A Member asked Mr D M was asked to respond to the allegation from October 2015 that he refused to take a fare. Mr D M said that he was guilty of that and apologised.

On a question from a Member about the consequences of an incident from 2014, outside the bank – Mr D M responded that he was not charged with anything as he was not guilty of anything. He explained that the passenger said she was not paying and had gone into the bank after he had done nothing wrong. He had gone into the bank after her and he stands by that.

Mr D M made a closing statement by saying that the issues in his personal life had been all consuming and had become his only concern which is why he found it difficult to focus on more than one issue. He said that at that time, nothing else mattered. He had tried to keep everyone around him 'sweet' and he apologised to the Committee for his actions.

Following an adjournment the Sub-Committee **RESOLVED** to revoke Mr D M's combined Hackney Carriage/Private Hire Drivers Licence.

Reasons

Members have had to determine what action to take against the holder of a combined Hackney Carriage/Private Hire Driver's Licence who has failed to provide a valid DBS certificate and received complaints against him during the course of his licence. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Members were due to determine what action, if any, to take against Mr D M for failure to provide a valid DBS Certificate on 1st December 2015. Mr D M did not attend the LSC on that date, nor did he provide any explanation for his non-attendance. On that occasion Members were advised that further information had come to light which should be reported to the LSC, accordingly in the interests of fairness, openness and transparency they resolved to defer determination of this matter to a later date where an updated report could be considered and the licensee would have the opportunity to present his case.

In making a determination Members took account of the licensee's oral representations and balanced this against the evidence in relation to his failure to

provide a valid DBS certificate and the evidence in relation to complaints on his driving record.

Members noted that Mr D M's licence had been renewed in February 2015 on the condition that (amongst other conditions) he provided a satisfactory police check, namely a valid DBS Certificate. Members note that this condition is clearly stated on the combined Hackney Carriage/Private Hire Driver's Licence issued to Mr D M. Furthermore, Mr D M was reminded by letter on 8th June and 23rd July 2015 that he must provide a copy of a valid DBS Certificates and yet, he failed to do so. Checks revealed that a DBS certificate was issued to Mr D M on 12th March 2015, however he failed to forward this certificate to the Council. Mr D M explained that he had been experiencing personal difficulties which had been all consuming and had resulted in him not being able to focus on anything else which included not opening his mail. He accepted that he had completed the forms in relation to his DBS check but explained that he was confused by the new process and was not aware that he had to provide the certificate to the Public Protection Team. He accepted that his failure to deal with letters meant he had not seen the certificate nor the reminders sent to him about his DBS certificate.

Members noted that the results of a DBS check are important evidence in relation to whether or not a licensee or new applicant is a fit and proper person.

Members noted that since 2004 there have been a number of entries on Mr D M's taxi licence record which relate to convictions for traffic offences, numerous complaints regarding poor attitude and behaviour whilst on duty as a licensed taxi driver, changing the agreed fare and refusing a fare entirely. Mr D M had received penalty points to his driving licence as well as short periods of disqualification from driving, internal penalty points on his taxi licence, a formal caution, words of advice, and several formal written warnings. Members take into account the fact that some of these matters are relatively historic and that between 2009 and 2014 there are no complaints recorded against Mr D M however, since 2014, there have been 6 complaints made against Mr D M. These complaints concern Mr D M's attitude and behaviour as well as his manner of driving whilst he was on duty and a refusal to take a fare. Notably, Mr D M received a final written warning from the Public Protection Team in June 2014 and there have been 3 complaints against him since then, all of which occurred in 2015. Mr D M acknowledged that there was a history of incidents on his file. In respect of complaints from 2015 he accepted 'speeding' on 23.07.15 and the refusal to take a fare on 30.10.15 however, in relation to the incident of 24.03.15 he did not accept that he had a hostile and rude attitude and said he charged the fare on the meter. Mr D M indicated that he had undertaken an anger management course approximately 2 years ago.

Members took on board the licensee's representations but find on balance that Mr D M is no longer a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's licence and therefore revoke his licence. Members' reasons for this decision are: Mr D M's failure to provide a valid DBS Certificate, his explanation for which they find to be unacceptable; his taxi driving record and notably, the complaints against him since the final written warning was issued in June 2014. Members are not satisfied that their friends, family or loved ones would be safe in a taxi driven by the licensee. Mr D M does not seem to have learnt from the warnings issued by the Public Protection Team or be able to conduct himself as a fit and proper person should.

111 CONSIDERATION OF CONVICTION OBTAINED - MR J R

The Senior Public Protection Officer summarised the updated report and invited the Sub-Committee to determine the issue. The Senior Public Protection Officer provided Members with copies of the statement from Mr J R with his version of events leading to the Caution, together with a copy of the Police Caution. The meeting was adjourned to allow Members time to read these documents.

After the meeting reconvened, Mr J R stated his case. Mr J R said that he had made a mistake and that he was one to blame. Mr J R apologised for his actions on 17th August 2015 and added that this was a one off incident which had happened whilst he was off duty.

Mr J R made a closing statement by saying that he had learnt a lesson and apologised for his actions on 17th August 2015.

Following an adjournment, it was **RESOLVED** to issue Mr J R with a stern warning in relation to his conduct.

Reasons

Members have had to determine what action to take against a licensed driver having obtained a caution during the course of his Hackney Carriage/Private Hire Driver's Licence. In doing so they took account of the Local Government Miscellaneous Provisions Act 1976, Human Rights Act 1998, case law and Council Policy.

This matter came before the LSC on 15th December 2015 when the Licensee failed to attend and whilst the Licensee had consented to the matter being dealt with in his absence Members were concerned about the circumstances of the matter and deferred for his attendance.

Members took into account the Licensee's oral representations, statement and balanced these against the formal police caution.

The Licensee was very apologetic towards the LSC for his conduct and said that he had expressed his remorse to the Licensing officers and the police involved in the incident. He explained that he was off duty when the incident took place, that it was out of character and that he has taken steps to improve his lifestyle since. Furthermore, he informed Members that he had learnt his lesson.

Members noted that the Council's Policy states that a licensee is expected not to have been cautioned by the police within the previous 2 years. Members were mindful that each case will be decided on its own merits and may depart from the policy where there are reasons for doing so. In this case the formal police caution was received in September 2015. Whilst this falls squarely within the policy Members felt that there were reasons to depart from it, those reasons being Mr J R's remorse, the fact that this was a one off incident that was out of character; Members were satisfied Mr J R had learnt his lesson and had taken steps to avoid this happening again. Members therefore took the view that Mr J R remained a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence however,

they took a very dim view of his behaviour and therefore issued Mr J R with a formal warning in relation to his future conduct.

The meeting ended at 12.55 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services