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# Bath & North East Somerset Council

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## Democratic Services

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Date: 22 February 2016

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**To: All Members of the Licensing Sub-Committee**

**Councillors:-** Paul Myers, Mark Shelford and Caroline Roberts

Chief Executive and other appropriate officers  
Press and Public

Dear Member

**Licensing Sub-Committee: Tuesday, 1st March, 2016**

You are invited to attend a meeting of the **Licensing Sub-Committee**, to be held on **Tuesday, 1st March, 2016 at 10.00 am** in the **Dome Room - Guildhall, Bath.**

### **Briefing**

Members of the Sub-Committee are reminded that the meeting will be preceded by a briefing at 9.30am.

The agenda is set out overleaf.

Yours sincerely

Sean O'Neill  
for Chief Executive

**If you need to access this agenda or any of the supporting reports in an alternative accessible format please contact Democratic Services or the relevant report author whose details are listed at the end of each report.**

*This Agenda and all accompanying reports are printed on recycled paper*

## NOTES:

1. **Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact Sean O'Neill who is available by telephoning Bath democratic\_services@bathnes.gov.uk or by calling at the Guildhall Bath (during normal office hours).
2. **Details of Decisions taken at this meeting** can be found in the minutes which will be published as soon as possible after the meeting, and also circulated with the agenda for the next meeting. In the meantime details can be obtained by contacting Sean O'Neill as above.

Appendices to reports are available for inspection as follows:-

**Public Access points** - Reception: Civic Centre - Keynsham, Guildhall - Bath, Hollies - Midsomer Norton, and Bath Central, Keynsham and Midsomer Norton public libraries.

**For Councillors and Officers** papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Rooms.

### 3. **Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator

The Council will broadcast the images and sound live via the internet [www.bathnes.gov.uk/webcast](http://www.bathnes.gov.uk/webcast) An archived recording of the proceedings will also be available for viewing after the meeting. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. **Attendance Register:** Members should sign the Register which will be circulated at the meeting.
5. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.
6. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted.

Arrangements are in place for the safe evacuation of disabled people.

## **Protocol for Decision-making**

### **Guidance for Members when making decisions**

When making decisions, the Cabinet/Committee must ensure it has regard only to relevant considerations and disregards those that are not material.

The Cabinet/Committee must ensure that it bears in mind the following legal duties when making its decisions:

- Equalities considerations
- Risk Management considerations
- Crime and Disorder considerations
- Sustainability considerations
- Natural Environment considerations
- Planning Act 2008 considerations
- Human Rights Act 1998 considerations
- Children Act 2004 considerations
- Public Health & Inequalities considerations

Whilst it is the responsibility of the report author and the Council's Monitoring Officer and Chief Financial Officer to assess the applicability of the legal requirements, decision makers should ensure they are satisfied that the information presented to them is consistent with and takes due regard of them.

**Licensing Sub-Committee - Tuesday, 1st March, 2016**

**at 10.00 am in the Dome Room - Guildhall, Bath**

**A G E N D A**

1. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out under Note 5 on the previous page.

2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

3. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* **an other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

4. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

5. MINUTES: 16 FEBRUARY 2012 (Pages 7 - 10)

6. TAXI PROCEDURE (Pages 11 - 14)

The Chair will, if required, explain the procedure.

7. EXCLUSION OF THE PUBLIC

The Committee is asked to consider passing the following resolution:

“that having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the

following item(s) of business and the reporting of the meeting be prevented under Section 100A(5A) 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.

8. CONSIDERATION OF COMPLAINTS RECEIVED - MR DF (Pages 15 - 42)

The Committee Administrator for this meeting is Sean O'Neill who can be contacted on [democratic\\_services@bathnes.gov.uk](mailto:democratic_services@bathnes.gov.uk).

**BATH AND NORTH EAST SOMERSET COUNCIL**

**LICENSING SUB-COMMITTEE**

Tuesday, 16th February, 2016, 10.00 am

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

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

**123 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

**124 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

**125 DECLARATIONS OF INTEREST**

There were none.

**126 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

**127 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, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for agenda items 7, 8 and 9 and the reporting of the meeting be prevented under Section 100A(5A) 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.

**128 TAXI PROCEDURE**

The Chair explained the procedure to be followed for agenda items 7, 8 and 9.

**129 APPLICATION FOR PRIVATE HIRE OPERATOR'S LICENCE - MR DM**

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

The Senior Public Protection Officer summarised the report and provided Members with copies of a DBS certificate, a statement submitted by Mr DM and three references given on his behalf. The meeting was adjourned to allow Members time to read these documents.

Mr DM stated his case and was questioned by Members. He did not wish to make a closing statement.

Following an adjournment the Sub-Committee **RESOLVED** to grant Mr DM a Private Hire Operator's Licence.

### Reasons

Members have had to determine an application for a Private Hire Operator's 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.

In making a determination Members took account of the applicant's oral representations, his statement, references and balanced these against the information contained in the Disclosure and Barring Service report.

The applicant did not try to go behind his conviction which he noted was not for violence but explained that it arose out of a particularly stressful period involving private family proceedings. He explained to members that he had moved on and felt that his previous difficulties would not impact upon his ability to act as a Private Hire Operator.

Members noted that according to the Council's Policy, an applicant is expected to have not been convicted of an offence during the previous 3 years and Mr D M's conviction falls squarely within this period. Members felt however, that taking into account the nature, seriousness, frequency of offending and mitigating circumstances that Mr D M is a fit and proper person to hold a Private Hire Operator's Licence. Their reasons for this are that:

- The conviction was a one-off in Mr D M's antecedent record which is otherwise unblemished.
- The conviction arose out of a private, domestic matter at a time of extreme stress in Mr D M's life.
- Since that time, Mr D M has moved on and confirmed to members that his relationship with the complainant in relation to the conviction is now amicable.

### **130 CONSIDERATION OF CONVICTIONS OBTAINED - MR MJS**

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

The Senior Public Protection Officer summarised the report and distributed a DVLA report showing three endorsements on Mr MJS's driving licence for speeding offences.

Mr MJS stated his case and was questioned by Members. He made a closing statement.

Following an adjournment the Sub-Committee **RESOLVED** to suspend Mr MJS's combined Hackney Carriage/Private Hire Driver's licence for one week.



## Reasons

Members have had to determine what action, if any, to take against the holder of a combined Hackney Carriage / Private Hire Driver's Licence having obtained three convictions 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 took account of the applicant's oral representations and balanced these against the DVLA print provided.

Accordingly Members had to decide whether the licensee continued to be a fit and proper person to hold a licence taking into account all the circumstances including his driving history and character.

The licensee accepted that he had received three convictions for speeding offences within the last three years and he did not seek to go behind those convictions. He explained that in each instance, as far as he could recall, he was only 5 or 6 miles per hour over the speed limit. On each occasion he said he was driving his licensed vehicle but was not on duty. Mr S said that he is normally very aware of speed and would not speed whilst he had members of the public on-board. He said he was definitely more aware of his speed since these instances.

Members noted that Mr S had been licensed since February 2003 and save for these convictions, had no complaints against his taxi licensing record. That said the Council's Policy expects a licensee not to have been convicted of 3 or more minor motoring offences during the previous 3 years. Mr S's convictions fall squarely within this part of the Policy. Members heard that Mr S had not taken up the Speed Awareness Course despite being offered it for his first speeding offence. Furthermore, Mr S committed his most recent two speeding offences in the space of 5 months and in similar circumstances, this frequency gave Members cause for concern. Whilst Mr S stated that he was not on duty at the time of these offences, there was a wider risk to pedestrians and other road users; this is not the conduct expected of a BANES licensed taxi driver.

For the reasons stated above Members take the view that Mr S's conduct has not been that of a fit and proper person but view revocation as disproportionate. Accordingly, members suspend Mr S's licence for a period of 7 days in order to allow him to reflect on his behaviour and deter him from misconduct in the future. Following the end of the period of suspension Members take the view that Mr S will be a fit and proper person again.

### **131 TAXI COMPLAINTS PROCEDURE**

### **132 CONSIDERATION OF COMPLAINTS RECEIVED MR DF**

Mr DF had sent an email to the Senior Public Protection Officer explaining that he was unable to attend today's hearing and requesting that the hearing be deferred.

**RESOLVED** to defer the hearing a future date to allow Mr DF to attend.

## Reasons

Members considered the applicant's written request to defer the meeting due to his non-availability as a result of work commitments. In all the circumstances and in the interests of openness, transparency and fairness Members resolved to defer the meeting to the first suitable date where the licensee should present his case. Members noted that the matter may proceed in Mr D F's absence on the next occasion.

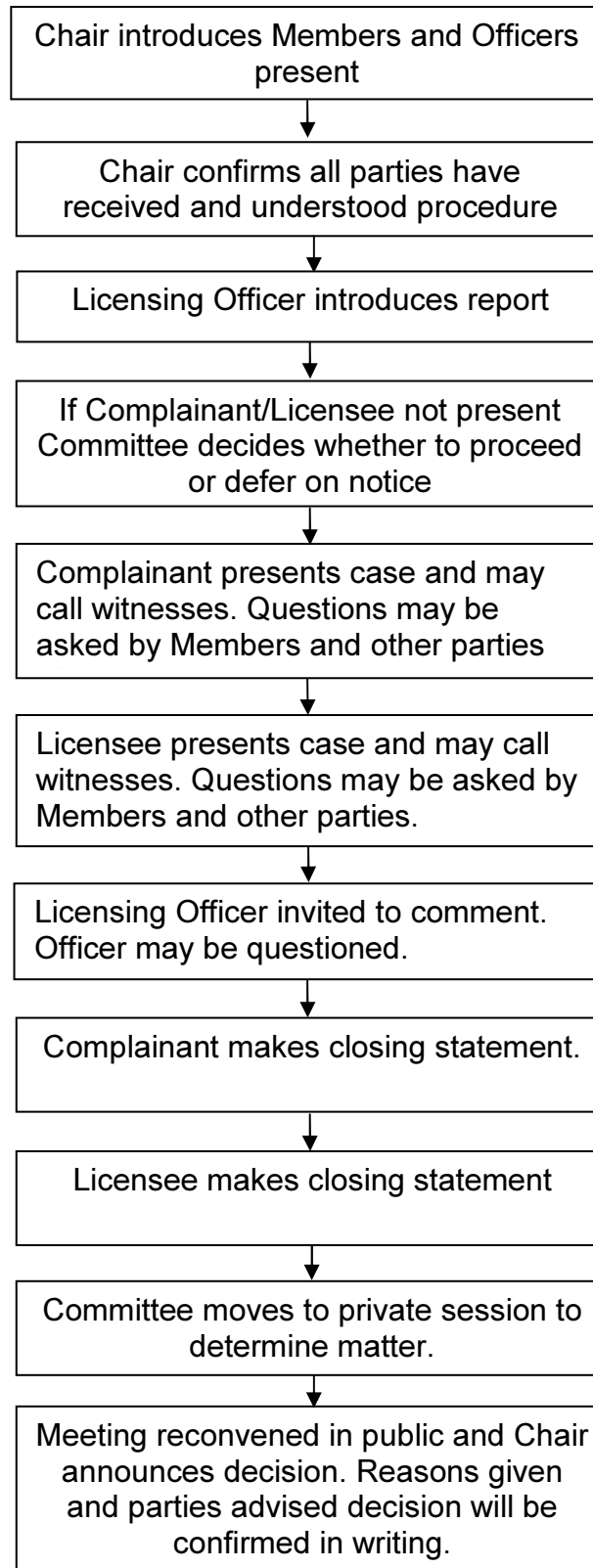
The meeting ended at 12.25 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

**LICENSING SUB-COMMITTEE  
HACKNEY CARRIAGE (TAXI) AND  
PRIVATE HIRE VEHICLES COMPLAINT PROCEDURE**



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**Licensing Sub Committee  
Hackney Carriage and Private Hire Drivers  
Complaint Hearing Procedure**

1. The Chair will introduce Members of the Committee, introduce the Officers present, explain the procedure to be followed and ensure those present have received and understood that procedure.
2. The Licensing Officer will outline the nature of the matter to be considered by the Committee.
3. The Complainant presents their case, may call witnesses and may be questioned by the Committee and other parties. Where a written complaint has been made the complaint will be read by the Committee. The procedure will be repeated should there be more than one complainant.
4. The Licensee presents their case, may call witnesses and may be questioned by the Committee and other parties.
5. The Chair will ask the Licensing Officers present whether they wish to comment. An Officer making comment may be asked questions.
6. The Complainant is invited to make a closing statement
7. The Licensee is invited to make a closing statement.
8. The Chair will invite the Committee to move into private session to enable the Members to deliberate in private. The Committee will reconvene publicly if clarification of evidence is required and/or legal advice is required. The Committee may retire to a private room, or alternatively require vacation of the meeting room by all other persons.
9. Whilst in deliberation the Committee will be accompanied by Legal and Democratic Services Officers for the purpose of assisting them in drafting their reasoning for the decision.
10. The Committee will reconvene the meeting and the Chair will announce the Committee's decision with reasons and advise that the decision will be released in writing within the statutory time limits.

### **PLEASE NOTE:**

- Where the Committee considers it necessary the procedure may be varied.
- In circumstances where a party fails to attend the Committee will consider whether to proceed in absence or defer to the next meeting. Should a matter be deferred the deferral notice will state that the matter may proceed in a party's absence on the next occasion. In deciding whether to proceed all notices, communications and representations will be considered.
- Only in **exceptional circumstances** will the Committee take account of additional late documentary or other information and will be at the discretion of the Chair and on notice to all the other parties. No new representations will be allowed at the hearing.
- The Committee will disregard all information or representations considered irrelevant.
- The hearing will take the form of a discussion. The Committee will allow parties to the proceedings to ask questions. Formal cross examination will be discouraged and, should they be necessary, supplementary questions allowed for clarification purposes only.
- Parties will have an equal amount of time to present their cases. Whilst time limits are at the Chair's discretion, in the interests of cost and efficiency, presentations will not normally exceed **twenty minutes** to include summarising the case. Time limits will not include the time taken for questions.

#### **N.B.**

1. Where there is more than one party making relevant representations the time allocated will be split between those parties.
  2. Where several parties are making the same or similar representations it is suggested that one representative is appointed to avoid duplication and to make the most efficient use of the allocated time.
  3. Where an objection is made by an association or local residents group, a duly authorised person – as notified to the Licensing authority – may speak on behalf of that association or local residents group.
- The Chair may request that persons behaving in a disruptive manner should leave the hearing and their return refused, or allowed subject to conditions. An excluded person is however, entitled to submit the information they would have been entitled to present had they not been excluded.
  - Bath & North East Somerset Council is committed to taking decisions in an honest, accountable and transparent fashion. On occasion however, it may be necessary to exclude members of the press and public pursuant to the Local Government Act 1972 Schedule 12 (a). In those circumstances reasons for such decisions will be given.
  - If a person has special needs regarding access, hearing or vision, this should be brought to the Licensing Authority's attention prior to the hearing so that reasonable adjustments may be made.

**Access to Information Arrangements**

**Exclusion of access by the public to Council meetings**

Information Compliance Ref: LGA 310/16

Meeting / Decision: Licensing Sub-Committee

Date: Tuesday 16th February 2016.

Author: John Dowding

Exempt Report Title: Consideration of Complaints Received:

Exempt Appendix Title:

**List of attachments to this report:**

**Annex A – Current Combined Hackney Carriage/Private Hire Drivers Licence.**

**Annex B –.Email from South Gloucestershire Council.**

**Annex C – Complaint August 2011.**

**Annex D – Council Policy**

The Report contains exempt information, according to the categories set out in the Local Government Act 1972 (amended Schedule 12A). The relevant exemption is set out below.

Stating the exemption:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

The public interest test has been applied, and it is concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure at this time. It is therefore recommended that the Report be withheld from publication on the Council website. The paragraphs below set out the relevant public interest issues in this case.

## PUBLIC INTEREST TEST

If the sub-Committee wishes to consider a matter with press and public excluded, it must be satisfied on two matters.

Firstly, it must be satisfied that the information likely to be disclosed falls within one of the accepted categories of exempt information under the Local Government Act 1972. The officer responsible for this item believes that this information falls within the following exemptions and this has been confirmed by the Council's Information Compliance Manager.

The following exemptions are engaged in respect to this report:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Exemptions 1 and 2 above must be considered in conjunction with the Principles of the Data Protection Act 1998 (DPA). It is considered that disclosure of the information in this report would breach the first principle of the DPA, which requires personal data to be fairly and lawfully processed. Further, as any information revealed by the Criminal Records Bureau check is likely to constitute sensitive personal data in terms of the DPA, this information cannot be disclosed by the Council without the explicit consent of the individual concerned.

Secondly, it is necessary to weigh up the arguments for and against disclosure on public interest grounds. It is considered that there is a public interest in information about individuals applying for taxi licences in the area, and in particular, information as to the backgrounds of those individuals.

Other factors in favour of disclosure include:

- furthering public understanding of the issues involved;
- furthering public participation in the public debate of issues, in that disclosure would allow a more informed debate;
- promoting accountability and transparency by the Council for the decisions it takes;
- allowing individuals and companies to understand decisions made by the Council affecting their lives and assist individuals to challenge those decisions.

However there is a real risk that the first Principle of the DPA will be breached by this disclosure, and that the individual/s concerned could bring a successful action against the Council if the disclosure occurred. Therefore it is recommended that exemptions 1 and 2 in Schedule 12A stand. The Council considers that the public interest is in favour of not holding this matter in open session at this time and that any reporting on the meeting is prevented in accordance with Section 100A(5A)



Due to the factors outlined above, further consideration has not been given to the application of exemption 3 of Schedule 12A.

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By virtue of paragraph(s) 1, 2, 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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