

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING SUB-COMMITTEE**

Thursday, 15th October, 2020

**Present:-** Councillors Manda Rigby (Chair), Sally Davis and Steve Hedges

**Also in attendance:** John Dowding (Lead Licensing Officer), Shaine Lewis (Team Leader, Legal Services) and Michael Dando (Senior Public Protection Officer)

#### **22 WELCOME & INTRODUCTIONS**

The Chair welcomed everyone to the meeting and introduced the other members of the Sub-Committee and the officers who were present.

#### **23 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **24 DECLARATIONS OF INTEREST**

Councillor Sally Davis said she had been present at a previous meeting of Full Council where the driver, who is the subject of today's hearing had made a statement.

Councillor Steve Hedges said that he was also present at the Council meeting and had met the driver on one other occasion for a general discussion regarding taxis.

Councillor Manda Rigby said that she too was present at the Council meeting and had also had one subsequent meeting with the driver and that there had been no predetermination and would be dealt with on its merits.

#### **25 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **26 MINUTES OF PREVIOUS MEETING - 24TH SEPTEMBER 2020**

The Sub-Committee approved the minutes of 24<sup>th</sup> September 2020 as a correct record.

#### **27 TAXI PROCEDURE**

The Chair explained the procedure for the meeting to all parties who were present.

The parties confirmed that they understood the procedure to be followed for the hearing.

## 28 EXCLUSION OF THE PUBLIC

The members of the Sub-Committee agreed that they were 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. They **RESOLVED** that the public should 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.

## 29 CONSIDERATION OF FIT AND PROPER - 1902441TAXI

The Lead Licensing Officer presented the report to the Sub-Committee. He explained that the report invited the Members to consider whether the driver before them remains fit and proper to hold a combined Hackney Carriage/Private Hire Drivers licence issued by the authority.

He stated that the Sub-Committee is asked to consider the matter, determine the issue and take any action it may consider suitable after hearing any representation from the driver or any representative acting on his behalf.

He showed the Sub-Committee a video of the driver acting in an obstructive manner when other vehicles were attempting to pass his stationary vehicle.

The driver's representative addressed the Sub-Committee. He said that the driver has dyslexia and that when he was informed that his vehicle had failed both the Compliance Test and MOT test on the 22nd October 2019 he was confused as he had only taken the vehicle to Bathwick Tyres for a pre-MOT check on 18<sup>th</sup> October 2019.

The driver's representative said that on 22<sup>nd</sup> October 2019 when the driver was on his way to the Test Centre he had hit a loose manhole cover and reported the matter via Fix My Street. He added that the driver did call Russell's of Bath a Private Hire Operator to request that someone cover his school run that afternoon.

He informed the Sub-Committee that new tyres had been fitted to the driver's vehicle on 23<sup>rd</sup> October 2019, but that he had not been informed by the Test Centre to not drive the vehicle due to the MOT failure and was not aware that the guidance had changed that meant that failure of an MOT test cancels the previous one held, even if the previous test had remaining days on it.

He stated that the vehicle was re-tested on the 29th October 2019 and subsequently passed the Compliance Test and MOT test.

Councillor Steve Hedges asked even if he believed that he could drive the vehicle on the merit of the old MOT certificate, why would he drive it with a serious defect and carry members of the public.

The driver replied that he had the new tyres fitted on the morning of 23<sup>rd</sup> October and that at that time he had not driven the vehicle with any passengers inside it. He added that he genuinely believed that he was still able to drive the vehicle as the

previous MOT was in place until 14th November and that he didn't knowingly drive with the serious defect.

Councillor Davis commented that she was concerned that he was not aware of the MOT rule change.

The Chair asked if any evidence could be provided that he had hit the manhole cover on 22<sup>nd</sup> October as stated and that it had been reported via Fix My Street.

The driver replied that he could not provide evidence to the Sub-Committee but stated that it was situated outside the new tattoo shop on the Upper Bristol Road, Bath and that he had previously reported it in late September 2019.

The Chair asked if he could explain the reason for his behaviour shown in the video.

The driver replied that the person taking the video was another licensed driver that was parked in a resident only spot on the street that he lived and said that he overreacted to the situation.

The Chair asked if he felt that his reaction was fit and proper behaviour and what he would do now if a similar incident occurred.

The driver replied that he would ignore future incidents.

The Lead Licensing Officer asked if when the fail sheet was issued on October 22<sup>nd</sup> did he repair the vehicle immediately and then return to work.

The driver replied that returned to work the next evening, October 23<sup>rd</sup>.

The Lead Licensing Officer asked the driver to confirm whether it was only the tyres of his vehicle that had been replaced before he returned to work on October 23<sup>rd</sup>.

The driver replied that the parts had been ordered for the defects that had been reported and that the tyres and the bearings had been fitted and replaced before he returned to work on October 23<sup>rd</sup>.

The Chair asked if he would like to comment on any further incidents that had been reported.

The driver replied that he was driving in the bus lane on the London Road where another vehicle swerved in his direction on two occasions. He said that he responded to this by simply making a shrugging gesture to question "What are you doing?".

The Chair asked if he could comment further on the breach of conditions relating to the failure to display the required vehicle licence identification plate.

The driver replied that this on his way to carry out a school run there had been no signage on top of his vehicle but said that that was because he had not officially started work until he had picked up the passenger. He added that signs are now on his vehicle at all times.

He explained that due to having varying sizes of Velcro strips available to him he had on occasion displayed the plates from inside his vehicle through the window. He said that on one occasion the Lead Licensing Officer had passed him on the way to work travelling in the opposite direction and had observed that the plates were not displayed correctly.

The Lead Licensing Officer commented that he had also observed the identification plates being displayed incorrectly whilst being a pedestrian.

The Chair asked if he could give evidence so that the members of the Sub-Committee would be comfortable to allow friends and family members in a vehicle with him.

The driver replied that he does all he can to make his car safe and that he had been commended on his school runs. He added that he regularly checks the tyres on his vehicle and that it had just passed a further MOT on Monday with no advisories.

He stated that he has disposable masks available in his vehicle due to Covid-19 and anti-bacterial hand gel.

He said that he genuinely had not been aware of the MOT rule change meaning that he should not have been driving his vehicle after it had failed and had discussed the matter with four other senior drivers who were also not aware.

He informed the Sub-Committee that being a licensed driver gave him the ability to carry out charity and volunteering work.

The Chair asked for further information on the driver's social media conduct.

The Lead Licensing Officer said that the driver had written derogatory comments on his closed Facebook group and had used foul language to describe a driver who had made a genuine mistake driving his car down a newly developed set of steps. He said that a complaint had been received regarding the language used to describe the other driver.

He added that the other complaint generated from social media involved a post that was related to Uber with a thread involving a question from someone in Canada who enquired why there are problems with Uber drivers in the UK, the driver responded "Muslims".

He said that this was brought to the attention of the licensing officer by a Muslim driver who felt it was Islamophobic in nature.

The Chair asked how the driver's behaviour compared to that of other licensed drivers.

The Lead Licensing Officer said that the driver had committed a number of offences over a period of time and that these included aggressive behaviour and inappropriate comments on social media. He added that he felt that a structured email process had

been carried regarding the incidents raised and that he would expect any licensed driver to reply in a timely fashion.

The Chair asked if the Licensing department were aware of the driver's dyslexia.

The Lead Licensing Officer said that he recalled that it had been mentioned briefly previously and that support had been offered to the driver.

The Chair asked for any closing statements to be made.

The Lead Licensing Officer said that the information supplied in the report was accurate and should stand on its own merits.

The driver's representative reiterated that the driver had no idea that the MOT rule had changed which meant that once the vehicle had been issued with a failure notice he was unable to drive the vehicle despite the previous notice being in place in terms of date.

He said that the driver had worked on many forums with the Council and carried out local volunteer and charity work, including the delivery of food parcels as a result of lockdown due to Covid-19.

He stated that he would be happy to let a family member travel with the driver.

The driver stated that he would never knowingly do anything wrong and that he frequently checks the tyres on his vehicle and has it regularly serviced. He added that the vehicle was Covid-19 compliant.

He said that being a licensed driver gave him the flexibility to undertake community work and work for local charities.

Following an adjournment, the Sub-Committee **RESOLVED** that the combined Hackney Carriage/Private Hire Drivers licence of the driver concerned be revoked.

### Reasons

Members have had to consider whether a Licensee remains fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Whilst reminding themselves that each case is taken on its merits Members are aware that the character of a person does not change when they become a licensed driver and further, that the whole of a person's character is of relevance and that the economic impact of the decision on the Licensee is irrelevant as their primary concern is public protection. Members, therefore, took account of the licensee's representations, the representations from his representative and balanced these representations against the information contained in the report before them. In making their decision, however, Members asked themselves the following question; would they, as members of the Licensing Sub Committee, allow their friends, family,

loved ones or any other person for whom they care to travel alone in a vehicle driven by this person?

With regards to the Licensee's responsibility to keep his vehicle safe Members found the following. In May 2019 the vehicle was presented for a Council Compliance test when a front suspension fault and two (2) rear tyres with exposed cords were recorded. Further, on 30 October 2019, when the vehicle was presented to renew its vehicle licence, the documentation disclosed that whilst the vehicle had passed the Compliance and MOT tests it had failed both tests on 22 October 2019. The MOT failure recorded several defects including 3 Major (repair immediately) and 1 Dangerous (do not drive until repaired) with the Major defects being; engine MIL inoperative or indicates a malfunction; offside rear wheel bearing has excessive play; nearside rear lower suspension arm pin or bush excessively worn and the Dangerous Defect being an offside rear tyre with its ply or cords exposed inner edge. Major and Dangerous defects are both MOT failures.

Members noted that the Licensing Officer wrote to the Licensee seeking an explanation as to how the vehicle had failed two (2) Council inspections and an MOT test within months. These failures were despite the Licensee being reminded of his responsibilities and the Dangerous defects being such that should have been identified on any visual inspection. In response to this request the Licensee stated his vehicle is serviced more regularly than the manufacturer suggests, he carries out daily visual checks and, in any event, the existing MOT did not expire until 14 November 2019. With regards to the MOT Certificate, and whilst taking a dim view of this response, Members noted that ignorance of the fact Dangerous defects cancel out an MOT and that a discrepancy of 1 mile gave rise to a concern that the vehicle had been driven whilst defective. Accordingly, Members found it reasonable for the Licensing Officer to investigate this discrepancy.

Members noted the investigation found the Licensee had potentially used a defective Private Hire Vehicle between 22 and 29 October 2019. In particular, the vehicle was used for 5 journeys between Bath and Bristol between 23 and 29 October and used for home to school contract work between the afternoon of 23 October and 25 October 2019. Accordingly, and in the absence of evidence indicating the Major defects had been resolved, further explanation was sought from the Licensee. Members, however noted, that whilst invoices were provided for the purchase of several parts no explanation, evidence or receipt was provided establishing when the Major defects were in fact rectified. Instead, however, the Licensee responded that he had paid cash, all defects had been resolved and by email that he had nothing further to add.

In terms of the Licensee's responsibilities Members found the following. Members found it extraordinary that the daily visual checks the Licensee said he had carried out had not revealed, over a period of time, that the vehicle's tyres were deteriorating and that three (3) of them on two (2) separate occasions had become so dangerously worn that the cord was exposed.

Accordingly, Members do not believe that these visual checks were carried out as the Licensee had claimed. Moreover, Members heard nothing to suggest the Private Hire Operators' records were inaccurate or that the Major defects had, as a matter of fact, been rectified in the timescale suggested by the Licensee. Members therefore

found on the balance of probabilities that the vehicle was used with Major defects to carry the public and that this was extremely irresponsible. Members therefore concluded that the Licensee needlessly put himself, the public and other road users at risk of serious harm and together with his delay and ultimate refusal to comply with the Licensing Officer's request find his conduct not that to be expected from a BANES licensed driver.

Members were disappointed to note several conduct issues had arisen since the grant of the licence. These included breaches of Licensing Conditions and aggressive conduct matters which have variously been dealt with by verbal advice and or Penalty Points in accordance with the Council Policy. There was also, however, a complaint of bullying on social media and the Licensee acknowledged that he used foul language on his website in describing fellow Licensed driver. In terms of the Licensee's social media Members further noted an extremely distasteful thread which appeared to classify Uber drivers as Muslim who should be banned from Bath. Whilst noting the Licensee's conduct had been dealt with by way of a warning letter Members found this conduct inappropriate, bullying and Islamophobic.

In determining this matter Members remind themselves of the considerable risks associated with unsuitable people holding a licence and that licences come with significant responsibility. In terms of risks these not only include Licensees putting passengers at risk, but also other road users should mechanically defective vehicles be used. Further, and in terms of responsibilities, all Licensees have the responsibility to ensure their conduct does not undermine public confidence in the licensing regime. Accordingly, Members reminded themselves that a Licensee's overriding concern must be the welfare of the public and that the Licensee must act accordingly.

In all the circumstances Members found over time the Licensee's conduct was such that he had left the Licensing Officer with no alternative other than to refer his conduct to the Licensing Sub Committee for a determination as to whether he remains fit and proper. Members, whilst noting the good works the Licensee had done in the community, nevertheless focused on his actions as a Licensee and that the safety of the public was the primary focus of the meeting. In considering the matters this morning Members did not find the Licensee's accounts credible, consistent or compelling but rather found they served to frustrate the administration and enforcement of the Licensing regime. Further, not only did he recklessly endanger the safety of the travelling public, his conduct at times was provocative, aggressive and he allowed language to be published that was foul, distasteful and Islamophobic if not borderline racist. Accordingly, Members took an extremely dim view of this behaviour which is certainly not that expected from any BANES licensed driver.

Accordingly, and in answer to the question whether they would allow their friends, family, loved ones and indeed all members of the community to travel alone in a vehicle driven by this person? On the balance of probabilities Members' answer to the question was no.

Members did, however, consider suspending the licence to give the Licensee an opportunity to reflect on his conduct and change his behaviour. In all the circumstances, however, they found the Licensee's course of conduct and

engagement with the Licensing Authority such that it demonstrated a suspension would not serve to change his behaviour and therefore the licence is revoked.

The meeting ended at 12.00 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**