

# **BATH AND NORTH EAST SOMERSET COUNCIL**

## **LICENSING SUB-COMMITTEE**

Thursday, 11th August, 2022, 10.00 am

**Councillors:** Rob Appleyard (Chair), Michael Evans and Steve Hedges

**Officers in attendance:**

### **46 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer drew attention to the Emergency Evacuation Procedure.

### **47 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were no apologies for absence or substitutions.

### **48 DECLARATIONS OF INTEREST**

There were no declarations of interest.

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

There was no urgent business.

### **50 MINUTES OF PREVIOUS MEETING: 27TH JULY 2022**

**RESOLVED** that the minutes be confirmed as a correct record and signed by the Chair.

### **51 LICENSING PROCEDURE**

The Chair outlined the procedure for the meeting which had been circulated to all parties in advance of the meeting. He asked whether the licence holders who were present at the meeting to make representations understood the procedure and they confirmed that they did.

### **52 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.

**RESOLVED** that the public be excluded from the meeting for the following items 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.

### **53 CONSIDERATION OF FIT AND PROPER - 2200499TAXI**

The Lead Officer - Licensing presented the report to the Sub-Committee. He advised Members to consider the matter, determine the issue and take any action they may consider suitable after hearing the representation from the licensee.

The licensee outlined her case as follows:

1. She had held a licence for nearly 30 years without any complaints.
2. She had always submitted her documents in time before 2020, but since that time she had some incidents in her personal life which meant that she had not been so organised in the administrative side of her business.
3. She had relied on her insurance company sending the confirmation to the Licensing Office as they had always done so in the past but had neglected to do so on this occasion. She accepted it was her responsibility and she would make sure that she did this herself in the future. The Lead Licensing Officer confirmed that it was not unusual for drivers to rely on insurance brokers to supply proof of insurance, but he would always recommend against it as it was the responsibility of the driver to provide the information.
4. At no point had her vehicle been without insurance or a valid MOT. There was a point where the garage was waiting for some parts, but the vehicle was off-road in the garage during this time.
5. She asked the Sub-Committee to also take into consideration that she had received 3 penalty points on her driving license for driving 24mph in a 20mph zone. The Lead Licensing Officer confirmed that as this was the first incident of its kind, it would result in a first warning letter and no further action would be taken.

The members of the Sub-Committee, Lead Licensing Officer and Team Leader, Legal Services asked questions of the licensee regarding each of the issues raised in the report and she responded accordingly:

1. She did now understand the importance of providing the correct documentation in a timely manner to assist the Council in its role of protecting the public and would endeavour to do this in the future.
2. She had evidence which she could now supply to the Licensing Office and apologised for not doing this sooner.

The Chair asked the licensee if she felt she had received a fair hearing and had said everything she wished to say before the meeting was adjourned. The licensee confirmed that she had done so.

The licensee and licensing officers left the meeting as the Committee made their decision and were invited back to hear the decision and reasons.

### Decisions and Reasons

Members considered whether or not the applicant was a fit and proper person to continue to hold her combined Hackney Carriage/Private Hire Driver's licence in the light of failures to comply with the terms of her Hackney Carriage Proprietor'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 Policy.

Members heard from the licensee in oral representations who apologised to the Licensing Sub-Committee for taking their time and for not putting her paperwork in. She explained that she now understood the importance of providing her MOT and

insurance documents to ensure the safety of the travelling public. She confirmed to Members that even when she did not provide her insurance documents on time, she always had insurance in place, furthermore, she always had her MOT in place save for in March 2022 when it expired on 16<sup>th</sup> March as there was delay in the repairs due to lack of availability of a part. Her vehicle was off the road in the garage until the repairs were carried out and it passed its MOT on 25<sup>th</sup> March 2022. In relation to the failure to provide the insurance certificate in 2021 she explained that she had asked her broker to provide the certificate to the licensing department and he had failed to do so, she acknowledged however, that this was her responsibility.

The licensee explained that there were extenuating personal circumstances in 2020 and 2022 that had impacted her ability to manage her paperwork and Members accepted the details of the account that she provided in this regard.

Whilst addressing members on the matters before the Licensing Sub-Committee the licensee disclosed that she had received 3 penalty points on her DVLA licence on 14.01.22 for travelling at 24mph in a 20mph limit. The Lead Licensing Officer Mr Dowding indicated that if she had notified the Licensing Department of this, as this was her first breach of condition related to failure to notify a conviction within the requisite period, she would have received a warning.

Members noted that compliance with the conditions relating to MOT and insurance certificates and notifying convictions, is vital so that the Council can be assured that the safety of the public when travelling in a BANES licensed vehicle is not compromised. Indeed, compliance with all licence conditions is of the utmost importance.

Members noted however, that there had been no complaints from the public relating to the licensee's conduct and she had been licensed as a Hackney Carriage/Private Hire Driver for in the region of 25 years.

Members found that the licensee's account was credible, she expressed genuine remorse for her non-compliance with the conditions of her licence and seemed to fully appreciate now the importance of these conditions. Members have no doubt that she is a good taxi driver who otherwise conducts herself well and offers excellent customer service but needs to improve her skills when it comes to her administrative responsibilities. With that in mind, on balance, members find that the applicant is fit and proper to continue to hold the combined Hackney Carriage/Private Hire Driver's Licence, but they issue a final warning that the licensee:

1. Cannot rely on her broker to submit documents to the licensing authority as it is her responsibility to comply with the conditions of her licences.
2. She must comply with the conditions on her licences as they are an important safeguard to ensure the safety of the travelling public.
3. If she comes before the Licensing Sub-Committee again, against this background, there is a strong risk of revocation of her licence.

## **54 CONSIDERATION OF FIT AND PROPER - 2200251TAXI**

The Lead Licensing Officer presented the report to the Sub-Committee. He advised Members to consider the matter, determine the issue and take any action they may consider suitable after hearing the representation from the licensee.

The licensee presented his case as follows:

1. There had been incidents in the past where he had not supplied documents in time which had been administrative errors on his part. He had received penalties for this and now set reminders to ensure that he wouldn't miss deadlines.
2. He had driven to the licensing office to collect his new badge not knowing that he was not able to drive his vehicle for personal use without a badge. This had been a genuine mistake and he had not tried to hide it from the licensing officer. The Lead Licensing Officer confirmed this account but stated that drivers should be aware of this as part of the knowledge test.
3. He accepted he had made a serious error in driving his vehicle after it failed his MOT. He had promised to give a friend a lift to Glasgow and did not want to let him down. He confirmed he had evidence of his friend's address to show the Sub-Committee.
4. He asked the Sub-Committee to consider his record of a taxi driver as he had made approximately 15,000 journeys without a single complaint.

The members of the Sub-Committee, Lead Licensing Officer and Team Leader, Legal Services asked questions of the licensee regarding each of the issues raised in the report and he responded accordingly:

1. He had not intended to mislead the Lead Licensing Officer when he said his car was in the garage after failing its MOT but had replied to the email too quickly before considering his response.
2. He was uncertain whether his insurance would be invalid if he drove his vehicle after it had failed its MOT and whether the previous MOT pass superseded the subsequent fail. The Lead Licensing Officer confirmed that the insurance would be null and void in such circumstances.
3. He did not dispute the facts of the case and admitted that he had made mistakes.

The Chair asked the licensee if he felt he had received a fair hearing and had said everything he wished to say before the meeting was adjourned. The licensee confirmed he had prepared a closing statement but questioned whether he should read it. The Team Leader Legal Services encouraged him to make his statement to ensure that the committee had all the necessary information to make their decision.

The licensee then read a statement regarding his personal circumstances and the importance of him retaining his licence.

The licensee and licensing officers left the meeting as the Committee made their decision and were invited back to hear the decision and reasons.

### Decisions and Reasons

Members considered whether or not the applicant was fit and proper to continue to hold his combined Hackney Carriage/Private Hire Driver's licence in the light of failures to comply with the terms of his Hackney Carriage Proprietor's Licence, breaches of condition relating to his Combined Hackney Carriage/Private Hire Driver's Licence and driving his vehicle whilst it had failed its MOT due to a dangerous defect. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council Policy.

Members heard from the licensee in oral representations who acknowledged the extent of the matters against him which he expressed embarrassment in relation to. He asked Members to consider how he had already been dealt with, namely, the warning letters that he had received and penalty points. He indicated that he had now set diary and phone reminders to ensure that he upholds his obligations in the timescales required.

In relation to the matter at 3.21 of the report and driving his licensed vehicle without a combined Hackney Carriage/Private Hire Driver's Licence, he acknowledged now that he was wrong but explained that at the time, he did not know that he could not drive the vehicle and was not trying to hide anything but explained it was due to a lack of knowledge on his part.

The licensee acknowledged before the Members that the most serious matter was the vehicle being driven after it failed its MOT earlier this year. His verbal account was consistent with the explanation given at Annex E of the report. He accepted on questioning that his initial account that it was at the garage for the days that it did not have a valid MOT, was not true and explained that he responded quickly to Mr Dowding's e-mail and should have given it more thought. In relation to his subsequent account that he had taken his friend on a long journey, he explained that he had written confirmation from the friend in relation to the journey and a screenshot to prove the friend's address. Members did not request to see these documents because there was no dispute that the licensee had them and there was no dispute that he had driven the vehicle 855 miles without an MOT. The licensee accepted that his behaviour was foolish, careless and stupid and he should not have taken his friend on the journey even if he had to pay another 'cabby' to do it. He told Members that he was deeply regretful.

The licensee asked Members to take note of the fact that in the years he had been a licensed driver, on a conservative estimate, he must have taken 15000 passengers and they had all got to their destination safely, had no issues with him, his vehicle or any other aspect. That said, he accepted he should have been wiser and smarter with his taxi, but he said that he thinks he is fit and proper and he has his car serviced regularly and is not neglectful of it.

Members noted that compliance with the conditions relating to MOT and insurance certificates is vital so that the Council can be assured that the safety of the public when travelling in a BANES licensed vehicle is not compromised. Similarly, conditions relating to notification of cautions and convictions are an important safeguard to ensure that the Council can monitor the fit and proper status of a licensed driver.

Members noted that the licensee had a number of failures to comply with conditions in relation to both his Hackney Carriage Proprietor's Licence and his combined Hackney Carriage/Private Hire Driver's Licence, as follows:

On 13.07.17 the licensee was served with a notice under s.68 Local Government (Miscellaneous Provisions) Act 1976 which suspended his vehicle licence immediately as it had been reported that his vehicle was immobilised by the DVLA due to non-payment of the road fund licence. The licensee had been using the vehicle for public hire without a road fund licence in place. The licensee explained in writing this was due to an oversight on his part.

On 01.06.2018 he received a formal written warning for breach of condition, namely, failure to produce his new insurance certificate or cover note within 7 working days of the expiry of the current certificate or cover note ("the Insurance Condition").

On 01.05.19 he received 4 penalty points on his BANES licence for a further failure to comply with the Insurance Condition.

On 03.06.19 the licensee was seen driving a Hackney Carriage without holding a combined Hackney Carriage/Private Hire Driver's Licence. The licensee explained in an interview under caution that this was done unintentionally, through ignorance of the legislation. The licensee accepted a simple caution for the commission of this offence.

On 24.12.20 the licensee was convicted of a speeding offence. It is a condition of his licence that any convictions are declared to the Council within 7 days. There was a question relating to convictions and cautions on the licensee's application for renewal of his combined Hackney Carriage/Private Hire Driver's licence. The licensee had rightly answered 'yes' to the question whether or not he had been convicted of an offence since the grant of his last licence and he indicated 'yes' that he had declared it to the Council. The Council had no record of such information having been provided but it was decided in that instance, that there would be no further action taken based on the explanation provided by the licensee.

On 27.05.22 the licensee was informed by e-mail that he had failed for a third time to comply with the Insurance Condition and was informed that this matter would be referred to the Licensing Sub Committee for determination. He supplied an insurance certificate to the council which showed an expiry date of 27.11.21 and a new certificate should have been supplied to the council no later than 07.12.21.

On 27.05.22 he was also issued with a formal written warning for breach of condition, namely, failure to produce a new MOT certificate within 7 working days of the expiry of the previous certificate. The previous MOT certificate expired on 27.08.21 and the new certificate should have been produced no later than 08.09.21. On 27.08.21 the licensee's vehicle had failed its MOT with a note saying "do not drive until repaired (dangerous defects): Nearside Rear Brake pad(s) less than 1.5mm thick" as well as other major defects requiring immediate repair such as inoperative lamps and there were advisories as well.

The licensee indicated in writing to the licensing authority that the garage had kept the vehicle after it has failed its MOT and until it passed again. This was not true because there was a difference of 855 miles between the mileage at the date of the failed test on 27<sup>th</sup> August and on 3<sup>rd</sup> September when it passed its MOT. In a further written response, the licensee indicated that he had in fact undertaken a very long journey to drive his friend's home, free of charge, and that he had completed the return trip in a day. He indicated in writing that he would have dropped the vehicle to the MOT centre at around 8.00am it would have taken approximately one hour and then he would have completed the trip. He also indicated that he had spoken to the DVSA and that they had allegedly said it was acceptable for him to drive the vehicle under the previous MOT. The MOT test details indicated that the test was in fact carried out at 13:37.

Members found the licensee's explanation regarding the mileage incurred when his vehicle had a dangerous defect, to be lacking in credibility given that what he initially said was untrue and the timings provided subsequently did not withstand scrutiny

due to the timing of his MOT test. In any event, there was no dispute that he drove a vehicle with dangerous defects, amongst others, 855 miles and this put the safety of the travelling public in danger.

Members noted that there had been no complaints from members of the public relating to the licensee's conduct in the 7 years he had been licensed as a Hackney Carriage/Private Hire Driver however, there is a catalogue of breaches of conditions and driving his vehicle with dangerous and other defects as referred to above, and for those reasons Members are not satisfied, on balance, that he remains fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence and revoke his licence on notice pursuant to section 61(2A) of Local Government (Miscellaneous Provisions) Act 1976.

Authority is delegated to the Licensing Officer to revoke the licence pursuant to section 61(2A).

Members had sympathy for the licensee's personal circumstances but the question before them is whether or not he is fit and proper and for the reasons indicated, they are not satisfied that he is.

The meeting ended at 1.20 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**