

Licensing Sub-Committee

Date: Thursday, 13th July, 2023

Time: 10.00am

Venue: Council Chamber - Guildhall, Bath

Councillors: Steve Hedges, Lucy Hodge and Toby Simon

Chief Executive and other appropriate officers
Press and Public

A briefing session for Members will be held at 9.30am.



Mark Durnford

Democratic Services

Lewis House, Manvers Street, Bath, BA1 1JG

Telephone: 01225 394458

Web-site - <http://www.bathnes.gov.uk>

E-mail: Democratic_Services@bathnes.gov.uk

NOTES:

1. **Inspection of Papers:** Papers are available for inspection as follows:

Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

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. We request that those filming/recording meetings avoid filming public seating areas, children, vulnerable people etc; however, the Council cannot guarantee this will happen.

The Council will broadcast the images and sounds live via the internet www.bathnes.gov.uk/webcast. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. **Public Speaking at Meetings**

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group.

Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.

Further details of the scheme can be found at:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

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

6. **Supplementary information for meetings**

Additional information and Protocols and procedures relating to meetings

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

Licensing Sub-Committee - Thursday, 13th July, 2023

at 10.00am in the Council Chamber - 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.

(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 4.4 Appendix 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 OF PREVIOUS MEETING: 29TH JUNE 2023 (Pages 5 - 10)

6. LICENSING PROCEDURE (Pages 11 - 14)

The Chair will, if required, explain the licensing procedure.

7. EXCLUSION OF THE PUBLIC

The Sub-Committee is asked to consider passing the following resolution:

“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, **RESOLVES** that the public shall 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 IMPACT OF MEDICAL DIAGNOSIS - 22/00342/TAXI (Pages 15 - 56)

The Committee Administrator for this meeting is Mark Durnford who can be contacted on 01225 394458.

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 29th June, 2023, 10.00 am

Councillors: Steve Hedges (Chair), Lucy Hodge and Toby Simon

Officers in attendance: Carrie-Ann Evans (Team Leader, Legal Services) and Wayne Campbell (Public Protection Officer (Licensing))

1 EMERGENCY EVACUATION PROCEDURE

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

2 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

3 DECLARATIONS OF INTEREST

There were none.

4 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

5 MINUTES OF PREVIOUS MEETING: 18TH MAY 2023

The Sub-Committee **RESOLVED** to approve the minutes for the meeting held on 18th May 2023 and they were duly signed by the Chairman.

6 LICENSING PROCEDURE

The driver that was present confirmed that he had received and understood the licensing procedure.

The Chairman referenced the procedure and stated that the driver would be given a fair amount of time to make a statement and give his evidence to the Sub-Committee.

7 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.

It was **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.

8 CONSIDERATION OF 'FIT AND PROPER' STATUS - 22/00378/TAXI

The Public Protection Officer (Licensing) introduced the report to the Sub-Committee. He explained that they were being asked to determine whether a driver remains fit and proper to hold a combined Hackney Carriage/Private Hire Drivers licence.

He outlined the key points from the report.

The driver acknowledged that he fully understood the content of the report.

The driver referred to the incident that took place on 6th February 2023 in which he named another person as the driver of the vehicle and explained that this occurred at stressful time when a family member had been diagnosed with a terminal illness and that he was worried that additional points could potentially see him lose his licence. He stated that he would not make this same decision again.

The driver referred to the incident that took place on 12th June 2021 and said that this had been an exceptional situation whereby he had become unwell due to food poisoning and had felt unsafe to drive so asked a friend to drive his vehicle home.

The driver referred to the previously recorded incident from 9th January 2020, when he was issued a verbal warning by Licensing, having admitted the offence of using a handheld device (mobile phone) whilst driving a vehicle. He said that at the time of the incident his vehicle was stopped at a set of temporary traffic lights and that he was checking on the location of his next fare.

The driver assured the Sub-Committee that his vehicle had at all times had an MOT certificate in place and been insured correctly despite not providing the appropriate paperwork to the Licensing team within the stated timescales in 2020.

The driver stated that he considers himself good at the work that he does, his vehicle is always in a good condition and that he is always dressed appropriately for his work. He added that he has never had any customer complaints made against him and that he has a number of regular customers.

The driver informed the Sub-Committee that no customers were ever present in his vehicle when the speeding offences occurred.

The Chairman asked the driver how he could prove to the Sub-Committee that he remains fit and proper to hold his licence.

The driver replied that he can't deny that the previous offences have occurred, but said that he was on the road for around 8 – 10 hours a day. He said that he tries to be as professional as he can and has provided a good service for many years. He stated that he would never drive while under the influence of alcohol or drugs and that he had no other police convictions aside from the matters relating to speeding that had been already raised.

The Chairman asked if he had given all the evidence that he had wished to the Sub-Committee.

The driver replied that he had.

Decision and Reasons

Members have had to consider whether the Licensee is a fit and proper person to continue to hold his combined Hackney Carriage/Private Hire Driver's licence in the light of speeding offences and other issues arising during his time as a BANES licensed driver. 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 indicated that he had received convictions for motoring offences in 2011, 2020, 2021 and for two further offences in 2023.

In relation to the 2011 offence that he failed to notify licensing of, he indicated that he had been licensed for only a year and was not very aware of the consequences.

With regard to the 2020 incident of using his mobile telephone whilst driving, he explained that he was stationary at traffic lights when he checked his telephone for his next job, his account was this had been acknowledged by the licensing officer and that resulted in a verbal warning.

The Licensee acknowledged that in 2020 he had failed to provide the Licensing Team with his MOT and insurance certificate within the requisite 7-day period however, the documents expired on 19th September, and he did not inform the Licensing Section within the next 7 days as he was attending the office on 21st October for a renewal appointment in any event. He explained to Members that he was at all times insured and had a valid MOT in place.

In relation to the 12th of June 2021 speeding incident, the Licensee explained that exceptionally the licensed vehicle was being driven by his friend as the Licensee had become ill with food poisoning and was unable to drive home. The Licensee acknowledged that his friend was not a licensed private hire driver.

In relation to the speeding incident on 6th February 2023 the Licensee admitted that he was driving his private hire vehicle at the time and not the person he had told the police was. He indicated that he panicked as he already had 6 penalty points on his DVLA driving licence and did not want to receive 9 penalty points. He admitted fault, that he had acted stupidly and took full responsibility for his actions and explained that his private hire vehicle was his only source of income. At this time his relative was terminally ill and it was a period of stress.

For the speeding offence on 24th February 2023 the Licensee indicated that he did not realise what speed he was travelling as he was going with the flow of traffic. He was not carrying passengers at this time but was travelling between jobs. He acknowledged on questioning by the Chair, that travelling between jobs was acting in the course of his business.

The Licensee explained to Members that for all of the speeding offences, he never had paying passengers in his vehicle. In respect of the 2020 incident, he was not driving his licensed vehicle.

The Licensee acknowledged the facts in the report but submitted to Members that he is still fit and proper. He said he does his job well, he keeps his car clean, operators like him and he has repeat passengers. He has never had a complaint from a member of the public and never been in trouble with the police aside from his motoring convictions. The Licensee referred to the fact that this is his only source of income, and it is a pleasure doing this job.

Members considered the fact that the Licensee had been a BANES licensed driver for nearly 13 years and during this time there had been no complaints from members of the public. That said, the Licensee has a notable number of speeding convictions during that 13-year period. Within the last 3 years his licensed vehicle had been used for 5 formal police speeding offences and he had been the driver for 4 of them. He had asked someone who was not a licensed driver to drive his licensed vehicle when such an activity was not lawful and crucially, he had lied to the police about who the driver was for the 6th of February 2023 speeding offence which had resulted in another person taking responsibility for it. The Licensee had admitted this dishonesty to the Licensing Team and before Members today however, Members view lying to the police very seriously as this is perverting the court of justice. His explanation for this; the fact that he already had 6 penalty points on his DVLA licence and that he did not want to receive 9 penalty points on his licence, as taxi driving is his only source of income, does not legitimise or justify this behaviour. Had he been honest to the police, he would have faced the possibility of a totting up disqualification.

In addition to this, whilst licenced the Licensee has failed to notify the Licensing Department of 4 speeding convictions within the requisite period in breach of the condition of his licence, and he had failed to provide his MOT and insurance certificates within the requisite period; he had received warnings from the Licensing Team for these failures. Furthermore, he received a verbal warning from the Licensing Team in January 2020 for using his mobile telephone whilst driving.

Looking at the totality of the Licensee's driving history, whilst it is acknowledged that he covers a considerable distance and works long hours as a professional driver, there is a concerning picture of repeatedly committing motoring offences and failures to comply with the conditions of his BANES licence.

Members note from the Policy that there is an expectation that a new applicant will not normally have been convicted of three or more minor motoring offences during the previous three years. If the Licensee was before Members as a new applicant, the policy starting point would be to not grant a licence. Further, the Policy provides that a serious view will be taken of any conviction occurring whilst the person holds a current licence, and a serious view will be taken of any conviction obtained by a licensed Driver or Operator.

In the circumstances and against the Policy background, Members are no longer satisfied that the Licensee is fit and proper to hold a combined Hackney Carriage/Private Hire Drivers licence and revoke his licence on notice pursuant to section 61(2A) of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting ended at 11.52 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

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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.

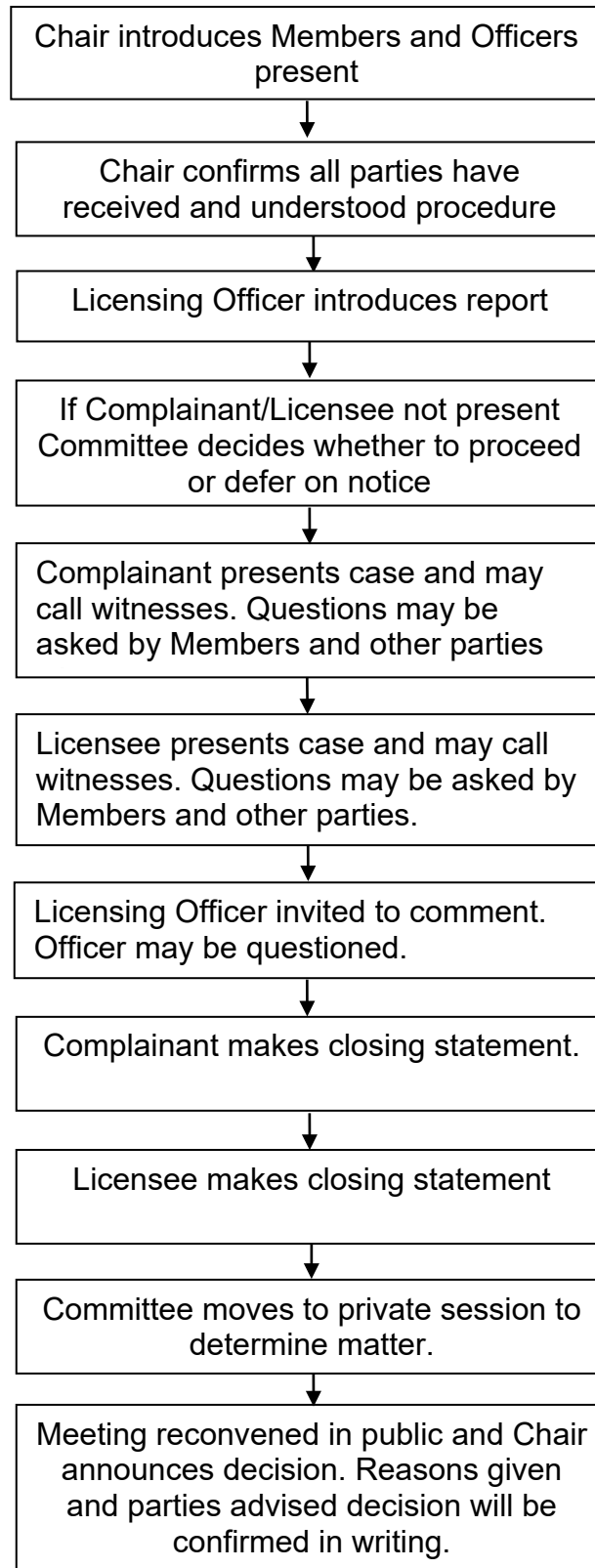
PLEASE NOTE:

- 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.

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



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Access to Information Arrangements

Exclusion of access by the public to Council meetings

Information Compliance Ref: LGA-1388644
Meeting / Decision: Licensing Sub-Committee
Date: Thursday 13 th July 2023
Author: Wayne Campbell
<p>Exempt Report Title: Consideration of Impact of Medical Diagnosis</p> <p>Exempt Appendix Title(s):</p> <p>Exempt Annex A- Current Licence. Exempt Annex B - DVLA Assessing Fitness to Drive requirements. Exempt Annex C- Email. Exempt Annex D – Medical Correspondence. Exempt Annex E – Operator, Vehicle and Driver Standards Policy.</p>

The report and appendices contain 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 and appendices 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 2018 (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.

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.

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

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