

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Thursday, 5th September, 2024, 10.00 am

**Councillors:** Steve Hedges (Chair), Toby Simon and Ann Morgan

**Officers in attendance:** Carrie-Ann Evans (Team Leader, Legal Services), Michael Dando (Senior Public Protection Officer), Wayne Campbell (Public Protection Officer (Licensing)) and Chris Jennings (Public Protection Officer (Licensing))

#### **50 EMERGENCY EVACUATION PROCEDURE**

The Chair welcomed everyone to the meeting and asked the Democratic Services Officer to read out the Emergency Evacuation Procedure.

#### **51 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **52 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **54 LICENSING PROCEDURE**

The Chair referenced the procedure that would be followed during the course of the meeting.

Those that were present confirmed that they had received and understood the licensing procedure.

#### **55 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.

**56 CONSIDERATION FOR REVOCATION OF PERSONAL LICENCE  
10/01627/LAPER**

The Public Protection Officer (Licensing) introduced the report to the Sub-Committee. He stated that they were being asked to determine whether a Personal Licence should be revoked, having received a Police Notice requesting such revocation on behalf of The Chief Officer of Police.

The Police Licensing Officer addressed the Sub-Committee and stated that revocation of a Personal Licence was being sought due to the licensee having been convicted on three relevant offences under Section 113 and Schedule 4 of The Licensing Act 2003.

He informed the Sub-Committee that the licensee had also failed to tell the Court, when convicted, that he held a Personal Licence and had not informed the Licensing Authority regarding his convictions.

The Police Licensing Officer explained that the licensee was also the Designated Premises Supervisor (DPS) at four premises within B&NES.

The Chair asked if it was a criminal offence for the licensee to withhold that he was a Personal Licence holder from the Court.

The Police Licensing Officer replied that it was.

The licensee addressed the Sub-Committee and said that he was sorry for what he had done. He said that he now knows it was wrong to send a video to his friend, but stated that he had not actively search to find it in the first instance.

Councillor Toby Simon asked the licensee if he had completed his rehabilitation programme and series of meetings with his probation officer.

The licensee replied that he had and that they had concluded on 2<sup>nd</sup> September 2024.

The Police Licensing Officer said that in his role as a DPS, information regarding the conditions of his licence should be kept on the premises. He asked the licensee if he was able to train his staff appropriately.

The licensee replied that he was and that he receives information from the Council about training online. He added that he does keep the conditions of his licence on the premises he runs.

The Chair stated that the licensee should be fully aware and know the responsibilities that come with holding his Personal Licence.

Councillor Toby Simon asked if the Licensing team had any notable interactions with the premises ran by the licensee.

The Public Protection Officer (Licensing) replied that there was a record of some anti-social behaviour in the locality of one of the premises, that there was no evidence of a refusal log, incident log or age restricted training at another, no

complaints regarding one of the premises and one historical incident relating to test purchasing at another.

The Team Leader, Legal Services said that the Sub-Committee should consider whether or not this information was relevant when making their decision.

The Police Licensing Officer made a closing statement. He said that in order to hold a Personal Licence that person must be professional in their role and observe the four licensing objectives.

He stated that the Police believe that the licence should be revoked as the Court convictions undermine the prevention of crime and disorder and the protection of children from harm licensing objectives.

The licensee said that he had no further comments to make.

### Decision & Reasons

Members have had to consider whether or not the licensee can continue to hold his personal licence under the Licensing Act 2003 in the light of a conviction for three relevant offences and a police notice requesting revocation of the personal licence. In doing so Members took account of the Licensing Act 2003, Statutory Guidance, Human Rights Act 1998 and the Council Statement of Licensing Policy.

Members heard from the licensee in oral representations who indicated that in respect of one of the offences a video had come up on Telegram, he had not searched for it, and he had shared it with his friend in America as he was surprised that this was what was happening in his country as a result of war. He went on to explain that in relation to the other offences, he had received images from his friends via WhatsApp and they had ended up saved on his phone. He acknowledged to Members his mistake and apologised for what he had done.

He appreciated now that he should not have sent the video, and he said he did not know much about the internet but he understands now that this video was on the black market and that people were doing these things without permission. The licensee explained to Members that his licensed premises had been his business and his job since 2010. If they revoke his licence, this is going to affect his business. He confirmed to Members that he had completed his rehabilitation activity requirement in relation to his court sentence, with the probation service.

Members heard from the Police Licensing Officer Ben Allen who reiterated the information regarding the conviction as provided in the police notice. In closing submissions Mr Allen indicated that a personal licence holder should act professionally and responsibly, taking responsibility for the promotion of the licensing objectives. In the police's view, those responsibilities and permissions are unsuitable for someone with the licensee's current convictions which undermine the crime prevention licensing objective and put children at risk. Mr Allen noted how rare this kind of application from the police is and that it is an indication of the seriousness of the conviction and the concerns held by the police.

Members noted that the licence holder had failed to comply with his duty under section 132(2) Licensing Act 2003 and as set out in the terms of his personal licence,

to notify the court that he was a personal licence holder and to notify the licensing authority of his conviction. The authority had only come to know about the conviction as a result of notification from the police.

In reaching a decision members had had regard to:  
Representations made by premises licence holder,  
Any decision of a court under section 129 or 130 of the Licensing Act 2003 of which the authority is aware,  
Any other information the authority considers relevant.

Members find that if they were to allow the licensee to continue to hold the personal licence this would undermine the prevention of crime and disorder licensing objective. His offending behaviour was of a serious nature, they are mindful of the presence of children, who may be unaccompanied, in the premises that he is responsible for, and they did not feel the lesser measure of suspension of the licence was appropriate or proportionate to the circumstances. As such, they revoke his licence, and he will be provided with a notice to that effect.

## **57 CONSIDERATION OF IMPACT OF MEDICAL DIAGNOSIS - 22/00365/TAXI**

The Lead Officer (Licensing) introduced the report to the Sub-Committee. He stated that they were being asked to determine a licensee's fitness to continue to hold a combined Hackney Carriage/Private Hire Driver's licence.

The licensee confirmed that the content of the report was correct. He apologised and said that English was not his first language. He added that he was very sorry that he had not reported his medical conditions to the Licensing team.

He explained that he has to ask his son to help him when using a computer.

Councillor Toby Simon commented that the licensee had already appeared before the Sub-Committee on two previous occasions and had been warned about his conduct in relation to complying with the conditions of his licence.

He referred to the MOT failure and asked the licensee if he was aware that he could present his vehicle up to one month before the current expiry date.

The licensee replied that around the same time he had been suffering from a skin problem and that when he realised that the MOT was due his normal garage had no availability to perform the inspection.

Councillor Simon stated that there are many other garages that he could have taken his vehicle to. He asked the licensee why he had purchased the incorrect insurance.

The licensee said that this was an error by the insurance company.

Councillor Simon said that it was the licensee's responsibility to check these documents regardless.

The Chair asked the licensee how he could ensure that these issues regarding his administration / conditions would not happen again.

The licensee replied that he would ask his son to help him with all these matters.

The Team Leader, Legal Services asked the licensee if he had reported his eye condition to the DVLA in 2015.

The licensee replied that he had not and said that he has now had further tests and that all was ok.

The Team Leader, Legal Services asked the licensee if he had driven his taxi whilst knowing that he had an eye condition.

The licensee replied that he had not.

The Team Leader, Legal Services asked the licensee if he had stopped driving for a period of time after complaining of problems with his vision in December 2021.

The licensee replied that he had not driven whilst knowingly had issues with his vision at that time.

The Team Leader, Legal Services asked the licensee if he was now aware of what to do if there are any further changes to his medical condition.

The licensee replied that he knows he must inform the Council as soon as possible. He made then made a closing statement to the Sub-Committee.

He said that he was sorry for the mistakes that he has made.

### Decision & Reasons

Members have had to consider whether or not 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 a medical diagnosis and his record 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 accepted all of the things set out by the licensing officer in his report to committee. He explained that English is not his first language, and he has a problem with not understanding well, so he has to ask his son each time to help him with understanding. He apologised for medical conditions from before Covid which we did not mention to the council and for that he said he was very sorry. He informed members that he has a wife and children that he has to maintain. In response to questioning regarding the gap in his MOT cover, the licensee explained that at the time he was not sleeping well and was on medication. He had gone to more than one garage and they did not have any slots free. On questioning regarding not having insurance for his vehicle for hackney carriage use, he explained that the insurance company forgot to print out hackney carriage and put 'private'.

The licensee accepted that it was his responsibility to check his documentation. On questioning regarding his eye condition in 2015, the licensee accepted he did not notify the DVLA but said that he had an eye check which confirmed all was ok. He said he goes for an eye check every year and all is ok. On questioning, he explained

that he stopped driving when he had his eye conditions. The licensee explained that if he has a change in medical condition, he knows now that needs to notify the council. In summing up the Licensee acknowledged that the mistakes have happened over and over again. He referred to the English language barrier but assured members that he had put himself back together, he was going to concentrate on his job and get everything back together.

Members noted that the licensee had held a licence with BANES since 2012.

Members noted that the licensee had two previous appearances before Licensing Sub Committee. The first was in 2015 where he received 4 penalty points on his Private Hire Driver's Licence for failing to declare a motoring conviction and making a false declaration on his renewal application. The second was in 2023 when: (i) he appeared before the committee as he had allowed an unrelated adult to join a home to school contract journey when a child was present in his vehicle, and (ii) he had received 6 penalty points on his DVLA licence, with an admission that he accepted the penalty points on behalf of someone else. On the latter occasion, members determined he was fit and proper to continue to hold his BANES licence but he was issued with warnings which included: *"he must continue to comply with the conditions on his licences as they are an important safeguard to ensure the safety of the travelling public"*, and, *"if he comes before the Licensing Sub Committee again, against this background, there is a risk of revocation of his licence."*

The Licensee appeared before the committee today as the medical report he provided in January of this year revealed a medical condition which he had not declared previously and his renewal application in April of this year had highlighted a number of issues, namely:

1. The insurance certificate he had supplied did not include cover for use as a Hackney Carriage vehicle, and in fact specifically excluded public hire. This was the same certificate that he had supplied in December 2023 and was asked to re-submit as he had submitted it through the wrong channels.
2. His previous MOT certificate expired on 12/04/24 and his vehicle was not taken for a new MOT until 19/04/24, consequently there was a gap in MOT cover of 6 days.
3. When his licensed vehicle underwent its MOT inspection on 18/04/24 it presented with a major defect *"nearside front tyre has a cut in excess of the requirements deep enough to reach the ply or cords close to outer sidewall & worn on inner edge."*

Enquiries made by the licensing section into the licensee's medical conditions revealed that:

1. Save for on first application, his next medical form was submitted in January 2019, his third was in January 2024.
2. The 2019 form did not include a diagnosis of hypertension. It did indicate a diagnosis of diabetes controlled by drugs other than insulin and that the diagnosis was made in December 2018. In fact, it is clear from medical

records that he was aware he had diabetes in 2017 and did not notify the licensing section of this until nearly two years later in January 2019.

3. Between January and November 2018, the licensee was strongly advised by medical professionals to commence medication for diabetes however, he failed to do so until November 2018.
4. The 2024 form indicated that he was diagnosed with hypertension in July 2021.
5. The licensee's explanation for not declaring this diagnosis was that he forgot due to Covid lockdown in July 2021. The final such lockdown ended in March 2021.
6. The licensee had been advised by medical professionals to start taking medication for high blood pressure, various times between December 2018 and December 2020 but failed to do so.
7. In February 2015 the licensee had an eye condition which he failed to declare to the licensing section. The Group 2 driver medical standards, which BANES licensed drivers must meet, indicate that where a diagnosis for this condition occurs the driver must not drive and must inform the DVLA. The licensee admitted that he did not notify the DVLA, he said to members he stopped driving, but that he had an eye test which revealed everything was ok with his eyes.
8. In December 2021 the licensee visited his GP and reported that his eyesight had deteriorated, and he was suffering blurred vision following which he was advised to book an optician appointment. The licensee did not notify the licensing section of this issue which could have affected his ability to drive and could have caused public safety issues.

Members noted that compliance with the conditions relating to: (i) declaration of medical conditions and any changes in medical condition, and (ii) MOTs and insurance, 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.

The Licensee had been given a clear warning in 2023 regarding the importance of compliance with the conditions of his licence, but he had gone on to breach these conditions again.

Whilst the licensee was apologetic and said he understood what was required of him, he had said this to the committee in 2023. He has a catalogue of breaches of the terms of his licence on his record at regular intervals throughout the period of his licence, several of which go right to the heart of public safety.

He has shown that he is unable to learn from his past mistakes, following previous warnings and appearances before committee, the most recent only 18 months ago. Therefore, on balance, members find that the licensee is not a fit and proper person

to continue to hold the combined Hackney Carriage/Private Hire Driver's Licence and revoke his licence on notice.

The meeting ended at 12.50 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**