

BATH AND NORTH EAST SOMERSET

LICENSING SUB-COMMITTEE

Thursday, 29th October, 2020

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

Also in attendance: Carrie-Ann Evans (Deputy Team Leader, Legal Services) and John Dowding (Lead Licensing Officer)

30 WELCOME & INTRODUCTIONS

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

31 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

32 DECLARATIONS OF INTEREST

Councillor Steve Hedges said that he recognised the name of one of the driver's representatives and said that there had been no predetermination and the matter would be dealt with on its merits.

Councillor Manda Rigby said that she too recognised the name of one of the driver's representatives and said that there had been no predetermination and the matter would be dealt with on its merits.

33 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

34 MINUTES OF PREVIOUS MEETING - 15TH OCTOBER 2020

The Sub-Committee approved the minutes of 15th October 2020 as a correct record.

35 TAXI PROCEDURE

The Chair explained the procedure for the meeting.

36 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.

37 CONSIDERATION OF FIT AND PROPER - 1900924TAXI

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 explained that the driver had failed on three consecutive occasions to comply with the following condition attached to the grant of Hackney Carriage Proprietors Licence which states;

“The proprietor shall produce to the Licensing Section a new insurance certificate or cover note within seven working days of the expiry of the current certificate or cover note.”

The driver stated that he had not received a written warning in May 2018 regarding the first breach of this condition. He said that he recalled being issued with penalty points in 2019 and that this year he had not been able to access the Licensing offices due to Covid-19 and that nobody had answered his phone calls. He apologised for the incidents in 2018 / 19.

The driver's representative addressed the Sub-Committee. He said that the driver was normally diligent, had acknowledged his mistakes and had tried to visit the offices on three separate occasions.

He said that the driver was not confident to send the required documents in via email and that no complaints had ever been made against him by the public.

Councillor Steve Hedges commented that he had seen in the agenda pack the letter referred to from May 2018 and asked if the letter had been sent but not received.

The Lead Licensing Officer replied that the procedure is to print off the letter and hand it to the driver along with a verbal warning. He added that this took place in both 2018 and 2019. He said, referring to this year, that the insurance renewal date was prior to the national lockdown being in place and therefore the driver had enough time to present his documents.

The Chair said that there was no accusation of the driver's vehicle not being insured and asked if he was aware of the need to comply with the rules so that the Council and the Sub-Committee were satisfied that the residents of B&NES could travel safely in his vehicle.

The driver replied that he was.

In his closing statement the driver's representative stated that he had known the driver for ten years and that he was great with the public, but not so great with his

admin. He said that he felt sure that this would not happen again and would encourage the driver to ask someone to email his documents to the Council on his behalf.

The driver said that he would not let an incident of this nature happen again.

The Lead Licensing Officer acknowledged that no complaints from members of the public had been made against the driver and asked that should he retain his licence he listens to the instructions from officers in the future.

Following an adjournment, the Sub-Committee **RESOLVED** that they are satisfied that he remains fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence but issue a formal warning that his conduct has not been acceptable.

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.

Members reminded themselves that each case is considered on its own merits. They had regard to the licensee's oral representations, the representations of his representative and balanced these against the report before them.

Members heard from the licensee who indicated that in relation to the first year he did not receive any written warning, on the second occasion he was notified by Mr Byron (Public Protection Officer) when he was leaving the office and in relation to this latest incident he had tried to provide the information but had not been able to get into the office and nobody had answered the phone.

The Licensee's representative indicated that the licensee apologises in relation to the first two incidents but has really tried in relation to the latest incident. He has tried to make contact by phone or in person as he is not confident in sending documents by e-mail. He has genuinely shown remorse and is good with the public. He has had to be educated how to do what is required but he has really tried this year.

The Lead Officer, Licensing Team (Development) indicated to Members that both the first and second letter were printed off and handed to the Licensee in the licensing office but he had been dismissive and brushed them off. The latest breach of condition related to insurance which expired on 21.02.20 and failure to provide a copy was nothing to do with lockdown. The Licensee indicated that he went to the licensing office in March and couple of times of April.

The Licensee apologised to members and said this will not happen again. Members noted that compliance with the condition relating to 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.

Members did not find the explanation given by the Licensee regarding not receiving the first letter credible and did not find it credible that he could not get the documents

in to the licensing office in time. His conduct with his administrative responsibilities is poor and these responsibilities are of great importance. The Licensee holds a position of great responsibility concerning public safety and compliance with these conditions is mandatory not discretionary with the onus on the Licensee to comply with them. Any request from the licensing authority for information in relation to a licence condition should be met with a swift and polite response from the Licensee.

Members were satisfied however, that notwithstanding his failure to comply with this condition repeatedly, the Licensee had maintained appropriate insurance throughout the relevant period. He is good public facing taxi driver with no complaints against his record from members of the public since first licensed by BANES in 2009.

On this occasion, Members are satisfied that he remains fit and proper but issue a formal warning that his conduct has not been acceptable, and they do not expect to see it repeated. He needs to ensure he complies with conditions notwithstanding his capabilities with technology and should seek support where required. If he appears before the LSC again for conduct issues, against this background, the outcome may not be the same.

38 CONSIDERATION OF FIT AND PROPER - 19/01848/TAXI

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.

The Licensing Sub-Committee is asked to consider two complaints of inappropriate contact with females and 3 complaints of inappropriate comments of a racist nature.

One of the complainants addressed the Sub-Committee. She said that it was difficult to hear that her incident was not the first time the driver had been alleged to have been racist. She described her incident as really abhorrent and that it had had a huge impact on her.

She stated that she was shocked that he was able to use 'that word' so comfortably and that she retained her composure until leaving the car. She said that she felt that this action alone should be enough for the driver to have his licence taken away.

She said that neither she nor her partner had been aggressive or confrontational in any way towards the driver.

She commented that she was unsure of what would have happened if she had been travelling alone and that she was worried about the driver's future conduct.

The other complainant confirmed that it had been a difficult journey and that he was not surprised to hear that other complaints had been made against the driver.

He agreed that he also was worried about the driver's future conduct and said that it was dreadful to think that he is allowed carry out this role to the public.

Councillor Steve Hedges asked the complainant how vulnerable, on a scale of 1-10, she would have felt if she was travelling alone.

The complainant replied that she thought it would be around an 8.

The Chair asked who instigated the conversation on the journey and at what point did she become uncomfortable.

The complainant replied that she and her partner were quite quiet in the car and that the conversation was started by the driver. She said that it began when he referred to the pulling down of the Colston statue. The complainant stated that she had been at the protests but was not near the statue when it came down.

The complainant said that the conversation then became more personal when the driver asked if she had ever experienced racism. She said that she replied that she had lived in the West Country for three years and had experienced a number of racist incidents.

The driver said that he had not directly been racist towards the complainant and apologised as his use of that word was not meant in that way. He added that he had no questions for the complainants.

The driver addressed the Sub-Committee. He said that he remembered the journey with the complainants and asking them if they had had a good weekend. He said that the subject of the protests came up in the conversation and that the complainant asked if he agreed with it. He said that he replied that he did not.

The driver stated that at this point in the journey the female complainant began swearing at him and lost it completely. He said that he decided against stopping his vehicle as he was worried that this would have resulted in a complaint against him.

He said that he had now not been an Uber driver for six months and only carries out Hackney Carriage work in Midsomer Norton and Keynsham alongside some school runs. He added that he tries to do the job to the best of his ability.

He stated that he was sorry to have upset the complainant and would accept being put on probation for a period of time. He said that due to Covid-19 he had been on edge the past five months and that if he were to lose his licence that would impact on his livelihood and could lose everything. He added that he was determined to act a lot better in the future.

Councillor Sally Davis asked if there was a reason for the run of recent reports against him over the past two years.

The driver replied that he felt that this was down to Uber customers trying to get free rides.

Councillor Davis asked if he felt that it would be better practice to make non-committal comments on journeys.

The driver agreed.

Councillor Steve Hedges asked how vulnerable he thought a lone female would feel on a journey.

The driver replied that they were likely to feel uneasy.

The Chair asked the driver if he had used an unacceptable word during the journey with the complainants.

The driver replied that he did say it once at the end of the journey.

The Chair asked the driver if he would like to address the Sub-Committee on any of the other complaints made against him.

Referring to the incident in February 2020 when a mobile phone was left in his vehicle, he said that he had taken the phone to the passenger's place of work and that the passenger was very welcome to have it returned. The driver said that he had told the passenger that he had sent her a friend request on Facebook and then he recalls receiving a complaint and told to hand any further items into the Police if they are left in his vehicle.

The driver apologised for the oversights in failing to return a required DBS certificate in 2015 and failing to report a speeding offence in 2016.

Referring the incident in January 2019 he said that it was possible that he had said something like "English drivers are better..." but that he recalls that the two male passengers were drunk.

Referring to the incident in March 2020 he said that four male Chinese passengers had travelled in his vehicle and that they appeared to be drunk. He recalls that a conversation did take place about Covid-19 but he did not say that the virus began because "They eat bats".

The driver stated that he had made improvements to his life since June and that he was not working for Uber anymore and that he found this a lot less stressful. He added that he now worked primarily in Midsomer Norton & Keynsham.

He said that driving was how he made a living and that his home and business would be at risk if he were to lose his licence.

He said that he loved working with people and had learnt from his mistakes and that he had felt under pressure because of recent events e.g. Covid-19.

He explained that he was prepared to work further with the Licensing team if required.

The Lead Licensing Officer informed the Sub-Committee that Uber had carried out a review of the driver and had removed him from the company.

The Deputy Team Leader, Legal Services explained to those present the options for action that the Sub-Committee could take in reaching their decision. She said that the Sub-Committee could either:

- i) Take no action
- ii) Issue a formal warning
- iii) Suspend the driver for a period of time
- iv) Revoke the licence of the driver

She reminded the Sub-Committee that in case law, in reaching their decision, a person's livelihood was not a material consideration.

The complainants said that they had no questions to put to the driver.

The Lead Licensing Officer said that he had nothing further to add.

In their closing statement the complainant asked for the Sub-Committee to think about all the complaints that had been received, not just hers and urged them to be taken seriously.

The driver, in his closing statement, said that he needed to keep his licence and couldn't afford not to work. He said he would be willing to drive under probation for six months or a period of time of the Sub-Committee's discretion. He added that he was willing to put everything right.

Following an adjournment, the Sub-Committee **RESOLVED** that the combined Hackney Carriage/Private Hire Drivers licence of the driver concerned be revoked on the basis that he is no longer fit and proper.

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 the light of a number of complaints that had been made against him and his conduct 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's Policy.

Members reminded themselves that each case is considered on its own merits. They had regard to the Licensee's oral representations and written representations and balanced these against the report before them together with the first-hand account of a complainant and her witness.

The complainant in relation to the June 2020 incident indicated to members that she was not aggressive in any way and it is difficult to hear that this is not the first time that the Licensee has been challenged about racist comments. What he did was really abhorrent and impacted her, particularly for him to use that word so comfortably and demean her experiences as a woman of colour. She explained though, that she really retained her composure until she got out of the car. She

explained to Members that using the word that he did should be enough to make a person lose their licence in her opinion. She explained that she does not even use that word even though technically she could. The complainant described getting out of the car shaking and was only comfortable arguing her piece because her partner was there. She expressed the view to Members that the knowledge that other women have made accusations is really worrying, as there are people who could get in his car that are much more vulnerable. When questioned by members the complainant said she felt 8 out of 10 in terms of vulnerability, 10 being the most.

The complainant's witness echoed the comments of his partner and supported her account.

In addressing Members, the Licensee described some of what the complainant had said as lies and claimed he was not racist towards her whatsoever. He did say however that he was really sorry for what had happened that day. His account was that the complainant had lost it with him and started swearing after he said he disagreed with the protests. He accepted referring to the incident in Barbados and saying that word once. He indicated to Members that he had not been driving for Uber for 6 months now, he had really changed things and was doing his job to the best of his ability. He informed Members of a role he had been appointed to recently, in the context of describing how he had made positive changes in his life.

The Licensee was invited to address members on the other complaints against him. Notably, in doing so he indicated to Members that in the second complaint of a racist nature the passengers were Chinese. He claimed that both sets of passengers in relation to the first and second racist incident were drunk.

Members noted that they have to be satisfied on the balance of probabilities that the Licensee continues to be a fit and proper person to hold a Combined Hackney Carriage/Private Hire Driver's Licence.

Members found that the Licensee's failure to return a DBS certificate to the licensing authority in 2015 and failure to report a speeding offence in 2016, for which he received 4 penalty points on his BANES Driver's Licence, are relevant matters on his record to weigh in the balance against the Licensee being fit and proper. Members expect BANES licensed drivers to comply with the conditions and requirements of their licence as these requirements help to assure the Council of the safety of the travelling public in relation to a driver.

Members were concerned to note two complaints against the Licensee in relation to his conduct with female passengers; the first complaint was received in July 2016 and the second in February 2019. In relation to the 2016 complaint members found that the Licensee had made inappropriate contact with the prospective female passenger via Facebook Messenger and mobile telephone. It was evident from the messages that Members had seen, and which were not disputed by the Licensee in his interview with the licensing authority, that the Licensee's conduct had strayed beyond professional into personal namely, asking to be friends, suggesting they meet and when she said she did not think this was a good idea and stopped responding, the contact via messages and phone calls became more persistent.

In the Licensee's interview with the licensing authority in relation to this incident, Members noted that he sought to minimise the incident saying initially it was "*only [a] friendly meet up request*" he eventually conceded that he was "*feeling down and looking for something more than friendship*" and having initially denied calling the female "*I did not call blank at any time, no number taken at all*" he eventually went on to concede "*two calls at most*". The Licensee received a formal written warning from the licensing authority for this incident in August 2016 and was given clear advice as follows: "*I would take this opportunity to advise you that you do everything in your power to avoid any further complaints or allegations being made against you. Especially such as the allegation as discussed on the 17th August 2016.*"

Members found that notwithstanding this clear advice, there was a further incident in February 2019 where the Licensee's conduct strayed beyond the professional into the personal again. A female passenger left her mobile telephone in the vehicle and rather than taking it to the police in accordance with his licensing condition, or taking it to the lost property at Uber's local office, he decided to examine the bank cards contained in the phone case and search on Facebook to try and identify the person. He tracked down their place of work and took the phone there the following day. On his own account he refused to leave the phone with a member of staff as he wanted to hand it back personally. Upon doing so he asked the female to be his friend on Facebook which she said in her complaint to Uber was "*inappropriate, just a bit creepy*" and she said that she "*no longer wants rides with him from now on*". The Members noted that the Licensee had not learnt from the warning he received in 2016 and this was inappropriate and unprofessional conduct that they would not expect from a BANES licensed driver.

Members found that there had been three incidents of a racist nature concerning the Licensee. The first took place in September 2019, the second March 2020 and the third in June 2020. In relation to the September 2019 incident the Licensee had made a comment about "*English drivers*" and the passenger who reported the incident to Uber explained that they "*were concerned that [the Licensee] appeared subconsciously racist*". In his own explanation of the incident to the licensing authority, the Licensee denied any recollection of such an incident initially but admitted that he "*may have said something jokingly but not meaning it... We just joke about English drivers being better and things, that's all, there's no malice in it... I know we have to be careful about what we say with the way things are going now. Well you have to be careful what you say to customers as they might not find it funny as you don't you who you're picking up so you have to be careful.*" The complaint also related to the Licensee not following the Sat Nav and taking a more costly route. The Licensee accepted he does not follow the Uber Sat Nav all the times as it is often wrong.

In relation to the March 2020 complaint, the passenger reported to Uber that the Licensee made inappropriate and racist comments regarding Coronavirus namely he said that the Chinese were to blame "*because they eat bats*". The passenger described the Licensee's conduct in their complaint as "*completely misinformed and blatantly ignorant comments*" and that they were appalled and offended. In written response to this complaint the Licensee recalled the journey but his account was that "*I said I had seen in the paper that day that the case was thought to be someone eating bats in China – but who would know?*" He denied saying as alleged and had

no recollection of the passengers being upset. In oral submissions before the LSC the Licensee indicated that the passengers in question were Chinese.

Members found the complaint from June 2020 to be particularly concerning. They read the account of the complainant supported by her witness. They have had the benefit of hearing their oral account today via Zoom as well.

The complainant is a person of colour to whom the Licensee said that the Black Lives Matter protests were irrelevant and would not change anything and that violence was not the answer. He also claimed the UK is not racist and so there is no point protesting. The complainant tried to explain to the Licensee that the BLM protests were peaceful and tried to provide the Licensee with statistics on UK racism. The complainant reports that the Licensee said that those who were subject to racism in the UK deserved it to which the complainant provided examples of her lived experiences of racism. At the end of the journey the Licensee signalled the passengers to stay in the car and he recounted a story to them from when he visited Barbados. This culminated in him explaining to his passengers how a waitress had used that word in a phrased to his Dad, he then went on to repeat the sentence with that word to the passengers again.

Members have intentionally decided not to include the complete word in their reasons as they do want to perpetuate its use and do not condone its use in any way. There is no dispute between the complainant and Licensee as to the word used. Members find it deeply troubling that the Licensee used this word in front of his passengers not once but twice and they prefer the complainants account about the number of times it was said.

Whilst the Licensee has been licensed for over 25 years Members consider that for the last 5 years since the complaint relating to failure to return the DBS Certificate, the Licensee has displayed a course of conduct which has escalated in terms of seriousness and frequency. He has not learnt from warnings and does not seem to be capable of acknowledging his inappropriate behaviour or addressing it. Members prefer the accounts of the complainant and her witness who they found to be clear, credible and compelling. They find the complainants' accounts in relation to all incidents to be more credible. The Licensee, they have not found to be credible as his accounts are not consistent and he seeks to minimise his conduct and apports blame to others.

Members had regard to what the licensee had said about making changes but found that the Licensee's remorse seems to relate principally to the prospect of losing his licence and livelihood rather than genuine remorse or understanding of what he has done. At no time did he ask the complainants if there was anything he could do to make it better. Members noted that their principal consideration is whether or not he is fit and proper as opposed to the impact on his livelihood.

Members have asked themselves if they would allow their friends, loved ones and indeed all members of the community to travel alone in a vehicle driven by this person and on the balance of the probability, Members' answer to this question is 'no'.

The Licensee asked members to consider a probationary period of 6 months where they could assess his conduct. This is not an option that is open to them in law, but

they would not consider this appropriate and proportionate in all the circumstances in any event.

Members did not consider a suspension to be appropriate and proportionate as they did not believe a suspension would serve to change his behaviour which was part of his character.

Members do not take a decision to revoke a driver's licence lightly but in all the circumstances and for the reasons expressed herein Members find the Licensee not to be a fit and proper person to continue to hold a Combined Hackney Carriage/Private Hire Driver's Licence and accordingly members determine that the Licensee's licence should be revoked in accordance with section 61 (2A) Local Government (Miscellaneous Provisions) Act 1976.

Authority is delegated to the Public Protection Officer to issue the notice accordingly.

The meeting ended at 1.33 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services