

BATH AND NORTH EAST SOMERSET

LICENSING SUB-COMMITTEE

Thursday, 7th October, 2021

Present:- Councillors Rob Appleyard (Chair), Steve Hedges and Sally Davis

Also in attendance: John Dowding (Lead Officer - Licensing), Wayne Campbell (Public Protection Officer (Licensing)) and Rebecca Jones (Deputy Team Leader - Legal Services)

54 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

55 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

56 DECLARATIONS OF INTEREST

There were none.

57 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

58 LICENSING PROCEDURE

The Chairman explained the procedure to be followed for the meeting and all parties stated they had read, heard and understood the procedure.

59 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.

60 CONSIDERATION OF SUITABILITY TO BE LICENSED AS A PRIVATE HIRE OPERATOR – 16/03320/PHOP

The Public Protection Officer (Licensing) presented the report to the Sub-Committee. He explained that the report invited the Members to consider whether the Licensee concerned remains fit and proper to hold a Private Hire Operator's licence issued by this authority.

He stated that on 19th November 2020, Licensing received an email from a solicitor acting on behalf of a complainant who was a licensed B&NES Private Hire vehicle proprietor. The email stated that the complainant had worked as a taxi driver on behalf of a licensed taxi operator, between February 2017 and May 2018 and that the complainant had not been paid during the period from March 2017 to May 2018.

He said that the complainant had filed a claim at the County Court Online against the licensee for the non-payment, which totalled £8405.00 and that on the 5th August 2020, the complainant was successful in that claim and awarded £8405 plus £410 costs, totalling £8815.00.

He added that on 11th January 2021, the complainant sent Licensing an email containing 16 attachments of unpaid invoices relating to work carried out on behalf of the licensee.

He explained that on 4th February 2021, the licensee informed Licensing in writing, of his version of events regarding the unpaid invoices.

He said that on 5th August 2021, the complainant sent Licensing a statement confirming that he had not been paid for work carried out on behalf of the licensee that he had been awarded the total invoiced amount plus costs at a County Court Online.

The complainant's solicitor addressed the Sub-Committee and stated that the case is clear. The licensee has not paid invoices that have been issued to him and that a County Court Judgement has ruled that he should pay the total in full, plus costs. He added that he felt that the licensee should also have his licence revoked.

A representative on behalf of the licensee addressed the Sub-Committee. He said that he carries out a school run on behalf of the licensee and provides him with a detailed invoice every month which is paid promptly by cheque.

He stated that he felt that the invoices supplied by the complainant were not very detailed and contained dates within school holidays. He added that the licensee has applied to have the County Court Judgement set aside.

The licensee addressed the Sub-Committee. He said that on receipt of invoices he would look to pay drivers by cheque the same day. He added that on occasions where drivers forget to provide invoices he has paid them and asked for them to be provided in due course.

The Chairman asked how he had received the invoices from the complainant.

The licensee replied that he had not received any invoices until after the County Court Judgement had been given. He said that he had no knowledge of the proceedings prior to the judgement.

The Chairman asked why he had not chased the complainant for the invoices.

The licensee replied that he had. He added that he had paid the complainant by cash and believed that he was trying to claim again by submitting the invoices and requesting a lump sum.

Councillor Sally Davis commented that in her opinion the invoices from the complainant did not contain any school holiday periods.

The Lead Officer – Licensing asked the licensee if the journeys carried out by the complainant had been confirmed by the Home to School Transport department.

The licensee replied that they had.

Referring to previous incidents mentioned within the report the licensee stated that he believed that the investigation in 2016 had only started because he had uncovered that friends of the Lead Officer - Licensing were running an unlicensed private hire business. The licensee provided no evidence of this claim.

Decision and Reasons

Members have had to consider whether a Licensee remained a fit and proper person to hold a Private Hire Operators License. In doing so they 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 taken on its merit, any economic impact of the decision is irrelevant and with public protection being the paramount importance the whole of a person's character is relevant.

The License holder stated:

He did not know what was happening before the County Court judgement was received.

The complainant had done work for him and was paid by cheque every month until in May 2017 he demanded I paid him in cash as he was desperate to pay some bills and could not wait for a cheque to clear. This is not a method of payment I would normally use but I have helped many hackney carriage drivers out over the years when they have needed cash for various reasons as long as we have had invoices to show where the money had gone it is not a problem. All hackney carriage drivers are required to provide an invoice each month, but they regularly forget and I often get them later or at the end of my financial year when I realise which ones are missing.

The complainant did not produce any invoices between May 2017 and July 2018 despite regular requests. I then stopped the complainant from doing any more work for me as I could not continue in this way, paying cash and not having any invoices. I am not sure of the date but in about October / November 2019 I received a recorded delivery with all of the outstanding invoices. I had not had any contact with the complainant during this time at all and still have not had any contact with him to this day.

The same invoices were then sent to my accountants at a later date and while I felt this was a bit odd I did not think anything of it, in fact quite the opposite. I expected the complainant to call me and ask if he could do work for me again as he had now produced the outstanding invoices. There was no letter or any demands enclosed with the invoices. I did not receive any further communications until the County Court judgement letter arrived at my accountant's address. Why he sent it to the accountants address I am not sure, but the company is registered at that address with Companies' House.

The complainant started doing work for my company in September 2016 and was paid every month. Invoices were produced monthly every month up until May 2017 when he started getting paid in cash. Unfortunately, I did not suspect anything during this time and did not realise what he was up to. Ask yourself a few questions: If you are being paid monthly could you afford to stop being paid for a 15 month period? Would you continue working if you were not getting paid? How could you afford to keep your vehicle on the road during this period? The complainant to my understanding owns five taxis, but he is not VAT registered, how come? I have learnt a lot about this man after making enquiries, he is not a trustworthy man, always seeking to be paid in cash, pays very little tax, goes back to Poland twice a year with all the money, and I believe he has already had charges brought against him in the past for fraud.

I tried to contact the complainant many times without success, if invoices are produced, I pay the same or next day. I did not receive any invoices and or messages from the complainant. I did not receive any court papers until I received the County Court judgment. I intend to apply to set the judgment aside. The invoices when they were sent after the court judgment did not have sufficient detail and there were some days he was charging for some days in the school holidays. I cannot pay if not enough detail. I still paid him cash.

Bath and North East Somerset Council Licensing Sub-Committee decision:
To Revoke the License Holder's Private Operators License

In determining this matter Members noted that licences come with responsibilities and there are risks if unsuitable people are licenced. In terms of risks these include putting passengers, other licensees and the public at risk of harm and in terms of responsibility, licensees must ensure public confidence in the licensing regime is not undermined.

Members noted that since the licence was granted the Licensee has been slow and reluctant to respond to proper requests for information from the Council's licensing team, only responding after several requests and the threat of a possible prosecution. He also deflected requests for information and was aggressive to

licensing officers when attending Council offices. When information and records were produced, several breaches of licensing law and conditions were revealed and the Licensee was given a final warning.

Further inaccurate information was provided by the License holder in the course of the investigation by Council officers of the current complaint, that is, regarding his working with Abbey Taxis.

The Members noted the complaint was for a lengthy period of over a year of unpaid hire fees amounting to the substantial sum of over £8,405. The complainant produced proof of posting of his invoices and text messages chasing for payment for which judgment has been obtained, no defence having been filed and which judgment remains unpaid.

Members acknowledged the Licensee's representations regarding the complaint, refuting the claim and judgment in the County Court and that he did not accept any of his reported conduct. Members found that the Licensee's explanations were not believable. Members noted several contradictions from the License holder in his submissions e.g. both saying he paid the complainant in cash and also saying that he did not pay him because the invoices did not set out sufficient detail and included charges for school holiday periods.

Members noted all invoices were for term times and appeared detailed. Members noted that the License holder stated he had not received the invoices or text messages chasing him for payment from the complainant, although the complainant provided proof of posting to the License holder and copies of his text messages. The License holder also stated he did not receive the claim form from Northampton County Court only the subsequent judgement.

Members noted that as the work was for regular runs for school transport, it would have been easy to check with B&NES School Transport if the work had been undertaken by the complainant.

Members noted that the License holder stated he intended to apply to set aside the judgment obtained by the complainant.

Members take a dim view of such conduct which deprives a person of payment for their work when the license holder has themselves been paid and consider such action serious. This was a lengthy breach of over a year of his Private Hire Operators License.

In all the circumstances Members found the License holder is not fit to operate a Private Hire Operators License and has undermined the public trust in the system. Members asked themselves the following question: Would they feel confident, as a driver, of payment when taking referrals from the license operator? In all the circumstances, and on the balance of probabilities, Members answered that question, No. Members do not consider a period of suspension would serve any purpose given the facts, the License holder has had opportunity to make payment when the invoices were received and after the judgment, but has failed to do so. Therefore there is no evidence to suggest the License holder is fit and proper. The license is therefore revoked.

The meeting ended at 11.30 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services