

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: Carrie-Ann Evans (Team Leader, Legal Services) and John Dowding (Lead Officer, Licensing), Maddie Grigor (Licensing)

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.

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 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.

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 16th 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 25th 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 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 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.

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 27th August and on 3rd 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