

NORTH DEVON COUNCIL

Minutes of a meeting of Licensing and Community Safety Sub Committee C held in the Barum Room - Brynsworthy on Friday, 23rd February 2024 at 10.00 am

PRESENT: Members:

Councillor Norman (Chair)

Councillors Maskell and Milton

Officers:

Legal Advisor and Licensing Officers (PF, NB and CH) and Clerk

32. APPOINTMENT OF CHAIR

The Clerk asked for a nomination for Chair.

RESOLVED that Councillor Norman be appointed as Chair of this Sub-Committee C.

33. APOLOGIES FOR ABSENCE

There were no apologies for absence.

34. ITEMS BROUGHT FORWARD WHICH IN THE OPINION OF THE CHAIR SHOULD BE CONSIDERED BY THE MEETING AS A MATTER OF URGENCY

There were no matters, which in the opinion of the Chair, to be considered as a matter of urgency.

35. DECLARATIONS OF INTEREST

There were no declarations of interest announced.

36. EXCLUSION OF PUBLIC AND PRESS AND RESTRICTION OF DOCUMENTS

RESOLVED that:

(a) Under Section 100A (4) of the Local Government Act 1972, the public and press be excluded from the meeting for the for the following item as it involved the likely disclosure of exempt information as defined in Paragraph 2 of Part 1 of the Schedule 12A of the Act (as amended from time to time), namely information which was likely to reveal the identity of an individual.

(b) All documents and reports relating to the item be confirmed as “Not for Publication”.

37. DISCIPLINARY HEARING OF A HACKNEY CARRIAGE AND PRIVATE HIRE LICENSED DRIVER – (REF PFDD0001(24))

Also present: The Applicant and the Applicant's Representative.

The Chair introduced himself, the other Sub-Committee members and the officers present.

The Chair asked the Legal Advisor to explain the order of the hearing proceedings.

The Licensing Officer presented his report. The Licensing Officer highlighted the following:

- Section 13.3 of the North Devon District Council's Hackney Carriage and Private Hire Licensing Policy (December 2023) required a licensed hackney carriage and private hire driver to notify the Licensing Authority within 48 hours of any motoring offence.
- On 9 January 2024 the driver (reference PFDD0001 (24) reported to the Council that he had been convicted of a driving offence in October 2023 and had incurred three penalty points. He advised that this offence would take the total points on his DVLA driving licence to nine penalty points. Notification of this could be seen at Appendix A of the report.
- Whilst the licence holder did inform the Licensing Authority of the October 2023 driving endorsement, no record could be found that the driver ever informed the Licensing Team of the two previous speeding offences for May 2023.
- On 18 January 2024, a Licensing Officer contacted the driver to seek clarity on the position surrounding the October 2023 speeding offence. The driver advised it was a speeding offence on the North Devon Link Road. The driver advised that he was not offered a National Speed Awareness Course (NSAC) in relation to any of the three current offences as he had undergone a NSAC course in August 2021. Once a driver had attended, a course there was no option for re-attendance for a further three years.
- As part of the Licensing Team's procedures, a DVLA check was made every year on a Hackney Carriage and Private Hire Driver's Driving licence. A check was made on 11 July 2023 but this did not disclose the two SP30 offences, which were accrued on the 25 and 26 May 2023 as can be seen at Appendix B of the report.
- In relation to the latest speeding offence, a check was made on 22 January 2024 that identified three driving endorsements totalling nine penalty points, as can be seen at Appendix C of the report.
- The licensee currently held a Hackney Carriage and Private Hire Driver's licence for the period 16 March 2021 to 15 March 2024.
- The driver was being referred to the Licensing and Community Safety Sub-Committee C for the following reasons:
 - The driver had acquired nine penalty points on their DVLA driving licence;
 - The driver had not previously advised the Council of the NSAC attended in August 2021;
 - Points had accrued in short succession following the attendance of the NSAC, which showed a propensity to speed;

- The driver failed to inform the Council of the two speeding offences on the 25 and 26 May 2023, contrary to the Council's Policy; and
- The driver had been issued a final warning for a racially aggravated complaint, a copy of which could be seen at Appendix D of the report.
- It should be noted that the nine penalty points would remain on the driving licence for a period of four years from the date of the offence.
- On 11 December 2023 the driver was issued a final warning with regard to his Hackney Carriage and Private Hire Driver's licence in relation to the complaint of a racially aggravated section 4A Public Order Offence contrary to section 4A of the Public Order Act 1986, which can be seen at Appendix D of the report.
- Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 stated that a district council might suspend, revoke or refuse to renew the licence of a driver of a Hackney Carriage or Private Hire vehicle. Where he had been convicted of an offence under or had failed to comply with the provisions of the Town Police Clauses Act 1847 or the 1976 Act or for 'any other reasonable cause'.
- It was submitted that a driver acquiring nine penalty points on his driving licence, failing to notify the Licensing Authority of a NSAC in 2021, and two of the three driving endorsements accrued in 2023, in combination with being issued a final warning for a racially aggravated Public Order Offence soundly fell within the category of 'any other reasonable cause'.
- A further consideration as to whether the failure to disclose the previous speeding offences was a dishonest act. Appendix H Section 12 of the North Devon Hackney Carriage and Private Hire Licensing Policy referred to any dishonesty by any applicant or other person on the applicant's behalf which was discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- The Sub-Committee was entitled to draw upon any of the considerations outlined in its Hackney Carriage and Private Hire Licensing policy dated December 2023.
- The most significant policy considerations were contained in the following parts of the document:
 - Section 4.12 of the main text (Relevance of Convictions and Cautions). This set out the general principles, which the Licensing Authority adopted in relation to an applicant's convictions and cautions;
 - Appendix H (Guidelines relating to relevance of convictions). Section 18 (12) (I) and (L) set out guidance as to the relevance of convictions for minor traffic offences which appeared on the applicant's record. General Policy (12) Any dishonesty by any applicant or other person on the applicant's behalf which was discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) would result in a licence being refused, or if already granted, revoked and may result in prosecution. Motoring Convictions (I) Hackney carriage and private hire drivers were professional drivers charged with the responsibility of carrying the

public. It was accepted that offences could be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant did not exhibit the behaviours of a safe road user and one that was suitable to drive professionally. Any motoring conviction while a licensed driver demonstrated that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the Licensing Authority considered that the licensee remained a fit and proper person to retain a licence. Other Motoring Offences (L). A minor traffic or vehicle related offence was one which did not involve driving under the influence of drink or drugs, driving whilst using a mobile phone, and had not resulted in injury to any person or damage to any property (including vehicles).; and

- Appendix I (Disciplinary hearings). This set out the disciplinary procedures, which the Sub-Committee may adopt in relation to licence holders who had acquired six or more penalty points on their DVLA driving licence.
- Issues for the Sub-Committee to consider were:
 - Whether the three driving offences (9 penalty points) for speeding, failure to notify of a speed awareness course in 2021 and two of the previous driving offences of May 2023, together with the final warning letter issued for the racially aggravated public order offence issued on 11 December 2023 by the Licensing Officer were relevant and serious enough to justify the suspension or revocation of the Hackney carriage and Private Hire Driver's Licence;
 - Whether the failure to disclose the previous speeding offences was an act of dishonesty; and
 - Whether the applicant continued to be a fit and proper person to hold Hackney Carriage and Private Hire Driver's Licences.
- The Sub-Committee must have regard to all the evidence it hears in reaching its decision.
- In assessing the various information collected in relation to the 'fit and proper' status of an applicant or licence holder, the Licensing Authority would apply the following test:
 - "Would the decision maker (s) charged with the ability to grant a licence, without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time day or night"? These included any dishonesty and offences involving violence against the person.

The Chair invited the Applicant and/or his representative to present their case.

The Applicant's representative highlighted the following:

- The copy of the NDC policy that he had been given was dated November 2022 and in it there was no mention of notifying the Licensing Authority about undertaking a National Speed Awareness Course. The Applicant had done nothing wrong by not notifying the Authority and could not be called dishonest if unaware he had done anything wrong.
- The Police had advised him that no one needed to be notified of the undertaking of the course.
- The Police had notified the representative for the Applicant initially; as he was, the owner of the vehicle that the Applicant had been driving when caught speeding.
- He felt that the Licensing Authority should issue paper copies of the policy with a signed confirmation of receipt.
- Now he was aware of the need to notify the Licensing Authority about NSAC undertaken by any of his drivers he would inform the Authority straightaway.
- The Applicant was still waiting for the bodycam footage of the civil enforcement officer.
- The Applicant had sent a letter of apology to the officer involved in the racially aggravated incident.

RESOLVED that it being 10:43 the meeting be adjourned for a comfort break.

RESOLVED that it being 10:45 the meeting be reconvened.

Members questioned the Applicant.

The Applicant's representative made the following responses:

- It was difficult to keep on top of all the changes that occurred for drivers.
- The copy of the policy he was adhering to didn't mention the need to notify a National Speed Awareness Course attended.
- The Licensing Officer had to check what was stated in the policy before he could answer his question on whether it needed to be notified.
- Felt he had been kept up to date as the copy of the policy he was using was supplied to him by the Licensing Officer.
- The Applicant had school contracts for Devon County Council, had regular customers to take to the airports he drove around 60,000 miles a year.
- The offence in London was four miles an over the limit in a 20 miles an hour zone he was unfamiliar with the area.
- The two offences on the dual carriageway he didn't have passengers in the vehicle and was caught at 48 miles an hour in a 40 mile an hour zone.
- Devon County Council carried out their own DBS checks on their drivers and these speeding offences would not show up on the DBS.
- The policy was probably only looked at once by the drivers in the three years that they held their licence.
- He felt his regular customers who knew him would still want to get in the car with him if the number of points he had were displayed on the dash.
- He had an impeccable record and had been driving for over 30 years.
- In recent times he had been suffering with anxiety due to the loss of close friends. He had recognised this and addressed it with the help from a GP.

- He felt he was well liked in the community and received over 100 well wishes on social media recently for his birthday.

The Licensing Officer summed up. In his summing up the Licensing Officer confirmed no record of a phone-call could be found to support the Applicant's claim he had notified us of the May 2022 speeding points. He advised that the list of offences that had to be notified were too numerous to list them all but would seek clarification on whether the policy should be amended to list them all. It was the Council's preference to use email for updates and correspondence and it could not be responsible for emails going into spam folders. All updates and policies were available on the Council's website.

The Applicant's representative summed up. In his summing up he confirmed he now understood he had done wrong by not notifying the Authority about the Speed Awareness Course and that he would ensure he would notify the Authority going forwards.

RESOLVED that it being 11:20, everyone be excluded from the meeting with the exception of Members, the Legal Advisor and the Clerk in order for the Sub-Committee to receive legal advice in accordance with paragraph 5 of Schedule 12A of the Local Government Act 1972.

RESOLVED that it being 12:36, everyone be readmitted to the meeting.

The Chair requested that the Clerk read the proposed decision, which was voted on, and unanimously agreed.

RESOLVED that the Hackney Carriage and Private Hire Drivers Licences, reference PFDD0001 (24) be revoked with immediate effect.

The decision was made for the following reasons:

The Licensing Authority has determined, with the high responsibility that the Licensing Authority has in respect to the protection of the public, that the Applicant was not a fit and proper person to continue to hold the above licence(s) for the following reasons, pursuant to section (61) (1) and (2B) of the Local Government (Miscellaneous Provisions) Act 1976, and Appendix H (18) (i) (I) and Section 4.12 of the Council's Hackney Carriage and Private Hire Licensing Policy dated December 2023, and the information that Members had heard today.

The reasons for this were:

- a) Failure to understand the moral and professional obligation to notify the Licensing Authority of a speed awareness course undertaken in 2021.
- b) There was no evidence of the Licensing Authority being notified of two driving offences of May 2023 in line with reporting requirements of the Council's Hackney Carriage and Private Hire Licensing Policy. These May 2023 offences having occurred at a site where there has been fatalities.

- c) Accumulation of nine DVLA penalty points for speeding offences within a six-month period between May & October 2023.
- d) The final warning letter issued by the Licensing Authority on the 11 December 2023 for a racially aggravated public order offence.

Appendix H (18) (i) of the Council's Hackney Carriage and Private Hire Licensing Policy states that Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence.

In this instance the driver had incurred nine penalty points for speeding within a short period of time which was not a single occurrence, and the Licensing Authority believed the number of points accrued indicated a propensity to drive in this manner. Moreover, these points had accumulated following the driver's attendance at an educational speed awareness course. It was held that the accumulation of these penalty points indicated that the driver did not exhibit the behaviours of a safe road user and one that was suitable to drive professionally.

Whilst the Licensing Authority was not considering the grant of a new licence in this instance, Members also noted that within Appendix H (18) (I) of the Council's Hackney Carriage and Private Hire Licensing Policy where a new driver applicant has 7 or more points on their DVLA licence for minor traffic or similar offences, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. This sets the expectation and gravitas pertaining to the propensity to speed in motor vehicles used prior to a licence having been granted, and now the Licensing Authority is determining a situation after the grant of a licence and relevant to the standard of fitness of a licensed hackney carriage and private hire driver.

There were concerns over a multitude of issues, namely the Licensing Authority was not satisfied that attempts to notify were evidenced; speeding offences and final warning in respect of the racially aggravated public order offence and it was considered that the above reasons were relevant and serious enough to justify the revocation of the current hackney carriage and private hire drivers licence with immediate effect.

The Decision Notice was printed and passed to the Applicant.

Chair

The meeting ended at 12.41 pm

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Committee.

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