

Minutes of: LICENSING AND SAFETY PANEL

Date of Meeting: 7 March 2017

Present: Councillor D Jones (in the Chair)
Councillors P Adams, N Bayley, I Bevan, J Grimshaw,
G Keeley, O Kersh, A McKay, Sarah Southworth, J Walker
and S Wright

Also in attendance:

Public Attendance: No members of the public were present at the meeting.

Apologies for Absence: Councillor R Hodgkinson and Councillor J Kelly

LSP.567 DECLARATIONS OF INTEREST

There were no declarations of interest raised in relation to any items on the agenda.

LSP.568 MINUTES

Delegated decision:

That the Minutes of the Licensing and Safety Panel meeting held on 19 January 2017, be approved as a correct record and signed by the Chair.

LSP.569 PUBLIC QUESTION TIME

There were no questions raised under this item.

LSP.570 OPERATIONAL REPORT

The Assistant Director (Localities) submitted a report advising Members on operational issues within the Licensing Service.

The report set out updates in respect of the following issues:

- Pre-application assessments are continuing to be undertaken by the adult learning team. From 4 January 2017 until 17 February there have been 47 assessments booked, of which 32 passed, 13 failed and 2 failed to attend.
- In relation to an immediate suspension of a private hire driver, following information from Greater Manchester Police of a serious assault on 27 January 2017. The driver in question has handed in his driver's badge and will be suspended pending the outcome of the Police investigation into the assault.
- In relation to an application for a Summary Review from Greater Manchester Police in respect of the Alt House, Moss Lane, Whitefield, in connection with serious crime and/or serious disorder, a Licensing Hearings Panel was convened on 10 February 2017 and on consideration of the evidence, members imposed interim steps which resulted in the premises licence being suspended pending the full review on 6 March 2017.

The Chair of the Licensing and Safety Panel informed the Committee that following the full review, which he also chaired, the Premises Licence for the Alt House had been revoked.

It was agreed:

That the report be noted.

LSP.571 URGENT BUSINESS

There was no urgent business reported.

LSP.572 EXCLUSION OF PRESS AND PUBLIC

Delegated decision:

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items of business since it involved the likely disclosure of information relating to individuals who hold Licences granted by the Authority or Applicants for Licences provided by the Authority.

LSP.573 CONSIDERATION OF DRIVER SUITABILITY TO WORK ON THE HOME TO SCHOOL & COLLEGE TRANSPORT CONTRACT

Mrs Nicola Hudson, Transport/Contract Supervisor, of the School and College Transport Team, presented a report submitted by the Director of Children's Services in relation to the suitability of an individual Public Service Vehicle (PSV) driver to authorise them to work on a home to school contract.

Passengers using the Service have a range of additional needs including learning, behavioural, sensory, hearing, visual, autistic disorder or physical disabilities and escorts are allocated to accompany pupils on their journey to and from school where required.

A report was considered on 6 October 2014 in relation to the Licensing and Safety Panel undertaking a review of PSV drivers working on School and College transport contracts when a caution or conviction is disclosed on their enhanced DBS certificate. Members resolved that the Panel would become the single reviewing body for such applications and the relevant delegation was amended, so as to enable it to determine if such applicants were 'fit and proper'.

In relation to the current driver, an application was made for an enhanced DBS on 27 September 2016 which showed a conviction dated 12 December 2007, in relation to racially aggravated assault by beating on 24 February 2007. The Applicant was convicted on 12 December 2007 at Bolton Crown Court and sentenced to unpaid work requirement.

The Applicant attended the meeting, accompanied by their employer and explained to the Panel that the incident had occurred 10 years ago but that the offence of racially aggravated assault by beating was an exaggerated explanation of what actually happened. On the night in question, the Applicant had fallen at

home and had to go to hospital for treatment. They had been put in a side ward and the nurse treating them had made a comment when asked who was in the bed, 'oh, just another drunk'. The Applicant was very unhappy with this comment as they were not drunk and had challenged the nurse about the comment and stated they did not want to be treated by her.

The Applicant explained that whilst trying to get off the bed their foot had caught the hip of the nurse but no physical contact had been intended. The Applicant felt that the nurse was trying to cover up for her previous statement and had then called Security making an allegation that she had kicked with intent.

The Applicant admitted being angry at this time and had called the nurse a 'sly person' and then a 'paki' but regretted this and was very remorseful but it was the heat of the moment in the chain of events.

The Applicant explained that they had eventually pleaded guilty due to the costs involved and the time taken off work and had been given a 12 month suspended sentence, ordered to pay £500 compensation and had undertaken Community Service.

The Applicant stated that they really wanted this employment and felt that the punishment already served outweighed the actual incident.

Delegated decision:

The Panel carefully considered the report and the oral representations by the Applicant and taking into account the Council's Conviction Policy and Guidelines and resolved, unanimously, that **the Applicant was suitable to work as a PSV driver on the home to School and College transport contract and therefore the application was allowed.**

The Licensing and Safety Panel noted that although the conviction itself was December 2007 and just under the 10 year condition, the offence itself was just over 10 years ago, and that the Applicant was remorseful for their actions at that time and therefore agreed unanimously that the driver was a suitable person.

LSP.574 SUSPENSION/REVOCATION OF HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCES

Licence Holders 03/2017 and 04/2017 were invited into the meeting together at their specific request. Licence holder 03/2017 was represented by Mr G Bridge, License Holder 04/2017 was unrepresented and both were accompanied by their partners.

The Chair asked each Licence Holder individually and Mr G Bridge if they were in agreement to have the hearing in each other's company and they indicated that they were content that this was the best way to conduct the meeting. It was explained that the licence holders were second cousins and the incident in question had been resolved following a family gathering.

The Chair outlined the procedure to be followed and the Licensing Unit Manager presented a summarised report submitted by the Assistant Director (Localities) on the proposed suspension of the Private Hire Drivers' Licences.

The Licence Holders were before the Licensing and Safety Panel following a violent altercation between both drivers on 5 February 2017.

The Licensing and Safety Panel were then showed CCTV footage of the altercation which took place on Silver Street in Bury Town Centre.

Mr G Bridge then addressed the Panel on behalf of Licence Holder 03/2017 explaining that the drivers were second cousins and there was a strong family connection. This Licence Holder was working for a local taxi firm and their second cousin had started to work for them also but it hadn't worked out and had left to work with a different operator. This had caused some issues within the family.

On 5 February 2017, Licence Holder 03/2017 had stopped their vehicle on Silver Street whilst dropping passengers. The vehicle then caused an obstruction on the road. It was a rainy night and the passengers had asked to be dropped off directly outside Brambles and the Licence Holder had felt obliged to do this which then caused the obstruction.

Licence Holder 04/2017 had then arrived and had been unable to get passed and words were exchanged. Licence Holder 03/2017 had then got out of their vehicle and approached 04/2017 on the driver's side and opened the door. The CCTV showed the footage of Licence Holder 04/2017 then hitting 03/2017 who then returned to their vehicle, realised their glasses had come off and returned to find them. Another brief altercation took place and then both drivers move off. Mr G Bridge stated that at no time did Licence Holder 03/2017 use any violence. Licence Holder 03/2017 reported the incident to the Police as he had an eye injury and was treated at hospital. Since having reported the incident, the complaint has since been withdrawn and Greater Manchester Police has not had any involvement.

Mr G Bridge then referred to a previous warning given to Licence Holder 03/2017 on 6 March 2013, relating to a road rage incident involving a member of the public and explained that Licence Holder 03/2017 was approaching a zebra crossing,

again on Silver Street and had a slow speed collision with a pedestrian. The Police were involved but there was no conviction and the Licence Holder had subsequently attended a driver improvement course.

Mr G Bridge then distributed a character reference from the Licence Holder's current employer and also a screen shot of the mobile phone of licence holder 04/2017 to 03/2017 stating he was 'really really sorry' for what had happened.

Mr G Bridge explained to the Panel that Licence Holder 03/2017 had 5 children and their partner works part time, however they provide the main income and the suspension was having an impact on their finances. The Licence Holder had held a licence for 14 years.

The Chair then asked Licence Holder 04/2017 to address the Panel and the Licence Holder stated how sorry they are. The Licence Holder's partner explained that both families had since met regarding this matter and had completely resolved their issues. They were a large and very close family and this was a very big thing for them all and completely out of character for them. They have 3 children. Licence Holder 04/2017 now drives for another taxi firm and again any action would have a significant impact on their finances.

Various questions were asked of both Licence Holders from members of the Licensing and Safety Panel.

Delegated decision:

1. The Panel carefully considered the report and the oral representations by Licence Holder 03/2017, their representative Mr G Bridge and partner and taking into account the Council's Conviction Policy and Guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976 and resolved, unanimously, **to suspend Licence Holder 03/2017 for a period of 2 months and attend the Council's driving standards course prior to the end of this period.**

The Panel noted that this was a very serious matter. Although this Licence Holder had not actually hit 04/2017, they were the instigator of the altercation. Also, the Panel were very concerned that the Licence Holder had shown no consideration to passengers and the surrounding public in dropping them off in an unmarked bay area, causing an obstruction to other road users and then by leaving the vehicle to approach Licence Holder 04/2017, causing a serious problem on an already busy street. The Panel's role includes a consideration of the safety of the public which the Panel felt this Licence Holder had shown no concern for. Further, the Panel noted that other members of the public were seen on the CCTV separating the two individuals and felt it unacceptable for two Licence Holders to be fighting in the streets. However, the Panel took into consideration the circumstances of Licence Holder 03/2017 and their family, that both families had resolved the feud between them and that the complaint to the Police and the Licensing Office had been withdrawn. It also noted the remorse and apologies from Licence Holder 03/2017. The Applicant was informed of his right of appeal to the Magistrates' Court within 21 days.

2. The Panel carefully considered the report and the oral representations by

Licence Holder 04/217 and their partner and taking into account the Council's Conviction Policy and guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976 and resolved, unanimously, **to suspend Licence Holder 04/2017 for a period of 2 months and attend the Council's driving standards course prior to the end of this period.**

The Panel noted that this incident was very serious and such an act of aggression could not be tolerated. Although this Licence Holder was not the instigator of the altercation, they had shown no concern to any of the members of public whilst alighting from the vehicle in order to repeatedly punch Licence Holder 03/2017. Further, the Panel noted that other members of the public were seen on the CCTV separating the two individuals and felt it unacceptable for two Licence Holders to be fighting in the streets. However, the Licence Holder and their partner had explained the circumstances of the feud between the two Licence Holders and that this was now resolved. The Panel took into consideration the circumstances of Licence Holder, the impact on their family if 04/2017 and that they were very remorseful and apologised for their actions generally and to Licence Holder 03/2017.

The Applicant was informed of his right of appeal to the Magistrates' Court within 21 days.

LSP.575 APPLICATIONS FOR PUBLIC/PRIVATE HIRE DRIVER LICENCES

The Licensing Unit Manager presented a report submitted by the Assistant Director (Localities) regarding applications for Public/Private Hire Vehicles Drivers' Licences.

The Applicants were invited to attend the meeting for separate hearings and the Chair outlined the procedure to be followed. The Applicants were invited to address the Panel separately on their applications and any matters referred to in the Officer's report.

1. Applicant 05/2017 attended the meeting and was represented by Mr Ahmed, Solicitor. The Licensing Unit Manager read the report which was accepted by the Applicant and their Solicitor which explained that the Applicant had been convicted at Greater Manchester Magistrates' Court on 19 July 2016 (postponed from 12 July 2016) for failing to provide a specimen for analysis and had been fined £325 and his DVLA Licence endorsed with 10 penalty points with costs of £225 and victim surcharge of £32. The Applicant had previously held both Private Hire and Hackney Carriage Driver Licences until 4 September 2016.

The Applicant's Solicitor addressed the Panel and explained that on the date of the offence, 15 March 2016, the Applicant had been picked up in a car, by a friend, near to where they live. The Applicant got in the vehicle having drunk alcohol, but did not realise that the friend only had a provisional driving licence. The car was stopped by Police and the Applicant, being classed as in charge of the vehicle, was asked to provide a sample which the Applicant refused and was subsequently taken to the Police station. The Applicant wrongly thought they could seek legal advice prior to giving a sample which was the reason for the

refusal. It was accepted that this was not an excuse for the Applicant's behaviour but a reason why the offence was committed. The Applicant had now had to move back home with parents due to financial implications and hadn't worked for 4 months.

The Applicant also addressed the Panel and explained that the initial conviction date of 12 July 2016 had been moved to 19 July 2016 due to the Applicant having a tooth infection and being unable to attend.

The Applicant stated they would not have got in the car had they known the driver had only a provisional licence as they would not have jeopardised their licence with Bury Council. This was the Applicant's profession and they really needed a licence to work.

Delegated decision:

The Panel carefully considered the report and the oral representations by the Applicant and after taking into account the Council's Conviction Policy and Guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976 and resolved, unanimously, that **the application for a Private Hire Driver's Licence by Applicant 05/2017 be granted.**

The Panel acknowledged that failure to provide a specimen was a serious offence, however, the Applicant was genuine in the explanation as to why they had initially been in the car with a driver who was driving on a provisional licence and then subsequently refused to provide a sample. The Panel agreed that the Applicant was remorseful for their actions and that they were a fit and proper person to be granted a licence in Bury.

2. Applicant 06/2017 attended the meeting and was unaccompanied. The Licensing Unit Manager read the report, which was repeatedly interrupted by the Applicant arguing that the information was incorrect throughout. The Chair asked the Applicant to allow the Licensing Unit Manager to finish the report and then address any issues after.

The Applicant then explained that at the time of the convictions for offences connected with the supply of drugs in 2007, they were young and naive. In relation to the offence for possession of cannabis in November 2010, the Applicant stated that they had allowed a friend to smoke cannabis in their vehicle, who had left behind two hand rolled cigarettes containing cannabis. The Applicant had then been stopped by Police and the drugs found. The Applicant had been convicted at Bury Magistrates' Court on 22 November 2010 and fined £65 plus costs of £85 and victim surcharge of £15.

In relation to an offence of common assault offence on 23 March 2016, for which the Applicant had received a caution from Greater Manchester Police, the Applicant stated this was not a fight but an argument with a cousin in Bury Town Centre, whom the Applicant had pushed and the cousin had reported the incident to the Police.

In relation to an offence of racially/religiously aggravated intentional harassment/alarm/distress-words/writing on 28 November 2016, for which the Applicant was convicted at Greater Manchester Courts on 16 December 2016 and sentenced to community order until 15 December 2017 with costs of £85 and compensation of £100 and unpaid work requirement victim surcharge of £85, the Applicant explained that this was in respect of having two vehicles registered in their name; one of the vehicles being driven by the Applicants partner who had lost the MOT certificate which had subsequently expired. Due to the vehicle not having a valid MOT, DVLA did not send a reminder for this vehicle to be taxed which had then also expired. As a result the DVLA took action an authorised Officer clamped the Applicant's vehicle outside their home. The Applicant stated that they had just woken up and was angry at the clamping and the fact that the Officer was 'smirking'. The Applicant denied using any language in relation to race or religion but stated the Officer was a 'pork pie eater'. The Applicant stated that they had since apologised to the Officer.

The Applicant explained that they were from a decent family and their Father had worked all his life. The Applicant has three children to provide for and currently is a part time delivery driver for a Chinese takeaway working nights, however, a Private Hire Vehicle licence would allow more flexibility with working hours and enable them to provide for their family.

The Applicant apologised for being disrespectful to the Panel and Officers of the Council but stated they were frustrated that they had already paid out so much for the licence. The Applicant went on to state that if the licence was not granted they would not apply for a licence again but wanted a refund for the money already paid to the Council. The Chair explained the process was the same for every prospective licence holder.

Delegated decision:

The Panel carefully considered the report and the oral representations by the Applicant and after taking into account the Council's Conviction Policy and Guidelines and in accordance with the Local Government (Miscellaneous Provisions) Act 1976 and resolved, unanimously, that **the application for a Private Hire Driver's Licence by Applicant 06/2017 be refused.**

The Panel agreed that these were very serious offences and although the convictions for the drugs offences were almost over 10 years, the Applicant's attitude was rude, aggressive and very challenging, both towards Council staff and the Panel itself. The Panel felt that the Applicant showed no perception of his manner or behaviour and took no apparent responsibility for his actions. The safety of the public is paramount and the Panel felt that the Applicant demonstrated a lack of ability to control his temper and was therefore not satisfied that he qualified as a fit and proper person to be driving the public in a private hire vehicle in Bury with such volatile behaviour.

The Applicant was informed of his right of appeal to the Magistrates' Court within 21 days.

COUNCILLOR D JONES

CHAIR

(Note: The meeting started at 7.00 pm and finished at 9.45 pm)